



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Marketing Practices

February 17, 2009

Thomas M. Hughes
Hunton & Williams LLP
1900 K Street NW
Washington, DC 20006

Dear Mr. Hughes:

This letter responds to your request for a staff advisory opinion regarding compliance with the Magnuson-Moss Warranty Act (“Act”), 15 U.S.C. §§ 2301-2312, and the Commission’s Rules promulgated under that Act. You seek guidance on whether providing consumer product warranties via electronic media, rather than in paper form, would comply with the Act and the Disclosure Rule. Based on the information you provide in your letter, and after considering the purposes of the Act, it is the staff’s opinion that warranties provided in electronic formats could comply with the Act and the Disclosure Rule.

In your letter you indicate that your client manufactures a variety of consumer electronics, such as desktop, notebook, and handheld computers, printers, televisions, and digital cameras, and provides written warranties on those products. Your client’s past practice has been to include the product’s warranty in paper form within the product’s package (“in-package” warranty).¹ You indicate that these in-package warranties can range in size from three to eighteen pages, which requires printing millions of copies of warranties each year on tons of paper.

Your Client’s Proposal

Your client proposes to “replace ‘in-package’ paper warranties with electronic written warranties. Depending upon the product, the electronic warranty would be preloaded on an internal fixed drive, or portable media such as a CD or DVD. The product ‘set-up guide’ will inform consumers that the warranty terms are provided electronically.”²

Your client would continue to provide its warranties to retailers so that retailers can make them available to consumers pre-sale. In addition, your client “will continue to make warranties

¹ Your letter also states that your client provides copies of its written warranties in paper form to retailers, in compliance with the Pre-Sale Availability Rule, 16 C.F.R. § 702.3(b)(1)(i).

² FTC staff agrees with the assertion in your letter that such an advisory would not be considered part of the written consumer product warranty, and therefore, would not implicate the single document requirement of the Warranty Disclosure Rule.

available at its web site.” Thus, under your client’s proposed course of action, consumers would “be able to compare warranties presale and have post-sale access to their warranty terms and conditions so that they can obtain support as needed.” Your client estimates that “replacing millions of paper in-package warranties with electronic versions would result in significant benefits related to reduced paper, printing, transportation, and storage.”

The Warranty Act and Rules

As acknowledged in your letter, your client’s proposed course of action implicates several provisions of the Act or the Commission’s Rules under the Act. Specifically, the Act requires that “any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty.” 15 U.S.C. § 2302(a). Following the mandate of the Act, the Commission’s Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions (the “Warranty Disclosure Rule”), further specifies that “any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language” certain specified items of information regarding the warranty terms and conditions. Moreover, the Commission’s Rule on Pre-Sale Availability of Written Warranty Terms (the “Pre-Sale Availability Rule”) requires a “warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than \$15.00” to “provide sellers with warranty materials necessary for such sellers to comply with the requirements” of the Rule so that consumers can read a covered consumer product’s warranty before buying it. 16 C.F.R. § 702.3(b). The Pre-Sale Availability Rule also requires that warrantors provide “a copy of the written warranty with every warranted consumer product.”³

Discussion

The language of the Act, quoted above, does not specify the medium, form, or format by which disclosure of the terms and conditions of a written consumer product warranty must be made, as long as the disclosure is made “fully and conspicuously . . . [and] in simple and readily understood language.” The Act, however, authorizes the Commission by Rule to make the disclosure requirement more specific, and the Commission, in the Warranty Disclosure Rule,

³ The Pre-Sale Availability Rule allows four methods for warrantors to provide sellers with warranty materials necessary to make warranties available to consumers at point of sale. Three of these methods entail providing “a copy of the written warranty” with every covered consumer product warranted, in addition to other action. The fourth method consists of providing “a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty.” Thus, regardless of the method chosen, the text of the warranty must accompany the warranted product. 16 C.F.R. § 702.3(b)(1)(i)(A)-(D).

added to the Act's requirements the specification that the disclosure be made "in a single document," while reiterating the Act's requirement for "simple and readily understood language." Like the Act, the Warranty Disclosure Rule does not specify permissible media, forms, or formats. Similarly, the Pre-Sale Availability Rule specifies that "a copy of the written warranty" be provided, but also does not specify permissible media, forms, or formats.

As your letter notes, in the context of warranties provided pursuant to online transactions, the FTC staff has stated that "[w]arranties communicated through visual text on Web sites are no different than paper versions and the same rules apply."⁴ In addition, advisory opinions have been issued stating that a retailer may make a warranty available to consumers using certain non-paper formats – such as on microfiche and ultrafiche readers – as a means of complying with the Pre-Sale Availability Rule.⁵

Conclusion

Based on the broad language used in the Pre-Sale Availability Rule, FTC staff's opinion is that an electronic version of a consumer product warranty would constitute a "copy" of the written warranty for purposes of compliance with the Warranty Act and Rules. Moreover, it is staff's opinion that a written consumer product warranty that is included on a CD, DVD, or on the internal drive of the warranted product would qualify as being "provided with" or as "accompanying" the product.

In passing the Act, Congress's intent was to ensure that consumers receive clear and complete information about warranty coverage pre-sale, and that consumers be able to retain a copy of the warranty post-sale for reference in case of product failure. In the opinion of FTC staff, those purposes are sufficiently accomplished by providing, in electronic form, a copy of a

⁴ *Dot Com Disclosures: Information About Online Advertising*, available at <http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf>.

⁵ See 42 Fed. Reg. 39,381 (Aug. 4, 1977) (microfiche); 42 Fed. Reg. 15,679 (Mar. 23, 1977) (ultrafiche); 41 Fed. Reg. 53,472 (Dec. 7, 1976) (microfiche). In those opinions, approval of microfiche and ultrafiche technologies for pre-sale availability purposes is predicated upon the seller providing simple, complete instructions for using the microfiche and ultrafiche readers and ensuring that retail personnel were familiar with operating the readers to assist consumers if needed. Similarly, here, if your client wishes to provide only electronic warranties to retailers instead of paper copies, the retailers would need either to print out the warranties in paper form, or to have the capability to display the electronic warranty and personnel available to assist consumers in viewing the warranty information, so that these retailers are "mak[ing] a text of the warranty readily available for examination by the *prospective buyer* by: (1) displaying it in close proximity to the warranted product, or (2) furnishing it upon request prior to sale" 16 C.F.R. § 702.3(a). (Emphasis added.)

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written consumer product warranty that otherwise complies with the requirements and prohibitions of the Warranty Act and Rules – provided the warranted consumer products include clear, conspicuous, and easy-to-follow instructions on how to access the warranty information provided on the consumer product's internal drive or on an accompanying CD or DVD and that a consumer can print out a paper copy of the warranty if needed. Further, consumers who receive your client's warranties electronically may end up dependent on the copy of the warranty available on your client's website if product failure occurs, because they may not be able to access the internal drive or portable media. Therefore, if your client changes its warranty, it should keep on its website a posting of printable earlier warranties and the dates they were in effect.

The opinions and conclusions expressed in the foregoing discussion are those of Commission staff only and are not attributable to, nor binding on, the Commission itself or any individual Commissioner. I hope this discussion is helpful to you. If you have any further questions, please do not hesitate to contact me at (202) 326-2505.

Sincerely,

Allyson Himelfarb
Investigator/Magnuson-Moss
Program Coordinator