



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

August 26, 2014

Consumers for Auto Reliability and Safety
Center for Auto Safety
Consumer Action
Consumer Federation of America
Consumers Union
Courage Campaign
National Association of Consumer Advocates
National Consumer Law Center
National Consumers League
Trauma Foundation
U.S. Public Interest Research Group

Dear Consumers for Auto Reliability, et al.:

Thank you for your letter of June 23, 2014, to Chairwoman Ramirez regarding potentially deceptive conduct by CarMax in the sale of automobiles subject to recall for safety-related defects. The Chairwoman's office has forwarded your letter to the Division of Financial Practices, which leads the FTC's regulatory and law enforcement efforts with respect to the practices of motor vehicle dealers.

I take very seriously the concerns you detailed in your letter. For many consumers, the purchase, financing, or leasing of a motor vehicle is one of the most expensive and complicated financial transactions they will ever complete. Thus, protecting these consumers is a high priority for the FTC, and we are actively engaged in enforcement and policy efforts in this area. This letter discusses some of the public actions the FTC has taken, and responds more specifically to the concerns about CarMax's conduct that you have raised.

As you know, the FTC has significant authority over automobile dealers under several statutes and regulations. Most broadly, Section 5 of the FTC Act, 15 U.S.C. § 45, prohibits unfair or deceptive acts or practices in or affecting commerce. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),¹ enacted in 2010, preserved the FTC's law enforcement authority in this area and authorized the agency to promulgate rules prohibiting

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (July 21, 2010) (Dodd-Frank Act).

unfair or deceptive acts or practices by motor vehicle dealers under the Administrative Procedure Act (APA).²

Since enactment of the Dodd-Frank Act, the FTC has dedicated substantial additional resources to enforcement and other initiatives aimed at protecting consumers in motor vehicle-related transactions. On the enforcement front, the agency has brought more than twenty actions. For example, in January 2014, the FTC announced a nationwide sweep against ten auto dealers involving deceptive advertising.³ The dealers agreed to settle charges that they made a variety of misrepresentations in print, Internet, and video advertisements, falsely leading consumers to believe they could purchase vehicles for low prices, finance vehicles with low monthly payments, or make no upfront payment to lease vehicles. Our other auto enforcement actions in the last few years include seven cases involving deceptive claims by auto dealers,⁴ two cases against scams that promised to reduce consumers' monthly payments but took the money upfront and failed to deliver on their promises,⁵ and an action against an auto dealer involving data security issues.⁶

Additionally, on the education front, we provide numerous consumer and business education materials, including a webpage on "Buying & Owning a Car," which has more than a dozen articles for consumers.⁷ Among other things, an article on "Buying a Used Car" advises consumers to inquire about recalls and directs consumers to the U.S. Department of Transportation's Vehicle Safety Hotline and website to find more information,⁸ including the ability to search for a vehicle's recall by VIN and by car make and model.⁹ In addition, the

² See Dodd-Frank Act, Section 1029, 12 U.S.C. § 5519. Absent such a grant of authority from Congress, the FTC can only issue rules using the more complex process set forth in Section 18 of the FTC Act. See 15 U.S.C. § 57a.

³ See Press Release, FTC Announces Sweep Against 10 Auto Dealers, January 9, 2014, *available at* <http://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers>.

⁴ See Press Release, FTC Approves Final Order Settling Charges Involving Two Auto Dealers' Deceptive Ads, February 11, 2014, *available at* <http://www.ftc.gov/news-events/press-releases/2014/02/ftc-approves-final-order-settling-charges-involving-two-auto>; *see also* Press Release, FTC Takes Action to Stop Deceptive Car Dealership Ads, March 14, 2012, *available at* <http://www.ftc.gov/news-events/press-releases/2012/03/ftc-takes-action-stop-deceptive-car-dealership-ads>.

⁵ See Press Release, FTC Charges that Auto Loan Schemes Falsely Promised They Could Stop Consumers' Cars from Being Repossessed, April 4, 2012, *available at* <http://www.ftc.gov/news-events/press-releases/2012/04/ftc-charges-auto-loan-schemes-falsely-promised-they-could-stop>.

⁶ See Press Release, FTC Charges Businesses Exposed Sensitive Information on Peer-to-Peer Sharing Networks, Putting Thousands of Consumers at Risk, June 7, 2012, *available at* <http://www.ftc.gov/news-events/press-releases/2012/06/ftc-charges-businesses-exposed-sensitive-information-peer-peer>.

⁷ See Buying & Owning a Car, FTC Consumer Information, *available at* <http://www.consumer.ftc.gov/topics/buying-owning-car>.

⁸ See Buying a Used Car, FTC Consumer Information, August 2014, *available at* <http://www.consumer.ftc.gov/articles/0055-buying-used-car>.

⁹ www.safercar.gov/vinlookup.

article recommends that consumers ask the dealer for information showing the vehicle was repaired, and corrected, for the recall issues.¹⁰

Your letter expressed specific concern that CarMax is selling cars subject to recall for safety-related defects, while at the same time representing to consumers that those used vehicles have passed rigorous safety inspections. While I cannot reveal information regarding any non-public investigations, I can offer general insight into how the Commission would examine these issues.

As you know, the FTC generally evaluates consumer protection issues using its authority under Section 5 of the FTC Act, which prohibits deceptive and unfair acts or practices. Under Section 5, a representation or omission is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.¹¹ An act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition.¹² In evaluating whether CarMax is engaged in deceptive or unfair conduct, the Commission would apply these principles. In this context, for example, we would consider whether CarMax's statements regarding safety inspections of a vehicle would materially mislead consumers to believe that the vehicle is not subject to any recalls or that any issues relating to recalls have been resolved prior to the sale of the vehicle. If the Commission were to pursue an action, the agency would seek equitable relief, which, as you noted, could include an injunction barring the deceptive or unfair conduct and, where appropriate, monetary relief such as consumer redress.

The FTC is committed to protecting consumers in their purchasing of motor vehicles, and we appreciate your interest in these issues. As noted above, we have substantially expanded our enforcement and policy activities in this area following enactment of the Dodd-Frank Act. And we will continue these efforts, including by monitoring the marketplace for illegal conduct associated with the practices you detailed.

¹⁰ See *Buying a Used Car*, FTC Consumer Information, August 2014, available at <http://www.consumer.ftc.gov/articles/0055-buying-used-car>.


¹¹ See *In re Cliffdale Assocs. Inc.*, 103 F.T.C. 110, 164-44 (1984), citing Commission letter on deception to Hon. John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, October 14, 1983 (commonly known as the FTC's "Deception Statement"); see also *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (citing *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65 (1984)). To be material, a claim must convey information that is important to consumers and thus be likely to affect their choice of a product. See *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).

¹² FTC Act § 5(n), 15 U.S.C. §45(n).

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I hope that this information is helpful. If you or your staff have additional questions or comments, please feel free to contact Teresa Kosmidis, an attorney in my Division at (202) 326-3216.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Reilly Dolan". The signature is fluid and cursive, with a large initial "J" and "R".

James Reilly Dolan
Associate Director for Financial Practices