

## Deceptive Advertising: FTC Recalls Auto Ads

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When life hands you a lemon subject to a recall, make sure your advertising doesn't overstate the safety of the cars you're selling. You might just find that federal advertising watchdogs tell you to recall those ads. On December 15th, 2016, the **Federal Trade Commission (FTC)** did just that, announcing that it settled deceptive advertising charges with auto dealerships CarMax, Asbury, and West-Herr. It also finalized consent orders against GM, Jim Koons Management, and Lithia Motors Inc. on similar grounds.

According to the FTC, the six companies each made broad claims that the used cars they offered underwent rigorous inspections, yet failed to disclose that some vehicles were subject to ongoing safety recalls. Under United States federal law, new cars must be free from open recalls when sold, but the prohibition does not extend to used cars. The FTC elected to try to close that apparent loophole using its authority under section 5 of the Federal Trade Commission Act to stop companies from engaging in false or misleading advertising practices that hide the existence of open recalls.

In these cases, some of the open recalls allegedly related to serious issues. For example, one of the cars sold by CarMax had a serious airbag defect that could cause it to rupture and fragment, while Asbury sold cars subject to an open recall for a defect that caused the car to move unexpectedly and erratically.

Under the agreement with the FTC, the companies are "prohibited from claiming that their used vehicles are safe, have been repaired for safety issues, or have been subject to an inspection for safety-related issues, unless they are free of open recalls, or the companies clearly and conspicuously disclose that their vehicles may be subject to unrepaired recalls for safety issues and explain how consumers can determine whether a vehicle is subject to a recall for a safety issue that has not been repaired, and the claims are not otherwise misleading."

The agreements with CarMax, Asbury, and Lithia will be subject to public comment until January 17, 2017. Interested parties can submit comments electronically for CarMax, Asbury Automotive Group and West-Herr Automotive Group [here](#).

Whether a product is subject to the recall authority of the U.S. Consumer Product Safety Commission (CPSC), the National Highway Traffic Safety Administration, the Food and Drug Administration (FDA), or another agency, it pays to remember that when advertisements overstate the safety of a product, or the measures the advertiser takes to assure safety, the ad just may be a dud.

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