

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Harley-Davidson Motor Company Group, LLC
File No. 2123140

The Federal Trade Commission (the “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Harley-Davidson Motor Company Group, LLC (“Respondent” or “Harley-Davidson”).

The proposed consent order (“Proposed Order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the Proposed Order.

This matter involves the warranty that Harley-Davidson offers to purchasers of its motorcycles. According to the Commission’s complaint, Harley-Davidson’s warranty is conditioned on purchasers using authorized Harley-Davidson parts and accessories; otherwise, the warranty is void. In addition, the complaint alleges that Harley-Davidson’s warranty does not contain a clear explanation of all material terms; instead, the warranty informs purchasers that they must ask a Harley-Davidson dealer to get a full explanation of what is covered by the warranty, and what is not.

Based on the foregoing, the Commission alleges that Respondent violated the Magnuson-Moss Warranty Act and regulations promulgated thereunder, including the Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions, and engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The Proposed Order contains injunctive provisions addressing the alleged deceptive conduct. Section I prohibits Respondent from (1) expressly or implicitly conditioning a warranty on a consumer’s use of any article or service which is identified by brand, trade, or corporate name, unless the article or service is offered for free or the Commission has issued a waiver to the company, or from otherwise violating the Warranty Act or the Rules promulgated thereunder; and (2) failing to disclose all warranty terms in a single document that uses simple and readily understood terms to describe the warranty to consumers. Section I permits Respondent to not modify its existing calendar year 2022 warranty documents, provided that Respondent provides all purchasers of its calendar year 2022 motorcycles with a copy of the updated warranty and a customer notice and requires its authorized dealers to maintain copies of these records.

Section II prohibits Respondent from representing to consumers, expressly or by implication, (a) that its warranties will be void if they use third-party parts or services or if they modify or alter the product without authorization, or (b) as a condition of warranty coverage or in the written warranty, that consumers should only use branded parts or have their product repaired, altered or serviced by authorized service providers.

Respondent will be permitted to exclude from its warranty coverage (1) damages caused by the use of unauthorized parts or services, the use of its vehicles for racing or competitions or the installation of parts designed for unauthorized uses of the vehicle, such as trailer hitches, and (2) all functional defects of powertrain components for any Harley-Davidson motorcycle registered in the United States if the vehicle was tuned using a tuning product not covered by a California Air and Resources Board Executive Order or that was otherwise approved by the Environmental Protection Agency, or if Harley-Davidson or any authorized Harley-Davidson dealer has any information to show that the vehicle was tuned using a tuning product not covered by a California Air and Resources Board Executive Order or that was otherwise approved by the Environmental Protection Agency.

Section II also requires Respondent to include language in the warranty that affirmatively notifies consumers of their rights to use third-party services and parts under the Magnuson-Moss Warranty Act and enjoins Respondent from misrepresenting any material facts to consumers about the warranty.

Sections III and IV require Respondent to inform its customers and authorized dealers and service providers that its warranty has been updated, and that the updated warranty is not conditioned on the use of authorized parts or services. Respondent must clearly and conspicuously post and keep on its website the notice and its updated warranty terms, and it must submit reports regarding its notification program.

Sections V through VII of the Proposed Order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance with the Proposed Order. Section IX states that the Proposed Order will remain in effect for twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.