

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of)
) DECISION AND ORDER
)

West
the procedure prescribed in Rule 2.34, the Commission issues ~~its~~ Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent West-Herr Automotive Group, Inc., is a New York corporation, with its principal office or place of business at 3552 Southwestern Blvd, Orchard Park, New York 14127.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “Respondent” shall mean West-Herr Automotive Group, Inc., and its successors and assigns.
2. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
3. “Clearly and conspicuously” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made through the same means through which the representation requiring the disclosure is presented.
 - b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - c. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 - d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

- ii. how consumers can determine whether an individual motor vehicle is subject to an open recall for a safety issue that has not been repaired,

and the representation is otherwise not misleading. *Provided further that* if Respondent receives any written notification from a manufacturer that an individual used motor vehicle is subject to an open recall for a safety issue, Respondent must clearly and conspicuously provide that written notification, or a document that conveys the same information using a substantially similar format, to the consumer prior to consummation of the sale of that motor vehicle.

B. Misrepresent the following:

1. Whether there is or is not an open recall for safety issues for any used motor vehicle;
2. Whether Respondent repairs used motor vehicles for open recalls for safety issues; and
3. Any other material fact about the safety of the used motor vehicles it advertises for sale.

II.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days of entry of this Order, must provide, by first class mail to the last known address of every consumer who purchased a used motor vehicle from Respondent between July 1, 2013 and June 30, 2015, a notice on Respondent's letterhead that clearly and conspicuously discloses the following:

“We want to alert you that some of the used vehicles we recently sold had been recalled for safety issues, but weren't repaired as of the date they were sold. You can check whether the vehicle you bought from us is subject to an unrepaired recall at the National Highway Traffic Safety Administration's recall website, <https://vinrcl.safercar.gov/vin/>. That site also provides information on how to get your vehicle fixed if it's been recalled.”

Respondent shall not include any advertising, marketing, or other promotional information in the notice. Moreover, the mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a clear and conspicuous fashion the disclosure “Important Safety Recall Information.”

Provided, however, that Respondent is not required to provide this notice for (A) any motor vehicle that Respondent can demonstrate was not subject to an open recall for a safety issue at the time of purchase and delivery, or (B) any motor vehicle that was the subject of one or more open recalls for safety issues at the time of purchase and delivery that Respondent can demonstrate have subsequently been fixed.

For purposes of Subpart (A) of this proviso, records showing that the vehicle was not listed as

subject to an open recall for a safety issue, as of the date of the purchase, on the Original

personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin: *In re West-Herr Automotive Group, Inc.*

VI.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary