Lube Report

FTC Snips Warranty Tie-ins

By George Gill • June 3, 2015

The U.S. Federal Trade Commission is toughening its guidelines to clarify that "implied tying" – language that implies to a consumer that warranty coverage is conditioned on their use of select parts or service – is deceptive under the Magnuson-Moss Warranty Act.

Industry groups hailed the action as a victory for consumers, and for sellers of engine oils, transmission fluids, gear oils and other automotive aftermarket products.

The FTC announced it will make changes to interpretations under the Warranty Act in a final action to be published soon in the Federal Register. The interpretations provide the Commission's views on terms and provisions in the Act.

The Magnuson-Moss Warranty Act prohibits "tying" arrangements that require the warranted product's purchaser buy a particular brand item or service to use with the product to be eligible for warranty coverage, unless the item or service is provided free of charge.

The revised wording now stipulates, "warranty language that implies to a consumer acting reasonably in the circumstances that warranty coverage requires the consumer's purchase of an article or service identified by brand, trade or corporate name is similarly deceptive." FTC further noted that a provision in the warranty such as, "use only an authorized 'ABC' dealer" or "use only 'ABC' replacement parts" is prohibited where the service or parts are not provided free of charge pursuant to the warranty. This still doesn't preclude a warrantor from expressly excluding liability for defects or damage caused by "unauthorized" articles or service, nor does it preclude the warrantor from denying liability if the warrantor can demonstrate that the defect or damage was so caused.

Many industry groups and companies banded together as the Uniform Standards in Automotive Products Coalition to comment to the FTC about the Act in 2011. Coalition members include the Independent Lubricant Manufacturers Association and the Automotive Oil Change Association, the Automotive Aftermarket Industry Association, Express Oil Change LLC, and dozens of other industry groups, including automotive repair and tire industry organizations and petroleum marketing groups. Although "tying" concerns about General Motors' Dexos motor oil specification were the most prominent examples cited by the groups, the coalition also criticized the warranties of other carmakers such as Nissan, which required use of its own branded automatic transmission fluid.

"It's a significant improvement over what we had, though it's short of what the coalition wanted," ILMA's legal counsel Jeffrey Leiter, of Leiter & Cramer PLLC, told Lube Report yesterday. "But it certainly goes a ways to address the concerns we had. FTC agreed with the concerns that there could be an improper tying arrangement."

The Automotive Oil Change Association said in a news release that, "this represents a significant departure from prior interpretation that essentially recognized nothing short of a manufacturer prefacing tie-in sales requirements with 'this warranty is void if you don't use your branded products and/or services' – a phrase savvy automakers found many ways to dance around."

AOCA noted that FTC is also clarifying that neither service bulletins nor managerial contentions are enough to deny a consumer warranty coverage over the use of non-branded products and services.

"After 12 years of advocating for more effective MMWA enforcement policies, we in the fast lube industry are both gratified and relieved that FTC has made this historic shift to protect consumers and level the aftermarket playing field," said AOCA President Len Minco in the release.

While the FTC's change is response to comments received in 2011, AOCA's policy advisor, Joanna Johnson, told Lube Report, "it is unlikely a coincidence that the two examples they highlight for problematic implied tying situations match the complaints filed against BMW MINI and Kia Motors by AOCA, Auto Care, Service Station Dealers of America, and Tire Industry of America during FTC's rule review period."

On March 19, the FTC issued an administrative complaint against BMW of North America LLC. The FTC alleged that BMW's Mini Division violated the "tie-in provision" of the Magnuson-Moss Warranty Act of 1975 by stating in Mini vehicles' owner manuals, beginning with 2012 models, that "only Mini dealers are to perform oil changes," lest the four-year, 50,000-mile limited warranty be rejected. BMW agreed to a pending settlement, saying it will discontinue the practice. Lube Report covered the BMW settlement in the April 1, 2015, edition.

Johnson said that overall, "it's a big step forward for those who have the knowledge and inclination to stand up for themselves no matter what steps automakers may take next. The hurdle here is that the same consumers who didn't know about the MMWA tie-in sales prohibition in April won't know about the recognition of implied ties in June. Going forward, the best way to maximize the expanded protection in FTC's new interpretation is for professional fast-lube operators and all other automotive aftermarket-related businesses to proactively educate customers about their rights. It's actually a great opportunity to pass on good news."

To view the pre-publication version of the Federal Register final action, visit the page at the FTC web site.