

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:       Maureen K. Ohlhausen, Acting Chairman  
                                  Terrell P. McSweeney**

<p><b>In the Matter of</b></p> <p><b>West-Herr Automotive Group, Inc.,</b> <b>a corporation;</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>DOCKET NO. C-4607</b></p>
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**COMPLAINT**

The Federal Trade Commission, having reason to believe that West-Herr Automotive Group, Inc., a corporation (“Respondent”), has violated provisions of the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a New York corporation, with its principal office or place of business at 3552 Southwestern Blvd, Orchard Park, New York 14127. Respondent has marketed, advertised, offered for sale, and sold used motor vehicles.
2. The acts or practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. Since at least May 2014, Respondent has disseminated or has caused to be disseminated advertisements promoting the sale of used motor vehicles.
4. Respondent’s advertisements include, but are not necessarily limited to, advertisements and marketing materials posted on the website [www.westherr.com](http://www.westherr.com), excerpts of which are attached as Exhibits A through D. On its website, until at least June 2015, it has made claims regarding the advantages of buying from West-Herr, including the “West-Herr Guarantee.” These marketing materials have included the following representations regarding used vehicles:

“At West Herr, you can choose from over 1,200 pre-owned vehicles, each backed by a West Herr Guarantee. Peace of Mind Vehicles, Value Cars, and Certified Vehicles - all hand selected, and fully reconditioned for your enjoyment....”

**Exhibit A at 3.**

On a page prominently titled “Why Buy From West-Herr?,” found at [www.westherr.com/west-herr-used-car-guarantee.htm](http://www.westherr.com/west-herr-used-car-guarantee.htm), it has made the following representations:

“Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots. ...

Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.

We prepare a complete history report on every vehicle. This is our ‘storybook’.”

**Exhibit B at 1.**

5. Even though it has made the claims set forth in Paragraph 4, Respondent has advertised numerous used vehicles subject to open recalls for safety issues on its websites.
6. In some instances, these open recalls for safety issues have included recalls for defects that can cause serious injury. For example, Respondent has advertised a used vehicle that has an open recall for safety issues for defects with the airbag, which can potentially rupture and strike occupants with metal fragments upon deployment. Respondent has also advertised a used vehicle that has an open safety recall for a key ignition switch defect, which can affect engine power, power steering, braking, and airbag deployment, thereby increasing the risk of a crash and occupant injury.
7. In numerous instances, until at least June 2015, when Respondent has advertised used vehicles that are subject to open recalls for safety issues making the claims set forth in Paragraph 4 above, it has provided no accompanying clear and conspicuous disclosure of this fact.
8. Until at least June 2015, when consumers have searched for particular categories of vehicles on Respondent’s website, there has been no disclosure regarding open recalls for safety issues. An example of such search results includes the following:

NEW Inventory
USED Inventory
SERVICE Your Vehicle
CONTACT Our Automotive Group
Viewed 6
Saved
Alerts
Login

- Dodge (49)
- Ford (247)
- GMC (42)
- Honda (61)
- HUMMER (2)
- Hyundai (35)
- Infiniti (11)
- Jaguar (2)
- Jeep (32)
- Kia (47)
- Lexus (12)
- Lincoln (14)
- Mazda (11)
- Mercedes-Benz (55)
- Mercury (8)
- MINI (7)
- Mitsubishi (5)
- Nissan (66)
- Pontiac (12)
- Ram (9)
- Saturn (8)
- Scion (3)
- Subaru (29)
- Toyota (194)
- Volkswagen (13)

**Model** +

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**Features** +

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**Mileage** +

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**Body Style** +




**2008 Honda Civic LX**

Mileage: 108331  
 Drive Line: Front-wheel Drive  
 Engine: 1.8L I-4 cyl  
 Transmission: Compact 5-Speed Automatic  
 Exterior Color: Alabaster Silver  
 Interior Color: Gray  
 Stock #: FAE50028A

Kelley Blue Book: **\$8,667**  
 West Herr Discount: **-\$768**  
 Price: **\$7,899**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare




