

FTC WARNS AGAINST WARRANTY CONDITIONS THAT VIOLATE MAGNUSON-MOSS WARRANTY ACT

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The FTC has sent warning letters to six major companies that market and sell automobiles, cellular devices, and video gaming systems warning against warranty tie-in provisions that state consumers must use specified parts or service providers to keep their warranties intact.

Unless warrantors provide the parts or services for free or receive a waiver from the FTC, such statements generally are prohibited by the [Magnuson-Moss Warranty Act](#), the federal law that governs consumer product warranties.

Each company that received a warning letter used different language, but here are examples of questionable provisions:

- The use of [company name] parts is required to keep your . . . manufacturer's warranties and any extended warranties intact.
- This warranty shall not apply if this product . . . is used with products not sold or licensed by [company name].
- This warranty does not apply if this product . . . has had the warranty seal on the [product] altered, defaced, or removed.
- The Magnuson-Moss Warranty Act requires warrantors of consumer products to provide consumers with detailed information about warranty coverage. The Act does not require any business to provide a written warranty, and does not apply to oral or implied warranties. However, once a business decides to offer a written warranty on a consumer product, it must comply with the Act.

The Act does not apply to warranties on services, only on goods. However, if a warranty covers both the parts provided for a repair and the workmanship in making that repair, the Act applies.

The Act establishes three basic requirements:

1. Warrantors must title their written warranties as either "full" or "limited." A full warranty means:

- There is no limit on the duration of implied warranties.
- Warranty service is provided to anyone who owns the product during the warranty period.
- Warranty service is provided free of charge.
- Either a replacement or a full refund is provided, at the consumer's choice, if after a reasonable number of tries, the warrantor is unable to repair the product.
- Consumers are not required to perform any duty as a precondition for receiving service, unless the warrantor can demonstrate that the duty is reasonable.
- If any of the above conditions are not met, the warranty is "limited."

2. Warrantors must state certain specified information about the coverage of their warranties in a single, clear, and easy-to-read document.

3. Warrantors must ensure that warranties are available where their warranted consumer products are sold so that consumers can read them before buying.

- For brick-and-mortar retailers, this means that they must make warranties readily available to consumers either by displaying them in close proximity to the warranted products, or by posting signs letting consumers know the warranties are available for review upon request.
- For online sales, warranties can be made available online.
- For mail order or catalog sales, warranty information can appear near the product description or clearly noted on a separate page. If the latter, provide a page reference to the warranty statement near the product description.

The titling requirement applies to all written warranties on consumer products costing more than \$10. The disclosure and pre-sale availability requirements apply to all written warranties on consumer products costing more than \$15.

The Act prohibits attempts to disclaim or modify implied warranties of merchantability – except that retailers who offer a "limited" written warranty can limit the duration of implied warranties to the duration of the limited warranty.

The Act also prohibits tie-in sales provisions that state or imply that a consumer must buy or use an item or service from a particular company to keep their warranty coverage. This is the provision that the FTC warned the six companies about. The exception is that a warrantor can require a consumer

to use select items or services if they're provided free of charge under the warranty, or the warrantor receives a waiver from the FTC.

Finally, warranties must not contain deceptive or misleading terms.

For questions or more information, contact the author, [Merrit Jones](#), at Merrit.Jones@bclplaw.com or 415-675-3435, or any member of our [Retail](#) team.

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Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)

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