



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Renae Acosta
State of Oklahoma

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Acosta:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual

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disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

L. Adams
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear L. Adams:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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Donald S. Clark
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March 22, 2017

Richard Ader
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Ader:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Russell Alexander
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Alexander:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jose Almaguer
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Almaguer:

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Donald S. Clark
Secretary



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WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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Donald S. Clark
Secretary



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March 22, 2017

Name Withheld
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
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Name Withheld
State of New York

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We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics,

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of Arizona

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March 22, 2017

Name Withheld
State of New Jersey

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

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Commonwealth of Massachusetts

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State of New Jersey

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WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
Commonwealth of Pennsylvania

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics,

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

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WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of California

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WASHINGTON, D.C. 20580

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Name Withheld
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
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WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of Illinois

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the

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complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

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By direction of the Commission.

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Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of North Carolina

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Asbury Automotive Group, Inc. (File No. 152 3103), and
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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Name Withheld
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Amy Armistead
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Armistead:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Robert Arthur
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Arthur:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Seth Ballentine

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Ballentine:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual

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disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Christina Barnes
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Barnes:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lynda Barry
State of Hawaii

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Barry:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ruthanna Battilana
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Battilana:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Bob Benivegna
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Benivegna:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Diane Black
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Black:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

Lakisha Blackstone
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Blackstone:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Shannon Blackwell
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Blackwell:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Trent Blair
State of Utah

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Blair:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

William Blair
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Blair:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Debbie Blair
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rachel Blake
State of Iowa

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Blake:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ben Blyton
Commonwealth of Kentucky

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Blyton:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. See 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. See PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jerald Boger
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Boger:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Elise Bouc
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Bouc:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandra Bowling
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Bowling:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Devin Boyer
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Boyer:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jonathan Boyne
State of Hawaii

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Boyne:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Virginia Bravo
State of Minnesota

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Bravo:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Allan Breit
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Breit:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Daniel Breitenstein
State of Utah

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Breitenstein:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lori Bres
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Bres:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Bryan Broadbent
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Broadbent:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Nina Brottman
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Brottman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Alan Brown
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Brown:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Robert Brown
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Brown:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michael Buckhout-White
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Buckhout-White:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kathryn Burns
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Burns:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Darwin Busa
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Busa:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

JA Byars
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear JA Byars:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard Cain
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Cain:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Candace Cangialosi
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Cangialosi:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Neil Cardew-Fanning
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Cardew-Fanning:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Travis Casey
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Casey:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deborah Cate
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Cate:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Frank Cavoto
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Cavoto:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Emma Chambers
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Chambers:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Po Chang
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Po Chang:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Diane Chaplin
State of Arizona

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Chaplin:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Donald Charest
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Charest:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jerry Chittenden
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Chittenden:

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kate Clair
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Clair:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Robert Clark
State of Oregon

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Clark:

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deborah Coble
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Coble:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mikael Cocco
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Cocco:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Collins
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Collins:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Elly Conley
State of Colorado

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Conley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Norm Conrad
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Conrad:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

K Cook
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear K Cook:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Judith Covell
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Covell:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandra Craig
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Craig:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deborah Cross
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Cross:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deborah Cunion
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Cunion:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Gary Dailey
State of Alaska

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Dailey:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Beth Darlington
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Darlington:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

David Darwin
State of Kansas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Darwin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kevin Davis
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Davis:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Glenn Davis
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Davis:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Betsy Day
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Day:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Steven Dayton
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Dayton:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Hector De Haro
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. De Haro:

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lisa Deju
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Deju:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

B del Mano
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Thomas Dempsey
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Dempsey:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carl Dettwiler
State of Idaho

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Dettwiler:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jennifer Dick
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Dick:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Shanta Dickerson
State of Kansas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Dickerson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

Michelle Dionne
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Dionne:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

David Doering
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Doering:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Steve Donaldson
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Donaldson:

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Donald S. Clark
Secretary



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WASHINGTON, D.C. 20580

March 22, 2017

Thomas Donovan
State of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
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Dear Mr. Donovan:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

James Drogo
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Drogo:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Alvin Dungan
State of Minnesota

