



October 21, 2011

Ms. Lois Greisman
Associate Director, Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Ms. Greisman:

Last fall, the organizations listed below wrote the Federal Trade Commission regarding a release from Honda and Acura that attempted to mislead consumers as to the quality of non-original equipment replacement parts and the possibility that use of these parts could void their new car warranties. We further contended that this release was a violation of the Magnuson Moss Warranty Act (MMWA) which prohibits the conditioning of warranties based on the use of a non-original equipment part. While the Commission chose not to take any action against Honda or Acura based on that release, we appreciate the consumer alert that the FTC issued earlier this year to inform consumers about their rights under federal warranty law. Our prediction that lack of enforcement action would encourage further egregious behavior, however, has come to pass.

Once again, our groups must urge the Commission to take action against an automaker, this time Mazda, for violating MMWA in a release (see attached) issued on August 12, 2011. Like Honda, Mazda is misleading consumers regarding the use of aftermarket parts. Specifically, the release states that Mazda “recommends that all maintenance and collision repairs be performed using Genuine Mazda Parts in order to provide an optimum level of performance, safety and durability.” Mazda further states that it “does not recommend the use of aftermarket parts (or imitation parts) for any Mazda maintenance or collision repair... These aftermarket parts are **generally made to a lower standard in order to cut costs and lack the testing required to determine their effectiveness in vehicle performance and safety** (emphasis added).” None of the statements made are accompanied by any form of evidence nor, to our knowledge, does any such evidence exist for Mazda to provide if appropriately pressed.

Our organizations take serious issue with this statement. Every day car owners or their service professionals use non-Mazda parts in the repair of their vehicle without any problem. In fact, many of these parts may have been produced by the very same factory that supplied the original component to Mazda—only the label on the box is different. In general there have not been any quality issues related to the use of non-original equipment parts on Mazda vehicles. Furthermore, the availability of non-original equipment parts has led to more affordable repairs for Mazda car owners while ensuring quality repairs. We are extremely concerned that the unsupportable, harmful generalizations made in this release relative to the quality of the products produced by our industry are already wrongfully pushing consumers to give up their MMWA-

guaranteed right to choose non-Mazda brand products. We strongly request that the FTC call on Mazda either to provide substantiation of their claim that aftermarket parts are “generally made to a lower standard” or withdraw that claim and issue a public correction in the same venues and manner as the original release.

To make matters worse, Mazda’s release actually attempts to erode the manufacturer’s burden of proof under MMWA:

“[O]nly Genuine Mazda Parts purchased from an authorized Mazda dealer are specifically covered by the Mazda warranty. The original warranty could become invalid if aftermarket parts **contribute** to the damage of original parts.” (emphasis added)

The MMWA manufacturer’s burden of proof is not that it need merely show an aftermarket part “contributed” to the damage of original parts, but that it “caused” any alleged damage. Contribution is a lesser standard by language and effect; how does one prove contribution and how much contribution is necessary to void the consumer’s warranty? One percent? Fifty percent? Seventy-five percent? And though Mazda need not guarantee another manufacturer’s parts individually, their reference to the “original warranty” becoming invalid from the use of aftermarket parts refers to the whole vehicle warranty, not any guarantee specific to individual parts. Clearly, the wording of this paragraph combined with the earlier statements in the release regarding the quality of aftermarket parts is intended to misinform consumers not only regarding quality of aftermarket parts, but also their impact on vehicle warranties. Most car owners would take this statement to mean that should they use an aftermarket part, it is not only possible, but likely that their warranty would be voided if there is a problem with the vehicle.

As the FTC states in its consumer alert regarding new car warranties, “The Magnuson-Moss Warranty Act makes it illegal for companies to void your warranty or deny coverage under the warranty simply because you used an aftermarket or recycled part.” The alert goes on to say that if there is a problem with use of an aftermarket part or how it was installed, the manufacturer or dealer may deny a warranty claim. However, the manufacturer must “show that the aftermarket or recycled part caused the need for repairs before denying warranty coverage.”

The wording in the Mazda release totally contradicts FTC’s alert by making the assumption that the aftermarket part would cause the warranty not to be honored rather than the fact that the use of the aftermarket part is permissible unless proven otherwise. Therefore, AAIA and AOCA further request that the Commission take immediate action to require Mazda to withdraw the release and issue a correction: that use of non-Mazda parts are permissible, and that it would be Mazda’s burden of proof to prove a non-Mazda part caused any alleged damage before denying warranty coverage.

Ms. Greisman, it appears that the absence of action as we requested by the Commission on the Honda release is leading more and more car companies to not only engage in similar misleading tactics regarding the use of non-original equipment parts by consumers, but also to ratchet up the unlawful rhetoric. Immediate action is needed to both protect consumers from Mazda in the short term, and to stop other automakers from jumping on this anti-consumer bandwagon.

Thank you for your immediate attention and we look forward to the Commission's response to this request.

Sincerely,



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Patricia Wirth
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Roy Littlefield
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