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August 3, 2012

Donald S. Clark  
Secretary  
Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex B)  
600 Pennsylvania Avenue, NW.  
Washington, DC 20580

Re: Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry  
16 CFR Part 20, P127702

Dear Secretary Clark:

The Automotive Recyclers Association (ARA) appreciates the opportunity to participate in the review of the Federal Trade Commission's (FTC) Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry as published in the May 21, 2012 edition of the *Federal Register*. ARA's continued support of the publication of the Guides is only possible if amended to:

- increase the scope of industry sectors that need to abide by the unfair/deceptive act clause;
- recognize the effect of international markets on reuse and data availability;
- ensure a fair and vigorous marketplace;
- emphasize consumer options;
- address unregulated electronic commerce;
- add advertising guidance on the sale of used tires; and,
- consider language already approved in other FTC documents on appropriate advertising and marketing as precedent.

#### Guides Purpose/Additional Focus

We appreciate FTC's intent to ensure that competing interests in the marketplace recognize these advertising and sale limits and that these "competing interests" do not

misrepresent the condition of automotive parts. However, we believe that FTC is only looking at this issue through one point of view. To better support the entire automotive parts industry, ARA strongly urges FTC to expand the Guide language to not only protect consumers from those who seek to mislead about a used part being new, but also to educate consumers about those competing interests who issue negative and false statements that cause consumers to doubt the viability of recycled parts and cause consumers needlessly to annually spend billions of dollars. FTC should use these guides to help ensure that such anticompetitive practices cease.

## Global Reach

Given that more and more businesses and consumers are conducting business overseas, FTC's policies discouraging anticompetitive marketing and advertising related to used OEM parts are appropriate not only for the domestic market, but for global commerce as well. Consider the European Union (EU) Directive on End-of-Life Vehicle Directive's affirmative management of parts reuse:

*European Directive End-of-Life Directive*

*Article 7*

### **Reuse and recovery**

*1. Member States shall take the necessary measures to encourage the reuse of components which are suitable for reuse, the recovery of components which cannot be reused and the giving of preference to recycling when environmentally viable, without prejudice to requirements regarding the safety of vehicles and environmental requirements such as air emissions and noise control.*

*Article 8*

### **Coding standards/dismantling information**

*4. Without prejudice to commercial and industrial confidentiality, Member States shall take the necessary measures to ensure that manufacturers of components used in vehicles make available to authorized treatment facilities, as far as it is requested by these facilities, appropriate information concerning dismantling, storage and testing of components which can be reused.*

ARA urges FTC to include language in its Guides mirroring the EU language noted above, stating that it would be unfair and deceptive to ignore the need for parts reuse in original equipment manufacturer (OEM) information.

## Marketplace Issues/Misleading Statements

More specifically, ARA believes that FTC should add language to its Guides emphasizing the need to require that proponents of new OEM parts be held to the same standard of non-deceptive advertising and market fairness as are advocates of recycled OEM parts. For too long, FTC has applied its guides/policies to those who would be less than forthright about the condition of the used part, possibly implying that the part was more "used" than stated and as such unsafe. ARA urges the Commission to also apply its guides/policies to those who would disparage the used part so as to enhance their new OEM part. Many such examples of this misleading advertising/marketing can

be found in multiple locations including the August 2010 edition of the collision repair trade journal *Hammer & Dolly* (see below) in which there are ads casting aspersion on recycled OEM parts and other parts alternatives.



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As noted in the following copy of the 2007 FTC letter to a collision investigator, the Guides state "that marketers should not mislead consumers about a part's condition or the extent of previous use."



2007-0530-FTC-Rec  
ycled-Parts.pdf

These marketers however, include the automobile manufacturers who increasingly are using language that warns against using recycled OEM parts. FTC needs to specifically state that the advertising and marketing guidelines apply to the manufacturers as well.

Unless FTC holds all sectors of the parts' market to the same standards, consumers could (and often do) erroneously assume that one market is better than another. As it is, OEMs currently enjoy a 66 percent portion of the collision repair parts market, partly because of misleading and blatantly incorrect advertising about recycled OEM parts.

In fact, statements made by many automobile manufacturers and misinformed state government officials often leave the impression that recycled parts are inferior to new OEM parts, that consumers are put at risk by using them, and that a consumer's vehicle warranty could be voided by using a recycled automobile part. It is statements such as these that fall under the Guides definition as "unfair and deceptive", as well as are dangerous to the consumer. One just has to consider the millions of recalled OE parts to understand that "new is not necessarily better." Through its Used Auto Parts Guides, FTC needs to hold the automobile manufacturers accountable so that a level playing field exists for all industry sectors to fairly compete for market share.

