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The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairwoman Ramirez,

I write to inquire about the status of the pending Federal Trade Commission (FTC) review of the public comments it requested more than three years ago regarding its interpretations of the Magnuson-Moss Warranty Act (MMWA). I am troubled by the FTC's lack of urgency in taking action to protect consumers from explicit and *de facto* warrantor tying practices that have been observed most glaringly in the auto repair industry. Many motorists may have been led to believe, for example, that going to a local repair shop or using a different manufacturer's parts could void a car's warranty.

I urge you to help bring clarity to consumers by updating the FTC's "Interpretations of the Magnuson-Moss Warranty Act" ("the Interpretations"). Manufacturers should be expressly advised that the MMWA prohibits any conduct that would lead a reasonable consumer to believe that his or her warranty coverage depends on the use of a particular brand of product or service.

Congress passed the MMWA in 1975 to "improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products," and tasked the FTC with promulgating rules and interpretive guidance.[1] Section 2302(c) of the MMWA generally prohibits a warrantor of a consumer product from "condition[ing] 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."

The FTC has explained that this constitutes a prohibition on "tying arrangements," meaning that "[n]o warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance."[2] Any such conditions are inherently "deceptive . . . because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of 'unauthorized' articles or service."[3] Unfortunately, these explanations in their current form have not been sufficient to end *de facto* tying behavior.

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[1] 15 U.S.C. § 2302(a)
[2] 16 CFR § 700.10
[3] *Id.*

Over three years ago, the FTC published a request for comments concerning its Interpretations. One of four "specific questions" included in the request reads:

> Should Rule 700.10, specifically, its interpretation of the Act's tying prohibition contained in Section 2302(c), be revised to improve the effectiveness of the prohibition? Why or why not? What changes, if any, should be considered? What evidence supports these changes?[4]

The FTC's evident desire to strengthen the prohibition on tying arrangements is laudable. Such arrangements harm consumers by preventing competition in a marketplace where many consumers may already be at a disadvantage because of a lack of specialized knowledge. It is important to indicate as clearly as possible to all warrantors, that communications and conduct suggesting improper conditions – whether by accident or by design – are impermissible. Consumers should also be aware that the MMWA protects their ability to investigate alternative options for parts or services.

The FTC received several comments on this topic by the October 24, 2011 deadline. Many offered reasonable suggestions for revising and improving the effectiveness of the Interpretations, such as using stronger language to make clear that the law prohibits *de facto* tying, or requiring warrantors to provide customers with written proof supporting any denial of a warranty claim. I believe that the FTC has an obligation to review these comments and proceed with the next step in the revision process without further delay. I have also noted that a group of vehicle aftermarket associations provided, both in their official comments and in several additional letters to the FTC, what they allege to be evidence of at least four specific violations of the tying prohibitions in the MMWA. I believe these allegations warrant responses from the FTC regarding whether further investigation of the complaints is merited. Prompt and responsive action on both of these fronts will serve the goals embodied in the MMWA: protecting consumers and ensuring that warrantors live up to their responsibilities.

I request that you respond to this letter with descriptions of (1) the status of the FTC's review of the comments received in response to its request; (2) the status of any other activity relating to revisions of the Interpretations; and (3) the status of your investigation of the complaints submitted by the aftermarket associations.

Thank you in advance for your response, which will facilitate effective implementation of the MMWA and its associated benefits for consumers and the marketplace.

Sincerely,

Richard Blumenthal
United States Senate

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[4] Request for Comment Concerning Interpretations of the 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, 76 Fed. Reg. 52,598 (August 23, 2011).