**2005 Honda Civic EX**

Mileage: 75322  
 Drive Line: Front-wheel Drive  
 Engine: 1.7L I-4 cyl  
 Transmission: 4-Speed Automatic with Overdrive  
 Stock #: CW14P364

Kelley Blue Book: **\$9,641**  
 West Herr Discount: **-\$766**  
 Price: **\$8,875**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare



**2006 Honda Civic EX**

Mileage: 58229  
 Drive Line: Front-wheel Drive  
 Engine: 1.8L I-4 cyl  
 Transmission: Compact 5-Speed Automatic  
 Exterior Color: Alabaster Silver  
 Interior Color: Gray  
 Stock #: SUX141575A

Kelley Blue Book: **\$11,564**  
 West Herr Discount: **-\$2,606**  
 Price: **\$8,958**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare

**Exhibit C.**

9. Until at least June 2015, when consumers have viewed specific vehicle listings on Respondent’s website, there has been no disclosure regarding open recalls for safety issues. An example of such a listing includes the following:

**WEST HERR** LIVE CHAT Make, Model, etc. SEARCH

NEW Inventory USED Inventory SERVICE Your Vehicle CONTACT Our Automotive Group Viewed Saved Alerts Login

Photos Video

**VALUE CARS**  
Detailed Pricing

Kelley Blue Book	\$9,501
West Herr Discount	-\$726
<b>Price</b>	<b>\$8,775</b>

CHECK AVAILABILITY

CALCULATE PAYMENTS

Save This Car! Get Price Alerts

Contact  
West Herr Chevrolet  
Williamsville  
Call 716-632-5110

31mpg City 38mpg Hwy  
1.7L I-4 Cyl  
4-SPEED AUTOMATIC WITH OVERDRIVE  
Front-Wheel Drive  
Exterior Color : Magnesium  
Interior Color : BLACK  
Mileage : 75,324 Miles  
Stock # : CW14P364  
Condition : Used  
VIN : 1HGEM22975L006130

SEARCH THE FREE CARFAX REAL DEAL FREE PRICE CHECK

SCHEDULE A TEST DRIVE

Trade-In Appraisal

Directions

**Comments**

Power moonroof. Manufacturing know-how and how! Built to last. Tired of the same ho-hum drive? Well change up things with this superb-looking 2005 Honda Civic. It is nicely equipped with features such as 98 Point Vehicle Inspection, NEW Oil & Filter Change, Power moonroof, and Professionally Detailed. New Car Test Drive said, "...you can't go wrong buying a Honda Civic...They are reliable, practical, and fuel efficient...fun to drive and all models offer excellent handling..." Have one less thing on your mind with this trouble-free Civic. Visit [www.realdeal.com/atbyd](http://www.realdeal.com/atbyd) to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car. Just click on the image for your free car fax. Visit [www.realdeal.com/atbyd](http://www.realdeal.com/atbyd) to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car.

**Detailed Specifications**

**Convenience Features**

1-touch down	Speed control	Remote keyless entry
Driver vanity mirror	Illuminated entry	Passenger vanity mirror
Tilt steering wheel	Rear beverage holders	Driver door bin
Air conditioning	Power windows	Power moonroof
Front beverage holders	Passenger door bin	

READ MORE

**Exhibit D.**

10. To uncover any information about open recalls for safety issues through Respondent’s website, until at least June 2015, a consumer would have to locate the “Carfax” link on the search results page or the vehicle listing page and click on it to access a vehicle history report, although the “Carfax” link provides no descriptive information or in any way conveys that it contains important safety information about recalls. Moreover, in

numerous instances, even these reports omit information about open recalls for safety issues.

## **VIOLATION OF THE FEDERAL TRADE COMMISSION ACT**

### **Count I**

11. In connection with the marketing, advertising, offering for sale, or sale of used motor vehicles, Respondent has represented, directly or indirectly, expressly or by implication, that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues.
12. In numerous instances in connection with the representation set forth in Paragraph 11, Respondent has failed to disclose, or disclose adequately, that used vehicles it sells are subject to open recalls for safety issues.
13. Respondent's failure to disclose, or disclose adequately, the material information set forth in Paragraph 12 above, in light of the representation described in Paragraph 11, above, constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**THEREFORE**, the Federal Trade Commission, this twenty-second day of March, 2017, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

# **Exhibit A**



LIVE CHAT



Search New York State's Largest Inventory Over 6,500 Vehicles:

Make, Model, etc.

