

## United States Federal Trade Commission Cracks Down on Voiding Warranties For Unauthorized Repairs and Parts

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While it is common practice for product manufactures to insist that consumers will void their warranties if they use an unauthorized repair service or “aftermarket” parts, the United States Federal Trade Commission (FTC) recently cracked down this practice clarifying that these policies are illegal under US law.

From the manufacturer’s perspective, if they provide a warranty on a product, they want to rest assured that a third party has not interfered with that product, or that the product has not malfunctioned due to the use of an unauthorized third-party part. Thus, it is typical that a product manufacturer or dealer will include qualifying language in any warranty, voiding the warranty if the customer has used an unauthorized repair service or parts.

In a recent enforcement action, the FTC sent warning letters to six automobile, cell phone and video game companies reminding them that it is illegal to stipulate that warranty coverage is dependent on using prescribed parts and service providers for repairs. The FTC demanded that the six companies cease voiding warranties for this reason and that they remove statements on other materials that threaten to do so within 30 days.

Although the FTC did not name the six subject companies of the enforcement action, the FTC did provide examples of warranty terms that violate the rules:

- a) An automotive manufacturer’s warranty stating that "the use of [the manufacturer’s] Genuine Parts is required to keep your [...] manufacturer’s warranties and any extended warranties intact."
- b) A video game console manufacturer’s warranty stating that "this warranty shall not apply if this product is used with products not sold or licensed by [the manufacturer]."
- c) A video game console manufacturer’s warranty stating that "this warranty does not apply if this product... has had the warranty seal on the [product] altered, defaced, and removed."

Section 102(c) of the United States Federal statute, the *Magnuson-Moss Warranty Act*<sup>4</sup> (the Act), already makes it illegal for manufacturers to claim that a warranty is void or to deny coverage under a warranty simply because someone other than the warrantor did the work:

*Prohibition on conditions for written or implied warranty; waiver by Commission*

# Cassels

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 article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

While language voiding warranties for unauthorized repairs and parts is prohibited by the Act, product manufacturers can include such a provision in their warranties pursuant to section 102(c)(1) and (2) if they can demonstrate to the satisfaction of the FTC that their product will not function correctly without a particular item or service. A warrantor can also require a consumer to use select items or services if those items or services are provided free of charge under the warranty. Last, it is permissible to disclaim warranty coverage for defects or damage caused by the use of parts or services the manufacturer didn't provide.

The following is an example of a prohibited provision voiding unauthorized repairs or 'aftermarket' parts:

To keep your new [manufacturer] Brand Vacuum Cleaner warranty in effect, you must use genuine [manufacturer] Brand Filter Bags. Failure to have scheduled maintenance performed, at your expense, by the [manufacturer], voids this warranty.<sup>2</sup>

In contrast, the following is a permissible provision voiding a warranty where defects or damage is caused by unauthorized repairs or parts:

While necessary maintenance or repairs on your [manufacturer] Stereo System can be performed by any company, we recommend that you use only authorized [manufacturer] dealers. Improper or incorrectly performed maintenance or repair voids this warranty.<sup>3</sup>

The FTC has initiated enforcement actions for void warranties in the past, but this appears to be the first time that the FTC has targeted specific companies in the automobile, cell phone, and video game industries. Looking ahead, manufacturers should be cognizant of these restrictions and ensure that the language in their warranties is compliant with relevant requirements on both sides of the border. While Canada has no direct equivalent to the US' *Magnuson-Moss Act*, these types of waiver provisions may still run afoul of provincial consumer protection laws or the federal *Competition Act*. It is worthwhile for manufacturers to consult with counsel to assist in selecting permissible language in order to avoid running afoul of the FTC and their regulatory counterparts in Canada moving forward.

<sup>1</sup> Magnuson-Moss Warranty Act of 1975, 15 United States Code section 2302.

<sup>2</sup> Federal Trade Commission, "Understanding the Magnuson-Moss Warranty Act: Businessperson's Guide to Federal Warranty Law", online: <<https://www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law#Magnuson-Moss>>.

<sup>3</sup> Federal Trade Commission, "Understanding the Magnuson-Moss Warranty Act: Businessperson's Guide to Federal Warranty Law", online: <<https://www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law#Magnuson-Moss>>.

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