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March 7, 2013

John C. Hallerud, Attorney
Federal Trade Commission
55 West Monroe Street
Suite 1825
Chicago, IL 60603

Re: Used Car Regulatory Review [Project No. Po87604]

Dear Mr. Hallerud:

I am writing on behalf of the Ohio Association for Justice (“OAJ”), formerly the Ohio Academy of Trial Lawyers. The OAJ hereby submits its comments in response to the Federal Trade Commission’s (FTC) notice of proposed rulemaking regarding the used motor vehicle trade regulation rule.

OAJ was founded in 1954 and is comprised of approximately 1,500 Ohio attorneys who represent those who have been injured by negligent conduct, those damaged by unfair and deceptive practices and other individuals who have been aggrieved by the wrongful acts of others. The OAJ and its members are dedicated to preserving the rights of Ohio consumers, workers and families, and to promoting public confidence in the civil justice system. Our membership includes attorneys who advocate on behalf of consumers in the used automobile market. We deal with consumers who engage in dealings with motor vehicle dealers who, among other unfair acts, have sold vehicle that have been the subject of undisclosed wrecks, flood damage, and other problems.

OAJ supports the FTC in its efforts to strengthen regulation related to the sale of used cars and applicable motor vehicle warranties. However, we believe that some of the proposals will undermine important consumer protections. Further, we believe there are areas where the existing rule may be strengthened. Next to a home, the purchase of a motor vehicle is often the most expensive undertaking a consumer will make, and it is a necessity for many in finding and maintaining employment.

A used car dealer is at a distinct advantage over a consumer purchasing a vehicle. The dealer is much more likely to be aware of problems plaguing the vehicle, but has a financial incentive not to share this information with the consumer.



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Require Warranty Disclosure on Face of Buyer's Guide. According to the proposal, dealers could post information regarding an existing manufacturer warranty on the back of the Buyer's Guide form where consumers are unlikely to see it. This key information should be visible on the face of the window sticker where a consumer is likely to see it. Notably, in most scenarios, the Buyer's Guide must be affixed to the interior side of the motor vehicle window, making it impossible for a consumer to see the back side display when approaching the vehicle. Most consumers do not expect crucial information to be placed on the back side of a window sticker.

Remove FTC Endorsed Advice regarding "As Is" Sale. The proposed language requires dealers to provide misleading verbiage regarding the meaning of an "As Is" sale. The proposed language is contrary to existing case law, which provides that even when vehicles are sold "As Is," this is not a shield against fraud. The proposed language is thus worse than the existing language under the rule.

Existing Language: AS IS = NO WARRANTY. YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

Proposed Language: AS IS - NO WARRANTY. THE DEALER WON'T PAY FOR ANY REPAIRS. The dealer is not responsible for any repairs, regardless what anyone else may tell you."

This may have the detrimental effect of discouraging consumers with valid fraud claims from seeking advice from consumer advocates, state attorneys general, or other advocacy groups.

Require Pre-Sale Inspection. The FTC should also require dealers to inspect a vehicle prior to sale to evaluate its condition. Currently, there is no such requirement and dealers do not even have to evaluate whether a vehicle is safe to drive before selling it and allowing a consumer to drive into onto the public roadways.

Require Disclosure of Known Defects. At a minimum, dealers should be required to disclose any know defects in a vehicle prior to sale. These items are necessary to provide just a modicum of protection to purchasers of used vehicles. Motor vehicle dealers are at a distinct advantage to know of defects affecting a motor vehicle. Dealers should be required to check the National Motor Vehicle Title Information System ("NMVTIS") or disclose the results of any vehicle history reports to consumers. This burden should not be placed on consumers



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who typically lack access to computers when they are on the car lot shopping for vehicles, and have to pay exponentially more than dealers to access the information. Notably, many financial disadvantaged consumers cannot access the information at all, due to the practical reality of the lack of access to credit (a credit card is required to access a vehicle history report).

On behalf of OAJ, we appreciate this opportunity to submit these comments. If you have any questions or comments, please contact Amy Wells, OAJ's Consumer Section Chair at (937) 435-4000.

Best regards,

Amy L. Wells
Ohio Association for Justice
Consumer Law Section Chair

Robert DeRose
Ohio Association for Justice
President