



October 24, 2011

Donald S. Clark
Secretary
Federal Trade Commission
Room H-113 (Annex G)
600 Pennsylvania Avenue, NW.
Washington, DC 20580

Re: Magnuson-Moss Warranty Act Rule Review, 16 CFR Part 700, P114406

Dear Mr. Clark:

LKQ Corporation and the Automotive Body Parts Association (“ABPA”) submit the following comment on the Federal Trade Commission’s Rule Review of 16 C.F.R. Part 700, specifically 16 C.F.R. § 700.10. LKQ and ABPA urge the Commission to enforce the Magnuson-Moss Act by requiring automakers to only issue statements that plainly say use of non-original brand-name parts will not cause consumers to lose warranty coverage, and by requiring automakers to stop baseless attacks on the aftermarket industry.

There are an alarming and increasing number of instances in which consumers (car owners) are being told by automobile manufacturers that use of aftermarket repair and maintenance parts will void the warranty agreement with the new vehicle warranty. Plainly, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. § 2302, prohibits firms from conditioning consumer warranties on the use of original equipment parts.

LKQ and ABPA urge the FTC to vigorously enforce this and similar provisions by which the FTC will continue to protect consumers and the aftermarket and recycled auto parts industry—a vital part of the American economy—from these unfair and misleading anti-competitive statements.

Any changes to the current law should be directed at strengthening the FTC’s interpretation of Section 2302, the Magnuson-Moss Act’s anti-tying prohibition by, for instance, requiring automobile manufacturers to explicitly disclose to consumers that using aftermarket auto parts will not void the consumers’ warranties.

The Act and the Interpretation

Congress passed the Magnuson-Moss Act in 1975 to protect consumers and consumers' warranties. The Act is the principal law preventing car companies (and other product manufacturers) from requiring the use of original equipment parts in order to maintain warranty coverage. The Commission is seeking comment on several parts of the Act and related interpretations and regulations, including the rules governing disclosure requirements for written warranties on consumer products. The Commission has asked whether it should revise its interpretations of the Act's prohibition on tying.

The anti-tying provision of the Act is Title 15 of the United States Code Section 2302(c). That section states that warranties cannot require the consumer to only buy from the seller in the future:

(c) Prohibition on conditions for written or implied warranty; waiver by Commission. 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 if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest

The FTC has interpreted Section 2302, an explicit anti-tying provision, to extend to new car warranties. Under the FTC's current interpretation, Section 2302 does not allow an automobile manufacturer to condition its warranty on the use of original equipment for repairs and maintenance of the vehicle:

(c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions such as, "This warranty is void if service is performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These provisions violate the Act in two ways. First, they violate the section 102 (c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of

“unauthorized” articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such “unauthorized” articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

The Commission also interprets the Act to prohibit a warrantor from denying liability where the warrantor cannot demonstrate that the defect or damage was caused by the use of unauthorized parts or services. Those interpretations are now up for review.

Interests of LKQ Corporation and the Auto Body Parts Association

LKQ Corporation is the largest nationwide provider of aftermarket and recycled collision replacement parts for automobiles and other vehicles. LKQ is also a leading distributor of mechanical replacement parts such as remanufactured engines, and refurbished collision replacement products, including wheels, bumper covers and lights. LKQ currently employs 13,000 people nationwide and operates more than 325 facilities in more than 43 states, offering customers a broad range of replacement systems, components and parts to repair automobiles and light, medium and heavy-duty trucks.

The Auto Body Parts Association (ABPA) has more than 150 members with more than 415 separate aftermarket collision parts distribution centers, recycling facilities and manufacturing plants across the nation. Collectively, they are responsible for supplying and distributing more than 75% of aftermarket collision parts sold in the U.S. and Canada. ABPA members are dedicated to serving the collision repair industry with quality replacement parts, backed by dependable service and fair prices.

As Vice President of Government Affairs for LKQ Corporation (LKQ) and Co-Chair of the Legislation & Regulation Committee for the Automotive Body Parts Association (ABPA), I appreciate the opportunity to comment on the rule review of the Magnuson-Moss Warranty Act (16 CFR Part 700, P114406). LKQ and ABPA are committed to working with the Federal Trade Commission (FTC) and various stakeholders during the rule-review process.

On behalf of LKQ and ABPA, please find below our industry responses to the questions posed in 76 Fed. Reg. 52,596:

A. General Questions for Comment

1. Is there a continuing need for specific provisions of the Interpretations, Rules and Guides? Why or why not?

Yes. The current protections set forth in 15 U.S.C. § 2302 are crucial protections for the American car owner. Yet the FTC’s own rules are being flagrantly ignored by many automobile manufacturers. Increasingly we are seeing car companies issuing false and misleading statements to the consumer, falsely claiming that aftermarket parts are not the same quality as parts sold by an authorized automobile maker. Or that use of a replacement part sold by someone other than the authorized dealership may be of a lower quality and will void the new-car warranty.

