

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)
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CarMax, Inc., a corporation.)
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) **AGREEMENT CONTAINING
CONSENT ORDER**
) **FILE NO. 142 3202**

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of CarMax, Inc., a corporation ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between CarMax, Inc., by its duly authorized counsel, and counsel for the Federal Trade Commission that:

1. Proposed respondent CarMax, Inc. is a Virginia corporation with its principal office or place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238.
2. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the order. Proposed respondent admits all the jurisdictional facts set forth in paragraphs 1 and 2 of the draft complaint. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period

of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any rights it may have to any other means of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Respondent" shall mean CarMax, Inc., and its successors and assigns.

2. "Advertisement" shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.

3. "Clearly and conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

- a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made through the same means through which the representation requiring the disclosure is presented.

- b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- c. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
- d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
- e. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
- f. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
- g- The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

4. "Material" shall mean likely to affect a person's choice of, or conduct regarding, goods or services.

5. "Motor vehicle" shall mean:

- a. Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;
- b. Recreational boats and marine equipment;
- c. Motorcycles;
- d. Motor homes, recreational vehicle trailers, and slide-in campers; and
- e. Other vehicles that are titled and sold through dealers.

I.

IT IS HEREBY ORDERED that Respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the marketing, advertising, offering for sale, or sale of used motor vehicles to consumers shall not, in any manner, expressly or by implication:

A. Represent that motor vehicles that Respondent offers for sale are safe, have been repaired for safety issues, or have been subject to a rigorous inspection, unless:

1. The used motor vehicles are not subject to any open recalls relating to safety, and the representation is otherwise not misleading, or
2. Respondent discloses, clearly and conspicuously, and in close proximity to such representation, any material qualifying information related to open recalls, including but not limited to:
 - i. the fact that its used motor vehicles may be subject to recalls for safety issues that have not been repaired, and
 - ii. how consumers can determine whether an individual used motor vehicle is subject to an open recall for safety issues that has not been repaired,

and the representation is otherwise not misleading; *provided further* that prior to the consummation of the sale of an individual used motor vehicle to a consumer, Respondent must clearly and conspicuously provide to the consumer either (a) any written notification from a manufacturer that Respondent has received that the motor vehicle is subject to an open recall for a safety issue, or a document that conveys the same information using a substantially similar format, or (b) a written notification that clearly and conspicuously conveys that the vehicle is subject to an open recall that is unrepainted, and the safety risks associated with the recall, that is made available by the U.S. Department of Transportation's National Highway Traffic Safety Administration ("NHTSA") or a commercial provider of recall information.

B. Misrepresent the following:

1. Whether there is or is not an open recall for safety issues on any used motor vehicle;
2. Whether Respondent repairs used motor vehicles for open safety recalls; and

3. Any other material fact about the safety or recall status of the used motor vehicles it advertises for sale.

II.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days of entry of this Order, must provide, by first class mail to the last known address of every consumer who purchased a used motor vehicle from Respondent between July 1, 2013 and November 20, 2014, a notice on Respondent's letterhead that clearly and conspicuously states the following:

"We want to alert you that some of the used cars we recently sold had been recalled for safety issues, but weren't repaired yet when we sold them. You can check whether the used car you bought from us is subject to an unrepaird recall at the National Highway Traffic Safety Administration's recall website, <https://vinrcl.safercar.gov/vin/>. That site also provides information on how to get your car fixed if it's been recalled."

Respondent shall not include any advertising, marketing, or other promotional information in the notice. Moreover, the mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a clear and conspicuous fashion the disclosure "Important Safety Recall Information."

Provided, however, that Respondent is not required to provide this notice for (A) any used motor vehicle that Respondent can demonstrate was not subject to an open recall for a safety issue at the time of purchase and delivery; (B) any used motor vehicle that was the subject of one or more open recalls for safety issues at the time of purchase and delivery that Respondent can demonstrate have subsequently been fixed; (C) any used motor vehicle that the consumer no longer owns or possesses because the consumer returned it to Respondent within five (5) days of the date of purchase; or (D) any used motor vehicle whose owner, between March 31, 2014, and November 20, 2014, received from Respondent a letter that did not include any advertising, marketing, or other promotional information, informing the owner clearly and conspicuously that the owner purchased a vehicle that may be affected by the GM ignition switch safety recall (NHTSA Campaign Number 14V171000).

For purposes of Subpart (A) of this proviso, records showing that the vehicle was not listed as subject to an open recall for a safety issue, as of the date of the purchase, on the Original Equipment Manufacturer's recall database, on the National Highway Traffic Safety Administration's www.safercar.gov database, or on a database with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results, shall be deemed to be sufficient to demonstrate that the vehicle was not subject to an open recall for a safety issue at the time of purchase and delivery.

For purposes of Subpart (B) of this proviso, (i) business records which demonstrate that a vehicle with an open recall for a safety issue has been repaired, generated by the Respondent in the ordinary course of business; or (ii) records showing that the vehicle is no longer listed as subject to an open recall for a safety issue on the Original Equipment Manufacturer's recall database, on

the National Highway Traffic Safety Administration's www.safercar.gov database, or on a database with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results, shall be deemed sufficient to demonstrate that an open recall for a safety issue has been fixed.

III.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. Each advertisement or other marketing material that makes any representation covered by the order unless, in comparison to an advertisement or other marketing material already maintained by Respondent pursuant to this Section, the advertisement or marketing material: (i) is a duplicate, or (ii) differs only in the description of the vehicle or other ways not related to any representations covered by this order, including a website which differs only with respect to individual vehicle details displayed in inventory or search page(s) of the site;
- B. All materials that were relied upon in disseminating the representation;
- C. All evidence in its possession or control that relates to used vehicle advertising and contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained, created, generated, or that in any way relate to the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order.

IV.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities with respect to the advertising or marketing of used motor vehicles for sale to consumers or to providing recall disclosures to consumers, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin: *In re Carmax, Inc.*

VI.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2016.

CARMAX, INC.

Dated: _____ By: _____
WILLIAM C. WOOD, JR.
Chief Operating Officer

FEDERAL TRADE COMMISSION

Dated: _____

EVAN R. ZULLOW
PETER LAMBERTON
Counsel for the Federal Trade Commission

APPROVED:

DUANE POZZA
Acting Assistant Director
Division of Financial Practices

MALINI MITHAL
Acting Associate Director
Division of Financial Practices

JESSICA L. RICH
Director
Bureau of Consumer Protection