UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

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Dear Mr. Whann:

The Commission is responding to your request for the Commission's views whether certain warranty terms violate the "tying" provisions of the Magnuson-Moss Warranty Act. Your inquiry arose in the context of used vehicle warranties commonly called "50/50 warranties." These are limited warranties under which the dealer promises to pay 50% of the labor cost and 50% of the cost for parts for repairs covered by the warranty, with the remainder paid by consumers.[1] Your concern is whether Section 102(c) of the Magnuson-Moss Warranty Act[2] and Section 700.10 of the Federal Trade Commission's Interpretations of Magnuson-Moss Warranty Act[3] prohibit dealers who offer 50/50 warranties from requiring that warranty repairs be performed at a repair facility designated by the dealer. It is the Commission's view that neither the Act nor the Interpretations prohibit such warranty terms.

The Magnuson-Moss Warranty Act is the federal act governing written warranties on consumer products.[4] Among other things, the Act contains provisions that protect consumers from deceptive or unfair warranty practices. One of these provisions is Section 102(c), which prohibits warrantors from conditioning warranty coverage on the consumer's "using, in connection with the warranted product," an article or service identified by brand, trade, or

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[1] The discussion of 50/50 warranties in this letter applies equally to a warranty with a different percentage allocation or with a deductible.

[2] 15 U.S.C. 2302(c).

[3] 16 C.F.R. Part 700.10.

[4] The Act defines "consumer product" as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

corporate name, unless the warrantor provides the article or service without charge.[5] This provision prevents warrantors from imposing tying arrangements that restrict consumers' purchase options with respect to articles or services used in connection with the warranted product. In the Commission's view, performing the very service promised under the warranty is not "using" a service "in connection with" the warranted product.

The legislative history for this provision, though scanty, mentions specific types of tying arrangements that would be prohibited: "Under this prohibition, for example, no automobile manufacturer may condition his warranty of an automobile on the use of a named motor oil or on the use of its own automobile parts unless he shows that any other motor oil or automobile parts which are available will not function properly and will not give equivalent performance characteristics in the automobile."[6] The Commission provided additional guidance in its 1977 Interpretations of the Magnuson-Moss Warranty Act, 16 C.F.R. Part 700.[7] Section 700.10(b) clarified that, when a limited warranty covers only replacement of parts but the consumer pays the labor charges, Section 102(c) would prohibit the warrantor from requiring that the consumer use only specified service or labor to install those parts. Conversely, the Commission explained, under a limited warranty that covers labor charges only, Section 102(c) prohibits a condition that the consumer use only a brand of parts identified by the warrantor or that the parts be purchased from a particular seller.

A tie-in prohibition that preserves consumers' purchase options makes sense with respect to non-warranted articles or services that are severable from the dealer's responsibilities under the warranty. Accordingly, if a warranty covers only repair parts, the repair service is not a service promised or covered under the warranty, and the consumer may choose the servicer. Similarly, if the warranty covers only service, the parts are not covered under the warranty and the consumer can obtain the parts from any supplier. For the same reason, as noted in the legislative history, the tie-in provision would prohibit conditioning warranty service on the consumer's use of a certain brand of motor oil or automobile parts.

In the case of 50/50 warranties, the warranting dealer has a direct interest in providing the warranty service for which it is partly financially responsible. Unlike the above examples, in a 50/50 warranty the warranted repair work is not, as a practical matter, severable into two parts: one that the warrantor can perform and another part that another auto repair shop could perform. Nor can a warranted part be separated into a fractional part provided by the warrantor and another fractional part that the consumer can purchase elsewhere. Rather than conditioning the

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[5] This section states in pertinent part as follows: "No warrantor of a consumer product may condition his written or implied warranty of such product 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 . . ."

[6] H.R. Rep. No 93-1107, at 36-37 (1974).

[7] 42 FR 36112 (July 13, 1977).

warranty on the purchase of a separate product or service not covered by the warranty, a 50/50 warranty shares the cost of a single product or service. Dealers who pay a proportion of repair costs need some control over the diagnosis of the repair needed and the quality of the repair. Barring dealers from providing the repair under these types of warranties could impose hardships and costs on both consumers and dealers that do not appear warranted by the purpose or intent of the statute.[8]

This opinion is consistent with staff's advice on the issue beginning over twenty-five years ago, when the warranty statute was enacted.[9] In addition, the Commission's Buyers Guide for used cars was designed to accommodate disclosure of warranties that cover less than 100% of the cost for warranty repairs.[10] We note, however, that a 1999 statement by the Commission appears to express a different view on the issue. In a Federal Register Notice ("FRN") publishing the results of its review of the Magnuson-Moss Warranty Act Interpretations,[11] the Commission stated that used car warranties that cover a percentage of parts and labor and provide that the repair must be done by the dealer/warrantor "likely violate Section 102(c)."[12] However, the Commission did not take a definite position at that time on the applicability of Section 102(c) to these types of warranties.

To resolve any uncertainty, the Commission is issuing this letter opinion, adopting the staff's long-held opinion that Section 102(c) does not prohibit 50/50 warranties (or other warranties under which the warrantor pays a percentage of the costs for covered repairs) from requiring that the warrantor perform all covered repairs. This opinion is limited to the question of whether section 102(c) prohibits such warranty terms. It does not constitute approval of any

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[8] The Commission recognizes that there is some concern that dealers may inflate the costs of warranted repairs and in this way impose all or most of the repair cost on the purchaser. If such practices occur, they would likely constitute deceptive practices and could also constitute breaches of warranty (as failing to provide the benefit promised in the warranty).

[9] *See, e.g.*, Christian S. White, *Title I, Magnuson-Moss Federal Trade Commission,* in Practising Law Institute, THE FEDERAL TRADE COMMISSION IN 1975, at 33.

[10] The Commission's Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. Part 455, requires that used car dealers display a Buyers Guide on all used cars offered for sale. This Buyers Guide must disclose the basic terms of any warranty offered in connection with the sale of the used car, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty.

[11] Final Action Concerning Review of Interpretations of Magnuson-Moss Warranty Act: Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing Informal Dispute Settlement Procedures; and Guides For the Advertising of Warranties and Guarantees, 64 FR 19700 (1999).

[12] *Id.* at 19703.

other terms of such warranties. Moreover, certain acts or practices, such as inadequate disclosures, could constitute deceptive or unfair practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or relevant state laws. Any such determination would be made on a case-by-case basis.

In accordance with Section 1.3(b) of the Federal Trade Commission's Rules of Practice and Procedure (16 C.F.R. § 1.3(b)) the Commission retains the right to reconsider the questions involved in this opinion and to rescind or revoke the opinion should the public interest so require. Further, in accordance with Section 1.4 of the Commission's Rules of Practice and Procedure (16 C.F.R. § 1.4), your letters, the submission from the National Consumer Law Center, and this response will be placed on the public record.

By direction of the Commission.

Donald S. Clark
Secretary