

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

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**In the Matter of**

**BMW of North America, LLC,  
a limited liability company.**

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) **FILE NO. 132 3150**  
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)

) **AGREEMENT CONTAINING**  
) **CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of BMW of North America, LLC (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between BMW of North America, LLC, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent BMW of North America, LLC, is a Delaware limited liability company with its principal place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677. Proposed respondent uses, among others, the trade names MINI USA and the MINI Division of BMW NA.
2. Proposed respondent admits that the Commission has jurisdiction in this matter.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve

its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "**Respondent**" shall mean BMW of North America, LLC, its successors and assigns and its officers, agents, representatives, and employees.
2. "**MINI Division**" means the MINI Division of BMW of North America, LLC, its successors and assigns and officers, agents, representatives, and employees with responsibilities for the operations of the MINI Division of BMW of North America, LLC or its successors and assigns.
3. "**MINI dealer**" or "**MINI center**" means an authorized dealer of MINI passenger cars operating pursuant to a valid Dealer Agreement for MINI Passenger Cars between such dealer and respondent.
4. "**Commerce**" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. **“Competent and reliable scientific evidence”** means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.
6. **“Implied warranty”** means an implied warranty arising under State law (as modified by 15 U.S.C. §§ 2308 and 2304(a)) in connection with the sale by a supplier of a consumer product.
7. **“Warrantor”** means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.
8. **“Written warranty”** means—
  - (a) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
  - (b) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

#### I.

**IT IS ORDERED** that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any MINI Division good or service shall not:

- A. condition any written or implied warranty of any product sold on the consumer’s using, in connection with such product, any article or service (other than an article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name unless the Commission has, prior to such conditioning, granted a waiver of this requirement pursuant to 15 U.S.C. 2302(c); or
- B. violate any provision of the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-2312), or the rules promulgated by the Commission under the Magnuson-Moss Warranty Act (16 C.F.R. §§ 701, 702, and 703), copies of which are attached as Attachment A.

## II.

**IT IS FURTHER ORDERED** that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any MINI Division good or service shall not:

- A. represent that the owner, in order for his/her vehicle to operate safely or maintain its value, must have maintenance work performed by a MINI dealer or MINI center, unless the representation, at the time it is made, has been substantiated by Respondent with competent and reliable scientific evidence; or,
- B. misrepresent, expressly or by implication, any fact material to consumers concerning any warranty or maintenance requirements of any good or service.

## III.

**IT IS FURTHER ORDERED** that Respondent, within 60 days of entry of this Order, must provide the notice appended to this Order as Attachment B by first class mail to MINI owners who still have coverage under the MINI New Passenger Car Limited Warranty and whose Service and Warranty Information Statement contains any of the following, or similar, statements:

- A. “Have maintenance and repair work performed by your MINI dealer. Make sure that the maintenance work is stamped in this Service and Warranty Information Statement. These entries are the evidence of regular maintenance of your vehicle and are a requirement for warranty claims;”
- B. While [the owner] may elect to use non-genuine MINI parts for maintenance or repair services, [MINI USA or the MINI Division] is not obligated to pay for repairs that include non-genuine MINI parts . . . .”

*Provided further* that Respondent shall not include any advertising, marketing, or other promotional information in conjunction with providing the information specified above. Moreover, Respondent will employ means to verify the address of any owner whose notice is returned as undeliverable and will attempt to resend the information to the owner by first class mail within 60 days of having the original notice returned as undeliverable. Furthermore, Respondent will post a copy of the notice contained in Attachment B on the miniusa.com website No Cost Maintenance & Warranty page for one year after entry of this Order.

On the 120th, 210th, and 360th days following entry of this Order, Respondent shall provide the Commission the following: (1) a copy of the content of the notice (which shall be in the form of the notice appended to this Order as Attachment B); (2) the number of notices sent by first class mail; (3) the number of the notices returned as undeliverable; (4) a detailed description of the process Respondent used to locate owners whose notices were undeliverable; (5) the number of notices resent; and (6) the number of resent notices returned as undeliverable.

#### IV.

**IT IS FURTHER ORDERED** that Respondent and its successors and assigns, shall, for five (5) years after the date of issuance of this Order, maintain and upon request make available to the Federal Trade Commission business records demonstrating Respondent's compliance with the terms and provisions of this Order, including but not limited to:

- A. A copy of each Owner's Manual and Service and Warranty Information Statement for each model of passenger car or light truck sold by Respondent after entry of this Order; and
- B. Records of all consumer complaints or other consumer correspondence concerning the subject matter of this Order.

#### V.

**IT IS FURTHER ORDERED** that Respondent and its successors and assigns, shall deliver a copy of this order to all current and, for the next five (5) years, future principals, officers, directors, managers, and to all current and, for the next five (5) years, future employees, agents, and representatives having responsibilities with respect to the MINI Division and the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*

Respondents shall deliver this order to current personnel with responsibilities with respect to the MINI Division and the subject matter of this order within thirty (30) days after the date of service of this order, and to future personnel with responsibilities with respect to the MINI Division and the subject matter of this order within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure.

#### VI.

**IT IS FURTHER ORDERED** that Respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to a divestiture of the MINI Division or any change in the limited liability company that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the company name or address. Provided, however, that, with respect to any proposed change in the company about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto:Debrief@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line must begin: In re BMW of North America, LLC.

## VII.

**IT IS FURTHER ORDERED** that Respondent within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, Respondent shall submit additional true and accurate written reports.

## VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

BMW of North America, LLC

Date: \_\_\_\_\_

By: Howard S. Harris  
HOWARD S. HARRIS  
Secretary  
BMW of North America, LLC

Date: 2/5/15

By: [Signature]  
DANIEL S. SAVRIN  
MORGAN, LEWIS & BOCKIUS LLP  
Attorney for Respondent

Date: \_\_\_\_\_

By: \_\_\_\_\_  
SVETLANA S. GANS  
KELLY A. HORNE  
Counsel for the Federal Trade Commission

APPROVED:

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Associate Director  
Division of Marketing Practices

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Director  
Bureau of Consumer Protection