



**The Safety Institute**  
340 Anawan Street  
Rehoboth, MA 02769  
[www.thesafetyinstitute.org](http://www.thesafetyinstitute.org)

February 26, 2016

Federal Trade Commission  
Office of the Secretary  
Room CC-5610 (Annex D)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: General Motors LLC- Consent Agreement, File No. 152-3101; Jim Koons Management Company - Consent Agreement, File No. 152-3104; and Lithia Motors, Inc.,- Consent Agreement, File No. 152-3102**

We appreciate the opportunity to comment on the Federal Trade Commission's proposed settlements with the General Motors Company, Jim Koons Management and Lithia Motors Inc. over their deceptive advertising claims regarding used vehicles.

Specifically, we have grave concerns about the provision that those companies would be permitted to claim that their used cars are "certified" if the companies clearly disclose the existence of recalls in "close proximity" to other representations. This provision allows the sellers of used vehicles to simultaneously claim that a vehicle has undergone a rigorous vetting for safety while allowing that it is being sold in an unsafe state. It is, in fact, antithetical to the first count in the FTC's original complaint: "Respondent has represented, directly or indirectly, expressly or by implication, that used motor vehicles it advertises have been subject to rigorous inspection, *including for safety issues.*"<sup>1</sup>

We take this opportunity to remind the Commission that under 49 CFR §573, recalls are an admission by a manufacturer of a safety defect or non-compliance with Federal Motor Vehicle Safety Standards, which are minimum safety requirements for any vehicle sold in the U.S. Further, under 49 CFR § 577 manufacturers are required to convey detailed information about the defect to vehicle owners in their recall notifications:

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<sup>1</sup> In the Matter of General Motors Company LLC, a Limited Liability Company; Complaint; Federal Trade Commission; undated

The letters must include a clear description of the defect or noncompliance to include: an identification of the vehicle system or items of equipment involved; a description of the malfunction that may occur due to the defect or noncompliance; a description of any operating or other conditions that may cause the malfunction to occur; and identification of any precautions owners may take to avoid or reduce the safety-related risk associated with the defect or noncompliance. The letters must also include an evaluation of the risk to motor vehicle safety reasonably related to the safety defect or noncompliance. This evaluation must be crafted in a specific manner depending upon whether a vehicle crash is a potential outcome of the defect or noncompliance. If a crash is a potential risk, the letters must include either a statement that the defect or noncompliance can cause a crash without warning, or a description of the warning that may occur coupled with a statement that if the warning is not heeded, a crash can occur. If a crash is not a potential risk, the letters must include a statement indicating the general type of injury to vehicle occupants or persons outside the vehicle that can result from the defect or noncompliance and, where applicable, a description of any warning that may occur.<sup>2</sup>

To allow a used vehicle seller, such as GM to merely tell the consumer that a vehicle “may be subject to recalls for safety issues that have not been repaired, and how consumers can determine whether an individual used motor vehicle has been subject to a recall for safety issues that has not been repaired,”<sup>3</sup> while making claims that “certified” used vehicles undergo a comprehensive 172-point inspection to determine that the vehicle meets its “rigorous standards,” “conducted only by highly trained technicians and adheres to strict, factory-set standards to ensure that every vehicle’s engine, chassis, and body are in excellent condition,”<sup>4</sup> is misleading, does not disclose the safety consequences of the open recall, and shifts the burden to the consumer.

Further, this proposed settlement is also contrary to changing regulations regarding the introduction of unrepaired recalled vehicles into the stream of commerce. Historically, 49 CFR 573.11 prohibited the sale or lease of new defective and noncompliant motor vehicles and items of replacement equipment. But, recently, rental vehicles have been brought under this stricture. In December, President Barack Obama signed into law the Fixing America’s Surface Transportation (FAST) Act, which included the Raechel and Jacqueline Houck Safe Rental Car Act, requiring rental car companies and dealers with fleets of at least 35 vehicles to remedy recalled vehicles before renting, leasing or selling them, or, the case of a rental, at least mitigating the hazard if a remedy is not immediately available.

