

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

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

DOCKET NO. C-4555

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that BMW of North America, LLC, a limited liability company, (“Respondent”) violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent BMW of North America, LLC (“BMW”), is a Delaware limited liability company with its principal place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677. Respondent uses, among others, the trade names MINI USA and the MINI Division of BMW NA.
2. Respondent has advertised, marketed, offered for sale, sold, and distributed products through authorized dealers to consumers, including MINI passenger cars and MINI parts.
3. The FTC enforces the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2312, (“Warranty Act”), which regulates consumer warranties and the procedures used to resolve warranty disputes. The broad purposes of the Warranty Act are: (1) to improve the adequacy of warranty information available to consumers, and thereby facilitate consumer choice; (2) to prevent deception; and (3) to improve competition in the marketing of consumer products. Among other things, the Warranty Act prohibits a warrantor from conditioning a consumer product’s warranty on the consumer’s use of an article or a service (other than an article or a service provided without charge) which is identified by brand, trade, or corporate name. 15 U.S.C. § 2302(c). Pursuant to Section 2310(b) of the Warranty Act, 15 U.S.C. § 2310(b), a violation of the Warranty Act constitutes a violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (“FTC Act”).

4. Respondent is a “warrantor” as defined by the Warranty Act because it is a supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty. 15 U.S.C. § 2301(5).

5. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

RESPONDENT’S BUSINESS ACTIVITIES

Overview

6. Respondent’s MINI Division distributes new MINI passenger cars throughout the United States to authorized MINI dealers, who then sell or lease MINI passenger cars to consumers.

7. Respondent’s MINI Division, through MINI dealers, provides purchasers of new MINI passenger cars a “written warranty” as defined by the Warranty Act, 15 U.S.C. § 2301(6), in the form of a Service and Warranty Information Statement (“Warranty Statement”).

8. The length of the MINI New Passenger Car Limited Warranty offered by Respondent’s MINI Division is four years or 50,000 miles, whichever comes first.

9. Since at least 2002, Respondent’s MINI Division has offered purchasers of its new MINI passenger cars the “MINI Maintenance Program” (“Maintenance Program”), included automatically in the purchase of a MINI passenger car from a MINI dealer.

10. For MINI passenger cars sold with the Maintenance Program, the Maintenance Program’s benefits cease after three years whereas the warranty lasts four years.

Respondent’s MINI Division Conditions Warranty Coverage on the Use of MINI Dealers and MINI Parts

11. In numerous instances, Respondent’s MINI Division, through its Warranty Statements for MINI passenger cars, conditions warranty coverage on the consumer’s use of genuine MINI parts and on the usage of MINI dealers to perform maintenance and repair work.

12. For instance, in the Warranty Statements for numerous models, including but not necessarily limited to the one attached as Exhibit A, Respondent’s MINI Division directs consumers to “[h]ave maintenance and repair work performed by your MINI dealer” and to “[m]ake sure that the maintenance work is stamped in [the] Service and Warranty Information Statement” because “[t]hese entries are the evidence of regular maintenance of your vehicle and are a requirement for warranty claims.” (Exhibit A at 2).

13. In addition, Respondent’s MINI Division includes in Warranty Statements a disclaimer that, “[w]hile [the owner] may elect to use non-genuine MINI parts for maintenance or repair services, MINI USA is not obligated to pay for repairs that include non-genuine MINI parts . . .” (Exhibit A at 19). Thus, Respondent’s MINI Division expressly states to consumers that its warranty will not cover repairs for parts that merely *include* “non-genuine” MINI parts.

14. By conditioning its warranty on the use of MINI dealers and genuine MINI parts without providing such parts and services without charge during the fourth year of its warranty, Respondent has violated the tying prohibition in the Warranty Act, which prohibits companies from conditioning their warranties on the consumer's use of any article or service (other than an article or service provided without charge under the terms of the warranty) identified by brand, trade, or corporate name.

15. Moreover, the Commission has not waived this prohibition as to Respondent, and Respondent has never sought such a waiver under the procedure identified in the Warranty Act, 15 U.S.C. § 2302(c).

THE WARRANTY ACT

16. The Warranty Act, 15 U.S.C. §§ 2301-2312, is the federal law that regulates consumer warranties and the procedures used to resolve warranty disputes. It also directs the FTC to prescribe rules enforcing certain requirements pertaining to the use and content of consumer warranties.

17. Section 2302(c) of the Warranty Act, 15 U.S.C. § 2302(c), prohibits any warrantor from conditioning a warranty on the consumer's using, in connection with the warranted 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.

Count I Violating the Tying Prohibition of the Warranty Act

18. In numerous instances, Respondent has conditioned a warranty on the consumer's using, in connection with the warranted product, an article or a service (other than an article or a service provided without charge under the terms of the warranty) identified by brand, trade, or corporate name.

19. The acts or practices of Respondent, as described in Paragraph 18 above, violate the Warranty Act, 15 U.S.C. § 2302(c), and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

THEREFORE, the Federal Trade Commission this twenty-first day of October, 2015, has issued this Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: