UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

COMMISSIONERS:	Edith Ramirez, Chairwoman
	Maureen K. Ohlhausen

Terrell P. McSweeny

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

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:

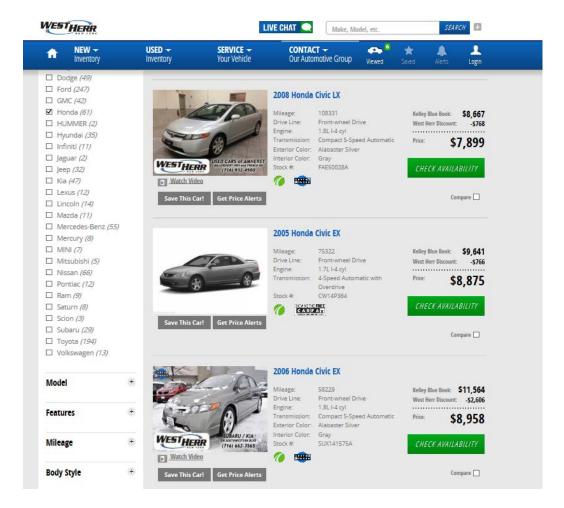


Exhibit C.

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:

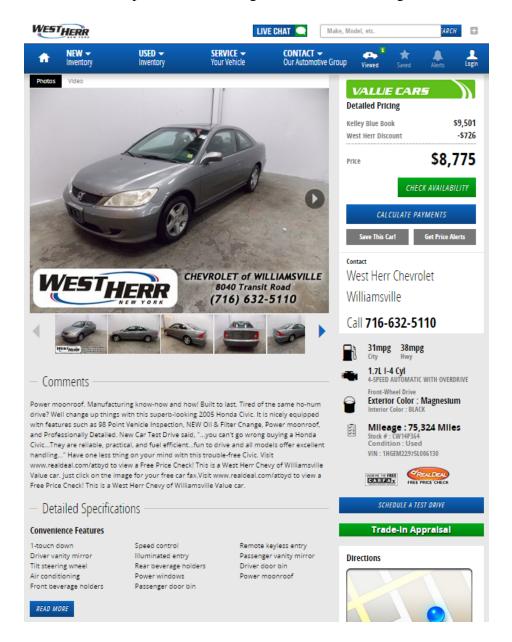


Exhibit D.

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 this complaint against Respondent.	Commission, this	day of	, 2016, has issued
By the Commission.			
	Donald S. Clark		

Secretary

SEAL: