

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell P. McSweeney**

)	
In the Matter of)	
)	DOCKET NO.
West-Herr Automotive Group, Inc.,)	
a corporation;)	
)	
)	

COMPLAINT

The Federal Trade Commission, having reason to believe that West-Herr Automotive Group, Inc., a corporation (“Respondent”), has violated provisions of the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a New York corporation, with its principal office or place of business at 3552 Southwestern Blvd, Orchard Park, New York 14127. Respondent has marketed, advertised, offered for sale, and sold used motor vehicles.
2. The acts or practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. Since at least May 2014, Respondent has disseminated or has caused to be disseminated advertisements promoting the sale of used motor vehicles.
4. Respondent’s advertisements include, but are not necessarily limited to, advertisements and marketing materials posted on the website www.westherr.com, excerpts of which are attached as Exhibits A through D. On its website, until at least June 2015, it has made claims regarding the advantages of buying from West-Herr, including the “West-Herr Guarantee.” These marketing materials have included the following representations regarding used vehicles:

“At West Herr, you can choose from over 1,200 pre-owned vehicles, each backed by a West Herr Guarantee. Peace of Mind Vehicles, Value Cars, and Certified Vehicles - all hand selected, and fully reconditioned for your enjoyment...”

Exhibit A at 3.

On a page prominently titled “Why Buy From West-Herr?,” found at www.westherr.com/west-herr-used-car-guarantee.htm, it has made the following representations:

“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. ...

Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.

We prepare a complete history report on every vehicle. This is our ‘storybook’.”

Exhibit B at 1.

5. Even though it has made the claims set forth in Paragraph 4, Respondent has advertised numerous used vehicles subject to open recalls for safety issues on its websites.
6. In some instances, these open recalls for safety issues have included recalls for defects that can cause serious injury. For example, Respondent has advertised a used vehicle that has an open recall for safety issues for defects with the airbag, which can potentially rupture and strike occupants with metal fragments upon deployment. Respondent has also advertised a used vehicle that has an open safety recall for a key ignition switch defect, which can affect engine power, power steering, braking, and airbag deployment, thereby increasing the risk of a crash and occupant injury.
7. In numerous instances, until at least June 2015, when Respondent has advertised used vehicles that are subject to open recalls for safety issues making the claims set forth in Paragraph 4 above, it has provided no accompanying clear and conspicuous disclosure of this fact.
8. Until at least June 2015, when consumers have searched for particular categories of vehicles on Respondent’s website, there has been no disclosure regarding open recalls for safety issues. An example of such search results includes the following:

NEW Inventory
USED Inventory
SERVICE Your Vehicle
CONTACT Our Automotive Group
Viewed 6
Saved
Alerts
Login


- Dodge (49)
- Ford (247)
- GMC (42)
- Honda (61)
- HUMMER (2)
- Hyundai (35)
- Infiniti (11)
- Jaguar (2)
- Jeep (32)
- Kia (47)
- Lexus (12)
- Lincoln (14)
- Mazda (11)
- Mercedes-Benz (55)
- Mercury (8)
- MINI (7)
- Mitsubishi (5)
- Nissan (66)
- Pontiac (12)
- Ram (9)
- Saturn (8)
- Scion (3)
- Subaru (29)
- Toyota (194)
- Volkswagen (13)

Model +

Features +

Mileage +

Body Style +




2008 Honda Civic LX

Mileage: 108331
 Drive Line: Front-wheel Drive
 Engine: 1.8L I-4 cyl
 Transmission: Compact 5-Speed Automatic
 Exterior Color: Alabaster Silver
 Interior Color: Gray
 Stock #: FAE50028A

Kelley Blue Book: **\$8,667**
 West Herr Discount: **-\$768**
 Price: **\$7,899**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare




2005 Honda Civic EX

Mileage: 75322
 Drive Line: Front-wheel Drive
 Engine: 1.7L I-4 cyl
 Transmission: 4-Speed Automatic with Overdrive
 Stock #: CW14P364

