

**Statement of the Federal Trade Commission
Concerning Auto Recall Advertising Cases¹
December 15, 2016**

Unrepaired auto recalls pose a serious threat to public safety. Car manufacturers and the National Highway Traffic Safety Administration have recalled tens of millions of vehicles in each of the last several years for defects that pose significant safety risks to consumers. In 2015, for example, recalls affected 51 million vehicles nationwide.² And defects that have been the subject of recalls have led to severe injuries and even death for many consumers. Federal law requires that all new cars sold in the United States be free from recalls, but it does not prohibit auto dealers from selling used cars with open recalls

3

Our orders stop this deceptive conduct and provide important additional protections for consumers. First, the orders prohibit each company from making any

¹ In the Matters of General Motors Company, File No. 1523101; Jim Koons Management Company, File No. 1523104; Lithia Motors, Inc., File No. 1523102; CarMax, Inc., File No. 1423202; West-Herr Automotive Group, Inc., File No. 1523105; and Asbury Automotive Group, Inc., File No 1523103.

² Gordon Trowbridge, National Highway Traffic Safety Administration, *U.S. Department of Transportation launches new public awareness campaign*, Jan. 21, 2016, <https://www.nhtsa.gov/About-NHTSA/Press->

safety-related claim about its vehicles unless (1) the vehicles are recall-free, or, alternatively, the company discloses clearly and conspicuously and in close proximity to the representation both that the vehicles may be subject to open recalls and how consumers can determine the recall status of a particular car, and (2) the claims are not otherwise misleading.⁴

This means that, if any car on the companies' lots is subject to an open recall, every time the companies make these types of inspection claims, they must prominently disclose that their cars may be subject to open recalls and tell consumers how to determine the recall status of specific cars. And they must provide this information wherever the inspection claims are made – in the showroom, on the lot, and in any TV, radio, or website ad that consumers may view before they even visit a car dealer.

Further, the orders require each company to warn consumers who recently purchased one of its used cars that the vehicle may have an open recall. The Commission can seek civil penalties for violations of these orders, and we will not hesitate to do so if we discover a violation.⁵

These enforcement actions will help empower consumers to make more informed and safer purchasing decisions in a market that, absent a change in federal law, continues to include cars subject to open recalls. Dealers that repair all of their cars can continue to make truthful claims that they are recall-free, and can benefit from the competitive advantages of doing so. Dealers that cannot, or do not, repair all of their cars must instead prominently disclose that the cars may have open recalls when they make certain safety-related claims, such as claims about comprehensive inspections. Dealers are therefore incentivized to repair open recalls in the cars they advertise. At the same time, dealers can continue conducting their inspection programs and truthfully advertising them, provided they prominently disclose that cars may be subject to open recalls and do not misrepresent the recall status or safety of their cars.⁶

Finally, we note that other laws, including state product safety, tort, and other consumer protection laws, provide important safeguards to consumers affected by defective cars. Of course, the Commission's orders do not affect the protections afforded by those laws. Rather, the Commission's orders provide independent protection for consumers, requiring that they be given information about open recalls before they purchase a used car.

⁴ For instance, a claim could still be misleading, even with the required disclosure, if a dealer represents that it inspected specific cars when it failed to do so, makes false oral statements to consumers that specific cars are free of recalls, or states a car *may* be subject to a recall (or otherwise implies it does not know the recall status) but in fact knows the car is actually subject to an open recall.

⁵ See *U.S. v. New World Auto*, No. 16-cv-2401 (N.D. Tex. Aug. 22, 2016) (requiring auto dealers to pay civil penalties for violations of FTC order).

⁶ Dealer inspection programs often involve checking that vital components of a car, like the brakes and drivetrain, are working properly and thus can provide important consumer benefits.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls altogether, and we support efforts seeking to address this serious public safety issue. Although the Commission's enforcement actions against individual companies cannot substitute for legislative solutions, they provide important protections for consumers to help ensure that they can make informed and safer purchasing decisions in the used car marketplace.