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## **Motor & Equipment Manufacturers Association**

### **Comments on**

### **Request for Comment Concerning Interpretations of the Magnuson-Moss Warranty Act**

**FTC Matter No. P114406**

**October 24, 2011**

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### **Introduction**

The Motor & Equipment Manufacturers Association (MEMA) represents over 700 companies that manufacture motor vehicle parts for use in the light vehicle and heavy-duty original equipment and aftermarket industries. MEMA represents its members through four affiliate associations: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA). Motor vehicle parts suppliers are the nation's largest manufacturing sector, directly employing over 685,000 U.S. workers and contributing to over 3.2 million jobs across the country. This industry is a leader in developing technologies critical to making today's vehicles safer and more fuel efficient and is investing in product development to help meet future consumer demand. Suppliers also manufacture the aftermarket products necessary to repair and maintain over 247 million cars and trucks on the road today. Without the contributions of the nation's parts suppliers, domestic vehicle manufacturing and maintenance would grind to a halt, adversely affecting the way we drive and go about our daily lives.

MEMA welcomes the opportunity to provide this response to the Federal Trade Commission's ("FTC" or "Commission") August 23, 2011 Request for Comment ("Request for Comment") on the Commission's warranty-related Interpretations, Rules, and Guides ("Interpretations") under the Magnuson-Moss Warranty Act (the "Act"). Specifically, MEMA's comments will focus on Section 102(c) of the Act, which prohibits the use of the vehicle warranty to tie-in the sale of parts in the automotive aftermarket. 15 U.S.C. sec. 2302(c).<sup>1</sup>

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<sup>1</sup> Section 102(c) of the Act states:

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.

15 U.S.C. sec. 2302(c).

Since its passage in 1975, the Magnuson-Moss Warranty Act has been extremely important to the health and prosperity of the independent automotive aftermarket for service and repair, typically providing consumers with a lower-priced alternative to automotive dealer repair, as well as more convenient, quality repairs, closer to the consumer's residence, and on-demand. A thriving independent aftermarket also serves a broader public good, providing a necessary check to rising repair costs and increasing consumer access and choice, while encouraging consumers to make repairs that will foster safer, more fuel-efficient, and more environmentally friendly driving. Clear interpretive guides from the Commission as to the rights and obligations provided by the Act and vigilant enforcement of violations by the Commission are essential to fulfilling the Act's purposes and ensuring the continued participation of the automotive aftermarket in the repair of new and used vehicles.

## The Commission Should Use Existing Authority To Enforce Violations of the Act

Overall, MEMA believes that the Commission's existing guidelines and rules interpret the Act in a fair and balanced manner. However, MEMA does believe that the Commission needs to take action when vehicle manufacturers fail to follow the requirements of the law and issue misleading statements about the implications of aftermarket repair for their vehicle warranty. There are numerous recent examples of vehicle manufacturers sending announcements to vehicle owners "recommending" that service only be conducted at franchised dealers and warning that the vehicle warranty could be voided by the use of non-original equipment parts. *See, e.g.*, Aug. 20, 2010 Position Statement from American Honda, "Honda Genuine Parts;" Aug. 20, 2010 Position Statement from American Honda, "Acura Genuine Parts;" Sept. 29, 2010 General Motors Remarketing/Rental Support Bulletin #RS-11-01; Aug. 12, 2011 Statement from Mazda North American Operations, "Mazda Recommends Use of Genuine Mazda Parts" (these four statements are attached as Exhibit 1 hereto).

For example, citing to no support for its sweeping conclusion, the Aug. 12, 2011 Mazda statement warns vehicle owners that they should not use aftermarket parts because "[t]hese 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." This statement alone is demonstrably untrue. MEMA members typically meet high quality standards and conduct rigorous testing of their products, as part of their pledge to be a "Full Service Supplier."<sup>2</sup> Many MEMA members make both original equipment and aftermarket parts and components, using similar exacting criterion for excellence in their aftermarket manufacturing processes related to raw materials procurement, management, production and inspection as used in their original equipment manufacturing operations.

The Mazda statement then concludes that, "The original warranty could become invalid if aftermarket parts **contribute** to the damage of original parts." (Emphasis added.) In fact, the Magnuson-Moss Act as well as the Commission's rules and interpretations clearly state

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<sup>2</sup> For more information about the quality and service standards met by MEMA/AASA "Full Service Suppliers," see <http://www.aftermarketsuppliers.org/Advocacy/Know-Your-Parts/Full-Service-Suppliers.html>

that, to deny a warranty based on the use of an aftermarket part, the aftermarket part must “*cause* the defect or damage” and the vehicle manufacturer must “*demonstrate* that the defect or damage was so *caused*.” 16 C.F.R. § 700.10(c). Mazda’s general statement about a “contribution” by aftermarket parts significantly understates the burden of proof requirement on the vehicle manufacturer. It is not even clear what “contributing” to an engine or component failure means in this context, other than to scare vehicle owners into believing that the very narrow exception for warranty denials provided by the Act, is instead so large that no aftermarket service should ever be risked.

MEMA does appreciate the Commission’s very helpful July 2011 FTC Consumer Alert on Auto Warranties (attached as Exhibit 2), which we believe the Commission intended to counteract some of these vehicle manufacturer statements. But we also believe that the Commission should address directly with vehicle manufacturers any violations of the existing rules. The fact that these statements have proliferated in the last six months, especially since August 2011, suggests that vehicle manufacturers may believe that FTC enforcement of Magnuson-Moss has lapsed or, at least, is inattentive.

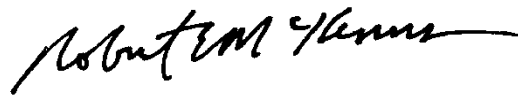
Inaccurate and misleading vehicle manufacturer statements regarding aftermarket repair impact not only individual vehicle owners, but also fleet owners and retail store locations, all of which become more reluctant to use and keep in their inventories high quality, brand name aftermarket parts when vehicle manufacturers undertake disingenuous efforts to convince vehicle owners not to use aftermarket parts and service.

## Conclusion

MEMA supports the Commission’s existing rules and interpretations of the Act, and encourages the Commission to do more to ensure compliance with the Act.

Please feel free to contact Ann Wilson, MEMA Senior Vice President of Government Affairs at (202) 312-9246, with any questions related to our comments.

Respectfully submitted,



Robert E. McKenna  
President and CEO



## POSITION STATEMENT

### **SUBJECT: HONDA GENUINE PARTS**

TORRANCE, Calif., August 20, 2010 – The original parts used on a Honda automobile are designed and built to work together within their respective systems to provide optimum performance, safety and system integrity.

American Honda recommends that all maintenance and repairs are performed using Honda recommended procedures and Honda Genuine parts, which are designated for use in the specific Honda vehicle.

Other parts – whether aftermarket, counterfeit or gray market – are not recommended. The quality, performance, and safety of these parts and whether they are compatible with a particular Honda vehicle are unknown. Only by purchasing Honda Genuine parts through an authorized US Honda dealer can you be assured of the replacement part's authenticity, reliability and compatibility.

American Honda's new vehicle warranty and replacement parts warranty do not apply to any part which is not purchased from an authorized US Honda dealer. American Honda will not be responsible for any subsequent repair costs associated with vehicle or part failures caused by the use of parts other than Honda Genuine parts purchased from an authorized US Honda dealer.

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## POSITION STATEMENT

### **SUBJECT: ACURA GENUINE PARTS**

TORRANCE, Calif., August 20, 2010 – The original parts used on an Acura automobile are designed and built to work together within their respective systems to provide optimum performance, safety and system integrity.

American Honda recommends that all maintenance and repairs are performed using Acura recommended procedures and Acura Genuine parts, which are designated for use in the specific Acura vehicle.

Other parts – whether aftermarket, counterfeit or gray market – are not recommended. The quality, performance, and safety of these parts and whether they are compatible with a particular Acura vehicle are unknown. Only by purchasing Acura Genuine parts through an authorized US Acura dealer can you be assured of the replacement part's authenticity, reliability and compatibility.

American Honda's new vehicle warranty and replacement parts warranty do not apply to any part which is not purchased from an authorized US Acura dealer. American Honda will not be responsible for any subsequent repair costs associated with vehicle or part failures caused by the use of parts other than Acura Genuine parts purchased from an authorized US Acura dealer.

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GM Remarketing  
Rental Support Bulletin # RS-11-01



### All 2011 Cadillac V6 and V8 Oil Filter Requirements

All 2011 Cadillacs are equipped with a "High Feature" V6 or V8 engine that requires the use of an AC / Delco (Blue) oil filter. Some non-AC / Delco oil filters have been known to cause engine failure when internal filter components are passed through the engine.

***The New Vehicle Limited Warranty does not cover damage caused by the installation of non-GM (General Motors) parts***

**Please see the 2011 Cadillac New Vehicle Warranty Book for additional information regarding warranty coverage and maintenance schedules.**

When a 2011 Cadillac is returned to General Motors as part of the General Motors Rental Repurchase Program, it should not be rejected because it has, what appears to be, an original equipment oil filter, regardless of vehicle mileage.

**Should a 2011 Cadillac be returned with an aftermarket (Non-AC / Delco) oil filter it should be deemed "currently ineligible" and returned to the rental account for installation of the correct AC / Delco filter.**

Please contact your General Motors Remarketing Representative with any questions.

Typical AC / Delco oil filter



**EXHIBIT 1**

# MAZDA RECOMMENDS USE OF GENUINE MAZDA PARTS

Published on 08/12/2011

*- Use of aftermarket parts may jeopardize performance, safety and durability -*

IRVINE, Calif. (August 12, 2011) - Mazda North American Operations (MNAO) 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. Genuine Mazda Parts are made from the same blueprint as the original parts found in production vehicles, ensuring that each part is guaranteed to perform seamlessly and wear the same as the day the vehicle was built.

