

COMMITTEE ON ENERGY AND COMMERCE
Subcommittees:
Ranking Member, Commerce,
Manufacturing, and Trade
Health
Oversight and Investigation

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September 12, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairwoman Ramirez:

I am writing to express my deep concern with regard to the consent orders with General Motors Company (GM), Jim Koons Management, and Lithia Motors, Inc. proposed by the Federal Trade Commission (FTC). The FTC's action comes after the companies deceptively advertised used cars as passing rigorous safety inspections when those cars were still subject to open safety recalls. Deceptive advertising of used cars is an important issue for the FTC to address, but the remedies in the proposed orders would fail to adequately protect consumers. The FTC can do better.

Dr. Mark Rosekind, Administrator of the National Highway Traffic Safety Administration, has repeatedly noted that the sale of unrepaired, recalled used cars is a critical safety concern and that new and used cars alike should not be sold with unrepaired recalled defects.¹ While the FTC does not have the authority to prohibit the sale of used cars with unrepaired defects, it can and should prevent the misleading advertising of those cars.

When auto dealers imply cars are safe even though the cars have unrepaired safety defects subject to a recall, those are precisely the unfair and deceptive practices the FTC has the power to stop. However, the proposed consent orders stop short of banning deceptive language. They allow the auto dealers to continue their misleading advertising practices as long as the seller includes (1) a disclaimer that the advertised vehicles may still be subject to safety recalls and (2) information on how to check if a specific vehicle is subject to an open recall. Rather than protecting consumers, these proposed orders would increase confusion and set a terrible precedent.

GM has advertised certified, pre-owned cars as undergoing a 172-point inspection but still sold cars subject to open recalls.² Normal consumers assume that the term "certified," even

¹ House Committee on Energy and Commerce, *Hearing on an Update on the Takata Airbag Ruptures and Recalls*, 114th Cong. (June 2, 2015); House Committee on Energy and Commerce, *Hearing on Examining Ways to Improve Vehicle and Roadway Safety*, 114th Cong. (Oct. 21, 2015); House Committee on Energy and Commerce, *Hearing on Oversight of the National Highway Traffic Safety Administration*, 114th Cong. (Apr. 14, 2016).

² Complaint, *In the Matter of General Motors LLC* (online at www.ftc.gov/system/files/documents/cases/160128generalmotorscmpt.pdf).

with a disclaimer elsewhere in an advertisement, means that the cars are safe and that recalls have been addressed. In fact, that is what consumers are told to believe. A leading automotive website tells consumers, “[S]hopping for a [certified, pre-owned] car is easier than shopping for a used car. This is because the certification process removes one of the major drawbacks to buying a used car: uncertainty about the mechanical condition of the vehicle.”³ Disclosure that vehicles *may* be subject to a recall does not fully inform consumers. Such disclosures even fall short of GM’s current requirement that dealers complete all safety recalls before a certified pre-owned vehicle is sold.⁴ Therefore, if GM did the bare minimum under the proposed order, it would be a step backward. Consumers would still be deceived.

In addition, the weak remedies in these proposed consent orders would likely affect other attempts to curb the sale or advertising of vehicles under recall. For example, the U.S. Attorney for the Southern District of New York entered into a Deferred Prosecution Agreement with GM.⁵ Under this agreement, an independent monitor was assigned to review how GM addresses defects in certified, pre-owned vehicles, and this monitor has the authority to make recommendations to ban the sale of vehicles with open recalls.⁶ However, the FTC consent order with GM allows only a disclaimer, which GM could use in other negotiations to argue against any additional restrictions on the sale or advertising of used cars with open recalls.

NHTSA has brought cases against auto dealers for selling unrepaired new cars.⁷ In such cases, the dealers also agreed to stop selling used cars that have unrepaired safety defects under recall.⁸ The FTC’s proposed consent orders could weaken NHTSA’s ability to stop the sale of unrepaired used cars in similar cases in the future. In recent years, auto dealers have pushed for disclosure of recalls instead of repairs at the state level. With those dangerous efforts in mind, I urge you to avoid any action that encourages selling cars without first repairing safety defects. Consumers rely on the FTC to protect them by prohibiting deception, and proceeding with the proposed orders would be a profound disappointment to me, other Members of Congress, and advocates who have worked so long to improve auto safety.

Recall response rates are already too low, and they are even worse for cars with a second owner. One of the best ways to increase the rate of repair is by prohibiting the sale of used cars until any known defects have been repaired. Selling a new car or renting a car with an open recall is already banned, and I have been working with safety advocates to close the major loophole in the law that allows for sale of used cars with open recalls to occur. In the meantime, the FTC should stop auto dealers from deceiving their customers.

³ *What Are Certified Pre-Owned Vehicles?*, Edmunds (Mar. 31, 2016) (online at www.edmunds.com/certified-cars/what-are-certified-used-vehicles.html).

⁴ *Vehicle Inspection and Reconditioning*, GM (online at <http://www.gmcertified.com/certified-benefits/vehicle-car-inspection>)

⁵ *Deferred Prosecution Agreement-General Motors Company* (online at www.justice.gov/usao-sdny/file/772311/download).


⁶ *Id.*

⁷ See e.g., *In re Sands Chevrolet, LLC Settlement Agreement* (online at www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM513100/INOT-AQ14001-63460.pdf).

⁸ *Id.*

I call on the FTC to revise or reject these proposed orders to truly look out for consumer safety. Thank you for your prompt attention to my concerns.

Sincerely,



Jan Schakowsky
Ranking Member, Subcommittee on Commerce,
Manufacturing, and Trade