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April 20, 2015

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

Re: BMW of North America, LLC -Consent Agreement; File No. 1323150

Dear Secretary Clark:

The Automotive Recyclers Association (ARA) appreciates the opportunity to comment on the BMW of North America, LLC proposed consent agreement with the Federal Trade Commission (FTC) as published in the March 26, 2015 edition of the *Federal Register*.

As the public record indicates, ARA has consistently urged FTC¹ to increase its enforcement of the Magnuson-Moss Warranty Act, which prohibits a warrantor from tying a product's warranty to the use of a specific article or service identified by a particular brand. ARA supports the proposed consent order written in response to the FTC's recent finding that BMW violated the Warranty Act by conditioning warranty coverage on the consumer's use of genuine MINI parts and performance of maintenance and repair by MINI dealers.

However, ARA believes that the BMW violation is just one example of many such actions by automakers that have yet to be addressed. ARA is deeply concerned that much of the abuse of the Warranty Act remains unchecked and in some instances is actually increasing. In response, ARA strongly encourages the FTC to adopt a more proactive

¹ ARA Comments on Magnuson-Moss Warranty Act Rule Review, 16 CFR, Part 700, P114406

approach to prevent, combat and penalize attempts by automakers to deceive consumers about repair part options through misrepresenting warranty provisions.

Over the past several years, auto manufacturers have become more aggressive in pushing the limits of both the Sherman Antitrust and the Magnuson-Moss Warranty Acts by releasing position statements claiming that recycled parts are inferior to OEM parts. These position statements are biased and based on no apparent scientific research. In making these types of statements, auto manufacturers seem to be attempting to monopolize a market, providing for only one source of parts and procedures for the repair of consumers' vehicles. The FTC needs to be strong and unwavering in its attempts to regulate such actions.

In response to these statements and to provide clarification to consumers on their warranties, the FTC has updated its consumer alert entitled "Auto Warranties, Routine Maintenance, and Repairs: Is Using the Dealer a Must?" The revised alert specifically notes that the mere use of recycled parts does not void a warranty and that it is illegal for warrantors to void a warranty or deny coverage simply because a recycled part was used. To ensure that consumers are aware of their vehicle warranty provisions, ARA urges the FTC to require that those manufacturers found in violation of "tying practices" be made to provide the Alert to purchasers at the point of sale.

The automotive parts industry is changing and the demand for replacement and repair parts is ever increasing - a fact recognized by the major players in the market, including President and Executive Director of the Automotive Service Association (ASA), Dan Risley who has gone on record stating that "recycled auto parts are an essential part of the supply chain from all perspectives – from insurance, collision repair and mechanical²." ASA is an association of collision, mechanical and transmission automotive repair shops whose members want to choose repair parts based on their training and expertise which provides them with the qualifications to determine which parts best fit the customer's need. These stakeholders do not want to be tied to any unfair warranty provisions.

A new proactive approach on the part of the FTC is necessary to provide careful oversight of the manufacturers' emerging partnerships with collision repair entities to implement certified repair programs that allegedly steer consumers to utilize new OEM parts instead of using quality, recycled OEM parts - parts that provide the identical or improved repair service to new OEM parts. The FTC needs to remain vigilant to ensure that these repair programs do not require one type of part over another and should support rulings such as the one taken by the West Virginia Supreme Court of Appeals in June 2014 that affirmed the use of salvage/recycled OEM crash parts in vehicle repairs and found that recycled parts are diametrically different from aftermarket parts.

ARA looks forward to working with FTC to ensure that other auto manufacturers are held to the same standard to which BMW was measured so that consumers will not be misled about the conditions of their vehicle warranties and that the parts used for repairs are quality non-recalled automotive parts.

² *Automotive Recycling: March-April 2014*

Thank you for the opportunity to comment on this proposed consent order.

Sincerely,

Michael Wilson
CEO, Automotive Recyclers Association

Since 1943, the Automotive Recyclers Association (ARA) represents an industry dedicated to the efficient removal and reuse of “green” automotive parts, and the proper recycling of inoperable motor vehicles. ARA represents the interests of over 4,500 auto recycling facilities in the United States and fourteen other countries around the world. With programs such as the Certified Automotive Recycler Program (CAR), Green Recycled Parts, and other partnerships, ARA members continue to provide consumers with quality, low-cost alternatives for vehicle replacement parts, while preserving our environment for a “greener” tomorrow.

To learn more about the Association, visit ARA’s Home Page at www.a-r-a.org or call (571) 208-0428.