



March 12, 2013

Federal Trade Commission Comment:
16 CFR 455
Used Motor Vehicle Trade Regulation Rule
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex T)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Subject: Proposed Modifications to Used Car Buyers Guide

Dear Secretary Donald S. Clark:

The Santa Clara Law's Katharine and George Alexander Community Law Center (KGACLC) represent many low-income individuals throughout the San Jose, California region. The majority of our clients are Spanish-Speakers. These individuals often purchase used vehicles and rely on the Used Vehicle Buyers Guide for assistance. As such, the information contained within the Buyers Guide serves as a vital source of information to low-income Spanish-Speaking consumers.

We are writing with two primary criticisms with respect to the proposed rule. First, we believe that the rule should be changed to explicitly require the posting of Spanish Buyers Guides when dealers advertise or conduct substantial sales in Spanish. We agree with the findings of the Federal Trade Commission, a Spanish Language Sentence should be added to the English version of the Buyers Guide.¹ Second, we recommend deleting the language that suggests that dealers cannot be held liable for repair costs in the event that the "AS IS" box is checked.²

I. THE MAJORITY OF SOUTH BAY DEALERS WHO ADVERTISE IN SPANISH LANGUAGE MAGAZINES ARE NOT PROVIDING SPANISH SPEAKERS WITH SPANISH LANGUAGE BUYERS GUIDES.

Our experience with clients revealed native Spanish-Speakers are not receiving Spanish Language Buyers Guides when the majority of the negotiations related to the transaction are conducted in Spanish. The Staff Compliance Guidelines suggest that "from a practical standpoint, dealers must post both the English and Spanish versions of the Buyers Guide where a substantial amount of sales are made in both Languages."³ However, dealerships regularly ignore this suggestion by failing to post a Spanish version of the Used Car

¹ 77 FR at 74761 (December 17, 2012).

² The current language reads, "[t]he dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle."

³ FTC, 16 CFR 455.5 (C).

Buyers Guide. Even dealerships who actively solicit Spanish-Speaking consumers are failing to provide Spanish Language Buyers Guides.⁴ This violation places the Spanish-Speaking community at a disadvantage because Spanish-Speaking consumers do not have a written copy of the vehicle information in a language they understand. Thus, a reasonable Spanish-Speaking consumer is likely to believe verbal representations made by the dealer, or the salesperson, because they cannot read the written contract.

Currently, the text of the Rule with respect to Spanish language sales states that dealerships “**may** display”⁵ both English and Spanish Used Car Buyers Guides. Illustration 3.10 of the Staff Compliance Guideline states that a “Spanish Used Car Buyers Guide **must** be posted . . . before you begin to discuss . . . that vehicle with a customer [in Spanish]”, and therefore declares it a “good idea” to simply post the guides on vehicles in both languages.⁶ From our experience, the inconsistency in this regulation has resulted in the regulation not being followed.

Furthermore, the KGACLC is concerned that the Rule, as stated, is difficult for the FTC to enforce because of the current language. The KGACLC agrees with Staff that the only practical way to assure that the warranty information is displayed on the vehicle before a consumer begins discussing the sale, is to require dealerships that anticipate Spanish sales to post both Spanish and English Buyers Guides on all their vehicles. The KGACLC suggests that the second sentence of 12 CFR 455.5 be changed to read as follows: “If you advertise in Spanish or conduct at least 25% of your sales in Spanish, you must display on a vehicle both an English language Buyers Guide and a Spanish language translation of that form.”⁷

Our study, conducted on local South Bay dealerships who advertise in Spanish Language Magazines, revealed that the majority of such dealerships, fail to display Spanish Language Buyers Guides. Of the nine dealerships surveyed, only three displayed Spanish Language Buyers Guides on their vehicles. The same company owned two of the three dealerships who displayed Spanish Language Buyers Guides. When asked, many of the dealer’s who did not provide Spanish Language Buyers Guides admitted that they conducted substantial sales in Spanish.

⁴ See *infra* pg. 2-4.

⁵ 16 CFR 455.5, the current language reads, “[y]ou **may** display on a vehicle both an English language window form and a Spanish translation of that form.”

⁶ 53 FR 17660 (May 17, 1988).