SEARCH



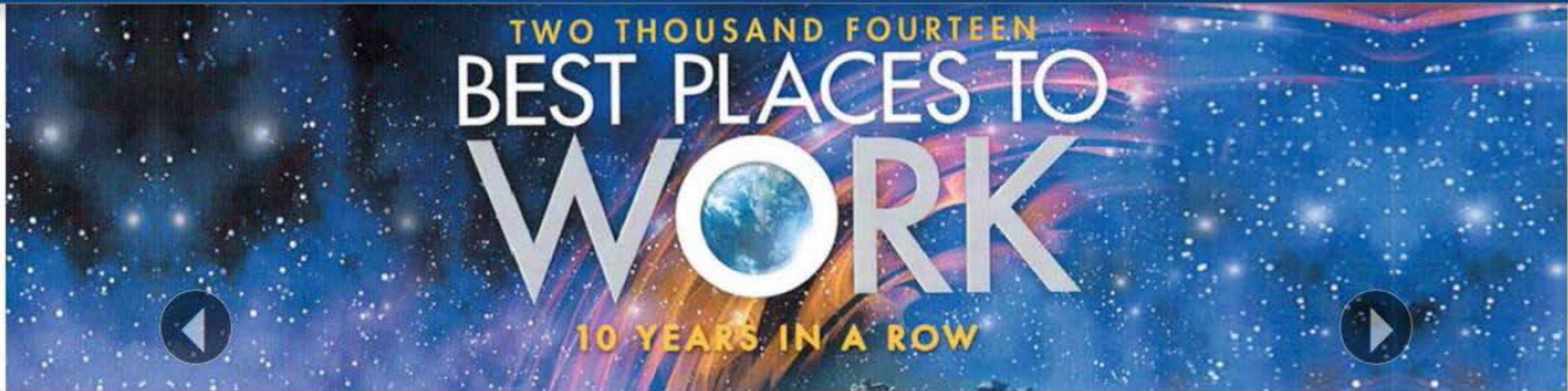
NEW Inventory

USED Inventory

SERVICE Your Vehicle

CONTACT Our Automotive Group

Login



APPLY FOR CREDIT

VIEW SPECIALS

SELL YOUR CAR



FIND NEW & USED VEHICLES

SERVICE MY CURRENT VEHICLE



Search

Visit A Store

All Conditions

All Years

All Makes

All Body Styles



BUICK



FIND NEW ROADS



Go Further



HONDA



JAGUAR



All Mileage

All Prices

SEARCH



----- West Herr Specials -----



----- Browse by Vehicle Type -----

- [2 Doors \(Coupe\)](#)
- [4 Doors \(Sedan\)](#)
- [Convertibles](#)
- [Hybrids](#)
- [Pickup Trucks](#)
- [SUVs \(Cross-over\)](#)
- [Vans](#)

----- Financing Options -----



— Vehicles Under \$15K [VIEW ALL](#)

<p><b>LAST CHANCE</b></p>	<p><b>WEST HERR</b> USED CARS OF AMHERST SALES/LEASE/RENT AND FINANCE DEPT. (716) 932-4500</p>	<p><b>WEST HERR</b> HONDA SALES/LEASE/RENT AND FINANCE DEPT. (716) 625-4300</p>	<p><b>LAST CHANCE</b></p>	<p><b>WEST HERR</b> HONDA SALES/LEASE/RENT AND FINANCE DEPT. (716) 625-4300</p>
<p>2003 Saturn ION 2 \$3,995</p>	<p>2006 Chevrolet Cobalt LT \$5,399</p>	<p>2007 Ford Focus \$5,697</p>	<p>2006 Buick LaCrosse CX \$6,485</p>	<p>2007 Ford Five Hundred SEL \$6,596</p>



