

October 24, 2011

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave NW
Washington DC 20580

Re: "Magnuson-Moss Warranty Act Rule Review, 16 CFR part 700, P114406,"

The Center for Auto Safety (CAS) submits the following comments in regard to the above noticed docket. CAS supports the continuing need for the FTC Guidelines and Rules issued under the Magnuson-Moss Warranty Act. CAS is concerned that some provisions need to be tightened due to evasion by industry and that others need to be tightened to address the on-line market place.

16 CFR Part 703 Informal Dispute Settlement Resolution Mechanisms (IDSMS). With the exception of the examinations by the States of Connecticut and Georgia which have found that auto company IDSMS fail to comply with Rule 703, the examinations and audits of auto company IDSMS are woefully inadequate at best and shams at worst. Auto companies sent a clear message to auditors when Frank McLaughlin was let go as an auditor after making critical findings of the Toyota/AAA Autosolve IDSMS.

Under the existing rule, the IDSMS selects the auditor, which is an inherent conflict of interest. Let the manufacturer and/or mechanism pay a fee to the FTC (comparable to what the auditor is paid) and have the FTC do the audit via electronic access to all pertinent documents and records. At least 12 car manufacturers force consumers to use their IDSMS before filing suit under Magnuson Moss because the manufacturers have deemed their IDSMS to be in compliance. The FTC, not the manufacturers, mechanisms and hired auditors, should determine whether the IDSMS are fair and expeditious.

All of the statistical record-keeping requirements under § 703.6 (b-f), because most of the categories are ambiguous, misleading or deceptive. Unfavorable consumer outcomes can be reported as favorable; untimely resolutions can be reported as timely. Since the FTC has yet to take a position whether an IDSMS complies with Rule 703, nebulous, favorable statistics reported by IDSMS can easily mask empirical evidence that might otherwise indicate consumers fare much worse than reported. On this same note, § 703.7 should also be scrapped.

The most widely used auto company IDSMS, the BBB Autoline, adopted a sneaky change in procedure that eviscerates the 40 day deadline in § 703.5(d) for reaching a decision which the FTC staunchly defended in its last examination of Rule 703 in 1999 in stating:

The Commission is concerned that by the time a dispute has ripened to referral to an IDSMS the consumer in many cases has already had to contend with a defective product for a protracted period. The Commission is concerned that any period longer than 40 days would, in many cases, serve only to wear down consumers so they will abandon their attempts to obtain redress.

The BBB has done an end around the 40 day deadline in § 703.5(d) by taking advantage of the requirement in § 703.5(e)(1) that the 40 day deadline doesn't begin to run until the consumer provides "the model number of the product involved." The BBB interprets the model number to be the Vehicle Identification Number. (in reality a VIN is more like a serial number of a product and a vehicle make is more like a model number of a consumer product so the even the BBB interpretation is flawed.) Until recently, the BBB asked the consumer to provide the VIN in its on-line application and in its phone intake but has dropped that question. As a result, a consumer files a application for arbitration with Autoline and believes they are in arbitration but in reality, they are not and stand an easy prey for an auto company who has been informed of the consumer's application by the BBB. Consumer who have enough persistence to penetrate this facade are delayed nearly a month in getting to the 40 day arbitration deadline which the FTC upheld in 1999 but which the BBB and the auto companies have now evaded.

The FTC should amend § 703.5 to provide the 40 day deadline begins upon the consumer filing a substantially complete application regardless of whether the VIN is provided or not because the BBB could remedy that by very simply asking, "What's your vehicle's VIN?"

In regard to service contracts (item B-2), dealers routinely sell cars "as is" with service contracts in the vast majority of states that allow implied warranty disclaimers. Some car dealers now offer extended warranties that blur the line whether they are service contracts (and regulated as insurance in certain states, possibly exempting the dealer from UDAP regulation in at least one state, NC <http://law.onecle.com/north-carolina/66-commerce-and-business/66-370.html> or warranties regulated by Magnuson-Moss. Two FTC publications create confusion where one disallows

the dealer from disclaiming implied warranties if it enters into a service contract with a consumer within 90 days of selling the product, while the other publication allows the disclaimer if the dealer is a seller of consumer products that merely sells service contracts as an agent of a service contract company. The FTC needs to flush out this ambiguity in § 700.11. There is also confusion when a service contract is considered insurance. Some states regulate the service contract underwriter, but not the service contract company. Consequently, there is an ambiguity in several states whether the service contract is regulated as insurance, or enforceable by the FTC and state UDAP laws.

In regard to warranty disclosure (item B-3), online disclosure of warranty terms should not be permitted in lieu of the § 702.3 point of sale requirements. As it is, few manufacturers and retailers comply with the current rule. At least one car manufacturer provides the warranty materials on a DVD instead of a hard copy. The FTC should be enforcing the existing rule to enable consumers to better shop for products according to warranty terms, rather than further dilute this objective in order to accommodate the warrantors. In regard to consumer products sold in a on-line transaction with no point of sale such as a showroom, the website should have the warranty displayed both as a standalone document and popup which is obvious to the consumer and is not buried in fine print in a 40 page terms of sale document which most consumers avoid by clicking I accept.

Respectfully submitted

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