October 24, 2011

Electronic Submission: https://ftcpublic.commentworks.com/ftc/warrantyrulesanprm

Chairman Jon Leibowitz
Federal Trade Commission
c/o Office of the Secretary
Room H-113 [Annex G]
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Magnuson-Moss Warranty Act Rule Review, 16 CFR Part 700, P1144066

Dear Chairman Leibowitz:

The Specialty Equipment Market Association (SEMA) welcomes the opportunity to provide comments to the FTC's review of its Magnuson-Moss Warranty Act rules and guides, specifically Rule 700 (Interpretations), Rule 701 (Disclosure of Terms and Conditions), Rule 702 (Pre-Sale Availability of Terms), Rule 703 (Dispute Settlement), and Advertising Guides. SEMA believes there is a continued need for the rules and guides, and recommends that they be expanded to better achieve the goal of protecting consumer rights.

SEMA represents the $28.6 billion specialty automotive industry and is comprised of nearly 6,400 mostly small businesses nationwide that manufacture, distribute and retail parts and accessories for motor vehicles. The products produced by our member companies include performance, functional, restoration and styling-enhancement products for use on passenger cars and light-duty trucks. SEMA also represents millions of enthusiasts through its SEMA Action Network (SAN). The SAN is a nationwide partnership with vehicle clubs and individual hobbyists which keeps consumers informed about laws and regulations affecting their vehicles.

SEMA is in the unique position of understanding the Magnuson-Moss Act from the perspective of both the manufacturer and the consumer. To follow are several recommendations on how the FTC's collective rules and guides can be expanded to clarify manufacturer responsibilities and consumer protections.

Need Supplemental FTC Consumer Alert on Auto Warranties

SEMA welcomed the FTC Consumer Alert issued in December 2010 entitled "*Auto Warranties, Routine Maintenance and Repairs: Is Using the Dealer a Must*?" For decades, SEMA and a

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number of other organizations representing the vast automotive aftermarket have educated consumers of their right to install compatible aftermarket parts on their vehicles at a location of their choosing, without jeopardizing the vehicle warranty. The Federal Trade Commission's Alert is a vital tool for reinforcing that message and providing additional assurance to the consumer. For example, a vehicle owner can now share the Consumer Alert with an employee who may not understand the dealership's legal obligations under the Magnuson-Moss Act.

While the Consumer Alert is an important resource, its primary focus is on vehicle repairs and maintenance. We recommend that the FTC issue a supplemental alert to reference vehicle modifications. SEMA represents that segment of the aftermarket which markets specialty parts, not straight repair/replacement parts. Examples include custom tires and wheels, lighting equipment, exhaust systems, suspensions, truck caps, grille guards, leather seating, mobile electronics and sunroofs. While the Magnuson-Moss Warranty Act clearly covers these types of consumer products, many readers of the Consumer Alert (including dealerships) may conclude it only applies to repair/maintenance issues based on language included in the Alert.

SEMA regularly receives consumer complaints about employees at auto dealerships voiding the car warranty because a specialty part has been installed. In some instances, the warranty is voided when the vehicle is brought-in for regularly scheduled maintenance (no mechanical problems). More frequently the issue arises when there is an actual mechanical problem. While a vehicle dealer may reject a claim because an aftermarket part caused the failure being claimed under the warranty, sometimes the denial is based on the mere presence of a specialty part (ex: custom wheels), even when the part in question could not have caused the problem (ex: engine trouble). It is worth noting that once a warranty denial is entered into a dealership's computer database, it is shared with the automaker and all other related dealerships.

A supplemental FTC Consumer Alert that specifically references the consumer's right to modify their vehicles with specialty parts would assist in protecting consumer rights and in helping educate the regulated community regarding the Magnuson-Moss Act.