## — Welcome to West Herr New York —

---

West Herr has been serving Western New York (WNY) and the Buffalo area for over 60 years. We are proud to be New York State's largest automotive group. From our humble beginnings on Clark St. in Hamburg, NY in 1950 we have grown to [18 locations](#), 20 franchises, and over 1500 employees! In 2013, we sold over 37,700 vehicles and serviced more than 300,000! We are grateful to our loyal customers, and our dedicated and hardworking employees...[\(read more about us\)](#)

### **New Inventory Spanning a Variety of Makes and Models**

When selection matters most, West Herr Auto Group is your best choice for a new car, truck or SUV in the Buffalo, NY area. With thousands of vehicles in stock, spanning 18 conveniently located dealerships in WNY, you can be sure to find the car, truck, SUV or minivan that suits your needs. Browse our [new inventory](#) today for a complete list of vehicles offered, including such makes as [Chevrolet](#), [Ford](#), [GMC](#), [Toyota](#) and [Honda](#).

### **Massive Used Car Selection**

At West Herr, you can choose from over 1,200 pre-owned vehicles, each backed by a West Herr Guarantee. Peace of Mind Vehicles, Value Cars, and Certified Vehicles - all hand selected, and fully reconditioned for your enjoyment. If you are not 100% satisfied with your vehicle, you can exchange it within 30 days, no questions asked!

[View Used Inventory](#) | [Our Guarantees](#)

### **Auto Service, Repair and Parts**

Keep your vehicle running at its best by visiting any of our [service and repair locations](#) in or around the Buffalo, NY area. Our factory trained technicians have been trusted by many in Western New York for their ability to quickly and accurately address everything from routine service issues to complex repairs and diagnostics. West Herr even offers three [Collision Centers](#), located in Orchard Park, Williamsville and Hamburg, staffed with technicians capable of repairing all makes and models. If you prefer to do your own service and repairs, contact the professionals at our [OEM auto parts center](#) to ensure you have everything you need to get the job done right.

### **Financing Help Available**

Being the largest automotive group in the state has its advantages. We have special relationships with over 30 lenders to help you get approved and keep your rates as low as possible. No matter your credit, West Herr can provide you with options - all in the no hassle, low pressure environment that has made West Herr famous.

[Finance Center](#) | [Credit Application](#) | [Send Application to a Salesperson](#) | Credit Help - [Southtowns](#) or [Northtowns](#)

### **Serving Buffalo for over 60 years!**

The West Herr Automotive Group is owned and operated by local Western New Yorkers, and we are committed to seeing this area thrive. We are heavily involved in charitable activities in Buffalo with our main focuses being:

- [Roswell Park Cancer Institute](#)
- [Alzheimer's Assoc. of WNY](#)
- [The Buffalo Zoo](#)
- [Hospice Buffalo](#)
- [Meals on Wheels of WNY](#)
- [University of Buffalo Alumni](#)
- [Child and Family Services](#)
- [Erie County SPCA](#)
- [Erie Community College](#)

Click [HERE](#) for a more complete list of charities and organizations we are involved with. We look forward to seeing you out and about in the community. Make sure to say hi!

[Community Involvement](#) | [Steve Tasker](#)

website by  
DEALER.COM



CONTACT ▶

DIRECTIONS ▶

PRIVACY ▶

SITEMAP ▶

# **Exhibit B**

West Herr Auto Group



SALES: (855) 638-2732

Search New York State's Largest Inventory Over 6,500 Vehicles:

## Why Buy From West Herr?

Last year, we sold over 14,000 pre-owned vehicles (<http://westherrautogroup.cms.dealer.com/all-inventory/index.htm?search=&accountId=&compositeType=used>). There were many reasons but here are a few...

### Selection

With new vehicles arriving every day and over 1,200 used vehicles to choose from, West Herr has the largest pre-owned inventory in Western New York.

### Convenience

Free vehicle transfers to any of our 18 locations. And most of our vehicles are prepped and ready for same day express delivery! Click the logo to learn more.



