

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Jim Koons Management Company, also doing business as
Jim Koons Automotive Companies, File No. 152 3104

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Jim Koons Management Company. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on the website www.koons.com which prominently featured the “Koons Used Car Advantage” and included the representation that “[b]acked by the Koons Used Car Advantage, each vehicle we carry has been carefully selected and tested... .” The website listed among the “Koons Used Car Advantage Guarantees” the following representation: “Every certified Koons Outlet vehicle must pass a rigorous and extensive quality inspection before it can be sold. Our certified mechanics check all major mechanical and electrical systems and every power accessory as part of our rigid quality controls.”

Even though it makes such claims, the respondent has allegedly advertised on its websites numerous certified used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised certified used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify every consumer who purchased from it a certified used motor vehicle between July 1, 2013 and June 15, 2015 that some of the used vehicles it sold during this time had been recalled for safety issues which weren’t repaired as of the date they were sold. The notice also specifies how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway Traffic Safety Administration's website, <https://vinrcl.safercar.gov/vin/>. This website also provides information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision that requires the respondent to provide the Order to current and future principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of the Order. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII “sunsets” the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order’s terms.