

**Consumers for Auto Reliability and Safety
Center for Auto Safety
Consumer Action
Consumer Federation of America
Consumers Union
Courage Campaign
National Association of Consumer Advocates
National Consumer Law Center¹
National Consumers League
Trauma Foundation
U.S. Public Interest Research Group**

June 23, 2014

Edith Ramirez, Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: PETITION Seeking FTC Enforcement Action vs. CarMax, Inc.

Dear Chairwoman Ramirez:

The non-profit consumer organizations listed above submit this petition, seeking enforcement action by the Federal Trade Commission, to curb CarMax's deceptive advertising and sales practices, which endanger the lives of their customers, their families, other passengers, and everyone who shares the roads.

CarMax is the nation's largest retailer of used vehicles. According to CarMax, it has sold more than 4 million cars. CarMax advertises on its website, on television, in newspapers, and at its dealerships that each of the used vehicles it offers for sale are "CarMax Quality Certified" and has undergone a rigorous, "125+ point inspection."

However, CarMax fails to ensure that safety recalls are performed prior to selling used cars to consumers. The *New York Times* recently reported that "CarMax, the nation's largest seller of used cars, offers a "Certified Quality Inspection," **which does not include fixing [safety] recalls.**"²

It is inherently deceptive for an auto dealer to represent that its vehicles have passed a rigorous inspection, while failing to take even the most basic step of checking the vehicle's safety recall status in order to identify known safety defects that have triggered a federal safety recall, and ensuring that the safety recall repairs have been performed, prior to selling the vehicle to a consumer.

¹ On behalf of its low-income clients.

² "Recalled Used Cars Roam Roads as Legislation Stalls," *New York Times*, front page, May 9, 2014, by Rachel Adams and Christopher Jensen. (Emphasis added.)

CarMax's claims clearly go beyond mere puffery, and would very likely mislead even sophisticated car buyers into believing that they do not need to have the vehicles inspected by an independent automotive technician of their choice, or check them out themselves. The company even lists dozens of specific vehicle components that it supposedly checks prior to offering vehicles for sale, without revealing that they may be so defective, they are subject to a safety recall. It also claims that each car has been "renewed" prior to sale.

For example, CarMax advertises on its Website:

125+ point inspection

Experienced technicians put every vehicle through a rigorous Certified Quality Inspection—over 125 points must check out before it meets our high standards.

Every used car is renewed

CarMax cars undergo (on average) 12 hours of renewing—sandwiched between two meticulous inspections—for a car that doesn't look or feel used.

No cars with flood or frame damage

Not every car that looks good is good. We're confident in the safety and reliability of our vehicles because our technicians are trained to detect those with hidden damage.

Such claims are dangerously deceptive, since they tend to lull car buyers into a false sense of security regarding the safety of used vehicles CarMax is offering for sale to consumers.

It is all the more important for the FTC to act, and exercise its authority under the FTC Act to address false or deceptive advertising, since the National Highway Traffic Safety Administration (NHTSA) currently lacks authority over new and used car dealers, regarding sales of used cars that are subject to auto safety recalls. According to the U.S. Government Accountability Office (GAO), in its 2011 report to Congress:

*"NHTSA cannot require used-car dealers, or franchised dealerships that sell used vehicles, to...get the defect remedied prior to sale....With over 35 million used cars sold by used and franchised dealerships in the United States in 2009 alone, this could pose a significant risk to the safety of millions of vehicle drivers, and may have a negative impact on recall completion rates."*³

While the U.S. Department of Transportation recently recommended to Congress, as part of its proposal regarding the GROW America Act, that Congress include a provision to prohibit dealers from selling recalled used cars to the public without fixing them first, that provision is likely to face stiff auto dealer opposition. In addition, CarMax, the California New Car Dealers Association, and independent auto dealers are opposing first-in-the-nation

³ United States Government Accountability Office: *Auto Safety: NHTSA Has Options to Improve the Safety Defect Recall Process*, Issued June 2011, page 40 (emphasis added).

legislation currently pending in California, SB 686, authored by California State Senator Hannah-Beth Jackson, that would prohibit auto dealers from selling used vehicles with unrepaired safety recalls to consumers.

Under the National Traffic and Motor Vehicle Safety Act, auto manufacturers are mandated to recall vehicles that either 1) fail to meet a Federal Motor Vehicle Safety Standard, or 2) otherwise pose an "unreasonable risk" to safety. Most safety recalls fall within the second category. According to NHTSA, examples of defects that lead to safety recalls include faulty steering, brakes that fail, components that catch on fire, air bags that fail to inflate when needed in a crash, accelerators that stick, stalling in traffic, wheels that fall off, or axles that break.

Federal safety recalls are aimed at addressing serious safety defects, not defects unrelated to safety, "service campaigns," or emissions recalls. If a manufacturer believes that a recall is not justified, it can petition NHTSA not to require a recall or contest the issue in court. Typically, the manufacturers agree with NHTSA that the vehicles are unsafe and should be recalled, and "voluntarily" comply with the federal mandate.

According to the National Highway Traffic Safety Administration, which oversees vehicle safety recalls:

"All safety recalls resulting from defects present an unreasonable risk to safety and we believe it is inappropriate to suggest that some defects are not risky enough to require repair. For the safety of the motoring public, all recalled vehicles should be fixed promptly." -- NHTSA Official Statement, issued April 4, 2011.

Therefore, we urge the FTC to investigate CarMax's advertising and sales practices and take all appropriate and necessary action in order to curb CarMax from selling unsafe, recalled used cars to the public. In addition to any other remedies or penalties that may be appropriate, we also urge the FTC to:

- Obtain VIN-specific information regarding the safety recall status of vehicles CarMax has already sold to the public, and release that information to the public
- Notify the owners of vehicles sold by CarMax that had safety recalls pending at the time of sale
- Enjoin CarMax from engaging in such irresponsible and reckless practices in the future

It is also important to note that under the National Traffic and Motor Vehicle Safety Act, auto manufacturers are required to provide safety recall repairs for FREE. It is also easy for dealers such as CarMax to check the safety recall status of used vehicles online, simply by checking the manufacturer's website, calling the manufacturer's toll-free number, or contacting a local dealer and providing the Vehicle Identification Number.

Last August 14, the National Highway Traffic Safety Administration issued a final rule that requires all auto manufacturers who produce more than 25,000 vehicles a year to provide safety recall data on their own Websites, searchable by VIN and updated at least every 7 days. That rule takes full effect this August 14, 2014.

Bottom line: there is absolutely no excuse for CarMax or other auto dealers not to

ensure that the used vehicles they sell to consumers are not ticking time-bomb cars with unrepaired safety recalls.

Thank you for your consideration of this petition. We hope that the FTC will act expeditiously, considering the serious threat CarMax's practices pose to public safety. Should you or the FTC's staff have any questions regarding this petition, please contact:

Rosemary Shahan
President
Consumers for Auto Reliability and Safety
1303 J Street, Suite 270
Sacramento, CA 95814

Respectfully submitted,

Consumers for Auto Reliability and Safety
Center for Auto Safety
Consumers Union
Consumer Action
Consumer Federation of America
Courage Campaign
National Association of Consumer Advocates
National Consumer Law Center⁴
National Consumers League
Trauma Foundation
U.S. Public Interest Research Group

4 On behalf of its low-income clients.