### Confidence

Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots. We will never sell a vehicle with a branded title (flood damage, total loss, frame damage, etc.).

Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.

We prepare a complete history report on every vehicle. This is our 'storybook'. Inside, you will find a CARFAX report, all known service history, a detailed reconditioning report, consumer reviews, and market pricing comparisons.



### Price

We know price is important to you. That's why we use several sophisticated internet pricing tools that allow us to scan the market on a daily basis for competitive vehicle information. We are constantly adjusting our prices to provide the best value possible. We can show you the market comparison on any vehicle, comparing factors like mileage, condition, availability, and equipment.



We do not "mark them up to mark them down" - and have found that by putting a

### Contact a Used Car Manager

Choose A

Please Select

Location\*

First Name\*

Last Name\*

Contact Me by\*

Please Select

Phone\*

Email\*

Comments

discounted price up front, the process is easier and more enjoyable for everyone - less negotiation, less stress.



The West Herr IVPS performs a comprehensive search of over 20,000 pre-owned vehicle websites every hour. These real-time results allow us to adjust our prices to the market and ensure you receive a fair price.

Also, look out for specially marked "Last Chance" vehicles for even more savings!

**WEST HERR**  
NEW YORK

**LAST CHANCE**

- Special Wholesale to Consumer Pricing
- Limited Time Only
- Soon the vehicle will be unlisted and no longer available!

FREE **CARFAX** ON EVERY VEHICLE  
VEHICLE HISTORY REPORTS

### Satisfaction Guaranteed!

We want you to love your vehicle. So we have put together some of the most complete guarantees on the market. Most vehicles (all except value cars) come with a 3 day, 150 mile money back guarantee. **All** pre-owned vehicles from West Herr come with a 30 day, 1,000 mile exchange policy. So if you aren't completely satisfied with your vehicle, you can exchange it, no questions asked!





## PEACE OF MIND

- 3 day / 150 mile Cash Refund
- 30 day / 1000 mile Exchange Policy
- 6 month/6000 mile Powertrain Warranty

FREE **CARFAX** ON EVERY VEHICLE  
VEHICLE HISTORY REPORTS



## VALUE CARS

- New York State Inspected
- 30 day / 1000 mile Exchange Policy
- Re-conditioning Report Included

FREE **CARFAX** ON EVERY VEHICLE  
VEHICLE HISTORY REPORTS



## CERTIFIED

- Rigorous Inspection & Reconditioning Standards
- Meets or Exceeds Factory Requirements
- Factory Backed Guarantees\*  
\*varies by brand, see store for details

FREE **CARFAX** ON EVERY VEHICLE  
VEHICLE HISTORY REPORTS



# **Exhibit C**



- Dodge (49)
- Ford (247)
- GMC (42)
- Honda (61)
- HUMMER (2)
- Hyundai (35)
- Infiniti (11)
- Jaguar (2)
- Jeep (32)
- Kia (47)
- Lexus (12)
- Lincoln (14)
- Mazda (11)
- Mercedes-Benz (55)
- Mercury (8)
- MINI (7)
- Mitsubishi (5)
- Nissan (66)
- Pontiac (12)
- Ram (9)
- Saturn (8)
- Scion (3)
- Subaru (29)
- Toyota (194)
- Volkswagen (13)

Model +

Features +

Mileage +

Body Style +

Body Style - Advanced +

Exterior Color +

Interior Color +

Interior Material +

Transmission +



**WEST HERR**  
USED CARS of AMHERST  
MILLESPOUR HWY and FRENCH RD  
(716) 932-4500

[Watch Video](#)

[Save This Car!](#) [Get Price Alerts](#)

### 2008 Honda Civic LX

Mileage: 108331  
 Drive Line: Front-wheel Drive  
 Engine: 1.8L I-4 cyl  
 Transmission: Compact 5-Speed Automatic  
 Exterior Color: Alabaster Silver  
 Interior Color: Gray  
 Stock #: FAE50028A

Kelley Blue Book: **\$8,667**  
 West Herr Discount: **-\$768**  
 Price: **\$7,899**

