

September 16, 2019

Electronic Submission: <https://www.regulations.gov/docket?D=FTC-2019-0013>

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Nixing the Fix: A Workshop on Repair Restrictions

Dear Chairman Simons:

The Specialty Equipment Market Association (SEMA) welcomes the opportunity to provide comments on the Federal Trade Commission's (FTC's) examination of ways manufacturers may limit third-party repairs. The July 16, 2019 "Nixing the Fix" Workshop provided a comprehensive overview of current and future issues on this topic. The workshop panels were also well-balanced in gathering feedback from a diversity of impacted industries representing manufacturer and consumer rights.

SEMA represents the \$45 billion specialty automotive industry and is comprised of nearly 7,500 mostly small businesses nationwide that manufacture, distribute and retail parts and accessories for motor vehicles. The products made by our member companies include performance, functional, restoration and styling-enhancement products for use on passenger cars and light-duty trucks. SEMA also represents millions of enthusiasts through its SEMA Action Network (SAN). The SAN is a nationwide partnership with vehicle clubs and individual hobbyists which keeps consumers informed about laws and regulations affecting their vehicles.

In advance of its July workshop, the FTC received comments and empirical data from workshop participants and other organizations. SEMA is not seeking to duplicate materials already submitted or comment on issues sufficiently covered during the workshop. The comments below focus on issues and recommendations relating to application of the Magnuson-Moss Warranty Act in the automotive aftermarket, including potential repair restrictions tied to the use of specialty automotive equipment.

FTC Consumer Alert on Auto Warranties

SEMA welcomed the FTC Consumer Alert issued in December 2010 entitled "Auto Warranties, Routine Maintenance and Repairs: Is Using the Dealer a Must?" The FTC subsequently posted the material on a dedicated webpage on the topic entitled Auto Warranties & Routine Maintenance. [<https://www.consumer.ftc.gov/articles/0138-auto-warranties-routine-maintenance>]

Specialty Equipment Market Association (SEMA)

1317 F Street, NW; Suite 500; Washington, DC 20004

Telephone: 202/783-6007; Fax: 202/783-6024



For decades, SEMA and many other organizations representing the vast automotive aftermarket have educated consumers on their right to install aftermarket parts on their vehicles at a location of their choosing, without jeopardizing the vehicle warranty. The Federal Trade Commission's alert and webpage are vital tools for reinforcing that message and providing additional assurance to the consumer. For example, a vehicle owner can now share the Consumer Alert with an auto dealership employee who may not understand the dealership's legal obligations under the Magnuson-Moss Warranty Act.

While the Consumer Alert is an important resource, its primary focus is on vehicle repairs and maintenance. SEMA recommends that the FTC also reference specialty auto parts and vehicle modifications within the webpage. SEMA represents the segment of the aftermarket that markets specialty parts, not traditional repair/replacement parts. Examples include custom tires and wheels, lighting equipment, exhaust systems, suspensions, truck caps, grille guards, mobile electronics and sunroofs. While the Magnuson-Moss Warranty Act clearly covers these types of consumer products, many readers of the webpage (including dealerships) may conclude the law only applies to repair/maintenance issues, not modifications.

SEMA regularly receives consumer complaints about a dealership having voided the car warranty because a specialty part has been installed. In some instances, the warranty is voided when the vehicle is brought-in for regularly scheduled maintenance. While a vehicle dealer may reject a claim because an aftermarket part caused the failure being claimed under the warranty, often the denial is based on the mere presence of a specialty part (ex: custom wheels), even when the part in question could not have caused the problem (ex: engine trouble). It is worth noting that once a warranty denial is entered into a dealership's computer database, it is shared with the automaker and all other related dealerships—which means the vehicle may then be permanently red-flagged.

Put Warranty Denial in Writing

The manufacturer or dealer has the right to deny coverage for damage caused by an aftermarket part. However, the FTC notes that the manufacturer or dealer must show that the aftermarket or recycled part caused the need for repairs before denying warranty coverage. SEMA urges the FTC to require the manufacturer or dealer to explain in writing why the warranty is being denied. This does not occur in most of the disputes which come to the attention of SEMA.

Under the law, warranties are required to be in a single, clear and easy-to-read document. The same should be the case when the warranty is being voided—the consumer should be provided a written document that details how the aftermarket part(s) caused the problem, with a copy of test results or other evidence upon which the dealership is basing its claim. It is critical to protect the consumer when outlining warranty rights. It is equally critical to protect consumers when those rights are being removed.

The Magnuson-Moss Act seeks to provide a level playing field for consumers and manufacturers by allowing consumers to sue for breach of warranty and recover court costs and reasonable attorneys' fees. With respect to the auto industry, warranty denial claims are rarely (if ever) brought to court. As a practical matter, most consumers are not lawyers or well-versed in their legal rights. When there is a problem, the financial burden to fix the

product is placed on the consumer's shoulders. Most consumers will not pursue a court case given the high costs of pursuing litigation. Consequently, if a dealership refuses to put in writing the reason for denial, it will not be produced as a result of discovery since there will likely be no court case.

The Magnuson-Moss Act establishes informal dispute settlement procedures for resolving warranty denial claims. SEMA supports this approach as an alternative to the courts. In some cases, it may be as simple as securing the opinion of a third-party mechanic or engineer. Once again, however, the process involves documenting the problem in order to render a decision. Dealerships that are willing to resolve warranty disputes are also likely to provide a written statement. An FTC requirement that written documentation be produced would address the other dealerships that refuse to document the problem.

Other Issues

The July 2016 workshop included valuable discussions on balancing consumer protections under the Magnuson-Moss Warranty Act as new technologies emerge or cybersecurity issues are addressed. Examples include:

- Ensuring the availability of collected data to third parties along with the original equipment manufacturer (OEM);
- Creating a uniform industry standard for OEMs and third parties to securely access the vehicle data;
- Preventing manufacturer use of embedded software to stifle access or competition by restricting installation of non-OEM parts; and
- Reviewing manufacturer bulletins or notices warning dealerships only to use the original manufacturer parts based on safety concerns.

SEMA thanks the FTC for its examination of current product repair restrictions in the marketplace and desire to anticipate future challenges. The Magnuson-Moss Warranty Act is a strong tool to safeguard the consumer and we urge the FTC to be proactive in enforcement and in educating industry and consumers to the law's protections.

Thank you for your consideration of these comments and feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ingber', with a long horizontal flourish extending to the right.

Daniel Ingber
Vice President, Government and Legal Affairs
Specialty Equipment Market Association