### Recycled Parts - ARA Meeting the Needs of Consumers

ARA has been representing the interests of thousands of businesses in the automotive recycling industry since 1943. Furthermore, the use of recycled parts has been widely accepted for decades in automotive repairs for the following reasons:

- The overwhelmingly vast majority of recycled parts are original equipment manufacturer (OEM) parts and are fully functional;

- Consumers often prefer recycled OEM collision repair parts to new parts because they allow consumers to save on costs while using parts in many instances are OEM parts;
- Recycled parts are better for the environment, since no additional resources or energy are used to create the part; and,
- Professional automotive recyclers adhere to a business code of ethics, provide warranty assurance and carry liability insurance for recycled parts used in repairs indicating they stand behind the parts they sell.

ARA is an association that boasts 65 percent of its members as small businesses that employ 10 or less employees. These small businesses need the help of entities like the FTC - through its alerts and guides - to ensure that the automobile manufacturers do not limit access to parts repairs to only new OEM parts and diminish consumer's ability to repair their vehicles.

In today's struggling economy, consumers are looking now more than ever for options and ARA members are providing quality alternatives. However, consumer perceptions are constantly being challenged by the OEM's multimillion dollar campaigns to promote their parts and collision repairers whose compensation structure is overwhelmingly skewed to utilize the most expensive replacement parts - those that are new only.

ARA's members are staunch advocates of a market that is fair and provides guideposts along the way to call out the monopolistic tendencies of the big OEMs. In some instances however, the automotive companies in their eagerness to hawk their "only new philosophy" over others, use language that actually better describes the case for use of recycled OEM parts. For example, in the General Motors (GM) banner at a 2010 collision industry conference (pictured below in two views) - GM describes its Genuine Parts as "Original is Forever." We as resellers of their original equipment product could not have stated it any better. Once original always original.

Obviously, however, the two industry sectors described - auto manufacturers and auto recyclers - are interpreting the same language very differently. How can the consumer make educated repair decisions in the midst of the many banners and slogans they are confronted with daily? ARA believes that it should be the consumer, with honest consultation from their professional collision repair specialist, who determines which part is best suited for a particular repair need. Consumers should not be hoodwinked into purchasing only a new part for their vehicle where a recycled part of the same year or newer is a more sensible option that provides significant economic savings as well.



### Electronic Marketplace

The Guides also should be updated to account for the changes in selling practices via the internet. The misrepresentations and deceptive practices abound in electronic commerce and online advertising and the effects on consumers is confusing at best and blatantly deceptive at worst. ARA urges FTC to add language to the Guides that recommends that policies governing online parts sales mirror the policies in most states regulating in-store parts' sales - that the seller must be a licensed professional automotive recycler. It is crucial for FTC to take a leading role in stopping the so-called "chop shops" and other like entities from selling parts online when it is against most state laws to do so in-store.

Deceptive advertisements depicting what OEMs want consumers to visualize about recycled parts shown on the left below is contrasted by the reality of an automotive recycler's facility with quality recycled engines prepared for resale (on the right below).



### Linking to Other FTC Guides/Alerts/Standards

In addition, the Guides should provide a platform to reinforce other similar FTC guides/alerts. We commend the authors of the Guides for noting that if the term recycled is used it should mirror the way in which FTC defines "recycled" in its Guides for the Use of Environmental Marketing Claims. Also, just as other federal agencies rely on private standards such as those adopted by the American National Standards Institute (ANSI) to implement federal mandates, so too should the Commission recognize those entities that boast facility certification programs and "green" recycled parts systems. Caution must be taken, however, to ensure that multiple sets of standards and certification programs are considered so that no one sector controls the industry. For example, the Guides should recognize ARA's CAR and Gold Seal Programs as programs that add value to the quality of recycled OEM parts.

### Reuse/Recycled

The Used Parts Guide also should echo the specific examples cited in the Green Guides that make it very clear that reuse in the automotive industry is a form of recycled materials. For instance, FTC states in its Green Guides that it is appropriate to describe a serviceable engine from a wrecked vehicle that is offered for resale as recycled. Also, many industry publications use similar language noting that "reusing quality parts from another vehicle is perhaps the purest form of recycling".

