



June 30, 2021

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: NIXING THE FIX: An FTC Report to Congress on Repair Restrictions

Dear Ms Khan:

The undersigned groups are writing to express our appreciation to the Federal Trade Commission on the findings and conclusion of the recently released report entitled: “Nixing the Fix: An FTC Report to Congress on Repair Restrictions”. The report highlights the barriers that face consumers when they seek independent repairs, including from independent motor vehicle service facilities, for the products they own. The Associations listed below applaud the Commission’s willingness to tackle these right-to-repair issues, and we stand ready to assist in those efforts.

Consumers rely on the independent repair industry, and you have clearly described how the Magnusson Moss Warranty Act (MMWA) does not fully meet the needs of consumers:

“The debate around repair restrictions illustrates the limitations of MMWA’s anti-tying provision in repair markets. While the anti-tying provision gives consumers the right to make repairs on their own or through an independent repair shop without voiding a product’s warranty, repair restrictions have made it difficult for consumers to exercise this right. Although manufacturers have offered numerous explanations for their repair restrictions, the majority are not supported by the record.”

The report goes on to state:

“To address unlawful repair restrictions, the FTC will pursue appropriate law enforcement and regulatory options, as well as consumer education, consistent with our statutory authority. The Commission also stands ready to work with legislators, either at the state or federal level, in order to ensure that consumers have choices when they need to repair products that they purchase and own.”

The report accurately describes the extensive breadth of problems vehicle owners face and recognizes that the Commission can take certain steps relatively quickly without further statutory authority. Our groups have put together a list of recommendations which we urge the



Commission to undertake now and also include suggestions for more substantive actions that may require congressional action.

Education/Compliance

Implementation of certain education/compliance initiatives combined with improved measures to achieve compliance could significantly improve the effectiveness of MMWA. Specifically, one of the major roadblocks experienced by consumers is not knowing about or understanding their MMWA rights or how to enforce them when their warranty claim is denied. This creates a ping pong effect where motorists are caught between the independent shop and the OEM-authorized dealer attempting to determine the actual problem with their vehicle and who is responsible for repairing it. Consumers would benefit in this situation from additional, official guidance regarding their ability to hold an OEM/authorized dealer accountable to explain in writing the justification for denial of the warranty coverage. The importance to consumers of understanding their warranty rights is highlighted by the fact that automobiles are still the first or second-most expensive purchase the average American consumer makes, and most of those consumers rely on those vehicles to get to the jobs necessary to make ends meet.

An example of a real problem faced by motorists is a claim by an OEM/authorized dealer that the destruction of an engine was caused by the use of a non-OEM oil filter. The evidence necessary to prove that claim can only come from an engine tear-down; i.e., a mere visual inspection that indicates the use of a non-OEM oil filter is not sufficient evidence. However, most car owners would not know that it is the duty of the manufacturer to demonstrate the cause of the issue and thus the dealer or manufacturer can avoid warranty responsibility simply by blaming the aftermarket part for the issue.

In order to improve consumer education and promote compliance with MMWA by dealers and manufacturers, we urge the Commission to:

- Require OEMs/authorized dealers to provide written notice of MMWA rights at the time of any vehicle warranty repair denial and a written explanation of the evidence justifying warranty coverage denial.
- Require OEMs/authorized dealers to provide written notice of any maintenance or repair claimed to be required as a result of prior vehicle maintenance with an aftermarket part and/or done by an aftermarket service provider. This must be done prior to performing the maintenance or repair.
- Update FTC educational materials to note that consumers have the right to modify their vehicle and that warranty repairs may not be denied simply by the presence of a non-original, recycled or specialty part.
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- Mandate that disclosure of MMWA rights be included with warranty information provided at the time of vehicle purchase in a clear and obvious manner.
- Update FTC's online consumer complaint form by adding notice of MMWA rights and contract dispute resolution options, e.g., BBB Auto Line, for vehicle warranty denial situations.
- Provide a specific site where automotive consumers can report MMWA-related issues experienced with OEMs/authorized dealers rather than forcing them to navigate the general consumer complaint site. Such action would both guide consumers in their stressful time of transportation crisis and provide improved compliance efforts for the Commission.

Manufacturers' Marketing Practices

The FTC report discusses several examples where manufacturers provide communications that appear to discourage the use of non-original equipment parts or services, either in a technical service bulletin or in language used in an owner's manual. Often technical bulletins include recommendations that are couched in terms that appear to threaten or outright deny warranty coverage if a non-original equipment part is used.

In addition, manufacturers have been advocating for bills in state legislatures across the nation that would require repair shops to use OEM procedures when performing collision repairs. While we do not dispute that shops must use the proper procedures in order to perform repairs, these procedures also "promote" the use of OEM replacement parts, making it appear that they are *required* in order to correctly complete the repairs.