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Dungan:

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jeff Duran
State of Colorado

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ann Eastman
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Eastman:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kathleen Eaton
State of Delaware

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Aaron Edwards
State of Nevada

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Edwards:

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Diane Eisenhower
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Eisenhower:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kenneth Elkins
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Elkins:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Frances Emanuel
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Frances Emanuel:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Tyler English
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. English:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Eve Eskew
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Eskew:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Joanne Faulkner
State of Connecticut

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Faulkner:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard Feferman
State of New Mexico

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Feferman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Alan Fiene
State of Minnesota

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Fiene:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Thomas Filip
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Filip:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Julie Braman Kane
President
American Association for Justice

Re: *In the Matters of CarMax, Inc.* (File No. 1423202)
West-Herr Automotive Group, Inc. (File No. 1523105)
Asbury Automotive Group, Inc. (File No. 1523103)

Dear Ms. Kane:

We would like to thank your organization for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

safety or recall status of their vehicles. Part II of the orders requires the respondents to mail their recent customers a notice informing them of the fact that respondents sold used cars with open recalls, and stating how to check whether their vehicles were affected and get them fixed. Finally, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you request that the proposed orders be modified to make clear that the remedies in the proposed orders would not affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. As we explained in connection with announcing the final orders in three previous recall advertising cases and these proposed orders,⁴ to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law. Thus, we conclude that it is unnecessary to modify the orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation. The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

⁴ *See, e.g.*, Commission's Statement Concerning Auto Recall Advertising Cases (Dec. 15, 2016) at 2.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

Rosemary Shahan
President
Consumers for Auto Reliability and Safety

Re: *In the Matters of CarMax, Inc.* (File No. 1423202)
West-Herr Automotive Group, Inc. (File No. 1523105)
Asbury Automotive Group, Inc. (File No. 1523103)

Dear Ms. Shahan:

We would like to thank your organization and the others that joined your submission for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The complaints in these matters allege that the respondents touted the rigorousness of their inspections of cars that were certified or under warranty – claiming, for example, to engage in a “125+ Point Inspection” and “12 hours of renewing—sandwiched between two meticulous inspections”; a “150 point bumper-to-bumper inspection by Certified mechanics...from bulbs to brakes – before offering a vehicle for sale”; or “a rigorous multi-point inspection with our factory trained technicians.” These affirmative statements were misleading, even if the dealers were conducting inspections that might benefit consumers, because consumers would reasonably believe that the inspections involved repair of all open recalls in all of these vehicles. Our complaints, therefore, state that in light of the advertising representations described above, the failure to disclose adequately that some of these cars were subject to open safety recalls was a deceptive act or practice in violation of Section 5 of the FTC Act.²

The proposed orders directly address the deceptive conduct identified in the complaints, and also impose additional requirements that would prevent these respondents from engaging in other deceptive conduct. Part I.A. of the orders prohibits the respondents from representing that their used motor vehicles are safe, have been repaired for safety issues, or have been subject to an inspection for safety issues unless the vehicles are recall-free or, alternatively, the respondents clearly and conspicuously, in close proximity to the representation, disclose at least two key facts to consumers: first, that the vehicles may be subject to open recalls and, second, how consumers can determine whether an individual car is subject to an open recall. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.³

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” “appear in each language in which the representation that requires the disclosure appears,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where

² It is well-established Commission law that “it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.” See *In re International Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

³ As noted in the Commission’s Statement Concerning Auto Recall Advertising Cases (Dec. 15, 2016), at 2 n.4, other situations where a claim could still be misleading, even with the required disclosures, include the following: situations where a dealer represents that it inspected specific cars when it failed to do so, makes false oral statements to consumers that specific cars are free of recalls, or states a car *may* be subject to a recall (or otherwise implies it does not know the recall status) but in fact knows the car is actually subject to an open recall.

they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.⁴

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.⁵ Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.⁶

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. This provision would prohibit a dealer’s salespeople, for example, from making oral misrepresentations to consumers regarding the recall status or safety of cars – a concern raised in your comment. Part II of the orders requires the respondents to mail their recent customers a notice informing them of the fact that respondents sold used cars with open recalls, and stating how to check whether their vehicles were affected and get them fixed.⁷

⁴ Beyond these disclosure requirements, the orders also require that, if the respondents receive a written recall notice from a manufacturer regarding a specific car, they share the recall information with consumers prior to consummating the sale of that car.