These rulings have been reaffirmed several times by the Commission since 1998 - the most recent being in a July 2011 Consumer Alert that states that a recycled part is a part that was made for and installed in a new vehicle by the manufacturer or the original equipment manufacturer, and later removed from the vehicle and made available for resale or reuse.

## Tires

Lastly, ARA strongly supports the use of quality used tires and a visual appearance inspection and tread depth evaluation to determine whether a tire should be resold. ARA requests that FTC include advertising guidelines for the marketing of used tires to ensure a standard practice in the marketplace.

ARA looks forward to working with FTC to make the Used Auto Part Guides an effective and representative document to help guide the used car part market to be a fair and effective area of commerce.

Thank you for the opportunity to comment on these Guides.

Sincerely,



Michael Wilson  
CEO, Automotive Recyclers Association

# HAMMER & DOLLY

Volume 4, No. 8  
\$5.95

August 2010

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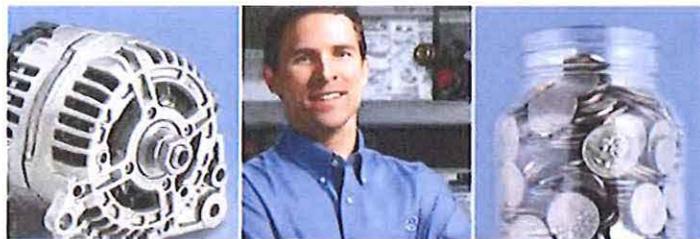
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**HAMMER  
& DOLLY** | 3

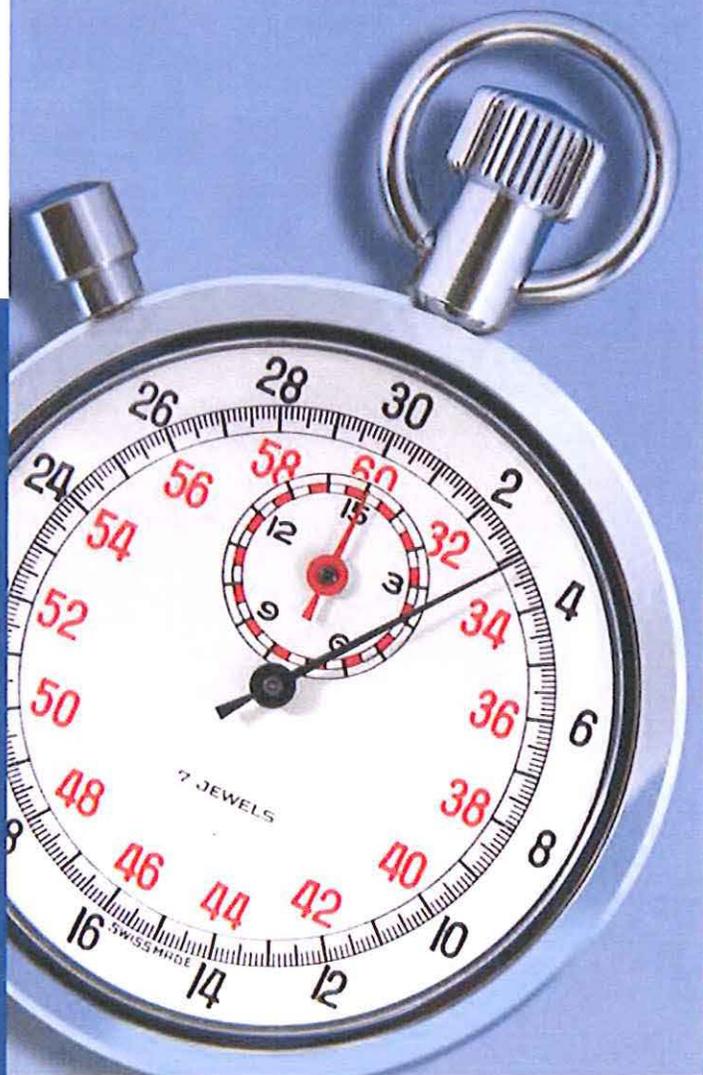
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**HAMMER  
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**MINI of Baltimore County**  
9804 Reisterstown Road  
Owings Mills, MD 21117  
410-296-MINI (6464)  
Toll Free: 888-616-4333  
[www.minibaltimore.com](http://www.minibaltimore.com)

**Passport MINI of Alexandria**  
5990 Duke Street  
Alexandria, VA 22304  
703-461-6250  
fax: 703-751-0595  
[www.passportmini.com](http://www.passportmini.com)