The Houck sisters, Raechel, 24, and Jacqueline, 20, died on October 7, 2004, in a rented 2004 PT Cruiser. The Chrysler vehicle was under a recall for power steering hoses which could fail and cause an underhood fire. Enterprise received the recall notice in early September 2004, but

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<sup>2</sup> 49 CFR § 577; Defect and Noncompliance Notification; Safety Recall Recompendum; Pg. 13; National Highway Traffic Safety Administration

<sup>3</sup> In the Matter of General Motors LLC, a limited liability company; Agreement Containing Consent Order; Federal Trade Commission; undated

<sup>4</sup> In the Matter of General Motors Company LLC, a Limited Liability Company; Complaint; Federal Trade Commission; undated

rented the unfixed vehicle anyway -- to other three customers before the Houcks. The young women died in a fiery crash while traveling northbound on Highway 101 in Monterey County outside of King City, caused by the defect. First introduced in 2013, The Rachel and Jacqueline Houck Safe Rental Car Act was supported by the car rental companies.<sup>5</sup>

Used car sellers are now the outliers. In December, The Safety Institute joined MASS PIRG and Consumers for Auto Reliability and Safety Foundation to expose the deceptive and unsafe selling practices of CarMax, which, like GM, Lithia and Koons, promises consumers that the cars on its lot have been thoroughly screened, passing “125 point inspection” in order to qualify to be sold as “CarMax Quality Certified” vehicles, and listing specific components that are checked including brakes, engine and transmission, electrical, and steering.

Not only are such ads deceptive when the vehicle has an open safety recall, CarMax salespeople at the location I visited repeatedly reassured me that that the 2012 Jeep that I eventually bought was safe and had cleared the Carmax inspection -- despite having three open safety recalls for a brake problem, intermittent stalling and faulty wiring. It wasn't until after I specifically requested information about recalls that they were identified – and even then the salespeople maintained that safety hazards associated with the recalls were insignificant. Only after I signed a sales contract, wrote a check, and the dealership verified that the check would clear, did CarMax inform me, via a disclosure statement, that NHTSA reported the Jeep had unrepaired safety recalls, but that Autocheck (owned by Experian), indicated that “your vehicle checks out.” and the Jeep received green checkmarks for a long list of potential problems. Autocheck found no pending recalls on that Jeep.

In light of these practices, The Safety Institute and other consumer groups petitioned the FTC in June 2014 to investigate and take enforcement actions to curb CarMax's sales of so-called “certified” used cars with unrepaired safety recalls.

The Federal Trade Commission states that its number one strategic goal is: “Protect Consumers: Prevent fraud, deception, and unfair business practices in the marketplace.”<sup>6</sup> The Safety Institute submits that it is fraudulent to advertise a vehicle for sale as thoroughly inspected and in drive-off-the-lot condition, when that vehicle contains safety defects. Further, it is misleading to allow used car dealers to simply inform a customer that open recalls “may exist” without a complete accounting of those recalls and of the dangerous safety consequences of leaving them unrepaired. Finally, it is unfair to shift the responsibility of obtaining those repairs on the consumer. The dealer is the owner of the vehicle as long as it remains in his or her possession and it is incumbent upon the dealer, as the owner of the vehicle, and the entity offering guarantees, to have those defects remedied *before* re-sale, or forego such guarantees.

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<sup>5</sup> Not Very FAST Act Tackles Recall, Tire Issues, Closes Rental Loophole; The Safety Record; December 7, 2015; <http://www.safetyresearch.net/blog/articles/not-very-fast-act-tackles-recall-tire-issues-closes-rental-loophole>

<sup>6</sup> About the FTC; Our Strategic Goals; <https://www.ftc.gov/about-ftc>

If the FTC wants to protect consumers -- at the very least -- it should prohibit GM, Lithia, Koons, and any other used car dealer from lulling its customers into a false sense of security with absurd claims about the lengths it has gone to ensure a vehicle's condition, when it has not done basic fixes to eliminate safety defects. The results of such advertising can be deadly. The Houck sisters are hardly the only consumers to have died a preventable death in a recalled vehicle that had been represented to them as safe to drive. But the FTC can ensure that such scenarios are less likely in the future: amend the proposed settlement to make certification claims contingent on recall repairs.

Sincerely,

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Sean E. Kane  
Founder and President Board of Directors

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Jamie Schaefer-Wilson  
Executive Director