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Contacts: Rosemary Shahan, CARS, 530-759-9440
Michael Brooks, CAS, 202-328-7700 x 113

Auto Safety / Consumer Organizations Sue Federal Trade Commission, Over Decision Allowing General Motors and Car Dealerships to Engage in False Advertising of Unrepaired Recalled “Certified” Used Cars

Today, Consumers for Auto Reliability and Safety (CARS), the Center for Auto Safety, U.S. Public Interest Research Group (PIRG), MASSPIRG, CONNPIRG, and CALPIRG filed a legal case seeking to have an appellate court review and overturn the Federal Trade Commission’s consent orders with General Motors, Lithia Motors, and Jim Koons Management Co., which would allow them to advertise that cars with unrepaired safety recalls are “safe,” “repaired for safety,” passed a “rigorous inspection,” and qualified to be sold as “certified” cars – without getting safety recall repairs performed, if the companies merely provide a contradictory, confusing, misleading, disclaimer that the cars “may” be subject to a safety recall.

The FTC’s Consent Orders set a de-facto standard for the auto industry that allows dealers to deceptively advertise cars with dangerous and potentially lethal safety defects that have killed and maimed people. Many of those defects jeopardize the lives of not only used car buyers, but also passengers and everyone else who shares the roads and adjacent areas, including sidewalks, driveways and parking lots.

“We’re optimistic that the Court will rein in the FTC’s dangerous and irresponsible abuse of its authority. Instead of protecting consumers, the FTC is protecting unscrupulous auto dealers who engage in false and deceptive advertising about the safety of the cars they offer for sale to the public. This is a serious threat to used car buyers, their families, and all who share the roads,” said Rosemary Shahan, President of Consumers for Auto Reliability and Safety.

“Even if there is a 100% certainty that an unrepaired safety recall defect will immediately kill anyone who buys a so-called ‘certified’ car and their family, the FTC would allow car dealers to advertise that car as ‘safe’ and ‘repaired for safety,’” said Michael Brooks, Acting Director of the Center for Auto Safety. “Clearly the Court should intervene and force the FTC to reverse itself.”

“The Federal Trade Commission is supposed to crack down on false and deceptive advertising. Instead, they are encouraging it,” said Deirdre Cummings, Legislative Director of MASSPIRG. “They should have protected consumers but chose to protect reckless car dealers.”

The FTC’s Consent Order is already putting motorists at greater risk of death or injury. According to a recent report in the *New York Times*, “Until [the FTC entered into consent orders with GM, Lithia and Koons] every major car company had said that they forbade their dealers from selling certified used vehicles with any open recalls, including ones for Takata airbags. [But] “with the F.T.C. settlement for cover...Ford broke ranks, issuing an update to dealers on its ‘enhanced’ recall process and giving them permission to certify used vehicles that had open recalls after all.”¹

Citing the FTC’s Consent Order and the election of an anti-regulation President Trump, AutoNation (the largest new car dealership chain in the U.S.) reversed its policy of ensuring that all used cars are repaired prior to sale to consumers, and now also allows its new car dealers to sell unrepaired recalled cars, including cars with Takata airbags that cannot be made safe, because of severe shortages of repair parts.

“Certified” cars are supposedly subject to rigorous inspections, and dealers and manufacturers charge an average of approximately \$1200 extra for them. Consumers are led to believe the cars have not only been inspected, but that any significant problems have been repaired.

The FTC sought public comments regarding its proposed consent agreements with GM, Lithia and Koons. All the consumer / safety organizations who filed comments strenuously opposed the Consent Orders, as did nearly all of the individual consumers. The groups followed up with in-person meetings with the Director of the FTC’s Bureau of Consumer Protection and each of the Commissioners, urging them to reconsider and modify the agreements to prohibit false advertising, instead of allowing it, or drop the FTC’s actions against the companies altogether, since the agency’s proposed “solution” would be worse than nothing.