⁷ Twenty-five percent provides a bright line standard, roughly tracking the Staff Compliance Guidelines requirement of a “substantial number, but not a majority of sales”. The Commission is welcome to adopt a different numerical or percentage test, but KGACLC strongly urges a bright line test for what constitutes ‘substantial sales’ to avoid confusion (see, for example, the disparity of judicial opinions on what Congress meant by persons ‘regularly’ collecting debts subject to the Federal Fair Debt Collection Practices Act {some of which are discussed in *Oppong v. First Union Mortg. Corp.*, 407 F. Supp 2d 658 (E.D. Pa. 2005)}).

Advertised in Spanish	Total Number	Spanish Language Buyers Guide On Vehicle
Yes	9	3
No	17	3

We also surveyed other local dealerships on the same street or in close proximity to those who advertised in Spanish (usually within walking distance). Many of these dealerships had “Se Habla Espanol” signs, or Latin American flags outside their building. These marketing efforts support the fact that the dealers are soliciting, targeting, and relying on Spanish speaking consumers. Therefore, they must be aware that their client base includes Spanish speakers who need a Spanish Used Car Buyers Guide. Of these seventeen dealers in close proximity to those who advertise in Spanish, only three had Spanish Language Buyers Guides on the sales vehicles.

These are photographs of two of the many vehicles we witnessed which contained only the English versions of the Buyers Guide, despite being parked next to prominent Spanish Language Advertising.



While conducting the survey, we inquired into why the dealer did not place Spanish Language Buyers Guides on the vehicles. Many of the responses made by dealer representatives were alarming. Dealer representatives made comments such as, “we don’t have Spanish Language Buyers Guides, we have sales people who speak Spanish.” Additionally, we inquired into what percentages of buyers were Spanish Speakers. Dealer responses included, “over ninety percent,” and “we wouldn’t survive without the Spanish.” One salesperson acknowledged that he advised his manager that Spanish Used Car Buyers guide should be displayed to comply with the law, due to the fact they largely serviced the Spanish speaking community, but his recommendation was rebuffed.

Although the KGACLC does not think merely adding a Spanish sentence to the English Buyers Guide goes far enough, it has no objection to adding such a sentence, as the

Proposed Rules suggest.⁸ However, KGACLC proposes the Spanish language sentence be displayed in a prominent way to draw significant attention from Spanish speakers.

KGACLC proposes a slight variation of the Spanish Language sentence, which we believe to be more effective in protecting Spanish Language car buyers than the sentence suggested by the FTC.⁹ The Spanish statement proposed by the FTC does not accurately reflect the responsibilities of the dealers, because the suggestion to ask your salesperson appears to be an informal suggestion rather than a requirement. We believe a more authoritative sentence, which accurately reflects the law, would be more effective. The statement we suggest is, “[i]f you cannot read English, the dealer is required by law to provide you with a Spanish Language Buyers Guide.”¹⁰

II. THE SECOND SENTENCE BELOW THE AS-IS WARRANTY BOX SHOULD BE CHANGED BECAUSE IT IS INCONSISTENT WITH A CONSUMER’S ABILITY TO BRING A CLAIM FOR FRAUD.

The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle. Although this statement was intended to protect car buyers by encouraging them to ask for all representations in writing, the negative repercussions of this statement far outweigh the protective value to the consumer. The plain language of the sentence implies that a sales representative may say anything about the vehicle without any liability. This mistaken belief is inconsistent with a consumer’s ability to bring a cause of action for fraud, based on an oral misrepresentation of a material fact.¹¹

Contrary to the current Buyers Guide language, a claim for fraud does not rely on the fact that the representation is in writing. See, e.g., *King v. O’Rielly Motor Co.*, 494 P.2d 718, 721 (Ariz. Ct. App. 1972) [**representation** that car was “like new,” when it had been wrecked on the dealer’s premises, supported action for fraud]; *Snodgrass v. Ford Motor Co.*, 2001 U.S. Dist. LEXIS 18999 at *26-*27 (D.N.J. Aug. 31, 2001) [once buyer asked manufacturer directly about the safety of the ignition switch, **false response** that there were no reported ignition switch problems presented triable issue of fraud]; *Sales v. Kecoughtan Hous. Co., Ltd.*, 690 S.E. 2d 91 (Va. 2010) [**statement** by landlord to tenant that apartment was “safe for habitation” is sufficient basis to support constructive fraud claim].

