

VIA ELECTRONIC DELIVERY

October 24, 2011

Ms. Svetlana S. Gans
Division of Marketing Practices
Bureau of Consumer Protections
Federal Trade Commission
H-286
600 Pennsylvania Ave. NW

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

Dear Ms. Gans:

I am writing on behalf of my client to provide comments to the Federal Trade Commission's ("FTC's") set of warranty-related Interpretations, Rules and Guides. The FTC requested comments on such Interpretations, Rules and Guides by October 24, 2011.

My client markets and sells products for the home, home office and professional office settings, offering a wide range of printers, fax machines, and multi-function equipment that include written warranties. Therefore, my client has a significant interest in any amendments made to the FTC warranty-related Interpretations, Rules and Guides.

Remanufactured Third Party Consumables

My client has encountered warranty issues related to "remanufactured" consumable products (*i.e.*, toner or ink cartridges) that are remanufactured by third parties. The remanufacturers overwhelmingly use "spent" original equipment manufacturer ("OEM") consumable housings that were collected and then processed at varying levels of quality and ultimately refilled with generic inks or toners. When the remanufactured products are sold, the practices of the resellers vary widely. The comments from my client, however, are limited solely to the remanufactured product once it has been removed from its packaging. Specifically, most times, the packaging is discarded at the time of installation. If the user of the equipment then encounters a quality or performance issue, the most prominent marking on the refurbished product or consumable is usually, if not always, the brand of

the OEM. As a result, my client is left to deal with complaints, calls and even warranty claims arising from products and consumables remanufactured by others that should never be directed to OEMs like my client.

My client proposes that the FTC modify Rule 701 so that third-party manufacturers (other than the OEM), or re-fillers of consumables such as ink and toner, are required to include a marking prominently displayed on the consumable that clearly directs the end user to contact the party that remanufactured the consumable (or their designee) for all warranty claims and information. This notice should be more prominent than the brand of the OEM and must clearly direct the end user how to pursue such a claim. This requirement is not necessary and should not be applicable when an OEM recycles and remanufactures its own consumables, since the OEM's brand is already prominently exhibited on the consumable.

Pre-Sale Warranty Availability

With regard to pre-sale availability of written warranties, FTC Rule 702 requires sellers of products costing more than \$15 to make such products' complete written warranty text readily available for examination by the prospective buyer. To allow sellers to fulfill this obligation, manufacturers are required to provide sellers with "sufficient" warranty materials necessary for such sellers to comply with their respective obligations under Rule 702.

While my client agrees with the objectives of Rule 702, it recommends that such rule be modified to contemplate changes in technology and information dissemination since the creation of the rule in the 1970s, which are further discussed below, as well as to account for inflation, which has caused many products not originally covered by the rule to be subject to this requirement.

My client therefore recommends that Rule 702 be modified to explicitly permit manufacturers to meet their respective obligations to provide sellers with warranty materials either (1) simply by emailing the seller (i) a link to the manufacturer's written product warranty or (ii) a PDF of the applicable written product warranty; (2) by providing a link to the written product warranties on correspondence to the seller; or (3) by providing a CD with the written product warranty to the seller.

Similarly, my client believes that Rule 702 should be amended to explicitly permit vendors to fulfill their obligations using current technology. Where manufacturers and resellers have Internet presences, click-through access to and/or a conspicuous reference to the manufacturers' website containing the applicable warranty should be recognized as sufficient means for sellers to meet the requirements of Rule 702.

In addition, in furtherance of the original intent of establishing monetary thresholds to which these rules should apply, my client also recommends that the \$15 price threshold referenced in Rule 702 be adjusted to account for inflation that has occurred since the rule was originally passed and be periodically adjusted in accordance with a commonly accepted inflation index.

Warranty Advertising Guidelines

In 2000, the FTC created the "Dot Com Disclosures: Information about Online Advertising" document (the "Dot Com Disclosures"). The Dot Com Disclosures provide guidance to businesses about how the FTC law applies to online activities. It focused on the clarity and conspicuousness required of

disclosures in online advertising. The Dot Com Disclosures also discussed how certain words, such as "written," "writing," and "printed", as used in FTC rules and guides, apply to new technologies. The Dot Com Disclosures state in part, "Sellers that offer written warranties on consumer products must include certain information in their warranties and make them available for review at the point of purchase. Warranties communicated through visual text on Web sites are no different than paper versions and the same rules apply. The requirement to make warranties available at the point of purchase can be accomplished easily on the Internet."

Currently, the Guides for the Advertising of Warranties and Guarantees, 16 CFR Part 239, ("Part 239") recommend that advertisements mentioning warranties or guarantees should contain a disclosure that the actual warranty document is available for consumers to read before they buy the advertised product. Part 239 was originally adopted during the 1960s. As a result, the advances in technology were never contemplated in its rules. My client believes the Dot Com Disclosures appropriately address the changes in advertising on the Internet that can be easily applied to the advertising rules of Part 239. As a result of the explosion of Internet use and its availability to the public, and the FTC's previous acknowledgment of the Internet as a portal for accessing warranty information under the Dot Com Disclosures, we recommend that the FTC consider amending Part 239 to recognize that referral of consumers to manufacturer Internet sites which make available warranty information satisfies the requirement to disclose the actual product warranty prior to purchase by the consumer. In amending Part 239, we further recommend that the FTC reference the Dot Com Disclosures as applicable to any "writing," "written" or "printed" requirements under Part 239.

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Thank you for considering these comments as part of your review process.

Sincerely,

Steven B. Steinborn

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