MNAO 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. Without access to original manufacturing specifications, their fit and finish can also be dramatically different.

Only 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. Even lease-end charges can be affected if the replacement parts fit poorly. MNAO will not be responsible for any subsequent repair costs associated with the vehicle or part failure caused by the use of parts other than Genuine Mazda Parts purchased from an authorized Mazda dealer.

Mazda North American Operations is headquartered in Irvine, Calif. and oversees the sales, marketing, parts and customer service support of [Mazda vehicles](#) [1] in the United States, Canada and Mexico through nearly 900 dealers. Operations in Canada are managed by Mazda Canada, Inc., located in Ontario; and in Mexico by Mazda Motor de Mexico in Mexico City.

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Source URL: <http://www.mazdausamedia.com/content/mazda-recommends-use-genuine-mazda-parts>

**EXHIBIT 1**

**Links:**

[1] <http://www.mazdausa.com/MusaWeb/displayModelSelector.action>

# FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Division of Consumer & Business Education

## Auto Warranties, Routine Maintenance, and Repairs: Is Using the Dealer a Must?

If you own a car, you know how important it is to keep up with routine maintenance and repairs. But can a dealer refuse to honor the warranty that came with your new car if someone else does the routine maintenance or repairs?

The Federal Trade Commission (FTC), the nation's consumer protection agency, says no. In fact, it's illegal for a dealer to deny your warranty coverage simply because you had routine maintenance or repairs performed by someone else. Routine maintenance often includes oil changes, tire rotations, belt replacement, fluid checks and flushes, new brake pads, and inspections. Maintenance schedules vary by vehicle make, model and year; the best source of information about routine scheduled maintenance is your owner's manual.

### *What is a warranty?*

A warranty is a promise, often made by a manufacturer, to stand behind its product or to fix certain defects or malfunctions over a period of time. The warranty pays for any covered repairs or part replacements during the warranty period.

### *Do I have to use the dealer for repairs and maintenance to keep my warranty in effect?*

No. An independent mechanic, a retail chain shop, or even you yourself can do routine maintenance and repairs on your vehicle. In fact, the Magnuson-Moss Warranty Act, which is enforced by the FTC, makes it illegal for manufacturers or dealers to claim that your warranty is void or to deny coverage under your warranty simply because someone other than the dealer did the work. That said, there may be certain situations where a repair may not be covered. For example, if you or your mechanic replaced a belt improperly and your engine is damaged as a result, your manufacturer or dealer may deny responsibility for fixing the engine under the warranty. However, according to the FTC, the manufacturer or dealer must be able to demonstrate that it was the improper belt replacement — rather than some other defect — that caused the damage to your engine. The warranty would still be in effect for other parts of your car.

### *Will using 'aftermarket' or recycled parts void my warranty?*

No. An 'aftermarket' part is a part made by a company other than the vehicle manufacturer or the original equipment manufacturer. A 'recycled' part is a part that was made for and installed in a new vehicle by the manufacturer or the original equipment manufacturer, and later removed from the

vehicle and made available for resale or reuse. Simply using an aftermarket or recycled part does not void your warranty. 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. Still, if it turns out that the aftermarket or recycled part was itself defective or wasn't installed correctly, and it causes damage to another part that is covered under the warranty, the manufacturer or dealer has the right to deny coverage for that part and charge you for any repairs. The FTC says the manufacturer or dealer must show that the aftermarket or recycled part caused the need for repairs before denying warranty coverage.

## **Tips To Avoid Warranty Issues**

Here's how to get the most out of your vehicle's warranty:

- **Read your warranty.** Often bundled with your owner's manual, the warranty gives a general description and specific details about your coverage. If you have misplaced your owner's manual, look for it online. Check the "Owners" section of your manufacturer's website.
- **Be aware of your warranty period.** If problems arise that are covered under the warranty, get them checked out before the warranty expires.
- **Service your car at regular intervals.** This is a good idea in any case. But for the sake of keeping your warranty intact, follow the manufacturer's recommended service schedule. Details are in your owner's manual.
- **Keep all service records and receipts, regardless of who performs the service.** This includes oil changes, tire rotations, belt replacement, new brake pads, and inspections. Create a file to keep track of repairs; it will come in handy if you have to use your warranty. If you ever have a warranty claim and it appears that you did not maintain your vehicle, your claim could be denied.
- **Complain.** If you think a dealer's service advisor denied your warranty claim unfairly, ask to speak with a supervisor. If you still aren't satisfied, contact the manufacturer or go to another dealer. You also may wish to file a complaint with your state Attorney General, local consumer protection office, local Better Business Bureau, or the FTC.

## **For More Information**

Visit [ftc.gov](http://ftc.gov) for free information on buying, financing, leasing, renting and maintaining vehicles.

The FTC works to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or get free information on consumer issues, visit [ftc.gov](http://ftc.gov) or call toll-free, **1-877-FTC-HELP** (1-877-382-4357); TTY: 1-866-653-4261. Watch a new video, *How to File a Complaint*, at [ftc.gov/video](http://ftc.gov/video) to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.