Center for Auto Safety

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Presentation of the Center for Auto Safety

Before the

Federal Trade Commission

Public Hearing on Proposed Regulations

Implementing the Moss-Magnuson Warranty ---

Federal Trade Commission Improvement Act

September 16, 1975

The Center for Auto Safety is pleased to take this opportunity to present its views on the Federal Trade Commission's (FTC) proposed rules implementing Title I of the Moss-Magnuson Warranty -- Federal Trade Commission Improvement Act, P.L. 93-637 (hereinafter "Act").

In general, the Center firmly endorses the proposed regulations which, in accordance with section 102(a) of the Act, are designed to "improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products. . . ." However, the need for effective controls is great, and the proposed regulations are deficient in the protection they offer consumers from deceptive warranties in several respects. Therefore, improvements should be made before the final regulations are adopted.

I. Information Included in the Written Warranty.

If warranties are to provide consumers with adequate information, and the FTC to prevent deception, the final regulation must compel the warrantor to call the consumer's attention to the terms of his warranty. However, section 701.3, as presently written, poses the danger that so much information will be included in written warranties that many consumers will not take the time to read

them, especially since the vast majority of consumers do not anticipate warranty problems when they purchase a consumer product. Thus, consumers may be no more well informed about warranty provisions after these regulations are adopted than they were before their adoption.

To prevent consumers from responding in this fashion, the Center requests that the FTC require that each written warranty have a cover sheet appended to it which summarizes the most important, operative requirements of the warranty in clear, concise language printed in double spaced, bold type. This provision is consistent with the mandate of section 102(a) of the Act that a written warranty "disclose in simple and readily understood language the terms and conditions of such warranty." Thus, the cover sheet should include a list of what the warranty covers, its beginning date and duration (if the warranty contains different durations for different parts the shortest duration only should be listed on the cover sheet to prevent the consumer from believing that the longer warranty applies to all the warranted parts), an explanation of any action the consumer must take to be covered (e.g., mail in a warranty card or have periodic maintenance checks at an authorized dealer), a list of any exclusions or limitations of its coverage and notice of the existence of a dispute resolving Mechanism, if one exists -- i.e., basically a

summary of the requirements imposed by section 701.3(c), (f), (g), (i) and (k). This should provide the minimum amount of information required to ensure that the less prudent consumer at least is aware of the basic framework of the warranty and knows what action, if any, he must take to protect these rights.

This is in no way meant to eliminate the requirement that a full written warranty accompany a consumer product costing over $5. Such requirements, of course, must be complied with. This suggested provision is merely intended to assist the consumer who would otherwise not read the entire warranty document.

Although section 701. 3 requires that the warrantor provide detailed information in the written warranty itself, it does not require that the information be presented in a manner which alerts the consumer to the existence of the warranty terms and hence will not prevent deception. This is because that section, which requires disclosure of more than a dozen items, permits equally "full" and "conspicuous" disclosure of all these items, except for limitation on implied warranties and consequential damages. Thus, the warrantor may use the same type size to disclose every item. But full and conspicuous disclosure of all is adequate disclosure of none.

The consumer faced with an instruction booklet or

owner's manual of ten to fifteen pages, as well as a warranty of two to three pages, is as likely as not to miss or ignore the latter. In order to ensure that every warrantor "red flags" his warranty, section 701.3 should include a requirement that a warranty contain, on the first page (or, if the warranty is contained in a booklet, on the cover) the following words:

IMPORTANT: DO NOT USE WITHOUT
READING THIS WARRANTY

Section 701.3 should further require that these words be printed in larger-sized (or the same-sized, but in different color) type than the "fully" and "conspicuously" disclosed items in the body of the warranty.

II. Specific Disclosure Requirements.

While the Act does not authorize the FTC to require warranties, section 102 thereof does authorize the agency to adopt warranty rules to "prevent deception." Yet, section 701.3(k)(1) and (3) of the proposed regulations permit a warrantor to state warranty modifications, limitations and exclusions, even when such modifications, etc. are "unenforceable under applicable state law." This disclaimer of a disclaimer serves no function other than deception of the consumer who may read no further than the modification, and hence not pursue his claim or, alternatively, read both the modification and the "not enforceable under

state law" disclaimer and, confused, assume that he must abandon all hope.

This must not be allowed to happen. If a warrantor is going to do business in a state, he must be required to do so in an ethical manner and not misstate that state's law and then disavow his misstatement. Any argument that the cost of tailoring warranty forms to conform to state law is too great is mere boilerplate resistance. Any extra cost involved in printing two or three warranty forms containing slightly different language rather than one is de minimus when compared with the total costs involved in offering the warranty in the first place. Clearly, this section of the proposed regulations flouts the Act's mandate that the FTC's warranty rules require disclosure in "simple and readily understood language."

In order to protect the consumers of motor vehicles and mobile homes, consumers whose interests the Center is actively involved in protecting, two additional, specific sections should be added to these regulations. Since warranties on these consumer products are often unclear as to what parts are covered or excluded by the warranty, section 701.3's requirement of a "clear description" of the warranty coverage should include a requirement that these warranties specifically list all parts not covered by th warranty. This is important from both the consumers' a

the seller's standpoint since if the seller is perfectly clear on what parts are covered or excluded (which they frequently are not) he will be more likely to expeditiously handle the consumer's warranty complaints.

Additionally, the information which section 701.3(e) requires be provided concerning the period in which a warrantor will repair a defect should be printed in a bold face type so the consumer is more likely to be aware of his rights concerning his property. This section should also require that a "full" warranty include a statement that a warrantor's failure to meet the warranty alloted time period for repair may result in the warrantor being liable for any damages incurred by the consumer due to this failure to make warranty repairs, i.e., liability for consequential damages.

Section 701 disclosures fall short of the mark in one other respect. Under Article 2 of the Uniform Commercial Code ("UCC," effective in all jurisdictions save Louisiana) a seller may, by appropriate and conspicuous language, exclude or modify all warranties (UCC 2-316(3)). Typically, warrantors of such consumer goods as televisions, radios, toasters, etc. provide warranty registration cards with their products. These cards exclude the UCC's implied warranties of merchantability and fitness for a particular purpose

(UCC §§2-314, 2-315) and the UCC's express warranty provision (UCC §2-313). The consumer who fills out and sends in such a card often receives only the warrantor's agreement to repair the product or replace defective parts for a short period of time -- say 90 days -- in exchange for assent to the exclusion of the above-mentioned warranties. To the consumer, the warranty registration card appears a thoughtful measure taken by the warrantor to protect customers from defective goods; in fact, this card is used to rob the consumer of warranty protection afforded him under the UCC, in short, to deceive him.

To prevent such deception, the FTC should require warrantors who utilize this warranty registration card scheme to disclose that if he fills out and sends in the card, the consumer, though he gains a repair/replacement agreement, loses the implied warranties of merchantability and fitness for a particular purpose and the express warranty: to disclose, in other words, that "you don't get something for nothing."

III. Presale Availability of Written Warranty Terms.

The preamble to proposed regulation Part 702 notes that "the unavailability of consumer product warranties at the point of sale precludes the use of the warranty as informational input in the consumer's purchasing decision,

and as a tool for making product comparisons." Therefore, the proposed regulation requires the pre-sale availability of written warranty terms applicable to consumer products actually costing the consumer more than $5.

Such availability, though necessary to inform consumers, is not sufficient to so do, for section 702.3(a)(3) does not require the seller to inform the consumer of the existence of the warranty binder but merely to make the binder available upon the latter's request. The effectiveness of the proposed regulation thus depends upon the persistence of the consumer and places no affirmative disclosure obligations on the seller. To remedy this oversight, section 702.3(a)(3) must be amended to require the seller to inform the consumer by means of posted notices at least 8½ by 11 inches set in type at least equivalent to typewritten capital letters of the existence and availability of the binder as well as making the binder available to the consumer upon request.

To enable the consumer to more easily read the written warranty in the binder, the Center urges the FTC to require the binder copy of the warranty to contain the double spaced cover sheet previously mentioned summarizing the crucial aspects of the warranty as well as the written warranty itself. Phychologically, this format will appear less

intimidating to the consumer and therefore result in greater consumer usage of the binders.

IV. Time Limitations Applicable to the "Mechanism".

In section 110(a)(1) of the Act, Congress declared it "to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled. . . ." The FTC has given short shrift to this policy in section 703 of its proposed regulations, which permits the Mechanism to take up to 40 days before rendering a decision. For the consumer whose automobile, delivery truck, or mobile home breaks down within the warranty period, the 40 day rule, however "good" the warrantor's "faith," is of little comfort. Such a long time period will encourage consumers to pay for repairs out of their own pocket, not to resort to the Mechanism for the remedy due them under their warranties.

In light of the need for a speedy resolution of warranty disputes, then, the 40 day limit within which the Mechanism must render a decision should be reduced by half -- to 20 days. To facilitate completion of the decision-making process in 20 days, section 703.5 should require that any communication the Mechanism has with warrantor

or consumer for the purpose of obtaining information concerning the dispute should be made by registered, special delivery mail.

The 20 day time limit, reasonable from the consumer's viewpoint, is also reasonable from that of the Mechanism, since delay in the performance of the latter's duties beyond the 20 day time limit is not prohibited where the period of delay results solely from consumer failure to promptly supply information necessary for the decision "in response to a reasonable request." §703.5(e)(4).

To demonstrate the reasonableness of the 20 day time limit consider the following hypothetical: On day one, the Mechanism receives notification of a dispute and immediatley sends registered, special delivery letters to both warrantor and consumer seeking information about the dispute. On day three the letters are received and the information is returned within seven days. Thus, on day 10, the Mechanism has the needed information, but after reviewing it, determines more data is needed. On day 11, it sends second registered, special delivery letters to the parties containing follow-up information requests and asking for an expeditious response. These letters are received three days later on day 13. The responses are received five days later on day 18. After another day for consideration of the facts, the Mechanism decides the

dispute on day 19. Parties interested in a fair and expeditious resolution of the dispute will likely return their responses to the Mechanism more quickly than in the hypothetical. If the consumer is the slow one no one is prejudiced by the time limit as it will be extended. Thus, a 20 day limit has the salutary effect of expediting the resolution of the dispute without precluding one party from presenting important facts due to time deadlines.

V. Operation of the "Mechanism".

Section 703.8 permits access to all records relating to the dispute only to the parties to the dispute. This is an unnecessarily restrictive policy and must be relaxed considerably.

The Mechanism has every appearance of a quasi-judicial proceeding without counsel and direct or cross-examination. As in any judicial or quasi-judicial proceeding, past records and decisions in similar disputes are helpful to both warrantor and consumer, and to forbid them access to such precedent-making records is grossly unfair and serves to protract the dispute rather than encourage settlements since neither party has any feel for what the decision might be.

This secretive, no access policy also gives an

unfair advantage to one warrantor defending many similar cases before the Mechanism. The warrantor can hope to wear down and discourage some consumers from fully and finally pursuing their remedies before the Mechanism even though the warrantor knows that he has lost every previous case decided by the Mechanism. If the consumer were privy to the same facts it is likely that he would pursue his case to its conclusion and not be discouraged by the time delay interposed by the warrantor insisting on a full proceeding before the Mechanism.

Since the Mechanism's decision-making process is a quasi-judicial process, it should be treated like one and all records of each dispute should be public information. The regulations should require that the warranty provision explaining the Mechanism should inform consumers that anyone using the Mechanism waives the right to have any part of the record remain confidential so no consumer who objects to such procedures is misled.

The Center agrees that the Mechanism cannot require the consumer to pay a fee to use its facilities. The definitions of "written warranty," "remedy," "replacement" and "refund" in section 101 of the Act clearly indicate that warranty work is to be performed at no charge. Clearly, this is what a warranty is all about, being made whole at

no additional cost. Thus, to charge a fee for the resolution of warranty disputes through the Mechanism would be the same as charging for warranty repairs, and this is not contemplated by the Act.

For these same reasons, the statement in section 701.3(g) which requires disclosure of "any expenses which must be borne by the purchaser" as a condition precedent to securing warranty performance should be deleted since the consumer should not have to bear any expenses of securing warranty performance.

Similarly, the regulation must prohibit a warrantor from requiring the consumer to pay shipping costs to obtain warranty service on a consumer product. Such fees, presently common terms in many warranties, fly in the face of the definition of "warranty" and the intent behind the Act. To permit them would permit warrantors to deceive consumers on the nature of warranties and this must not occur.

VI. Conclusion.

In order to make these proposed regulations as effective as possible in achieving the goals of the Act, the Center urges that all its proposed changes be adopted in the final regulations.