Kelley Blue Book: **\$9,641**
 West Herr Discount: **-\$766**
 Price: **\$8,875**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare



2006 Honda Civic EX

Mileage: 58229
 Drive Line: Front-wheel Drive
 Engine: 1.8L I-4 cyl
 Transmission: Compact 5-Speed Automatic
 Exterior Color: Alabaster Silver
 Interior Color: Gray
 Stock #: SUX141575A

Kelley Blue Book: **\$11,564**
 West Herr Discount: **-\$2,606**
 Price: **\$8,958**

[CHECK AVAILABILITY](#)

[Save This Car!](#) [Get Price Alerts](#) Compare

Exhibit C.

9. Until at least June 2015, when consumers have viewed specific vehicle listings on Respondent’s website, there has been no disclosure regarding open recalls for safety issues. An example of such a listing includes the following:

WEST HERR LIVE CHAT Make, Model, etc. SEARCH

NEW Inventory USED Inventory SERVICE Your Vehicle CONTACT Our Automotive Group Viewed Saved Alerts Login

Photos Video

VALUE CARS
Detailed Pricing

Kelley Blue Book \$9,501
West Herr Discount -\$726

Price **\$8,775**

CHECK AVAILABILITY

CALCULATE PAYMENTS

Save This Car! Get Price Alerts

Contact
West Herr Chevrolet
Williamsville
Call 716-632-5110

31mpg City 38mpg Hwy
1.7L I-4 Cyl
4-SPEED AUTOMATIC WITH OVERDRIVE
Front-Wheel Drive
Exterior Color : Magnesium
Interior Color : BLACK

Mileage : 75,324 Miles
Stock # : CW14P364
Condition : Used
VIN : 1HGEM22975L006130

SEEK THE FREE CARFAX FREE PRICE CHECK

SCHEDULE A TEST DRIVE

Trade-In Appraisal

Directions

Comments

Power moonroof. Manufacturing know-how and how! Built to last. Tired of the same ho-hum drive? Well change up things with this superb-looking 2005 Honda Civic. It is nicely equipped with features such as 98 Point Vehicle Inspection, NEW Oil & Filter Change, Power moonroof, and Professionally Detailed. New Car Test Drive said, "...you can't go wrong buying a Honda Civic...They are reliable, practical, and fuel efficient...fun to drive and all models offer excellent handling..." Have one less thing on your mind with this trouble-free Civic. Visit www.realdeal.com/atbyd to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car. Just click on the image for your free car fax. Visit www.realdeal.com/atbyd to view a Free Price Check! This is a West Herr Chevy of Williamsville Value car.

Detailed Specifications

Convenience Features

1-touch down	Speed control	Remote keyless entry
Driver vanity mirror	Illuminated entry	Passenger vanity mirror
Tilt steering wheel	Rear beverage holders	Driver door bin
Air conditioning	Power windows	Power moonroof
Front beverage holders	Passenger door bin	

READ MORE

Exhibit D.

10. To uncover any information about open recalls for safety issues through Respondent’s website, until at least June 2015, a consumer would have to locate the “Carfax” link on the search results page or the vehicle listing page and click on it to access a vehicle history report, although the “Carfax” link provides no descriptive information or in any way conveys that it contains important safety information about recalls. Moreover, in

numerous instances, even these reports omit information about open recalls for safety issues.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Count I

11. In connection with the marketing, advertising, offering for sale, or sale of used motor vehicles, Respondent has represented, directly or indirectly, expressly or by implication, that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues.
12. In numerous instances in connection with the representation set forth in Paragraph 11, Respondent has failed to disclose, or disclose adequately, that used vehicles it sells are subject to open recalls for safety issues.
13. Respondent's failure to disclose, or disclose adequately, the material information set forth in Paragraph 12 above, in light of the representation described in Paragraph 11, above, constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission, this ____ day of _____, 2016, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: