

Warranties and Guarantees

The Federal Trade Commission (“FTC”) regulates warranties and guarantees pursuant to the Magnuson-Moss Warranty Act (the “Act”), 15 U.S.C. § 2301-2312, and the Federal Trade Commission Act, 15 U.S.C. § 45. In 1985, the FTC issued its Guides for the Advertising of Warranties and Guarantees (the “Guides”), 16 C.F.R. § 239, to help warrantors comply with the Act.

1. THE MAGNUSON-MOSS WARRANTY ACT

The Act requires sellers and manufacturers of consumer products sold with written warranties to fully and conspicuously disclose the terms and conditions of such warranties in simple and understandable language. The Act does not require all sellers and manufacturers of consumer products to provide written warranties. Rather, it simply regulates the written warranties for consumer products that are provided by sellers and manufacturers.

a. Full Warranties

A written warranty, also referred to as an express warranty, must be characterized as either “full” or “limited” in accordance with the terms of the Act. When a seller or manufacturer provides a “full” warranty on a consumer product, a consumer can expect that (1) if the product is defective, it will be repaired or replaced for free; (2) the product will be repaired within a reasonable period of time; (3) the consumer does not have to do anything unreasonable to receive warranty service; (4) the warranty is valid during the entire

warranty period, regardless of who owns the product; (5) the consumer may get a replacement product if the product has not been repaired after several attempts; (6) completion of a warranty registration card is completely voluntary and does not affect the validity of the warranty; and (7) the implied warranties of merchantability (the product is in proper condition for sale and functions as intended) and fitness for a particular purpose (the product can be used for a particular purpose, as advised by the seller) are not disclaimed or limited during the warranty period. A “full” warranty does not necessarily cover the entire consumer product and does not entitle a consumer to misuse a consumer product and then receive warranty service. In addition, a “full” warranty does not have to last for a particular length of time (although the duration must be stated) or be available in all geographic areas. The seller or manufacturer may establish the parameters of the warranty. Finally, a “full” warranty does not obligate a warrantor to pay for consequential or incidental damages associated with a consumer’s use of the consumer product. Very few products are sold with “full” warranties.

b. Limited Warranties

When a seller or manufacturer provides a “limited” warranty, a consumer can expect that it is receiving less than “full” warranty coverage. A “limited” warranty indicates that the warrantor is not assuming all of the responsibilities for the consumer product, and accordingly, a

consumer may have to pay certain costs. For instance, a “limited” warranty may inform a consumer that the warrantor will only pay for replacement parts, but that the consumer must pay for the labor associated with replacing the parts. Other examples include: (1) limiting the warranty to repairs only; (2) requiring the return of a warranty registration card in order to obtain warranty service (note: this is not allowed under a “full” warranty); (3) not allowing the warranty to be transferred to another individual; (4) requiring the consumer to return the product to the store for service (even if it is very heavy); and (5) limiting the duration of the implied warranties of merchantability and fitness for a particular purpose. However, just because a warranty is “limited” does not mean that the consumer product is inferior or will not function as promised. In addition, a “limited” warranty does not imply that only part of the consumer product will be covered under the warranty or that the warranty will last for a particular time period. Again, a seller or manufacturer is free to establish the parameters of the warranty.

Regardless of whether a seller or manufacturer chooses to provide a “full” or “limited” written warranty, it must clearly state the type of warranty it is providing. As noted above, a “full” warranty must state the duration, such as “Full Five Year Warranty.” A limited warranty must simply be stated as “Limited Warranty.” The “full” or “limited” warranty must also include an explanation of the warranty coverage and the warranty remedy to inform consumers what the warranty includes and what the warrantor will or will not do if a product is defective.

2. THE GUIDES FOR THE ADVERTISING OF WARRANTIES AND GUARANTEES

The FTC issued its “Guides” to help sellers and manufacturers comply with the Act and avoid unfair or deceptive practices in advertising warranties and guarantees. The Guides address written warranties for consumer products as governed by the Act and the FTC’s Rule on Pre-Sale Availability, 16 C.F.R. § 702. Pursuant to the Guides, if an advertisement mentions a warranty or guarantee for a consumer product that costs a consumer more than \$15.00, the advertisement must disclose with clarity and prominence that the prospective purchaser may view the written warranty prior to the sale at the place where the product is sold. If the advertisement appears in a catalog or other solicitation for mail or telephone order sales, the advertisement must clearly and prominently disclose that prospective purchasers can obtain complete details of the warranty coverage by making a written request to the seller or from the catalog or solicitation (if applicable).

The FTC’s Guides also address “satisfaction guarantee” representations made by sellers or manufacturers. If a seller or manufacturer wishes to provide a “satisfaction guarantee” or similar representation in its advertising (i.e., “money back guarantee”), it must be prepared to fully refund the purchase price of the product at the purchaser’s request. If there is any material limitation to the “satisfaction guarantee,” the limitation(s) must be disclosed clearly and prominently. Similarly, if a seller or manufacturer claims in its advertisement that a product has a “lifetime” guarantee or warranty or a similar representation that indicates the duration of the guarantee or warranty, the seller or manufacturer must ensure that prospective purchasers will easily notice

and understand the term of the guarantee or warranty.

Regardless of whether a seller or manufacturer makes a warranty claim or a guarantee claim, the seller or manufacturer must be able to fully perform its obligations under the warranty or guarantee. Accordingly, a seller or manufacturer should only make a warranty or guarantee claim if it can promptly and completely meet its obligations.

3. REMEDIES

A seller or manufacturer's failure to comply with the provisions of the Act may result in injunctive or monetary relief. Pursuant to the Act, a consumer may bring a civil action against a seller or manufacturer for failing to comply with a warranty obligation. In the civil action, the consumer may seek damages and even the recovery of costs and expenses (including attorney's fees). A class action may not be brought against a seller or manufacturer, unless the seller or manufacturer is first provided with a reasonable opportunity to cure its failure to comply with a warranty obligation.

In addition, the FTC has the authority to bring injunction proceedings and order monetary payments on the basis of deceptive warranties, noncompliance with the Act's requirements, or violations of prohibitions imposed by the Act. As an example, in 1998, the FTC ordered Gateway 2000 to pay approximately \$290,000 to settle charges that the company misrepresented its money back guarantee policy and free onsite warranty service, failed to make the text of its written warranties avail-

able to prospective buyers prior to sale, falsely represented remedies available to consumers under the warranties, disclaimed all implied warranties, and failed to include mandatory language concerning consumers' legal rights in the written warranties. As part of the settlement, the company is also prohibited from making any future misrepresentations regarding its money back guarantee policy, onsite warranty service and warranty remedies, and must clearly disclose any material limitations to its guarantee and warranty policies.

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