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FTC to car dealers: When making inspection claims, recall recalls

By: Lesley Fair | Dec 16, 2016 11:08AM

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When thinking about buying a used car, some people hit a speed bump when they get to the “used” part. It’s one thing to spot a dinged fender or smudged floor mat, but it’s tougher to evaluate a used car’s essential systems. In separate complaints, [the FTC charged that CarMax and two large dealership groups](#) touted how rigorously they inspect their used cars and yet failed to clearly disclose to prospective buyers that some were subject to unrepaired safety recalls.

CarMax’s ads highlighted that its cars undergo a 125+ point “Certified Quality Inspection” that “must check out before it meets our high standards.” What did CarMax say it inspected in the “over 12 hours, on average” it spent on each car? Everything from the engine and steering system to the brakes and axles.

Georgia-based Asbury Auto Group – which also does business under the names Coggin and Crown – made

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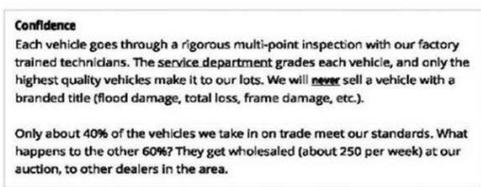
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Car Max, Inc.



Asbury Automotive Group, Inc.



West-Herr Automotive Group, Inc.

similar claims for its used fleet of certified cars. For example, on its website, the company promised “Crown Automotive sends every Crown Certified used vehicle through a rigorous 150 point inspection to ensure that every vehicle is in top shape before you take it home. It is important to Crown that every feature of your vehicle work as it should so that you have peace of mind before you leave the dealership.”

Similarly, West-Herr Automotive Group – the largest auto group in New York – told car buyers that “Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots.”

But according to the FTC, despite the companies' broad claims about rigorous used car inspections, there was something they failed to tell consumers: that some of the cars were subject to safety recalls that hadn't been fixed.

Let's be clear. We're not talking about wonky cup holders. According to the complaints, some of the unrepaired recalls covered defects that could cause serious injury – for example, in the case of CarMax, a defect that could result in the airbag rupturing and striking occupants with metal fragments. The complaint against Asbury alleges that some cars advertised as passing its “150 point bumper-to-bumper inspection” were subject to an open recall for a defect that could increase the risk of a crash by causing the car to move in an unexpected or unintended direction.

Under the proposed settlements, CarMax, Asbury and West-Herr can't claim their used vehicles have been subject to an inspection for safety-related issues unless they're free of open safety recalls, or the companies clearly and conspicuously disclose that the vehicles may be subject to unrepaired safety recalls. If they

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make that clear and conspicuous disclosure, they also have to tell consumers how to determine if a car they're considering is subject to an unrepaired safety recall. (The inspection claim and disclosure can't be misleading in any other way, of course.) Among other things, the companies also have to send letters to customers that vehicles they bought as far back as July 1, 2013, may be subject to open recalls.

While we're on the subject of "clear and conspicuous," the FTC's complaint against CarMax alleges that one TV ad touted its inspection procedures and then flashed in fine print for just three seconds at the bottom of the screen "Some CarMax vehicles are subject to open safety recalls." It's FTC 101 that fleeting fine-print superscripts flunk the "clear and conspicuous" standard. That's the case for the disclosure of any information necessary to prevent deception. Dealerships eager to steer clear of law enforcement need to know that conveying key information in tiny type, burying it in dense blocks of text, or hiding it in a place consumers aren't likely to look is a non-starter under the law.

The FTC is accepting online comments about the proposed settlements until January 17, 2017.

In a related development, the FTC also finalized [settlements with GM, Jim Koons Management and Lithia Motors](#), which alleged similar Section 5 violations for touting the thoroughness of used car inspections while not disclosing that some cars were subject to unrepaired safety recalls.

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Headquarters:
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