Proposed Revision to 16 C.F.R. 700.01(c)

A supplemental Consumer Alert about specialty auto parts would specifically address auto-related issues and is a necessary document for consumers when being challenged by dealerships. However, specialty parts are also marketed for other applications in and outside of the house. In order to provide clarity to the issue, SEMA proposes that the following language be added to the regulatory definitions of covered products:

16 C.F.R. 700.01(c)

16(c) The definition of "Consumer product" limits the applicability of the Act to personal property, "including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed." This provision brings under the Act separate items of equipment attached to real property, such as air conditioners, furnaces, and water heaters. **The definition would also apply to specialty equipment attached to or installed on real property that serves a function other than ordinary repair and maintenance, such as specialty auto equipment.**

Put the Warranty Denial in Writing

The FTC should mandate that a warrantor (ex: dealership) provide the consumer with a written statement upon which a warranty denial claim is based. This does not occur in most of the disputes which come to the attention of SEMA.

Under the law, warranties are required to be in a single, clear and easy-to-read document. The same should be the case when the warranty is being voided – the consumer should be provided a written document that details how the aftermarket part(s) caused the problem, with a copy of test results or other evidence upon which the dealership is basing its claim. It is critical to protect the consumer when outlining warranty rights. It is equally critical to protect consumers when those rights are being removed.

As noted, there are instances when an aftermarket part has caused the mechanical problem and warranty denial is justifiably permitted. However, it is the obligation of the dealership to first diagnose the problem. Further, the burden is on the warrantor to demonstrate that the aftermarket part caused the damage or defect [*See*: 16 C.F.R. 700.10(c) and the December 2010 Consumer Alert on Auto Warranties]. Educating dealership employees about this obligation can be difficult. In order to assist the consumer in the process, it is vital that the FTC issue the supplemental Consumer Alert outlining the consumer's right to install specialty parts along with the requirement that a dealership provide a written diagnosis on why the warranty is being denied.

The Magnuson-Moss Act seeks to provide a level playing field for consumers and manufacturers by allowing consumers to sue for breach of warranty and recover court costs and reasonable attorneys' fees. With respect to the auto industry, warranty denial claims are rarely (if ever) brought to court. As a practical matter, most consumers are not lawyers or well-versed in their legal rights. When there is a problem, the financial burden to fix the product is placed on the consumer's shoulders. Most consumers will not pursue a court case since they could lose more money (beyond the costs of fixing the vehicle). Even in the rare instance when a consumer may be willing to pursue the claim, it may be impossible to find an attorney to take the case. As a consequence, if a dealership refuses to put in writing the reason for denial, it will not be produced as a result of discovery since there will likely be no court case.

The Magnuson-Moss Act establishes informal dispute settlement procedures for resolving warranty denial claims. SEMA supports this approach as an alternative to the courts. In some cases, it may be as simple as securing the opinion of a third-party mechanic or engineer. Once again, however, the process involves documenting the problem in order to render a decision. Dealerships that are willing to resolve warranty disputes are also likely to provide a written statement. An FTC requirement that written documentation be produced would address the other dealerships that refuse to document the problem.

When a warrantor rejects putting the reason for a denial in writing, they may be taking a calculated approach that the consumer will not pursue the issue. This potentially rewards the warrantor for potentially violating the law. For example, there are instances in which the subject problem has been identified by the automaker in a service bulletin but the dealership instead denies a warranty claim on the basis of an unrelated aftermarket part. Providing a written diagnosis allows the consumer to seek a second opinion from other repair facilities and to investigate whether there may be another reason for the problem (ex: automaker service bulletins).

By requiring that the dealership issue a written statement upon which the warrantor has based its denial, the FTC will be establishing a rule that the denial cannot occur until the consumer has been presented "proof" for such denial. The warrantor will then be limited to that demonstration of proof if the consumer seeks to challenge the finding in court, mediation or arbitration.

SEMA appreciates the opportunity to advocate for a supplemental Consumer Alert, a clarified definition of "consumer product", and written statements on warranty denial. Thank you for your consideration of these comments and feel free to contact me if you have any questions.

Sincerely,

Stephen B. McDonald
Vice President, Government Affairs
Specialty Equipment Market Association