The purpose of the As Is Warranty Box is to waive all warranties including the Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose. The As Is Warranty Box was never intended to shield the seller from liability for

⁸ The FTC suggests the following statement, “[i]f you are unable to read this document in English, ask your salesperson for a copy in Spanish.” 77 FR at 74761.

⁹ The Spanish translation of the FTC statement is, “[s]i Usted no puede leer este document en ingles, pidale al concesionario unal copia en espanol.” 77 FR at 74761.

¹⁰ KGACLC proposes this Spanish Translation “[s]i Usted no puede leer Ingles, se requiere por ley proporcinarle el guia del comprador en Español.”

¹¹ *Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565 (8th Cir. 1998).

fraudulent activity. For example, in a situation where a dealer claims to have fixed a brake problem when it has only disconnected the warning light,¹² or when a dealer claims that a vehicle has never been in a wreck when it has been in a major accident.¹³ In these common cases, dealers are liable for fraud, despite the As Is language.¹⁴

While conducting our survey, many of the dealers we spoke to verbally stated that each vehicle sale included a warranty, even though these verbal promises were not reflected on the Used Car Buyers guide. These verbal offers of warranty extensions appeared believable, yet are likely difficult to enforce. Due to the current Buyers Guide language, consumers may be led to believe no remedy is available for the misleading or fraudulent oral representations made by the dealer. When in fact, the consumer is able to bring an action for fraud.¹⁵

Any claim that auto-dealers are not similarly protected from fraudulent misrepresentations is incorrect. Consumers are held liable for fraud when they trade-in a vehicle with significant hidden damage.¹⁶ Also, auto auctions are held liable for fraud when they fail to disclose to a dealer the true selling price of a vehicle.¹⁷ Furthermore, courts provide consumers protection from fraudulent oral statements in other contexts. Specifically, home buyers are protected from fraudulent oral misrepresentations made by sellers.¹⁸ Accordingly, by holding auto dealers liable for fraudulent statements, they are only being held to the same legal standard which they require of others with whom they do business.

The Law Center's recommendation is to either change the current language, or strike the language in its entirety. We suggest changing the current language from, "[t]he dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle," to, "**[a]sk for all representations about the vehicle in writing.**" This language would be more consistent with the law, while also continuing to encourage the buyer to ask for all statements about the vehicle to be in writing.

¹² *Tague v. Molitor Motor Co.*, 487 N.E.2d 436 (Ill. App. Ct. 1985).

¹³ *City Dodge, Inc. V. Gardner*, 208 S.E.2d 794 (Ga. 1974).

¹⁴ *Tague v. Molitor Motor Co.*, 487 N.E.2d 436 (Ill. App. Ct. 1985); *City Dodge, Inc. V. Gardner*, 208 S.E.2d 794 (Ga. 1974).

¹⁵ *Gage Products Co. v. Henkel Corp.*, 393 F.3d 629, 646-647 (6th Cir. 2004) (fraud claim could be based on promise of future conduct when circumstances yielded a reasonable inference that defendant did not intend to fulfill promise at the time made).

¹⁶ *Cadillac Co. v. Aron*, 371 S.W.2d 651, 653 (Mo. Ct. App. 1963).

¹⁷ *Condon Auto Sales & Serv. v. Sioxland Auto Action*, 715 N.W. 2d 769 (Iowa Ct. App. 2006).

¹⁸ *Rosas v. Hatz*, 147 S.W.3d 560, 565-566 (Tex. App. 2004); *Alires v. Mcgehee*, 85 P.3d 1191, 1196 (Kan. 2004).

III. CONCLUSION

In sum, we believe the FTC can offer more appropriate protection to consumers we serve by making two critical changes to the Used Car Buyers Guide.


1. Adding a Spanish Language Sentence to the English version of the Buyers Guide.
2. Changing or deleting the language about dealer responsibility with respect to oral representations about the vehicle.


Finally, the KGACLC also supports the several commentators who have asked that the Rule require dealers to disclose known defects. The KGACLC also agrees with the comment submitted by California Assemblyman Bob Blumenfield that his bill provides an excellent model which can be replicated nationally by the FTC.


Respectfully Submitted,

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Dated March 12, 2013


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