In a scathing letter to the FTC, Senators Schumer, Durbin, Nelson, Blumenthal, and Markey, leading champions of auto safety in the U.S. Senate, termed the FTC’s consent orders with GM, Lithia and Koons as “anti-safety” and “anti-consumer.” U.S. Representative Jan Schakowsky, the leading Congressional champion of auto safety in the U.S. House, also sent a strongly worded letter urging the Chairwoman of the FTC, Edith Ramirez, to reconsider.

To his credit, auto dealer Earl Stewart, who owns a large Toyota dealership in West Palm Beach, Florida, has refused to sell recalled vehicles that he cannot get fixed, stockpiling them on a remote lot miles from his main showroom. He even sued a rival, Arrigo Chrysler Dodge Jeep Ram, who he believes is selling recalled cars without disclosing that they have not been fixed. His lawsuit recently made it over a major potential hurdle, surviving Arrigo’s motion to have it dismissed.

1 “How to Buy a Used Car in an Age of Widespread Recalls,” by Ron Lieber, *New York Times*, January 27, 2017. Posted at: https://www.nytimes.com/2017/01/27/your-money/used-cars-takata-recalls.html?_r=0

Last December, the FTC proposed a similar consent agreement with CarMax and the Asbury and West-Herr car dealership chains. CarMax is the largest retailer of used cars in the nation. The CARS Foundation, MASSPIRG, CONNPIRG, and CALPIRG have released detailed reports documenting CarMax’s deceptive sales of unrepaired recalled cars as “certified” cars that supposedly passed a “rigorous inspection” and qualified to be sold as a “CarMax Quality Certified” car. The groups also filed comments opposing those consent orders, which have not yet been finalized.

Among the defects in cars sold by CarMax: catching on fire, faulty brakes, wheels that fall off, axles that break, hoods that fly up while the car is being driven, transmissions that slip so the cars slide downhill and crush people, seat belts that fail in a crash, and Takata airbags that propel metal fragments at drivers and passengers – causing them to bleed to death, or causing severe injuries such as blindness. Citing the high risk of death or injury, the National Highway Traffic Safety Administration has warned owners of many of those vehicles not to drive them, except to the dealership for recall repairs. While CarMax says it tells car buyers to get recalls repaired, for many purchasers of cars with the Takata exploding airbag recalls, that advice would be misleading, because it may be months, or even years, before repair parts are available.

State laws prohibit dealers from engaging in such practices. However, some of those laws may not be enforced until after someone has already been injured or killed. Victims of dealers who sold unrepaired recalled cars, or their surviving family members, have sued dealers for wrongs such as negligence or wrongful death, and have received confidential settlements. One similar case, where two sisters, Raechel and Jacqueline Houck, were killed by an unrepaired recalled PT Cruiser, resulted in a unanimous jury verdict awarding \$15 million in compensatory damages.

Despite progress made in improving vehicle design, motor vehicle crashes remain a leading cause of death and injury in America, particularly among children, teenagers, and young adults in the U.S. According to NHTSA, “The Nation lost 35,092 people in crashes on U.S. roadways during 2015,” and another 2.44 million people were injured.²

“Motor vehicle crashes impose a staggering human and economic toll in the United States. The price tag for crashes comes at a heavy burden for Americans at \$871 billion in economic loss and societal harm. This includes \$277 billion in economic costs – nearly \$900 for each person living in the United States based on calendar year 2010 data – and \$594 billion in harm from the loss of life and the pain and decreased quality of life due to injuries.”³

The organizations are represented by the public interest law firm of Meyer Glitzenstein & Eubanks LLP in Washington, D.C.

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2 “Traffic Safety Facts,” U.S. Department of Transportation, National Highway Traffic Safety Administration, August, 2016. Posted at: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812318>

3 “New NHTSA Study Shows Motor Vehicle Crashes have \$871 Billion Economic and Societal Impact on U.S. Citizens,” National Highway Traffic Safety Administration, May 28, 2014, posted at: <https://www.nhtsa.gov/press-releases/new-nhtsa-study-shows-motor-vehicle-crashes-have-871-billion-economic-and-societal>