**MINI of Sterling**  
21826 Pacific Blvd  
Sterling, VA 20166  
888-954-8222  
fax: 571-434-7727  
[www.miniofsterling.com](http://www.miniofsterling.com)

**Checkeder Flag MINI**  
5225 Virginia Beach Blvd  
Virginia Beach, VA 23462  
757-687-3494  
fax: 757-687-3495  
[www.checkederflagmini.com](http://www.checkederflagmini.com)

**Crown MINI**  
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Richmond, VA 23294  
Toll Free: 800-237-0130  
804-527-6860  
fax: 804-965-6254  
[www.crownmini.com](http://www.crownmini.com)



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**Checked Flag Toyota**  
5301 Virginia Beach Blvd  
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PH: 757-687-3443  
FAX: 757-687-3437  
[www.checkedflag.com](http://www.checkedflag.com)

**Bill Page Toyota**  
2923 Annadale Road  
Falls Church, VA 22042  
PH: 703-532-8809  
FAX: 703-538-5705

**Lakeforest Toyota**  
18707 North Frederick Ave  
Gaithersburg, MD 20879  
PH: 301-670-4881  
FAX: 301-670-1595

**Koons Tysons Toyota**  
8610 Leesburg Pike  
Vienna, VA 22182  
PH: 703-790-8310  
FAX: 703-356-9081  
[www.koons.com](http://www.koons.com)

**Russel Toyota**  
6324 Baltimore Nat'l Pike  
Catonsville, MD 21228  
PH: 410-788-1700  
443-341-8665  
FAX: 410-455-9909  
[www.rcars.com](http://www.rcars.com)

**Koons Arlington Toyota**  
4045 Lee Highway  
Arlington, VA 22207  
PH: 703-522-7403  
FAX: 703-522-3599  
[www.koons.com](http://www.koons.com)

**Springfield Toyota**  
6570 Amherst Ave  
Springfield, VA 22150  
PH: 703-269-1406  
FAX: 703-269-1456  
[www.kjtoyota.com](http://www.kjtoyota.com)

**Alexandria Toyota**  
3750 Jefferson Davis  
Highway  
Alexandria, VA 22305  
Toll Free: 800-766-9767  
PH: 703-836-8476  
FAX: 703-684-3468  
[www.alexandriatoyota.com](http://www.alexandriatoyota.com)

**Antwerpen Toyota**  
12420 Auto Drive  
Clarksville, MD 21029  
PH: 410-988-9272  
FAX: 443-539-4022  
TBrethauer@antwerpenauto.com

**R&H Toyota**  
15 Music Fair Rd.  
Owings Mills, MD. 21117  
Direct: 410-363-4502  
Toll Free: 1-866-692-2787  
FAX: 410-902-1998  
toyotawholesale@rhemail.com

**Charles Barker Toyota**  
1877 Laskin Road  
Virginia Beach, VA 23454  
Direct: 757-437-4020  
FAX: 757-437-5192  
toyotaparts@charlesbarker.com  
[www.charlesbarker.com](http://www.charlesbarker.com)

**Ourisman Fairfax Toyota**  
10441 Lee Highway  
Fairfax, VA. 22030  
Toll Free: 800-626-2236  
Direct: 703-273-2236  
Fax: 703-385-8411  
fairfaxparts@ourismanva.com  
[www.ourismanva.com](http://www.ourismanva.com)

**Jerry's Toyota**  
8001 Belair Road  
Baltimore, MD 21236  
410-661-5700  
FAX: 410-661-0259  
jfarley@jerrystoyota.com  
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### **Porsche of Arlington**