In order to ensure that consumers are receiving accurate information, we urge the FTC to:

- Establish guidelines for an MMWA anti-tying compliance notice to be included in any communications between OEMs and franchised dealers regarding recommendations for use of any original equipment part or service, including maintenance and repair directives.
- Require manufacturers to include a disclosure in all repair procedures not covered by a warranty or recall that service providers are not required to use OEM parts and that they should consider all parts sourcing options when authorizing repairs.

Of further concern, automakers have been exploiting a semantic technicality to avoid the MMWA prohibition against tie-in sales of brand products by requiring OEM *brand specification* fluids such as antifreeze and transmission fluid to maintain warranty coverage. In this anti-consumer scenario, an OEM requires their brand fluid and includes the name of that brand fluid's specification, but restricts access to it as proprietary property. That means a competitor can only



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make a competing brand specification fluid if they pay to get that fluid approved by the OEM or they'll be attacked for fraud and/or stealing intellectual property. All fluids of that approved *brand specification* type are then (1) far more costly to consumers due to the expensive OEM fees involved, and (2) only available as the OEM allows, both of which are against the public interest (15 U.S.C. § 2302(c)(2)).

Moreover, the OEM also has not proven that its *brand specification fluid* is the only one with which the vehicle could function properly (15 U.S.C. §2302(c)(1)) while the national fleet is flush with millions of examples of vehicles successfully operating with non-brand specification fluids that may actually be *superior* products. If an OEM requiring a brand product to maintain warranty coverage is an unlawful tie-in sale, then so is an OEM requiring a *brand product specification* where the OEM retains exclusive control of the specification's use. Therefore, if a manufacturer makes a brand fluid specification requirement, then they must either make that specification available so non-OEM companies can provide competitive, compliant products or acknowledge the alternative acceptability of fluids meeting the "suitable for use" standard, such as the one for transmission fluid that is codified in the current NIST Handbook 130.¹

We urge the FTC to:

- Recognize that an OEM requiring a *brand product specification* where the OEM retains exclusive control of the specification's use is a form of prohibited tie-in sale of branded products under 15 U.S.C. §2302(c).
- Establish disclosure requirements for OEMs when any brand fluid/part specification is required to maintain warranty coverage such that non-OEM suppliers can ensure to consumers that their products are consistent with or superior to manufacturer specifications.

Enforcement Measures

Developing better enforcement tools for the Commission is more critical than ever. Having a database focused on MMWA would help the FTC better track those types of consumer

¹ NIST Handbook 130 Method of Sale Regulations §2.36.1. Products for Use in Lubricating Transmissions. – Transmission fluids shall meet the original equipment manufacturer's requirements for those transmissions or have demonstrated performance claims to be suitable for use in those transmissions. Where a fluid can be licensed against an original equipment manufacturer's specification, evidence of current licensing by the marketer is acceptable documentation of performance against the specification. In the absence of a license from the original equipment manufacturer, adherence to the original equipment manufacturer's recommended requirements shall be assessed after testing per relevant methods available to the lubricants industry and the state regulatory agency. Suitability for use claims shall be based upon appropriate field, bench, and/or transmission rig testing. Any manufacturer of a transmission fluid making suitable-for-use claims shall provide, upon request by a duly authorized representative of the Director, credible documentation of such claims. If the product performance claims published by a blender and/or marketer are based on the claim(s) of one or more additive suppliers, documentation of the claims may be requested in confidence by a duly authorized representative of the Director. Supporting data may be supplied directly to the Director's office by the additive supplier(s).

complaints from the rest. Further, it would be helpful to cross check automotive-related MMWA complaints with consumer complaints made to the National Highway Traffic Safety Administration (NHTSA). The Hyundai/Kia Theta II engine defect case is a perfect example of how disconnects in the current federal complaint system allow defective vehicles and related OEM mistreatment of consumers to avoid enforcement for years. In the Theta II case, OEMs/authorized dealers made an official practice of denying warranty coverage for the engine defects to consumers who obtained oil changes at non-OEM/dealer locations by claiming a non-OEM oil filter caused every defect. Consumers reported this problem to NHTSA but apparently not to the FTC, although several of the undersigned Associations alerted the FTC to the problem as early as 2012. Meanwhile, NHTSA waited years for a sufficient number of fire-related complaints before taking significant action.

The major repair costs experienced by consumers in the Theta II case would have been avoided with MMWA-specific questions and/or educational information within the complaint systems and an automatic cross-check on complaints between the FTC and NHTSA.

We urge the FTC to:

- Work with NHTSA to create a link between NHTSA's consumer complaint/recall system and FTC's consumer complaint system for consumers experiencing (a) warranty denial based on unlawful tie-in sales of brand products and/or services; and/or (b) repeated repair denials based on OEM/authorized dealer inability to diagnose or repair a substantial symptom such as stalling, shuddering, and knocking.

Commercial Vehicles

The MMWA does not address issues related to commercial vehicles. The warranties for commercial vehicles should also be covered by MMWA in order to prevent anti-competitive actions by OEMs. Small and medium-sized commercial vehicle repairers can't compete without MMWA protections.