⁵ See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

⁶ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

⁷ As part of these notifications, the proposed orders require the dealer-respondents to provide consumers with information about the National Highway Traffic Safety Administration’s (NHTSA) online VIN look-up tool. This tool, and more information about it, are available at <http://www.safercar.gov/>. The proposed orders’ references to the NHTSA online lookup tool and recall database are appropriate given that agency’s particular expertise on recalls and the relatively comprehensive information it makes available on the sorts of recalls at issue in these matters.

Finally, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation. The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. We believe that legislative bodies are best situated to consider and resolve the many issues implicated by such proposals – including, for example, the competitive effects they would have on independent dealerships that are not authorized to make repairs, the effect they could have on used vehicle trade-ins, the fact that remedies for some recalls may remain unavailable for significant periods of time, and other factors affecting the costs and benefits to consumers. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website

at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Larry Hecker
State of Florida

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Hecker:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern that the proposed orders apply only to the respondents in our above-referenced law enforcement actions, and not to other vehicle sellers in the marketplace. While these orders address the alleged FTC Act violations of these respondents, the Commission could also bring law enforcement actions against other dealers in the marketplace if they engaged in similar deceptive conduct.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carol (Cally) Houck
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Houck:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

We want to again express our deepest condolences for your loss. We greatly appreciate you sharing your personal story and discussing the important consumer protection issues involved in these matters. And we are grateful to receive your feedback on the proposed orders in the above-referenced proceedings, as well as your previous comment of February 16, 2016, on prior recall-related proceedings. Below we analyze in some detail these specific law enforcement matters under the FTC Act.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. Thank you again for sharing your story and submitting your public comment on these matters.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mark Steinbach
State of Maryland

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Steinbach:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. In your comment, you express concern regarding the respondents’ compliance with the requirements of the proposed orders. The FTC monitors the conduct of proposed respondents to ensure order compliance, and the orders contain specific provisions pertaining to compliance monitoring and reporting. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Earl Stewart
State of Florida

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Stewart:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern that other used automobile dealers in your area may be engaging in deceptive practices in connection with their marketing and sale of vehicles subject to open recalls. We have added your comment to our agency’s complaint database,

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, <https://www.ftccomplaintassistant.gov>, or by calling our Consumer Response Center at 1-877-FTC-HELP (1-877-382-4357).

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Gail Findley
State of Nevada

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Findley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard W. Firth
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Firth:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lauren Flahive
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Flahive:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

S. Flatt
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

T. Michael Flinn
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Flinn:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Larry Foster
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Foster:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Elaine Fox
State of Tennessee

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Fox:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Frank
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Edward Franz
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Franz:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Paul Fray
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Fray:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michele Fricke
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Fricke:

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Adele Friedel
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Douglas Fuson
State of Wisconsin

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Bob Fuston
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Gaffner Sr
State of Minnesota

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Gaffner:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Glenda Gallagher
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Gallagher:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deborah Gandolfa
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Gandolfa:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Croitene ganMoryn
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics,

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

April Garcia
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Garcia:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jacquie Garcia
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Garcia:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Charles Gaulke
State of Wisconsin

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Gaulke:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Gayle
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Gayle:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Gear
State of Oregon

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Gear:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard L Giovanoni
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Giovanoni:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Adam Goldfine
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Goldfine:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Donald Goldhamer
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Goldhamer:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Steven Good
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Good:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jessica Goodkind
State of New Mexico

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Goodkind:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Robert Goodlett
State of Indiana

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Goodlett:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Darrell Gordon
State of Utah

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Gordon:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Peter Grave
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Grave:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michaela Gray
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Gray:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Margaret Greene
State of Florida

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Greene:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lisa Greenhut
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Greenhut:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ben Grego
State of Ohio

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Grego:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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By direction of the Commission.

Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Esther Gross
State of Colorado

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Gross:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

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Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Stacy Grossman
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Grossman:

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jason Gurley
State of Arkansas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Gurley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

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WASHINGTON, D.C. 20580

March 22, 2017

Luerra Hammond
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Hammond:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Hanson
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carol Hauschild
State of Kansas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Hauschild:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jay Hawekotte
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Hawekotte:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

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Donald S. Clark
Secretary



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Donna Hazard
State of Rhode Island

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Hazard:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

M Hebert
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear M Hebert:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Raymond Hendrey
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Hendrey:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Diane Hendricks
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Hendricks:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jocelyn Henning
State of New Hampshire

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Henning:

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kimberly Hiett
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Hiett:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Wendolyn Hill
State of Connecticut

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Hill:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ervin Hill
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Hill:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Fred Holden
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Holden:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Phillip Hope
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Hope:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Eugene Howard
State of Tennessee

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Howard:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Paul Howell
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Howell:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

Agnes Howkins
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Howkins:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Edward Hubbard
State of Wisconsin

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Hubbard:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

William Huber
State of Utah

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Huber:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Bruce Huey
State of Oklahoma

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Huey:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Henry Jackson
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Jackson:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Alice Jackson
State of Oklahoma

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Edward Jackson
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Jackson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Karen Jacob
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Jacob:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Edward Jahn
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Jahn:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jenny Jahraus
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Jahraus:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

George Johnson
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Johnson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deveron Johnson
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Johnson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jeffrey Johnson
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Johnson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Dorothy-Anne Johnson
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Johnson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Melody Jones
State of New Jersey

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Jones:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jones
State of Texas

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Jones:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

William Kadish
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Kadish:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michael Karlesky
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Karlesky:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lisa Mintz Kavas
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kavas:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Natalie Kegulian
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kegulian:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Tim Kelly
State of Colorado

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Kelly:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kasia Kent-Moses
State of Tennessee

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kent-Moses:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mike Kerr
State of Louisiana

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Kerr:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Marjorie Kessler
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kessler:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rebecca Kimsey
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kimsey:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Eileen Kimsey
State of Florida

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Kimsey:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sheryl King
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. King:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Stephen Kirby
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Kirby:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sonja Klaas
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Klaas:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lydia Klasnikov
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Klasnikov:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ryan Klenke
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Klenke:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jon Knipp
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Knipp:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carl Knorr
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Knorr:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Wendy Koch
State of Delaware

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Koch:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Candice Kohli
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kohli:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jackie Kubinski
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Kubinski:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Andrea La Vigne
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. La Vigne:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Donald Lahti
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Lahti:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Clintonia Lengley
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Lengley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

C LaScala
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear C LaScala:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Howard Lattimore
State of Oklahoma

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Lattimore:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jane Lees
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Lees:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Howard Leicht
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Leicht:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Patricia Lestz
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Lestz:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mare Levine
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mare Levine:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jo Liggett
State of West Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Jo Liggett:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Norma Line
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Line:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Cyrus Lipsitt
State of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Cyrus Lipsitt:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Barbara Loe
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Loe:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Arlyne London
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. London:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Nicholas Long
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Long:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Christian Lonjers
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Lonjers:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jean Lowe
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Lowe:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ellen Lubic
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Lubic:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Shelly Lyons
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Lyons:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Patricia de Magalhaes
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Magalhaes:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Howard Malpass
State of South Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Malpass:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Tania Malven
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Malven:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Amanda Mann
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Mann:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Melissa Martin
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Martin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mark Martin
State of Connecticut

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Martin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mary Martin
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Martin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lianne Mathie
State of Michigan

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Mathie:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jennifer Matthews
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Matthews:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Patrick Matwijec
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Matwijec:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Dale McCart
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. McCart:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michael McCartin
State of Indiana

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. McCartin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Benjamin McDermott
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. McDermott:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Patrick McLean
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. McLean:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Amanda McLean
State of South Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. McLean:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Zachary McMurrin
State of Mississippi

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. McMurrin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Cathy Menendez
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Menendez:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Miller
State of Wyoming

