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# FTC Makes Good on Its Promise to Ramp up Right-to-Repair Enforcement

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As detailed in our articles[1] earlier this year, the "right to repair" movement has gained significant steam in the last year. The right to repair movement is an effort focused on ensuring that consumers and aftermarket businesses have the ability to repair, maintain, and/or modify the devices and equipment consumers purchase.

In July 2021, President Biden issued an executive order asking the Federal Trade Commission to draft "right-to-repair" rules to increase consumers' ability to repair equipment on their own or at after-market repair shops. Less than a month later, the FTC unanimously announced that it would ramp up its enforcement against illegal repair restrictions.

Then in January, the president again announced his support for the right-to-repair movement in remarks at a meeting with White House Competition Council. Days later, members of Congress began to announce proposed federal legislation that would regulate the right to repair in specific industries like agricultural equipment and automotive vehicles, signaling, as we suggested, "major changes in the way software access and warranty restrictions are regulated."

Now, one year after President Biden announced his support for the right to repair movement, we are beginning to see a true shift in the regulatory landscape. This summer the FTC announced several major settlements based on right to repair issues, making good on its word to ramp up enforcement.

For example, in June the FTC announced it was taking action against Westinghouse outdoor generator maker MWE Investments, LLC for allegedly illegally restricting customers' right to repair their purchased products by offering limited warranties voided by a customer's use of other companies or unauthorized dealers for repairs.[2]

The complaint[3] alleged violations of the Magnuson Moss Warranty Act, a law that prohibits tying a consumer's warranty to the use of a specific service provider or product without an FTC-issued waiver,[4] as well as the Federal Trade Commission Act, which prohibits, among other things, certain types of unfair competition and deceptive conduct.[5]

Specifically, the FTC claimed that MWE offered warranties for one year from the date of purchase and replacement parts for three years from the date of purchase, but, through its written warranty conditions, MWE

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listed certain “exclusions” including “portable generators that utilize non-MWE Investments, LLC replacement parts” as well as “products that are altered or modified in a manner not authorized in writing by MWE Investments, LLC.”[6]

According to the FTC, MWE did not seek the required waiver that would permit them to condition warrant coverage “on the use of genuine MWE Investments parts and accessories” in direct violation of the Magnusson Moss Warranty Act.[7]

Meanwhile, the FTC alleged that MWE falsely represented to consumers that its warranty conditions were valid, which the FTC believed to be a violation of the FTC Act’s prohibition of unfair or deceptive acts or practices in or affecting commerce.[8]

Through a consent order, MWE neither admitted nor denied any of the Commission’s allegations but agreed to certain injunctive terms, including removing the terms the FTC alleged violated the law, providing notice of the consent order to customers, and undertaking efforts to ensure that MWE-authorized dealers compete fairly with independent third parties.[9]

The consent order also provided for compliance monitoring, requiring the company to respond to requests from the Commission with sworn statements and reports.

On July 7, 2022, the FTC announced its “third right-to-repair lawsuit in as many weeks,” issuing a press release regarding a settlement with grill maker Weber-Stephen Products, LLC.[10] The allegations against Weber were almost identical to those against MWE — the user manual for certain Weber grills stated that “[t]he use and/or installation of parts on your WEBER products that are not genuine WEBER parts will void this warranty, and any damages that result hereby are not covered by this warranty.”[11]

Like MWE, Weber neither admitted nor denied the FTC’s allegations, but agreed to certain injunctive terms. For example, Weber will be required to add specific language to its warranty saying, “Using third-party parts will not void this warranty.”[12]

**Takeaways**

As the Director of the Commission’s Bureau of Consumer Protection Samuel Levine has made clear: “Companies that use their warranties to illegally restrict consumers’ right to repair should fix them now.”[13] While this may seem like a straightforward directive, for some companies it will involve a careful revaluation of their current business models.

Take for example the automotive industry. As we highlighted in our most recent article on this topic, car makers are increasingly embracing a subscription-based model for certain car features such as active driving assistance, voice recognition, or heated seats.[14]

The idea behind a subscription-based model is that automotive makers can streamline manufacturing by building all cars to more uniform specifications and can then create a steady stream of recurring revenue for years after initial purchase by requiring consumers to pay to unlock certain features.

However, we have already seen a small market of "coders" who offer to activate features on cars that may not have been activated at the time they were sold, allowing consumers to avoid the extra fees. Car companies may seek to prevent consumers from coding their automobiles to activate subscription-based features, without paying for a subscription, by limiting their cars' warranties, such that any use of coding to avoid paying for certain features voids the warranty.[15]

If the FTC says that such warranty restrictions are illegal, automotive makers will need to consider a new strategy to combat coding, or perhaps even rethink their adoption of the subscription-based model in a right-to-repair world.

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[1] Stephen Piepgrass and Abbey Thornhill, *President Biden Doubles Down His Support for "Right-to-Repair" Movement*, Regulatory Oversight (Feb. 8, 2022), https://www.regulatoryoversight.com/2022/02/president-biden-doubles-down-his-support-for-right-to-repair-movement/; Stephen Piepgrass and Abbey Thornhill, *The clash of two movements*, Thomas Reuters: Westlaw Today (April 22, 2022), https://www.troutman.com/images/content/3/1/v2/310874/WLT_Piepgrass.pdf.

[2] Press Release, FTC, FTC Takes Action Against Harley-Davidson and Westinghouse for Illegally Restricting Customers' Right to Repair (June 23, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-davidson-westinghouse-illegally-restricting-customers-right-repair-0.

*[3] See* Complaint, *In re MWE Investments, LLC* (F.T.C. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2223012WestinghouseComplaint.pdf.

[4] 15 U.S.C. § 2301 *et seq*.

[5] 15 U.S.C. § 41 *et seq*.

[6] Complaint at ¶¶ 4–7, *In re MWE*.

[7] *Id*. at ¶ 8.

[8] *Id*. at ¶¶ 17–21.

[9] Consent Order, *In re MWE* (F.T.C. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2223012WestinghouseACCO.pdf.

[10] Press Release, FTC, FTC Takes Action Against Weber for Illegally Restricting Customers' Right to Repair (July 7, 2022) (quoting Samuel Levine), https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-against-weber-illegally-restricting-customers-right-repair.

[11] Complaint at ¶ 6, *In re Weber-Stephen Products LLC* (F.T.C. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/6.27.22%20Weber%20admin%20complaint.pdf.

[12] Consent Order, *In re Weber* (F.T.C. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Agreement%20Containing%20Consent%20Order%20(6.17.22).pdf.

[13] Press Release, *supra* n.10 (quoting Samuel Levine).

[14] Piepgrass and Thornhill, *The clash of two movements, supra* n.1.

[15] Adrian Padeanu, *BMW Heated Seats Subscription Is Real And It Costs $18 Per Month*, Motor1.com (July 11, 2022), https://www.motor1.com/news/597376/bmw-heated-seats-subscription/amp/.

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