In the Matter of	)	
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Magnuson-Moss Warranty Act Rule Review, 16 CFR Part 700	)	FTC Matter No. P114406
	)	

COMMENTS SUBMITTED ON BEHALF OF BP LUBRICANTS USA INC.

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BP Lubricants USA Inc, ("BP") submits the following comments in response to the Federal Trade Commission's ("FTC" or "Commission") request for comment released on August 23, 2011 ("Request for Comment") on its warranty-related Interpretations, Rules, and Guides ("Interpretations") under the Magnuson-Moss Warranty Act (the "Act"). Specifically, FTC invited comments on whether Section 700.10 of its Interpretations should be revised to improve the effectiveness of the Act's tying prohibition (76 Fed. Reg. at 52598).

Section 102(c) of the Act provides that:

> No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission [upon an affirmative showing by the party requesting the waiver.] 15 U.S.C. § 2302(c).

The legislative history specifically clarifies the intent of Congress that:

> "no automobile manufacturer may condition his warranty of an automobile on the use of a named motor oil or on the use of its own automobile parts unless he shows that any other motor oil or automobile parts which are available will not function properly and will not give equivalent performance[.]" H.R. Rep. No 93-1107 at 36-37 (1974).

The intent of the Act is to preclude, for example, arrangements that condition automobile warranty coverage on the use of branded motor oil, unless the motor oil is provided without charge under the terms of the warranty or unless no other motor oil will function properly and provide equivalent performance. That intent is frustrated when a warrantor induces a purchase of its lubricants or those of a licensed producer by utilizing warranty language in the market place that creates the impression that the use of such lubricants is required in order to maintain warranty coverage. Consumer intimidation through ambiguous warranty provisions works to create a *de facto* tying arrangement. The FTC should clarify its Interpretations to more expressly indicate that implicit tying arrangements are also prohibited by the Act.

It is well established that the practice of tying is anti-competitive by preventing competing sellers from selling the "tied" product to purchasers and is also harmful to the consumer by foreclosing other sources of supply for such products. *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 6 (1958). In such cases the consumer is restricted from buying a competing product at a better price or from buying a competing product that is perceived to have superior performance

BP is concerned with the apparent trend in the automotive lubricant marketplace of automobile manufacturers implying or creating confusion about the required use of a branded or licensed lubricant in order to retain warranty coverage for an automobile.[1] Statements by a manufacturer that imply or create uncertainty as to whether a certain brand of lubricant or licensed lubricant is required inevitably push many consumers toward the implicitly required lubricant rather than take a risk with their vehicle warranty.

BP has observed such caution and confusion even among relatively sophisticated purchasers such as lubricant wholesale distributors and quicklubes operators who have expressed uncertainty about the legal requirement to use dexos-licensed products in GM vehicles. Such comments are often coupled with concerns about the substantially higher cost of buying licensed lubricants.

The intent of the Act is not served if consumers are not provided with assurance that they are not taking a gamble with warranty difficulties if they choose a lubricant other than the lubricant brands designated by manufacturers. For this reason, BP urges FTC to amend Section 700.10 of its Interpretations of the Act to:

- prohibit warrantors from stating or implying in any communication to the consumer that warranty coverage is conditioned upon use of any product or

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[1] The 2011 Chevrolet Impala Owners Manual states that such vehicles "require ... engine oil approved to the dexos specification". *See also,* GM Dexos Information Center, www.gmdexos.com. ("To ensure you are using the right oil for your GM car, choose only authentic, licensed dexos™ oils. dexos™ is an exclusive trademark of General Motors. Only those oils displaying the green or blue dexos™ trademark and icon on the front label have been certified and licensed by GM as meeting the demanding performance requirements and stringent quality standards of the dexos™ specification.").

service which is identified by brand, trademark, or corporate name, unless that product or service is provided for free;

- require the inclusion of a statement in the warranty document and/or owners manual making clear that warranty coverage cannot be denied unless the warrantor can demonstrate that the defect or damage was caused by the use of unauthorized parts or services; and

- require that any denial of warranty coverage be accompanied by a written statement explaining why the warranty coverage was denied, with a copy of test results or other evidence the warrantor is relying upon to substantiate its denial.

Respectfully submitted,

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