[CHECK AVAILABILITY](#)

Compare



[Save This Car!](#) [Get Price Alerts](#)

### 2005 Honda Civic EX

Mileage: 75322  
 Drive Line: Front-wheel Drive  
 Engine: 1.7L I-4 cyl  
 Transmission: 4-Speed Automatic with Overdrive  
 Stock #: CW14P364

Kelley Blue Book: **\$9,641**  
 West Herr Discount: **-\$766**  
 Price: **\$8,875**

[CHECK AVAILABILITY](#)

Compare



**WEST HERR**  
SUBARU / KIA  
ON SOUTHWESTERN BLVD  
(716) 662-3565

[Watch Video](#)

[Save This Car!](#) [Get Price Alerts](#)

### 2006 Honda Civic EX

Mileage: 58229  
 Drive Line: Front-wheel Drive  
 Engine: 1.8L I-4 cyl  
 Transmission: Compact 5-Speed Automatic  
 Exterior Color: Alabaster Silver  
 Interior Color: Gray  
 Stock #: SUX141575A

Kelley Blue Book: **\$11,564**  
 West Herr Discount: **-\$2,606**  
 Price: **\$8,958**

[CHECK AVAILABILITY](#)

Compare



[Save This Car!](#) [Get Price Alerts](#)

### 2008 Honda Fit Sport

Mileage: 65150  
 Drive Line: Front-wheel Drive  
 Engine: 1.5L I-4 cyl  
 Transmission: 5-Speed Automatic  
 Exterior Color: Nighthawk Black Pearl  
 Interior Color: Black  
 Stock #: HLC150487A

Kelley Blue Book: **\$9,929**  
 West Herr Discount: **-\$364**  
 Price: **\$9,565**

[CHECK AVAILABILITY](#)

Compare

# **Exhibit D**



**CHEVROLET of WILLIAMSVILLE**  
8040 Transit Road  
(716) 632-5110



**VALUE CARS**

**Detailed Pricing**

Kelley Blue Book **\$9,501**  
West Herr Discount **-\$726**

Price **\$8,775**

[CHECK AVAILABILITY](#)

[CALCULATE PAYMENTS](#)

[Save This Car!](#) [Get Price Alerts](#)

**Contact**  
West Herr Chevrolet  
Williamsville  
Call **716-632-5110**

**31mpg** City **38mpg** Hwy  
**1.7L I-4 Cyl**  
4-SPEED AUTOMATIC WITH OVERDRIVE  
Front-Wheel Drive  
**Exterior Color : Magnesium**  
Interior Color : BLACK  
**Mileage : 75,324 Miles**  
Stock # : CW14P364  
Condition : Used  
VIN : 1HGEM22975L006130



[SCHEDULE A TEST DRIVE](#)

**Trade-In Appraisal**

**Directions**



[GET DIRECTIONS](#)

**Comments**

Power moonroof. Manufacturing know-how and how! Built to last. Tired of the same no-hum drive? Well change up things with this superb-looking 2005 Honda Civic. It is nicely equipped with features such as 98 Point Vehicle Inspection, NEW Oil & Filter Change, Power moonroof, and Professionally Detailed. New Car Test Drive said, "...you can't go wrong buying a Honda Civic...They are reliable, practical, and fuel efficient...fun to drive and all models offer excellent handling..." Have one less thing on your mind with this trouble-free Civic. Visit [www.realdeal.com/atoyd](http://www.realdeal.com/atoyd) to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car. Just click on the image for your free car fax. Visit [www.realdeal.com/atoyd](http://www.realdeal.com/atoyd) to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car.

**Detailed Specifications**

**Convenience Features**

- |                        |                       |                         |
|------------------------|-----------------------|-------------------------|
| 1-touch down           | Speed control         | Remote keyless entry    |
| Driver vanity mirror   | Illuminated entry     | Passenger vanity mirror |
| Tilt steering wheel    | Rear beverage holders | Driver door bin         |
| Air conditioning       | Power windows         | Power moonroof          |
| Front beverage holders | Passenger door bin    |                         |

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**Similar Vehicles**