

# Understanding the Magnuson-Moss Warranty Act

Items highlighted in **red** pertain directly to the most frequent warranty questions posed to mobile electronics retailers.

The Magnuson-Moss Warranty Act is the federal law that governs consumer product warranties. Passed by Congress in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage. In addition, it affects both the rights of consumers and the obligations of warrantors under written warranties.

To understand the Act, it is useful to be aware of Congress' intentions in passing it. First, Congress wanted to ensure that consumers could get complete information about warranty terms and conditions. By providing consumers with a way of learning what warranty coverage is offered on a product before they buy, the Act gives consumers a way to know what to expect if something goes wrong, and thus helps to increase customer satisfaction.

## **What the Magnuson-Moss Act Does Not Allow**

There are three prohibitions under the Magnuson-Moss Act. They involve implied warranties, so-called "tie-in sales" provisions, and deceptive or misleading warranty terms.

### ***Disclaimer or Modification of Implied Warranties***

The Act prohibits anyone who offers a written warranty from disclaiming or modifying implied warranties. This means that no matter how broad or narrow your written warranty is, your customers always will receive the basic protection of the implied warranty of merchantability. There is one permissible modification of implied warranties, however. If you offer a "limited" written warranty, the law allows you to include a provision that restricts the duration of implied warranties to the duration of your limited warranty. For example, if you offer a two-year limited warranty, you can limit implied warranties to two years. However, if you offer a "full" written warranty, you cannot limit the duration of implied warranties. If you sell a consumer product with a written warranty from the product manufacturer, but you do not warrant the product in writing, you can disclaim your implied warranties. (These are the implied warranties under which the seller, not the manufacturer, would otherwise be responsible.) But, regardless of whether you warrant the products you sell, as a seller, you must give your customers copies of any written warranties from product manufacturers.

### ***"Tie-In Sales" Provisions***

Generally, tie-in sales provisions are not allowed. Such a provision would require a purchaser of the warranted product to buy an item or service from a particular company to use with the warranted product in order to be eligible to receive a remedy under the warranty. The following are examples of prohibited tie-in sales provisions.

In order to keep your new Plenum Brand Vacuum Cleaner warranty in effect, you must use genuine Plenum Brand Filter Bags. Failure to have scheduled maintenance performed, at your expense, by the Great American Maintenance Company, Inc., voids this warranty.

### ***Deceptive Warranty Terms***

Obviously, warranties must not contain deceptive or misleading terms. You cannot offer a warranty that appears to provide coverage but, in fact, provides none. For example, a warranty covering only "moving parts" on an electronic product that has no moving parts would be deceptive and unlawful. Similarly, a warranty that promised service that the warrantor had no intention of providing or could not provide would be deceptive and unlawful.

## **Excerpt from Magnuson-Moss Warranty Act**

(b)(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer to the consumer (or prospective consumer) prior to the sale of the product to him/her.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

### **Prohibition on conditions for written or implied warranty; waiver by the Commission**

(c) No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if -

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest. The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefore.

**Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions**

(c)(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or personate to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice of the defendant, a temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district, in which person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause the third party to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

For more information, please contact the Federal Trade Commission in your area:

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