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Miller:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sherlynn Miller
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Miller:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jerry Miller
State of Washington

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Miller:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michael Mintz
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Mintz:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michelle Mitchell
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Mitchell:

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ron Mittan
State of Minnesota

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Mittan:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Tom Monaco
State of Oklahoma

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Monaco:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Nicholas Monitto
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Monitto:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Marge Moon
State of Ohio

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Moon:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

J.A. Moore
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear J.A. Moore:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jennifer Moreno
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Moreno:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carolyn Moser
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Moser:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sonia Murray
State of Mississippi

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Murray:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carol Myers
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Myers:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Beth Napier
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Napier:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jerry Neal
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Neal:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Neben El
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics,

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must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

L Nelson
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear L Nelson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandra Nicht
State of Maryland

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Nicht:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Stephen Mac Nish
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Nish:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Elisabeth Norwood
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Norwood:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Trina Novak
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Novak:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Oda
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Oda:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Dale Offet
State of Oregon

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Offet:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Douglas OGeen
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. OGeen:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard Ogin
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Ogin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Penny Olien
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Olien:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Emily Orr
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Orr:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Hethoe Orr
State of Nevada

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Hethoe Orr:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mrs. Otero
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mrs. Otero:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Leslie Pagan
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Pagan:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Robert Paterno
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Paterno:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

B.A. Paterson
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear B.A. Paterson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Don Patterson
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Patterson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Joan Paul & PJ Sullivan
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing

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the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Russell Paulin
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Paulin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Joel Peebles
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Peebles:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Patricia Pertel
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Pertel:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Marta Phillips
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Phillips:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lynn Pique
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Pique:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Wendy Plasko
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Plasko:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Emil Plecko
State of Illinois

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Emil Plecko:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Chris Plock
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Plock:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

William Plonty
State of Wisconsin

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Plonty:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Adam Pollock
State of Florida

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Pollock:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Devin Posey
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Posey:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Matthew Power
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Power:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

Teresa Preston
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Preston:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Shayn Proler
State of Texas

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Shayn Proler:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Herbert Radack
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Radack:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Matthew Rail
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Rail:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Donna Rauch
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Rauch:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

David Ray
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Ray:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kelly Rebbin
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Rebbin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Paul Reehal
State of Nevada

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Reehal:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mary Reichley
State of Nevada

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Reichley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

D. Rein
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear D. Rein:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Damaris Rice
State of Washington

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Rice:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Patty Ridenour
State of Ohio

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Ridenour:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Steve Ritchie
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Ritchie:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandra Roberts
State of Maryland

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Roberts:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sue Rocks
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Rocks:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Marya Roddis
State of New Mexico

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Roddis:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

June Rodman
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Rodman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Joseph E Rogers Jr.
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Rogers:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jason Rohr
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Rohr:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Charles Roocke
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Roocke:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lynne Rooney-Katsma
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Rooney-Katsma:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

Christina Gill Roseman
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Roseman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

John Ross
State of Indiana

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Ross:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard Rossi
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Rossi:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Taras Rudnitsky
State of Florida

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Taras Rudnitsky:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers’ only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website

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at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jesse Rusoff
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Jesse Rusoff:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Erich Russell
State of Minnesota

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Russell:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Teresa Safron
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Safron:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Emily Sanders
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Sanders:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Joshua Sandler
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sasha K
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Nicholas Sayers
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Sayers:

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We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ginger Schedler
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Schedler:

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We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Daniel Seiple
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Seiple:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Greg Sells
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Sells:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Cassie Shahan
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Shahan:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Alan Sheidler
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Sheidler:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ralph Shelton
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Shelton:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sheila Shepard
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Shepard:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sharon Shores
State of Colorado

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Shores:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jeffrey Silman
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Silman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Javier Silva
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Silva:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

George Silverwood
State of Wisconsin

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Silverwood:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rick Simkin
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Simkin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandra Simmons
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Simmons:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Elaine Simon
State of Tennessee

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Simon:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Marianne Simon
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Simon:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Theodore Skarbowski
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Skarbowski:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

S L
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics,

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ronald Smith
Commonwealth of Virginia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Smith:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Richard Smith
State of New York

