

BMW Settling Oil Change Suit

BY JOE BEETON

BMW has attempted to settle a Federal Trade Commission charge that it illegally made warranties conditional on consumers having all oil changes performed at authorized service centers. BMW agreed to a pending settlement, saying it will discontinue the practice.

On March 19, the FTC issued an administrative complaint against BMW of North America LLC. The FTC alleged that BMW's Mini Division violated the "tie-in provision" of the Magnus-Moss Warranty Act of 1975 by stating in Mini vehicles' owner manuals, beginning with 2012 models, that "only Mini dealers are to perform oil changes," lest the four-year, 50,000-mile limited warranty be rejected.

"It's against the law for a dealer to refuse to honor a warranty just because someone else did maintenance or repairs on the car," said Jessica Rich, director of the commission's Bureau of Consumer Protection. "As a result of this order, BMW will change its practices and give Mini owners information about their rights [to use third-party services]."

BMW has agreed to the order, but the FTC is fielding public comments until April 21. After that the commission will decide to accept the settlement without mention of penalties or to prescribe fines of up to \$16,000 per incident for future violations.

The Automotive Oil Change Association, which has advocated for the order, encouraged anyone with evidence against BMW to participate in the public comment and urged all its members to respond to an industry field data survey on the matter. "AOCA applauds FTC's action thus far, but it's not a done deal," the association said in a press release last week.

The association said tie-in violations of the federal warranty law are an epidemic for consumer rights. It has filed official complaints against Volkswagen-Audi, DaimlerChrysler, GM, Honda, Nissan, Mazda, Kia Motors and BMW. "For years it seemed nothing would move FTC – or anyone in the federal government – into action against the politically giant automakers, but the

BMW complaint may have finally pushed them over the edge," AOCA said. "Overall, we're hopeful that FTC's action against BMW will motivate other manufacturers to comply with MMWA."

There are also other ways that automakers violate the tie-in provision. "An automaker doesn't have to use the phrase 'your warranty is void unless you use our products and services' in order to achieve a tied product/service result," AOCA's policy advisor, Joanna Johnson, told Lube Report. "Since 2003, we've seen every trick in the book."

According to the FTC's website, anyone from an independent mechanic to a retail chain shop to a do-it-yourselfer can do routine maintenance and repairs on a vehicle under warranty. However, if an engine is damaged from the maintenance, the OEM can deny coverage if it can prove that the maintenance or product used during the repair caused the damage.

"Any tying of products and/or services is a problem for consumers, aftermarket service professionals and aftermarket manufacturers," Johnson said. "The most common approach seems to be tying of products."

Johnson pointed to an alleged violation by Kia Motors in 2012, in which the automaker claimed that its warranties would be voided if a non-Kia oil filter was used in oil changes. "The manufacturer's burden of proof is not that it need merely show an aftermarket part 'relates' to damage, but that it 'caused' any alleged damage," Johnson said. "Does FTC know how many engine problems arguably 'relate' to oil filter function but aren't necessarily caused by any problem with the oil filter part itself? So long as they don't have to prove causation, Kia has a veritable smorgasbord of engine problems available to wrongfully blame on the use of aftermarket oil filters, and the average layperson consumer will never know the difference."

Johnson said AOCA is hopeful that FTC will address the Kia complaint next.

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