3154 Jefferson Davis Hwy  
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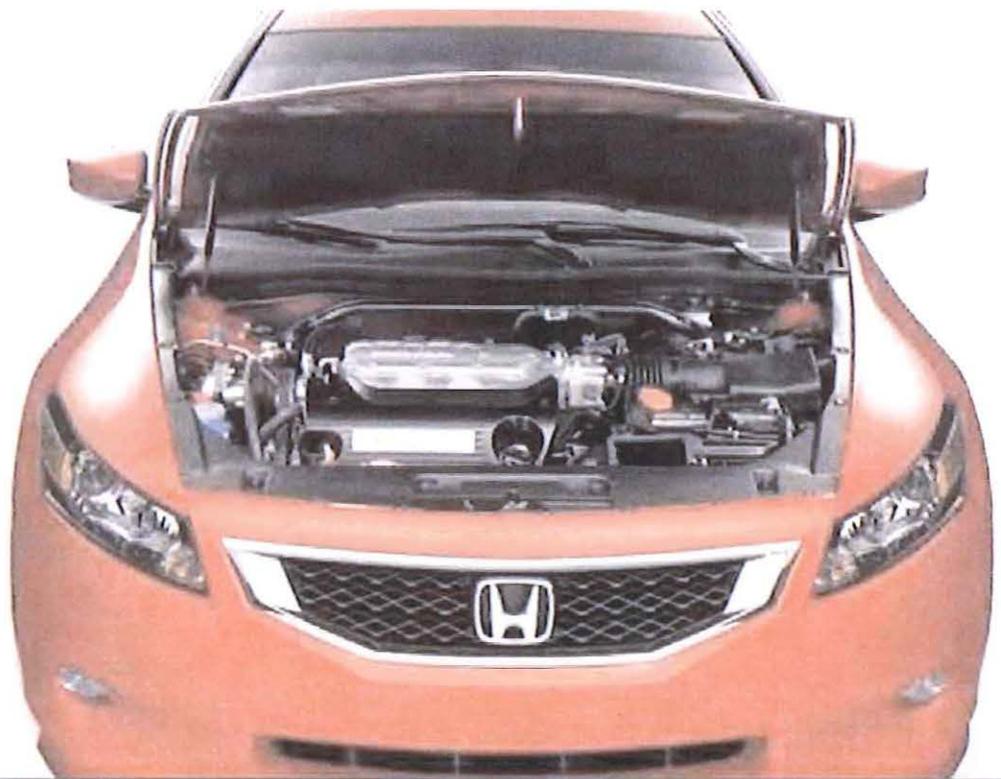
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### **Tischer Porsche**

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Silver Spring, MD 20904  
Toll Free: 866-956-2716  
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[www.criswellauto.com](http://www.criswellauto.com)

**Hendrick Honda**  
14201 Jefferson Davis Hwy  
Woodbridge, VA 22191  
Direct: 703-690-7777  
FAX: 703-490-2058  
[www.hendrickonline.com](http://www.hendrickonline.com)

**Checkered Flag Honda**  
6541 East Virginia Beach Blvd  
Norfolk, VA 23502  
Direct: 757-687-3453  
FAX: 757-687-3455  
[www.checkeredflag.com](http://www.checkeredflag.com)

**Bill Page Honda**  
6715 Arlington Blvd  
Falls Church, VA 22042  
PH: 703-533-5068/69  
FAX: 703-538-5407  
[www.billpagehonda.com](http://www.billpagehonda.com)

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7105 Sudley Rd.  
Manassas, VA 20109  
PH: 703-366-1010  
FAX: 703-365-8117  
[www.koonshonda.com](http://www.koonshonda.com)

**Honda of Tysons Corner**  
1580 Spring Hill Rd.  
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PH: 703-749-6651  
Direct: 866-658-0841  
FAX: 703-821-4229  
[www.hondatysonscorner.com](http://www.hondatysonscorner.com)  
E-mail: [hrc-parts@hondaoftysonscorner.com](mailto:hrc-parts@hondaoftysonscorner.com)





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FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Enforcement  
Bureau of Consumer Protection

Janice Podoll Frankle  
Attorney

Direct Dial:  
(202) 326-3022  
Fax:  
(202) 326-2558

May 30, 2007

Mr. Danny Wyatt  
Collision Service Investigators of North Carolina  
1917-B South Main Street  
Salisbury, NC 28144

Dear Mr. Wyatt:

Thank you for your recent letter to Chairman Deborah Platt Majoras, and your follow-up fax to John Kessler, of the Federal Trade Commission. Your correspondence poses a number of questions regarding the marketing of used "recycled" auto parts and "quality recycled" auto parts obtained from salvage yard vehicles and used to repair vehicles. Additionally, your fax discusses the marketing of "Like Kind and Quality" auto parts ("LKQ").

The FTC's Guides for the Rebuilt, Reconditioned, and other Used Automobile Parts Industry ("Used Auto Parts Guides"), 16 CFR Part 20, and the FTC's Guides for the Use of Environmental Marketing Claims ("Environmental Guides"), 16 CFR Part 260, address many of the issues you raise in your letter.