As a result of these statements, three industry associations—the Automotive Aftermarket Industry Association, the Automotive Oil Change Association, the Tire Industry Association, and the Automotive Recyclers Association—wrote to the Commission complaining about flagrantly misleading and anti-competitive statements by Honda and Hyundai. Those statements are substantially the same as the ones being repeated throughout the automaker industry: “Honda will not be responsible for any subsequent repair costs associated with vehicle or part failures caused by the use of parts other than Honda Genuine parts purchased from an authorized US Honda dealer.”¹ The associations’ letter responded, noting that the widespread use of these parts shows there is no basis to the automakers claims:

In fact, thousands of replacement parts produced by companies other than Honda are available and sold for Honda vehicles. In the vast majority of cases, the reality that these parts are installed and used without any related vehicle issues points to the clear fact that the quality of aftermarket parts are known and preferred by many U.S. consumers.²

Recognizing that if unchecked by the Commission, statements like Honda’s are so anticompetitive that they threaten the continued viability of the aftermarket parts industry, the Commission recently issued a consumer alert assuring consumers that use of aftermarket and recycled parts would not violate a new vehicle warranty.³

That the FTC would consider this consumer alert necessary underscores how serious this threat is. Without the continued oversight of the FTC, the consumer would have no way of knowing that cheaper and in many cases identical replacement parts could be installed in their cars—without violating any warranties or affecting the safety of the vehicle.

2. What benefits and costs have the Interpretations, Rules and Guides had on businesses or firms that are subject to their requirements?

¹ Letter from Michael Wilson, CEO, Automotive Recyclers Association, to the Honorable Jon D. Leibowitz, Chairman, Federal Trade Commission (October 21, 2010) (Attached as Exhibit I).

² Body Shop Business, *FTC Issues Warranty Rights Consumer Alert in Response to Complaints about OEM Position Statements* (Jan. 1, 2011) (Attached as Exhibit II).

³ That guidance is available at: <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt192.shtm>.

The aggressive interpretation of Section 2302(c) has allowed the aftermarket and recycled auto parts industry to flourish. The aftermarket industry employs over 4 million American citizens, and the industry posts annual sales of over \$250 billion.⁴ The industry's trade association, the Automotive Aftermarket Industry Association has over 23,000 members and affiliates, representing more than 100,000 repair shops, parts stores, and distribution outlets.⁵ In short, the industry is a vital part of the American economy.

But that success is now threatened by the automakers' anticompetitive statements designed to make consumers believe they have no choice, and must only buy brand-name parts at brand-name prices sold by the automakers. That is exactly the kind of arrangement the Act was passed to stop. Left unchecked, these statements threaten the continued existence of the aftermarket industry, and the livelihood of millions of American citizens. Unless the FTC makes clear that there is more than one way to create a tying arrangement—and that tricking consumers into thinking there is such an arrangement is one way—the automakers will succeed in getting around the Act to the great harm to millions of aftermarket employees and every American car owner.

(a) What changes, if any, should be made to the Interpretations, Rules and Guides to minimize any burden or cost imposed on businesses or firms subject to their requirements?

LKQ and ABPA urge the Commission to vigorously enforce the Act, and not weaken the consumers' protection. Weakening consumer protection would threaten the consumers' freedom to choose aftermarket or recycled auto parts, and would threaten the existence of the aftermarket and recycled auto parts industry. Without the interpretations protection, automakers will deceive the consumers into believing that to keep their warranties, they must buy parts only from the automaker. Consumers would no longer be free to choose the less expensive auto parts that they have been buying for decades. That result would harm the consumer because there is no real difference between the automakers' parts and non-brand name parts other than the price. Recycled parts, for example, often were made by the original automaker and are identical to the brand-name parts covered by the automakers' warranties. And auto recyclers provide their own warranties for any recycled parts used in repairs. Even though these recycled parts were new brand-name parts at one point, the automakers want to convince the consumers not to use them, not because there are any legitimate safety or warranty concerns, but simply because they make no money when the customer chooses to buy one of these parts. Without the protections of the interpretation, consumers will be forced to pay more to repair their cars and get nothing in return.

⁴ See The Automotive Aftermarket Industry Association, "About the Aftermarket," available at <http://aftermarket.org/AbouttheAftermarket.aspx>.

⁵ The Automotive Aftermarket Industry Association, "About AAIA," available at <http://aftermarket.org/AbouttheAftermarket/AboutAAIA.aspx>.

Moreover, the protections of the Act are the only limit to the automakers repeated attempts to engage in unfair competition against the aftermarket and recycled parts industry. That industry is dependent on the consumers' freedom to choose the industry's products. If that freedom is taken away the industry's very existence will be threatened. The automobile aftermarket industry employs over 4 million American citizens, and represents hundreds of billions of dollars in sales.⁶ Weakening the consumers' protection could destroy this important part of the American economy.

(b) What evidence supports these proposed changes?

[N/A]

(c) How would these changes affect consumers and businesses, including small businesses?

[N/A]

3. What benefits and costs have the Interpretations, Rules and Guides had on consumers who purchase the warranted products affected by the Act?

Although the interpretation protects the consumers' freedom to choose less expensive auto parts, it ultimately fails to stop automakers from deceiving consumers, forcing them to buy brand-name parts instead of less expensive aftermarket and recycled auto parts.

The protections in the interpretation preserve the consumers' right to choose between brand-name parts covered by the original warranty and less expensive aftermarket and recycled parts. So, legally, the consumers do not have to pay the marked-up prices of the auto-automakers. And competition within the aftermarket and recycled parts industry works to drive down prices, allowing the consumers to save money and keep their cars running.

But consumers are still being forced to pay more for essentially the same product because automakers are unfairly and misleadingly marketing brand-name parts with statements disguised as consumer protection and warranty information. Those statements are deliberately calculated to make consumers believe they must choose between keeping their warranty and using non-brand-name parts, and that the automakers' parts are safer. For example, American Honda has issued a release saying, "American Honda will not be responsible for *any* subsequent repair costs associated with vehicle or part failures caused by the use of parts other than Honda Genuine parts purchased from an authorized US

⁶ <http://www.aftermarket.org/abouttheaftermarket.aspx>.

Honda dealer.”⁷ The implication is that if you use any part that is not “Honda Genuine” you will not be protected by your warranty.

Mazda, GM, Ford, and Volvo have all issued similar statements. Mazda tells consumers “The original warranty could become invalid if aftermarket parts contribute to the damage of original parts.”⁸ General Motors prints stickers for repair orders that say “Imitation/aftermarket parts are not covered by any GM warranties and may void the GM warranties for any adjoining or associated GM part they may cause to fail.”⁹

This is not an isolated incident, but part of an industry-wide campaign by the automakers to unfairly subvert the aftermarket and recycled parts industry. The other half of this campaign is to claim that the automakers’ parts are somehow safer than other parts. Ford has gone so far as to state, “using a non-Ford original part can reduce the safety of a vehicle for the driver and other road users, including pedestrians.” And Mazda has claimed that aftermarket parts “are generally made to a lower standard in order to cut costs and lack the testing required to determine their effectiveness in vehicle performance and safety.” But, of course, recycled parts are often manufactured by the original automaker in the first place—the only real difference is that when a recycled part is sold, the automaker does not get a cut. GM and Volvo have also issued similar statements. Those statements fool consumers into buying the brand-name product and paying the brand-name premium.

Unless the Commission strengthens the interpretation’s consumer protections, the automaker-imposed costs will eventually eclipse the consumers’ benefit.

(a) What changes, if any, should be made to the Interpretations, Rules and Guides to increase the benefits to consumers?

As the statements by Honda, Hyundai, Ford, Mazda, GM, and Volvo show, the consumers urgently need increased protection to prevent the automakers’ from coercing them into buying only new, brand-name auto parts. The Commission should, at a minimum, require automakers to plainly inform the consumers of the consumers’ rights, and to back any claim that aftermarket or recycled parts are inferior with real evidence.

First, because automakers’ statements about their warranty obligations are deliberately misleading, the Commission should require automakers to inform the consumers that aftermarket or recycled parts will not void their warranty, in recognition of the fact that automakers’ statements about their warranty obligations are often misleading. The manufacture has no incentive to inform the consumer that using aftermarket or recycled parts will not void the warranty (other than the Act and the

⁷ Emphasis added. (Exhibit I).

⁸ Exhibit III.

⁹ Exhibit IV.

Interpretation). But the automaker has every incentive to distort any description of its warranty obligations to *imply* that consumers must always buy new brand-name parts. The interpretation should recognize that the consumers are likely to be misled by the automakers' statements, and so every statement should plainly say that use of aftermarket or recycled parts will not void the warranty as a whole.

Second, the Commission should require any automaker that claims aftermarket or recycled parts are inferior in quality or safety to show the public the evidence for that claim. Under the current interpretation, the automakers have issued statements that are full of conclusory, blanket assertions about the relative safety and quality of aftermarket and recycled parts, even though many of these parts are identical to the new brand-name parts. The automakers should have to back these statements up with evidence, filed with the Commission, and made available for public review.

(b) What evidence supports these proposed changes?

[N/A]

(c) How would these changes affect consumers and businesses, including small businesses?

These changes are necessary to protect the consumers from the automakers flagrantly anticompetitive behavior, designed to force consumers into buying brand-name parts they do not want and protect the aftermarket and recycled parts industry from unfair competition from the automakers.

The changes are necessary to protect consumers' freedom to make an informed choice between the expensive brand-name parts and less expensive aftermarket and recycled auto parts without being deceived by the automakers. For those consumers who place a premium on price, protecting consumers' from the misleading statements of the automakers will allow the consumers to spend less money for the same result. And for those consumers who place a premium on brand-name loyalty, these changes will not interfere with their decision to buy brand-name parts.

These changes will also protect the aftermarket industry and independent repair shops from the automakers' unfair and misleading campaign. Once the consumers are allowed to make an informed choice, we believe many of them will continue to use aftermarket and recycled parts in order to save money. But without these changes, the automakers' campaign against the aftermarket industry will eventually succeed, bullying and tricking consumers into buying only new brand-name parts. That threatens the millions of employees in the aftermarket and recycled auto parts industry and the billions of dollars' worth of sales the industry produces.

As for the automakers, the changes only require them to comply with already-existing law. And if the automakers actually can support their claims about the safety and reliability of aftermarket and recycled products with real testing data, then there is little to no cost in supplying that data to the Commission and the public.

4. Do the Interpretations, Rules and Guides overlap or conflict with other federal, state, or local laws or regulations? What evidence supports these asserted conflicts? Should the Interpretations, Rules or Guides be changed in light of these asserted conflicts? If so, how?

[N/A]

5. Provide any evidence concerning the degree of industry compliance with the Interpretations, Rules and Guides. Does this evidence indicate the Interpretations, Rules or Guides should be modified? If so, why and how? If not, why not?

[N/A]

6. Have changes in technology, including but not limited to, the Internet and mobile technology, or economic conditions affected the need or purpose for the Interpretations, Rules and Guides? Should the Interpretations, Rules or Guides be changed because of these developments? If so, how?

No—even though the Act, the interpretation, and the Commission’s consumer alerts are all available online, the automakers are still able to mislead the consumers into thinking they must buy only new brand-name parts in order to keep their warranties. Although some consumers will use the resources published by the Commission, most will not look beyond the automakers’ comprehensive anti-aftermarket campaign. And that campaign is designed to unfairly mislead the consumers into thinking they have to use new brand-name parts in a blatant attempt to get around the Act.

7. What are the effects, if any, of the Interpretations, Rules and Guides on the costs, profitability, competitiveness and employment of small business entities?

The current interpretation allows automakers to harm the profits, competitiveness, and employment of the aftermarket and recycled auto parts industry, all at the expense of the consumer, by coercing and misleading consumers into buying brand-name parts. While this may profit the automakers, it harms the profitability, competitiveness, and employment of every business in, or supported by, the aftermarket industry. The aftermarket industry exists because it is willing to provide the auto parts needed to repair the consumers’ vehicles at a lower price than the automakers. If the consumers are misled into thinking that those parts will void their warranty, or that those parts are inferior to the automakers’ parts, the aftermarket industry will not be able to do business.

Profits, competitiveness, and employment will all decrease. In order to prevent this, the Commission should change the Interpretation to stop the automakers' unfair and misleading campaign against the aftermarket industry.

B. Specific Questions for Comment

1. Should Rule 700.10, specifically, its interpretation of the Act's tying prohibition contained in Section 2302(c), be revised to improve the effectiveness of the prohibition? Why or why not? What changes, if any, should be considered? What evidence supports these changes?

For all the reasons discussed in these comments, Rule 700.10 should be changed to require the automakers to plainly state that aftermarket and recycled parts will not void the warranty, and to require automakers to support their claims on the differences between new brand-name parts and aftermarket and recycled parts with real evidence, available for public review.

[Alternatively, the discussion above could all be included in here, provided subheadings are used. This would allow us to cut several paragraphs. The following structure would be useful: §§1, 3, 2(c), 7, conclusion.]

2. Should the Interpretations, Rules or Guides be amended to address service contracts? Why or why not? What changes, if any, should be considered? What evidence supports these changes?

[N/A]

3. Should Rule 702 be amended to specifically address making warranty documents accessible via online commerce? Why or why not? What changes, if any, should be considered? What evidence supports these changes?

[N/A]

4. Should the informal dispute settlement mechanism requirements of Rule 703 be changed? Why or why not? What changes, if any, should be made? What evidence supports these changes?

[N/A]

On behalf of LKQ Corporation and ABPA, I thank you for the opportunity to comment on the rule review process. I would also like to offer myself as a resource on automotive issues and make myself available to meet with you to discuss this matter further.

Please do not hesitate to contact me if you have any questions. I can be reached at

Respectfully submitted,

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Eileen A. Sottile
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