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Smith:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Deborah Spangler
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Spangler:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Virginia Sparks
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Sparks:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Darryl Spears
State of Iowa

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Spears:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Dan Spencer
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Spencer:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kate Steele
State of Nebraska

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Steele:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Michael Sternfeld
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Sternfeld:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Gavi Stevens
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Gavi Stevens:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lola Stone
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Stone:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Brian Stover
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Stover:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

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² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Louis Stuhl
Commonwealth of Massachusetts

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Stuhl:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jeremy Swanson
State of Wisconsin

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Swanson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

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some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

William Swatos
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Swatos:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 22, 2017

T K
State of New Jersey

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear T K:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Luis Tafur
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Tafur:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Gregg Takeuchi
State of Hawaii

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Takeuchi:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Steven Taterka
State of Tennessee

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Taterka:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers’ only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Kathy Tenda
State of Montana

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Tenda:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Tiffany Terry
State of Texas

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Terry:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you express concern about problematic practices you have observed or experienced in the used automobile marketplace. We have added your comment to our agency’s complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Further, if you have any additional information regarding these practices, we would encourage you to submit a complaint with the Commission at our website, www.ftccomplaintassistant.gov, or by calling our Consumer Response Center at (877) 382-4357.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

James & April Thompson
State of North Carolina

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the

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complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Trischa Thorne
State of Missouri

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Thorne:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Irasema Tierrablanca
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Tierrablanca:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Judith Tillman
Commonwealth of Pennsylvania

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Tillman:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Judith Timmerman
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Timmerman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Chris Toop
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Toop:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Marcos Torres
State of Texas

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Torres:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jonathan Turak
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Turak:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Judy Turner
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Turner:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

David Twait
State of Colorado

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Twait:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

James Tyree II
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Tyree:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Diane Vandiver
State of Illinois

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Vandiver:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rosa M. Vasquez
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Vasquez:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Robin Vincent
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Vincent:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jerald Vinikoff
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Vinikoff:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

N Vitale
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear N Vitale:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Jeff Volkman
State of Indiana

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Volkman:

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Alison Wasielewski
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Wasielewski:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Nate Weaver
State of Colorado

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Mr. Weaver:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rachel Weber
State of Georgia

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Weber:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandee Weinstein
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Weinstein:

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Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Benjamin Wenker
State of New York

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Wenker:

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Adam Whiteman
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Whiteman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Sandy Whitley
State of Arizona

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Whitley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Steve Widlund
State of California

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Widlund:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Reed Williams
State of Nevada

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Williams:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rhonda Witwer
State of New Jersey

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Witwer:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Rose Wood
State of Wisconsin

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Wood:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Ellis Woodward
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ellis Woodward:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Katherine Wright
State of Oregon

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Wright:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Lawrence Wyman
State of Washington

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Lawrence Wyman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Amy Yarnall
State of Delaware

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Yarnall:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Carrie Yerance
State of Ohio

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Yerance:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Andrea Young
State of Georgia

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Young:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Mark Young
State of Michigan

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Young:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary

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consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls. Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Don Young
State of Maryland

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Young:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Leo Young
State of Iowa

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Mr. Young:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³ Additionally, Part I.A. requires that, even if the respondents make these required disclosures, their advertising claims cannot otherwise mislead consumers. Thus, it would violate the orders for a dealer to make broad safety claims about a specific car (for example, expressly stating it is “safe”) that create a false impression in reasonable consumers’ minds – despite the required disclosures – that the car is recall free.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Darlene Young
State of Hawaii

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Young:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,654 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Regina Young
State of California

Re: *In the Matters of CarMax, Inc. (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)*

Dear Ms. Young:

The Commission has received your comment in the above-referenced proceedings and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we appreciate feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles

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subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 22, 2017

Olympia Zacharakis
State of Florida

Re: *In the Matters of CarMax, Inc.* (File No. 142 3202),
Asbury Automotive Group, Inc. (File No. 152 3103), and
West-Herr Automotive Group, Inc. (File No. 152 3105)

Dear Ms. Zacharakis:

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Secretary