For example, the Used Auto Parts Guides, 16 CFR § 20.1(a), state that marketers should not misrepresent that a part "is new or unused when such is not the fact" or misrepresent "the current condition, or extent of previous use, reconstruction or repair." These Guides, 16 CFR § 20.1(b), also state that it is unfair or deceptive to offer for sale or sell a used part unless the marketer discloses in advertising, sales promotional literature, invoices and product packaging, clearly and conspicuously, that the part is used.<sup>1</sup>

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<sup>1</sup>Additionally, the Used Auto Parts Guides state that it is deceptive to sell any rebuilt, remanufactured, reconditioned, or otherwise new-appearing product unless this disclosure is made on the product itself; and suggests that marketers use descriptive terms such as

With regard to “recycled” claims, the Environmental Guides, 16 CFR § 260.7(e), state that marketers should adequately qualify their claims to avoid deceiving consumers about whether the components consist of recycled raw material or are used, reconditioned, rebuilt, or remanufactured. How much information the seller, marketer, or installer needs to disclose to the purchaser depends on the purchaser’s understanding of the part’s origin and condition. For example, if an auto repair shop purchases a used part described as “recycled” from a salvage yard, based on the context of the transaction, the repair shop is likely on notice that the “recycled” part is simply “used” rather than reconditioned, rebuilt, or remanufactured. However, to avoid deceiving the purchaser, when the repair shop sells or installs that part, the shop should disclose to the consumer who is likely unaware of the part’s origin that the “recycled” auto part is used. If an auto parts store or other marketer sells both used and other types of parts, the marketer should disclose in a clear and conspicuous manner whether a part described as “recycled” is used; reconditioned, rebuilt, or remanufactured; or a new part made from recycled raw materials.

You also ask about the marketing of parts described as “quality recycled parts,” including parts such as used weld-on panels where the original equipment manufacturer’s welds have been “drilled out” and are now “oversized” in a manner that makes them inferior to new weld-on panels. As you may know, neither the Used Auto Parts Guides nor the Environmental Guides define the term “quality recycled part.” However, as discussed above, the Used Auto Parts Guides state that marketers should not mislead consumers about a part’s condition or the extent of previous use. Thus, marketers who offer for sale or sell any part described as a “quality recycled part” should do so in a manner that does not misrepresent the part’s condition or the extent of previous use. Depending on how consumers interpret the description “quality recycled part,” marketers who described their parts in this way may need to disclose more details about the part’s condition or the extent of its previous use to avoid engaging in an unfair or deceptive practice.

Furthermore, you inquire about the Guides’ application to an insurance company’s representations regarding “quality recycled parts” when it provides an estimate or pays a claim for repairs. The Used Auto Part Guides apply to the manufacture, sale, distribution, marketing, and advertising of used parts. Similarly, the Environmental Guides apply to claims about the environmental attributes of a product, package, or service in connection with the sale, offering for sale, or marketing of such product, package, or service. An insurance company does not engage in the activities covered by the two Guides merely because it provides a repair cost estimate or pays a claim based on the assumption that a vehicle will be repaired with used parts. As noted earlier, the Guides apply to those who actually market auto parts, including those

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“secondhand,” “remanufactured,” “reconditioned,” “rebuilt,” or “relined.” The Guides, however, provide that invoices to the trade may disclose the used nature of the part “by use of any number, mark, or other symbol” that is understood by the industry as meaning that the part has been used.

described as "quality recycled parts" (e.g., the salvage yard and auto repair shop in the examples discussed above).

Finally, your fax expresses concern about the auto repair industry's use of the term "LKQ" to describe certain parts. As you may know, neither the Used Auto Part Guides nor the Environmental Guides define this term. You state that insurance companies and body shops are misleading consumers by describing certain damaged salvaged parts as "LKQ" parts. Like marketers who market a part by describing it as a "quality recycled part," marketers who offer for sale or sell a part described as a LKQ part should do so in a manner that does not misrepresent the part's condition or the extent of previous use. Depending on how consumers interpret the description "LKQ," marketers who describe their parts in this way may need to disclose more details about the part's condition or the extent of its previous use to avoid engaging in an unfair or deceptive practice.

In summary, to avoid deceiving purchasers, whenever marketers make claims about an auto part, they should not misrepresent the part's condition and previous use. In addition, they should disclose, clearly and conspicuously, the fact that a part is used and qualify any claim that a used part is recycled as necessary to avoid deceiving consumers. We hope that the foregoing information is helpful.

Very truly yours,

Janice Podoll Frankle