



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

Office of the Secretary

October 21, 2015

Aaron M. Lowe
Senior Vice President, Regulatory and Government Affairs
The Auto Care Association
State of Maryland

Meredith Robertson, Executive Director
Automotive Oil Change Association
State of Texas

Roy Littlefield, Executive Vice President
Executive Vice President
Tire Industry Association & Service Station Dealers of America
State of Maryland

Re: *In the Matter of BMW of North America, LLC* (“BMW”), FTC File No. 1323150

Dear Mr. Lowe, Ms. Robertson, and Mr. Littlefield:

Thank you for your comment on the Federal Trade Commission’s (“Commission”) proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of the Commission action and proposes two revisions to the proposed consent order.

With respect to the proposed consent order, you propose to: (1) broaden the conduct relief to extend all requirements set forth in a final consent to BMW at large; and (2) apply additional affirmative obligations.

With respect to your first request, the relief set forth in the consent does not address only Magnuson-Moss Warranty Act violations, but also prohibits BMW, in the sale of MINI goods or services, from misrepresenting that vehicles, in order to operate safely or maintain value, must have maintenance work performed by a MINI dealer. More broadly, it prohibits BMW from misrepresenting any material fact concerning any warranty or maintenance requirements of any MINI good or service. Although the terms of the complaint and order reference MINI, the Commission believes the relief set forth in the proposed consent, coupled with the potential for civil penalties, is appropriate to remedy the violation alleged in the complaint and to deter future violations by BMW.

Second, you ask that the proposed consent include additional affirmative obligations. Specifically, you state that BMW should be required to do more than send letters to current affected MINI consumers. You propose that the Commission require BMW to include in its owner's manuals and automotive warranties a plain English anti-tying disclosure, modeled directly upon language in the Commission's Consumer Alert entitled, "Auto Warranties, Routine Maintenance, and Repairs: Is Using the Dealer a Must?"¹

Part III of the proposed consent order requires BMW to send notices to all affected MINI consumers informing them that their warranties are not conditioned on repair work being performed by MINI dealers or on the use of genuine MINI parts. The letter's message is similar to the guidance contained in the Consumer Alert, and states that absent a Commission waiver, or unless the warrantor provides the parts or service free of charge, the Magnuson-Moss Warranty Act "makes it illegal for manufacturers or dealers to claim that your warranty is void or to deny coverage under your warranty simply because someone other than the dealer did the work," and "[s]imply using an aftermarket or recycled part does not void your warranty."² The Commission believes such a letter is appropriate under the facts of this case.³ The proposed order also requires BMW to post a copy of the notice on the MINI Division's No Cost Maintenance & Warranty webpage for one year.

The Commission will remain vigilant in its efforts to enforce the MMWA and continue to monitor the marketplace and take enforcement action where necessary. The Commission will also continue to evaluate whether additional guidance is necessary to better inform consumers and businesses concerning their rights and responsibilities under the MMWA.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, ftc.gov.

¹ FTC, Auto Warranties & Routine Maintenance (July 2011, updated May 2015) ("Consumer Alert"), available at <http://www.consumer.ftc.gov/articles/0138-auto-warranties-routine-maintenance>.

² *Id.*

³ In its recent MMWA rule review, the FTC examined the issue of, and declined to impose, a mandatory disclaimer requirement in warranty documents. See FTC, 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, available at https://www.ftc.gov/system/files/documents/federal_register_notices/2015/07/150720magmossfrn.pdf (July 20, 2015).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary



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October 21, 2015

Mr. Michael Wilson
CEO, Automotive Recyclers Association
Commonwealth of Virginia

Re: *In the Matter of BMW of North America, LLC* (“BMW”), FTC File No. 1323150

Dear Mr. Wilson:

Thank you for your comment on the Federal Trade Commission’s (“Commission”) proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the consent order in the BMW matter but suggests one change to the order and asks for greater Commission enforcement of the Magnuson-Moss Warranty Act (“MMWA”).

With respect to the proposed consent order, you urge the Commission to require that manufacturers found in violation of the tying prohibition provide the Commission’s Consumer Alert on Auto Warranties¹ to purchasers at the point of sale. Part III of the proposed consent agreement requires BMW to send notices to all affected consumers informing them that their warranties are not conditioned on repair work being performed by MINI dealers or on the use of genuine MINI parts. The letter’s message is similar to the guidance contained in the Consumer Alert, and states that absent a Commission waiver, or unless the warrantor provides the parts or service free of charge, the MMWA “makes it illegal for manufacturers or dealers to claim that your warranty is void or to deny coverage under your warranty simply because someone other than the dealer did the work,” and “[s]imply using an aftermarket or recycled part does not void your warranty.”² The Commission believes such a letter is appropriate under the facts of this

¹ FTC, *Auto Warranties & Routine Maintenance* (July 2011, updated May 2015) (“Consumer Alert”), available at <http://www.consumer.ftc.gov/articles/0138-auto-warranties-routine-maintenance>.

² *Id.*

case.³ The proposed consent order also requires BMW to post a copy of the notice on the MINI Division's No Cost Maintenance & Warranty webpage for one year.

In addition, you note that auto manufacturers have become more aggressive in their advertising by releasing position statements claiming that recycled parts are inferior to OEM parts. You ask that the Commission combat attempts by automakers to deceive consumers about repair part options through misrepresenting warranty provisions. In its MMWA regulatory rule review, the Commission reaffirmed that "Section 5 requires warrantors making performance claims regarding non-original or recycled parts to have a reasonable basis for those claims, thereby ensuring that such claims are not unfair, deceptive, false, or misleading."⁴ The FTC will remain vigilant in its efforts to enforce the MMWA and will continue to evaluate whether additional guidance is necessary to better inform consumers and businesses concerning their rights and responsibilities under the MMWA.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, ftc.gov.

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary

³ Moreover, in its recent MMWA rule review, the Commission examined the issue of, and declined to impose, a mandatory disclaimer requirement in warranty documents. *See* FTC, 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 ("Final Action"), *available at* https://www.ftc.gov/system/files/documents/federal_register_notices/2015/05/150522mag-mossfrn.pdf (May 22, 2015, FR publication forthcoming).

⁴ *Id.*



UNITED STATES OF AMERICA
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October 21, 2015

Momberger
State of New Mexico

Re: *In the Matter of BMW of North America, LLC (“BMW”)*, FTC File No. 1323150

Thank you for your comment on the Federal Trade Commission’s (“Commission”) proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of the Commission’s action in this matter and does not propose any specific modifications to the proposed consent agreement. Rather, you ask for the Commission to help consumers assure their warranty remains intact should the consumer choose to use a qualified auto service other than BMW and MINI. The proposed consent order contains provisions designed to prevent BMW from engaging in similar acts or practices in the future. Specifically, Part I prohibits BMW, in connection with the sale of any MINI Division good or service, from violating any provision of the Magnuson-Moss Warranty Act, including, the anti-tying provision. Part II prohibits BMW, in connection with the sale of any MINI good or service, from misrepresenting that vehicles, in order to operate safely or maintain value, must have maintenance work performed by a MINI dealer. Part II also prohibits BMW from misrepresenting any material fact concerning any warranty or maintenance requirements of any MINI good or service. Part III requires BMW to send notices to all affected consumers informing them that their warranties are not conditioned on repair work being performed by MINI dealers or on the use of genuine MINI parts. In addition, the proposed consent order requires BMW to post a copy of the notice on the MINI Division’s No Cost Maintenance & Warranty webpage for one year.

The notice’s message is similar to the guidance document Commission staff issued to better educate consumers and businesses concerning their rights and responsibilities under the MMWA. Specifically, the Consumer Alert on Auto Warranties states, that absent a Commission waiver, or unless the warrantor provides the parts or service free of charge, “the Magnuson-Moss Warranty Act . . . makes it illegal for manufacturers or dealers to claim that your warranty is void or to deny coverage under your warranty simply because someone other than the dealer did the work,” and “[s]imply using an aftermarket or recycled part does not void your warranty.”¹

¹ FTC, *Auto Warranties & Routine Maintenance* (July 2011, updated May 2015), *available at* <http://www.consumer.ftc.gov/articles/0138-auto-warranties-routine-maintenance>.

The FTC will continue to remain vigilant in its efforts to enforce the MMWA and will continue to evaluate whether additional guidance is necessary to better inform both consumers and businesses concerning their rights and responsibilities under the MMWA.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, ftc.gov.

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary



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October 21, 2015

Miro Kefurt, CEO
SynLube Incorporated
State of Nevada

Re: *In the Matter of BMW of North America, LLC* (“BMW”), FTC File No. 1323150

Dear Mr. Kefurt:

Thank you for your comment on the Federal Trade Commission’s (“Commission”) proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of the Commission’s action in this matter and does not propose any specific modification to the proposed consent agreement. After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission’s website, ftc.gov.

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission’s analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary