



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers

In 2019, the Federal Trade Commission (“Commission”) called for public comment and empirical research on repair restrictions, which culminated in the Commission’s “Nixing the Fix” report to Congress.¹ The Commission is now issuing this policy statement regarding its enforcement policy with respect to repair restrictions.

Restricting consumers and businesses from choosing how they repair products can substantially increase the total cost of repairs, generate harmful electronic waste, and unnecessarily increase wait times for repairs. In contrast, providing more choice in repairs can lead to lower costs, reduce e-waste by extending the useful lifespan of products, enable more timely repairs, and provide economic opportunities for entrepreneurs and local businesses.

In 2019, the Commission convened a workshop on “Nixing the Fix” and sought input from consumers, independent businesses, manufacturers, and others. Through this work, the Commission uncovered evidence that manufacturers and sellers may, without reasonable justification, be restricting competition for repair services in numerous ways, including: imposing physical restrictions (e.g., the use of adhesives); limiting the availability of parts, manuals, diagnostic software, and tools to manufacturers’ authorized repair networks; using designs that make independent repairs less safe; limiting the availability of telematics information (i.e., information on the operation and status of a vehicle that is collected by a system contained in the vehicle and wirelessly relayed to a central location, often the manufacturer or dealer of the vehicle); asserting patent rights and enforcement of trademarks in an unlawful, overbroad manner; disparaging non-OEM parts and independent repair; using unjustified software locks, digital rights management, and technical protection measures; and imposing restrictive end user license agreements.

The Commission’s report on repair restrictions explores and discusses a number of these issues and describes the hardships repair restrictions create for families and businesses. The Commission is concerned that this burden is borne more heavily by underserved communities, including communities of color and lower-income Americans.² The pandemic exacerbated these effects as consumers relied more heavily on technology than ever before.³

¹ Federal Trade Commission. *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*. (May 2021) https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

² *See id.* at 3-4.

³ *Id.* at 4-5.

While unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years,⁴ the Commission has determined that it will devote more enforcement resources to combat these practices.⁵ Accordingly, the Commission will now prioritize investigations into unlawful repair restrictions under relevant statutes such as the Magnuson-Moss Warranty Act⁶ and Section 5 of the Federal Trade Commission Act.⁷

First, the Commission urges the public to submit complaints and provide other information to aid in greater enforcement of the Magnuson-Moss Warranty Act and its implementing regulations. While current law does not provide for civil penalties or redress, the Commission will consider filing suit against violators of the Magnuson-Moss Warranty Act to seek appropriate injunctive relief. The Commission will also closely monitor private litigation to determine whether the Commission may wish to investigate a pattern of unfair or deceptive acts or practices or file an amicus brief. Further, the Commission will explore rulemaking, as appropriate.

Second, the Commission will scrutinize repair restrictions for violations of the antitrust laws. For example, certain repair restrictions may constitute tying arrangements or monopolistic practices—such as refusals to deal, exclusive dealing, or exclusionary design—that violate the Sherman Act.⁸ Violations of the Sherman Act also violate the prohibition on unfair methods of competition codified in Section 5 of the Federal Trade Commission Act.

Third, the Commission will assess whether repair restrictions constitute unfair acts or practices, which are also prohibited by Section 5 of the Federal Trade Commission Act. In addition, the Commission will analyze any material claims made to purchasers and users to ascertain whether there are any prohibited deceptive acts or practices, in violation of Section 5 of the Federal Trade Commission Act.

Finally, the Commission will bring an interdisciplinary approach to this issue, using resources and expertise from throughout the agency to combat unlawful repair restrictions. The FTC will also closely coordinate with state law enforcement and policymakers to ensure compliance and to update existing law and regulation to advance the goal of open repair markets.

⁴ The Commission has brought only one case alleging a violation of the Magnuson-Moss Warranty Act in the past decade. *In the Matter of BMW of North America, LLC*, No. 132-3150 (October 2015). During this period, the Commission's efforts have included issuing several warning letters to companies that appeared to be engaged in warranty tying in violation of the Magnuson-Moss Warranty Act. *See FTC Staff Warns Companies that It Is Illegal to Condition Warranty Coverage on the Use of Specified Parts or Services*, <https://www.ftc.gov/news-events/press-releases/2018/04/ftc-staff-warns-companies-it-illegal-condition-warranty-coverage>.

⁵ In conjunction with the Nixing the Fix Workshop, the Commission sought public comments and submissions of empirical research concerning repair restrictions. The full docket of public comments and empirical research submissions is available at <https://www.regulations.gov/docket/FTC-2019-0013/document> and <https://www.regulations.gov/document/FTC-2019-0013-0001/comment>.

⁶ 15 U.S.C. § 2301 *et. seq.* The Magnuson-Moss Warranty Act prohibits, among other things, tying arrangements that condition a consumer product's warranty on the use of a third-party service provider or on the use of a particular product, unless the warrantor provides the services or products for free or obtains a waiver from the FTC. 15 U.S.C. § 2302(c).

⁷ 15 U.S.C. § 45. Section 5 of the Federal Trade Commission Act prohibits unfair or deceptive actors or practices, as well as unfair methods of competition, in or affecting commerce. Section 5 also encompasses violations of the Sherman Act, which prohibits certain exclusionary and other anticompetitive conduct.

⁸ *See, e.g., Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451 (1992); *United States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001).