



Formerly the Association of Trial Lawyers of America (ATLA®)

January 17, 2017

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

**RE: In the Matter of CarMax, Inc., File No. 142 3202 – Consent Agreement  
In the Matter of Asbury Automotive Group, Inc. File No. 152 3103 – Consent Agreement  
In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105 – Consent Agreement**

To Whom It May Concern:

The American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America (ATLA), hereby submits comments in response to the Federal Trade Commission (FTC) proposed consent agreements with CarMax, Asbury Automotive Group, and West-Herr Automotive Group.

AAJ, with members in United States, Canada and abroad, works to preserve the constitutional right to trial by jury and access to justice when people are injured by the negligence or misconduct of others. AAJ members represent many individuals who have been harmed as a result of faulty vehicles. We believe, these consent decrees, as drafted are deceptive, potentially harmful to consumers and that the FTC should include a strong disclaimer indicating that they have no impact on underlying state or federal law.

We previously commented on similar proposals filed against General Motors, Jim Koons, and Lithia Motors. In those comments, we raised concerns that the consent decrees might preempt state law remedies for individuals injured by these dangerous and defective vehicles being advertised as “safe,” “repaired for safety issues,” or “subject to a rigorous inspection,” *without* repairing the safety defects. In its response, dated December 8, 2016, the Federal Trade Commission stated that the Commission’s law enforcement actions in no way preempt, substitute, or alter any other federal or state law. The Commission also stated that “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.”

We continue to believe that that it is inherently deceptive—regardless of any disclaimer—to advertise a car as “safe,” “repaired for safety issues,” or “subject to a rigorous inspection,” when a dealer is under a reasonable duty to inspect and identify that the vehicle is subject to an open safety recall. As we previously stated, these consent decrees allow dealers to continue to engage in an unfair and deceptive act that jeopardizes safety not only for the drivers of the vehicles, but for the general public.

Therefore, we are writing today to ask that the Commission to include a strong disclaimer in these consent decrees acknowledging that they shall not affect any of the legal obligations that these dealers are otherwise required to adhere to under state and federal law. This should include a disclaimer that any remedy otherwise available under state or federal law is in no way preempted or affected by the consent decrees entered into as a result of this law enforcement proceeding initiated by the Commission. Such language will be helpful to ensure that the courts and future litigants who have been killed or injured from the sale of these dangerously defective vehicles properly understand the context of these consent decrees and their effects on their access to justice. Given that this is in line with the Commissions previous position and public statements, surely the Commission will agree that maintaining access to such remedies will be crucial.

AAJ appreciates this opportunity to submit comments in response to these consent decrees. If you have any questions or comments, please contact Daniel Hinkle, AAJ’s State Affairs Counsel, at

Sincerely,

<sup>v</sup>  
Julie Braman Kane  
President  
American Association for Justice