



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

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Division of Enforcement  
Bureau of Consumer Protection

July 22, 2004

Celeste M. Powers, CAE  
Executive Director  
Independent Lubricant Manufacturers Association  
651 S. Washington Street  
Alexandria, VA 22314

Re: DaimlerChrysler Corporation, FTC Ref. No. 3519061

Dear Ms. Powers:

Thank you for your letter to Chairman Timothy J. Muris regarding DaimlerChrysler's practices relating to the marketing and use of Mopar ATF+4 automatic transmission fluid and the terms of its vehicle warranties. Your letter contends that DaimlerChrysler has conditioned warranty coverage for its vehicles on the consumer's use of Mopar ATF+4 automatic transmission fluid in violation of section 102(c) of the Magnuson Moss Warranty Act, 15 U.S.C. § 2302(c) ("MMWA" or "Act"). It also contends that DaimlerChrysler has engaged in anti-competitive practices in connection with the terms of its vehicle warranties and the marketing of Mopar ATF+4 automatic transmission fluid and Mopar motor oil to DaimlerChrysler dealers.

The staff of the Federal Trade Commission has conducted an inquiry to determine whether DaimlerChrysler is engaging in practices in violation of section 102(c) of the MMWA and the Commission's Rule interpreting the MMWA, 16 C.F.R. Part 700, or otherwise is engaging in anti-competitive practices.

As you note, section 2302(c) of the Act prohibits a warrantor from conditioning warranty coverage on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer. In section 700.10(c) of its Rule, the Commission provided further clarification of this prohibition:

No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions such as, "This warranty is void if service is performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These

provisions violate the Act in two ways. First, they violate the section 102(c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of “unauthorized” articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such “unauthorized” articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused. (Emphasis added).

The warranty document establishes the conditions and requirements for warranty service. We reviewed several DaimlerChrysler vehicle warranties and found that they do not condition warranty coverage on the consumer’s use of ATF+4 fluid. Rather, the warranties exclude liability for the costs of repairing damage or conditions caused by the use of any fluid that does not meet the minimum recommendations in the owner’s manual.<sup>1</sup> This type of exclusion is expressly allowed by the last sentence of 16 C.F.R. § 700.10(c) quoted above.

The DaimlerChrysler technical service bulletins you cite in your letter are not determinative of whether DaimlerChrysler conditions its warranty on use of ATF+4 fluid. The statute does not prohibit warrantors from requiring that their dealers use particular products in connection with the repair or maintenance of warranted vehicles. Further, although the warranty recommends that customers return to a DaimlerChrysler dealer for maintenance service, it does not condition the warranty on the vehicle owner’s use of a DaimlerChrysler dealer. Therefore, a DaimlerChrysler owner could have maintenance service done at a non-DaimlerChrysler facility that uses another type of transmission fluid and this action would not void the warranty with respect to the transmission.<sup>2</sup> By its terms, the warranty only excludes coverage for damage caused by use of an “unauthorized” transmission fluid, not continued warranty coverage based on the mere use of an “unauthorized” fluid.

Although the owner’s manual tells vehicle owners to “use only the manufacturer’s recommended transmission fluid” and warns that using other fluids may damage the transmission, it does not state that the warranty will be voided if the vehicle owner uses another type of transmission fluid. Again, the warranty states that it does not cover damage caused by

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<sup>1</sup> Warranties examined by staff exclude “the costs of repairing damage or conditions caused by .... using any fluid that doesn’t meet the minimum recommendations in the owner’s Manual.” (Emphasis added). The minimum automatic transmission fluid recommended in the owner’s manual is Mopar ATF+4.

<sup>2</sup> Vehicle owners can have maintenance service on their vehicle’s transmission performed at a non-DaimlerChrysler facility and still use ATF+4 transmission fluid. They could either buy ATF+4 from a DaimlerChrysler dealer themselves or have the repair facility purchase ATF+4 from a DaimlerChrysler dealer. DaimlerChrysler sells ATF+4 to the public for about \$5.00 per quart.

use of another transmission fluid.

For these reasons, we believe that the evidence you presented, along with our examination of DaimlerChrysler's warranties, does not demonstrate that DaimlerChrysler's practices violate this section of the MMWA. This is the view of the staff of the Division of Enforcement, Bureau of Consumer Protection, and does not necessarily represent the view of the Commission. The Commission reserves the right to take such further action as the public interest may require. Further, the staff will not be precluded from recommending to the Commission an appropriate action should other facts subsequently come to our attention.

The staff of the Bureau of Competition also has considered whether the antitrust laws provide a basis for challenging DaimlerChrysler's practices in connection with the terms of its vehicle warranties relating to transmission fluid and its marketing of ATF+4 fluid and Mopar motor oil to its dealers. In determining whether to take enforcement or other action in any particular situation, the Commission may consider a number of factors, including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct and securing redress or other relief. Considering all appropriate factors, the Bureau of Competition staff has determined that no further action is warranted by the Commission at this time.<sup>3</sup>

Your interest in calling this matter to the attention of the Commission is appreciated.

Sincerely,



Elaine D. Kolish  
Associate Director

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<sup>3</sup> This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred.