Comments of the
CERTIFIED AUTOMOTIVE PARTS ASSOCIATION

for the
FEDERAL TRADE COMMISSION

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

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The Certified Automotive Parts Association[1] (CAPA) is pleased to respond to the Federal Trade Commission's request for comment concerning interpretations of the Magnuson-Moss Warranty Act.

The Magnuson-Moss Warranty Act was signed into law in January 1975. In order to help consumers and businesses understand the requirements of the law, a series of "Interpretations" of the Magnuson-Moss Act were prepared by the FTC. These "Interpretations" provide explanation and guidance on a number of issues in the act. One such "Interpretation," issued in 1977, is contained in Section 2302(c) which relates to illegal tying arrangements.

Per the Federal Registry Notice Vol. 76, No. 163/ Tuesday, August 23, 2011, Proposed Rules page 52597:

[1] The Certified Automotive Parts Association is a non-profit, independent third party, standard setting and certification program founded in 1987. CAPA standards enable the market to identify high quality, fairly priced alternatives to car company brand parts. CAPA standards protect both competitors and consumers from both poor quality replacement parts and expensive car company brand service parts.

The CAPA program incorporates an independent, third party Validator to insure integrity and conformance to the CAPA standards. CAPA standards are used to certify that an aftermarket part meets or exceeds the performance of car company service parts in the areas of appearance, fit, function, and safety. CAPA has been approved by the American National Standards Institute (ANSI) as an independent, third party standard setting organization who develops and maintains consensus of quality standards for competitive crash repair parts.

Section 2302(c) prohibits warrantors from employing "tying" arrangements—i.e., conditioning a written warranty's coverage on the consumer's using, in connection with the warranted product, an article or service identified by brand, trade, or corporate name (unless the warrantor provides that article or service to the consumer without charge). The interpretations contained in Section 700.10 explain that "[n]o 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." 16 CFR 700.10. Section 700.10 further provides that a warrantor is prohibited from denying liability where the warrantor cannot demonstrate that the defect or damage was caused by the use of unauthorized articles or services. Id. [2]

While this "Interpretation" provides the market with some critical guidance, it is much better explained in the FTC's July 2011 Consumer Alert on the subject which is very clear and unambiguous. From the FTC Consumer Alert:

Do I have to use the dealer for repairs and maintenance to keep my warranty in effect?

No.

Will using 'aftermarket' or recycled parts void my warranty?

No.

In summary, the guidance on 'tying' has three components: 1. One can't require a consumer to use another product in order to get the benefits of the warranty, unless that product is free. 2. One may not require the use of a particular repair service to benefit from the warranty. 3. One cannot deny warranty benefits if it cannot be demonstrated that unauthorized services or articles caused the damage.

Given the clear intent of the Act as best evidenced by the FTC Consumer Alert, consumers would benefit greatly from a specific regulation, (as opposed to the current interpretation which does not have the force of law), using the clear and unambiguous language of the FTC Consumer Alert.

[2] Federal Register/Vol. 76, No. 163/Tuesday, August 23, 2011/Proposed Rules

Fair and understandable warranties are critically important consumer protections in the marketplace. The Magnuson-Moss Warranty Act of 1975 establishes the FTC as the arbiter of warranties and sets out specific and important conditions governing warranties. Not only do warranties need to be clear and understandable, but consumers need protection from the illicit use of warranties to restrict competition. The Magnuson-Moss Warranty Act recognized the need to protect consumers from sellers attempting to coerce market behavior via warranties.

The Certified Automotive Parts Association was established to insure that consumers are protected from poorly made, shoddy, and unsafe car parts by establishing a set of standards that requires comparability to car company brand parts. CAPA Certified parts provide wholesome and important competition to expensive car company brand parts. In the course of insuring that the market has the ability to truly identify high quality alternative parts, we have experienced many occasions when the car companies indirectly claim that using something other than their brand of part would void a consumer's warranty. There is no question that such an accusation, especially when it comes to a product as expensive and complex as a vehicle, has a chilling effect on consumer comfort with alternative parts. The car companies have been particularly effective in using the technique to protect their virtual monopoly on the parts consumers need to repair their vehicles after a crash.

While the car companies like to claim that their competition is substandard and unsafe, the FTC can be assured that the rigorous testing, inspection and continuous monitoring of product quality by CAPA protects consumers, repairers and insurers from unwittingly using a poor quality or unsafe part.

In reviewing the FTC "Interpretations" of the Magnuson-Moss Act, CAPA recommends that the FTC establish a specific regulation banning the tying of part use to a product, rather than depend on an "interpretation of the law." In addition, CAPA recommends that the FTC require very specific, consumer friendly, and clear language, such as that used in its July 2011 Consumer Alert, to be clearly and boldly stated in the written product warranty.

Why is illicitly using a warranty to protect market domination so bad for consumers? Because the economically beleaguered American consumer desperately needs <u>more</u> competition when it comes to repairing a car after an

accident. Right now, a simple side scrape or inadvertently backing into a pole can cause thousands of dollars worth of damage to a vehicle. Why? Because the parts needed to repair the car are just too expensive. Because of their virtual monopoly, the car companies can charge as much as they want for the parts consumers need to get their cars fixed. For example, Ford charges more for a simple fender ($491) than Dell charges for a high speed computer and flat screen monitor ($488). A Sears Kenmore two-door, refrigerator/freezer with an icemaker is the same price as an unpainted door skin from Chrysler. Not only do these virtual monopolies enable over-charging, but they provide no incentive for quality. Unfortunately, the illicit use of warranties is partially responsible for car companies being able to maintain monopolistic prices.

Another example of the impact of over-priced parts is borne out by testing from the Insurance Institute for Highway Safety. For over 40 years, the IIHS has been a world leader in auto safety and the study of vehicle damageability and safety. Their work has led to numerous improvements in vehicle safety and they have become a source of advice and expertise for governments, auto companies, other testing facilities, and the national media on a worldwide basis. Their highly respected test results provide further evidence of the enormous cost of parts. The table below exemplifies the repair cost from low-speed crashes. The unchecked cost of parts due to monopolistic pricing is a major factor in these results.

Repair Costs Using Car Company Brand Parts After a Low-Speed Crash

	Front Full Crash	Front Corner Crash	Rear Full Crash	Rear Corner Crash	Total Damage
Kia Rio	$3,701	$1,758	$3,148	$773	$9,380
Chev. Malibu	$2,092	$1,685	$3,494	$1,116	$8,387
Ford Fusion	$2,529	$1,889	$2,610	$1,073	$8,101
Hyundai Accent	$3,476	$839	$2,057	$831	$7,203

Source: Insurance Institute for Highway Safety

While Senator Magnuson, Senator Moss and Representative Moss created one of America's most important consumer protections, and the FTC has unequivocally clarified those protections, there is a general lack of awareness among consumers about their rights when pursuing a warranty claim. For example, it's likely that few consumers are aware that they must be provided with proof of causation before a warranty claim can be properly denied. The FTC should clarify this right with specific regulatory language that makes it clear that

the warrantor must prove or demonstrate that the failure was due to an alternative part or service—not just "say so."

A precedent for clarifying consumer warranty rights has been clearly demonstrated in the Clean Air Act which requires car companies to provide clear written maintenance instructions that:

…shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service... which is identified by brand, trade, or corporate name… [unless a waiver is granted by the EPA].[3]

In addition, the Clean Air Act specifically states that warrantors are explicitly prohibited from providing "directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of a warranty under the Clean Air Act is conditioned upon use of any part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons."[4] The term "indirectly" is a critical component of the requirement as it directly addresses the inferences often made about the use of parts made by the car companies and their dealers.

In summary, the FTC has the opportunity to amplify the extraordinarily important market protections of the Magnuson-Moss Warranty Act by codifying the clear and unambiguous interpretation of the Act presented in its July 2010 Consumer Alert. Not only will a regulatory clarification of the intent of the Magnuson-Moss Act provide signification consumer protections, but it will provide a fair and healthy marketplace for all businesses.

[3] 42 U.S.C. § 7541(c)(3)(B).
[4] 40 CFR § 86.1780-99(a)(4)(iii)