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Consumer/Safety Groups Appeal Federal Court Ruling that Lets FTC Continue To Enable Car Dealers to Lie about the Safety of Hazardous Recalled Used Vehicles

Washington, DC: Today, leading auto safety / consumer advocacy non-profit organizations Consumers for Auto Reliability and Safety (CARS), the Center for Auto Safety, and U.S. Public Interest Research Group (USPIRG) [filed a notice of appeal](#) in their ongoing battle to protect the public from hazardous recalled vehicles, upping the ante in their challenge to the Federal Trade Commission's Consent Orders with General Motors and the publicly traded mega-car dealership chains CarMax, Lithia, Koons, Asbury, and West-Herr that allow them to engage in dangerously deceptive advertising about the safety of recalled used vehicles with deadly safety defects.

The FTC's consent orders, finalized before any of the current Commissioners were seated, allow GM and the car dealership chains to advertise that hazardous, defective recalled used vehicles are "safe," "repaired for safety," passed a rigorous inspection, and qualify to be sold at an inflated price as so-called "certified" vehicles, *without getting the free safety recall repairs done first*, if they merely disclose (in English only) that the vehicles "may" have an "open recall."

"Under the FTC's Consent Orders, a car dealer can get away with advertising that a used car is 'safe,' 'repaired for safety,' 'passed a 172-point inspection,' and qualifies as a 'certified' vehicle – even if it has the exact same safety recall defect that killed my daughters. That's appalling," said Cally Houck, mother of Raechel and Jacqueline Houck, who were ages 20 and 24 when they were killed by an unrepaired recalled rental car. A unanimous jury eventually awarded Raechel and Jacqueline's parents \$15 million in compensatory damages for negligence and wrongful death, under existing state consumer protection laws. The federal Raechel and Jacqueline Houck Safe Rental Car Act is named in their memory.

"Under state laws, such deceptive advertising has historically been viewed by numerous Courts as being clearly illegal. But the FTC's consent orders make it more difficult for victims of unscrupulous car dealers to use some of the most important existing state consumer protection laws," said Bernard Brown, a nationally renowned attorney who specializes in winning litigation against car dealers who engage in fraud involving seriously defective used cars and teaches other attorneys about auto fraud litigation. Brown also serves on the Board of Directors of CARS.

The legal appeal filed today seeks to have the Washington, D.C. Circuit Court of Appeal overrule a federal court decision issued on Labor Day, September 6, ruling in the safety groups' case against the FTC before the U.S. District Court that the groups lacked legal "standing" to sue, without ruling on the merits of the case.

When the FTC first proposed the orders, they were opposed by a large coalition of the nation's leading auto safety, consumer, and injury prevention organizations, who filed [detailed and authoritative comments](#) calling on the FTC to modify the proposed Consent Orders before they were finalized, arguing that "The kind of contradictory doublespeak that would be allowed by the proposed agreements is dangerous and inherently false and misleading. Such advertising has been found repeatedly by courts to be unfair, deceptive, and/or fraudulent."

Leading pro-auto safety champions in Congress U.S. Senators [Schumer, Durbin, Blumenthal, Markey, and Nelson](#) and [Representative Schakowsky](#) also joined in urging the FTC to reject the Orders. When the FTC finalized them despite the Congressional opposition, Senators Blumenthal and Markey blasted them for being ["anti-safety" and "anti-consumer."](#)

When the [FTC announced the Consent Orders](#), the agency itself admitted how dangerous the recalled vehicles are, stating "Unrepaired auto recalls pose a serious threat to public safety...defects that have been the subject of recalls have led to severe injuries and even death for many consumers."

"It's vitally important for Congress to enact The Used Car Safety Recall Act, S 1835, sponsored by Senators Blumenthal, Markey, and Warren, to provide the National Highway Traffic Safety Administration the authority to crack down on dealers who endanger lives by selling unrepaired recalled used vehicles, without anyone having to suffer economic damages or be injured or killed," said Rosemary Shahan, President of CARS.

"As this legal action demonstrates, we remain determined to do everything we can to protect the motoring public from dangerous recalled cars, whether they are new or used," said Jason Levine, Executive Director of the Center for Auto Safety.

Unless the FTC's Consent Orders are overturned in the Courts, or Congress enacts safety legislation that overrides them, they will be in effect for 20 years from when they were finalized – until 2036. Other mega-dealers are now engaging in the same deceptive practices, and the Orders have become the standard among car dealerships, including AutoNation (the nation's largest new car dealership chain) and relatively new market "disrupters" such as Carvana and Vroom.

Consumers victimized by car dealers' deceptive sales of unrepaired recalled used vehicles should consult an attorney familiar with state consumer protection laws. Some state laws may still apply, despite the FTC's consent orders. For example, Indiana law makes it an unfair and deceptive act or practice for any merchant to sell a recalled product. Some victims and surviving family members have won confidential settlements, alleging violations of express warranties or the implied warranty of merchantability, a breach of the dealer's common law duty of care, or negligence or wrongful death.

The consumer groups are represented in this action by the public interest law firm of Eubanks & Associates, PLLC.