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April 17, 2015

Submitted via regulation.gov

Federal Trade Commission  
Office of the Secretary  
Suite CC-5610 (Annex D)  
600 Pennsylvania Avenue NW  
Washington, DC 20580

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

Dear Sir/Madam:

In March 2013, the Automotive Oil Change Association (AOCA), Auto Care Association (formerly the Automotive Aftermarket Industry Association), Service Station Dealers of America (SSDA), and Tire Industry of America (TIA) submitted a complaint against BMW for the same essential reasons described in both the Commission's complaint and proposed consent agreement. Although we very much appreciate the Commission taking action to prevent BMW's MINI division from further violating the Magnuson Moss Warranty Act (MMWA), we urge you to (1) extend all requirements ultimately set forth in a final consent agreement to BMW at large; and (2) apply additional affirmative obligations.

An AOCA member in Texas recently serviced a 2010 BMW Series 7 with the following engine sticker:



To be clear, a Series 7 is not a MINI. Branded product tying language nearly identical to what was found under the Series 7 hood appears in its owner's manual as well: "Only use approved BMW High

Performance oil.”<sup>1</sup> That language is actually more restrictive than what the MINI Division has been using regarding engine oil.<sup>2</sup> It is noteworthy that an AOCA member didn’t see one of these vehicles until *after* the new car warranty coverage had expired during the 5<sup>th</sup> year after the model’s rollout; i.e., between 12 to 15 service opportunities later.

BMW has also employed service tie-in language with its 2013 128i convertible—again, not a MINI. On page 235 of the digital version of the 2013 128i convertible owner’s manual<sup>3</sup>, BMW tells customers that “[o]il changes should only be performed by a BMW Center.” We found that particular reference through research rather than an operator report, because, apparently, no 2013 128i convertibles have visited AOCA member aftermarket facilities. This situation underscores the fact that BMW customers with this vehicle likely believe they can only use BMW Centers, which further underscores the fact that the Commission’s consent decree requirements should apply to the entire BMW Company, not merely its MINI Division.

Additionally, we urge the Commission to require a bit more of BMW than to send letters to current affected customers and generally refrain from violating the MMWA, the latter of which it has always been required to do. As suggested to the Commission in response to a request for comments on the overall functionality of the MMWA regulation during the fall of 2011 (MMWA Rule Review, 16 CFR Part 700, P114406), BMW’s owner’s manuals and automotive warranties should be required to include a plain English anti-tying disclosure, similar to the disclosure already required of automotive warranties under the Clean Air Act, and modeled directly upon language approved by the Commission in its Consumer Alert entitled *Auto Warranties, Routine Maintenance, and Repairs: Is Using the Dealer a Must?*

The tie-in language used by BMW is, unfortunately, not unique among automakers. We have in the past brought to the Commission’s attention many examples of misleading automaker statements and

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<sup>1</sup> 2010 BMW Series 7 Owner’s Manual, digital version, at 235.

<http://www.bmwusa.com/Standard/Content/Owner/OwnersManualVideos.aspx?namodelcode=1074>

<sup>2</sup> “A second violation of the prohibition against tying arrangements is also found on page 147 of the owner’s manual: BMW restricts “approved” engine oil types to BMW High Performance SAE 5W-30, BMW Longlife-01, and BMW Longlife-01 FE. One limited exception to this rule is provided. If the listed proprietary engine oils are not available, up to 1 U.S. quart (or 1 liter) of non-proprietary oil with a specification of API SM or higher may be used. The 2012 MINI Service & Warranty Information booklet echoes both the restriction and narrow exception: *If you need to add oil between oil changes and MINI High Performance Synthetic Oil is unavailable, you may top up the oil level with one of the following approved synthetic oils.* (Service & Warranty Information booklet page 5) Since MINI Coopers require oil changes to maintain engine function under the warranty and topping up is the only listed circumstance where MINI owners may deviate from using MINI proprietary engine oil, BMW has, in fact, tied sales of its oil product to warranty coverage.” AOCA, et al, March 2013 complaint, at 2.

<sup>3</sup> <http://owners-owners.com/manuals/2013-BMW-128i-Owners-Manual-Convertible.pdf>

directives made to consumers that either violate MMWA's tie-in sales prohibition on its face or undercut it so deeply as to render it meaningless. As reported in both our series of formal complaints through 2014 and comments to the rule review in 2011, Honda, General Motors, Nissan, Mazda, and Kia Motors have all engaged in these harmful, anti-consumer activities. Kia's tie-in sales requirement for Kia brand oil filters—delivered via Technical Service Bulletin and about which our complaint is still pending—has been so effective as to convince even *Consumer Reports* to parrot it nationwide.<sup>4</sup> We mention these related situations in this BMW-specific context to encourage the Commission to consider the potential industry-wide benefit of taking a stronger stance here, as well as taking action on the pending rule review and complaint against Kia Motors.

We thank you for the opportunity to submit comments on this crucial consumer matter.

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<sup>4</sup> "How a cheap oil change can cost you in the long run," by Jon Linkov, *Consumer Reports* online (May 20, 2014).