We strongly recommend that the FTC:

- pursue legislative revisions to MMWA such that commercial vehicles would be included in the conditioning provisions of the Act.

Telematics

The vast majority of new vehicles sold today have the capacity for wireless transmission of data through telematics. This data has the potential to provide extensive benefits to consumers



including improved safety and more efficient repairs. However, OEMs continue to impose control over access to this data, meaning that a vehicle may be owned by an individual, but that individual has no control over their vehicle data. Instead, the vehicle data is collected and used by the OEM with little to no notice to, or consultation with, the owner of the vehicle. Access to mechanical vehicle data is critical to ensuring that independent shops can provide repairs and maintenance for vehicles. Therefore, if the current control of data by OEMs is left unchecked, they will be the gatekeepers for in-vehicle data, ultimately determining whether a competitive marketplace continues to exist to the point of rendering the MMWA irrelevant.

Finally, although telematics can be a useful tool for the motoring public in terms of improving real-time communication of maintenance needs and possible vehicle malfunctions, it should not become a closed-loop “capture” tool for OEMs to command use of their authorized dealers. Ensuring that vehicle owners can choose where they have their vehicles maintained and repaired will make telematic systems beneficial to consumers and in the end, make them more likely to have a favorable experience with their vehicle.

We urge the FTC to:

- Obtain passage of legislation to mandate that vehicle owners (1) have access and control of their vehicle’s mechanical data, and (2) can authorize the data to be directly accessible to the repair facility where they choose to do business.
- Work with NHTSA to develop cybersecurity standards that permit standardized and secure access to data by entities authorized by owner to obtain access.
- Require automakers to reprogram in-vehicle messaging to cease commanding consumers back to authorized dealers.
- Require automakers to provide a means whereby non-dealer repair facilities can be included as a choice for vehicle owners when a repair alert is sent to an in-vehicle system.

We hope this information is helpful. We would like to arrange a meeting in the near future with the Commission to further discuss our suggestions and to determine if there is additional assistance that our groups could provide the FTC in order to address this very important issue.

Sincerely,

Auto Care Association

Automotive Oil Change Association

Automotive Recyclers Association

CAR Coalition

Service Station Dealers Association

Specialty Equipment Market Association

Tire Industry Association



Associations' Background:

Auto Care Association:

The Auto Care Association is the voice of the \$380 billion plus auto care industry. We provide advocacy, educational, networking, technology, market intelligence and communications resources to serve the collective interests of our members. Auto Care Association serves the entire supply chain of the automotive aftermarket: nearly 3,000 member companies that represent 150,000 businesses in the industry that manufacture, distribute and sell motor vehicle parts, accessories, tools, equipment, materials and supplies, and perform vehicle service, maintenance and repair.

Automotive Oil Change Association (AOCA):

The Automotive Oil Change Association (AOCA) is a non-profit trade organization representing over 4,800 auto maintenance centers throughout the United States, Mexico, Canada and many other countries around the world. The association was founded in 1987 to represent the convenient automotive service industry, and its mission is to provide its members with the business tools, resources and education to professionally and successfully deliver convenient automotive oil changes and other preventive maintenance services.

Automotive Recyclers Association (ARA):

The Automotive Recyclers Association (ARA) represents an industry dedicated to the efficient removal and reuse of “green” automotive parts and the proper recycling of inoperable motor vehicles. ARA represents the interests of over 4,500 auto recycling facilities in the United States and fourteen other countries around the world. ARA members provide consumers with quality, low-cost alternatives for vehicle replacement parts, while preserving our environment for a “green” tomorrow.

CAR Coalition (CAR):

The CAR Coalition is committed to preserving and protecting consumer choice and affordable vehicle repair by ensuring competition in the automotive collision parts industry. Members include: Allstate, American Property Casualty Insurance Association (APCIA), Automotive Body Parts Association (ABPA), Automotive Manufacturers Equipment Compliance Agency, Inc. (AMECA), AutoZone, Certified Automotive Parts Association (CAPA), Diamond Standard, Geotab, KSI Auto Parts, and LKQ Corporation. Learn more at carcoalition.com



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Specialty Equipment Market Association (SEMA):

The Specialty Equipment Market Association operates as a non-profit organization. The Organization provides research data, trends, and market growth information to manufacturers, distributors, retailers, publishing companies, auto restorers, street-rod builders, restylers, car clubs, and race teams. Specialty Equipment Market Association serves communities in the United States.

Service Station Dealers of America (SSDA-AT):

Service Station Dealers of America and Allied Trades (SSDA-AT) is a national association composed of individual and state affiliate associations representing service station dealers, repair facilities, car washes, and convenience stores. For over 57 years, SSDA-AT has worked for the betterment of its members as a voice on Capitol Hill, with federal regulators, with the media, in the courts, and with suppliers.

Tire Industry Association (TIA):

The Tire Industry Association (TIA), with a 100-year history representing all segments of the national and international tire industry, is the leading advocate as well as instructor in technical training of tire service technicians. For more information, visit www.tireindustry.org or call 800-876-8372.