

SHERMAN ANTITRUST + MAGNUSON-MOSS ACTS

- THE OEM CANNOT LOWER THE SERVICE LEVEL – NOT EVEN 1%.
- ALL STANDARD PARTS ARE PROTECTED BY THIS ANTI-MONOPOLISTIC LAW. OPTICS ARE MSA STANDARD.
- OEM SALESPEOPLE ARE TRAINED TO VERBALLY COERCE AND WON'T EVER PUT IT IN WRITING. ASK THEM TO – THEY WON'T!
- OUR OPTICS ARE LIFETIME WARRANTIED. LONGER THAN OEMS.

SHERMAN ANTITRUST AND MAGNUSON-MOSS WARRANTY ACTS

EXPLANATION OF END-USER RIGHTS TO THIRD PARTY

Occasionally, we hear reports that an OEM sales representative has told a customer that the use of third-party optics, cables, or memory in the manufacturer's system voids the warranty. Sales representatives use this method in an attempt to coerce customers into purchasing products exclusively from the system manufacturer, usually at prices much higher than ours. A system manufacturer may resort to this type of warranty threat to spread doubt in the minds of consumers rather than to compete on the basis of quality and price.

Warrantors cannot require that only branded parts be used with the product in order to retain the warranty. In legal terms, this type of ploy is referred to as a "tie-in sales provision." In general, such provisions are illegal. They are specifically prohibited in the consumer market by section 102(c) of the Magnuson-Moss Warranty Act of 1975 (15 United States Code section 2302(c)). In the networking and server markets, such ploys violate sections 1 and 2 of the Sherman Antitrust Act (15 United States Code sections 1 and 2). As the United States Supreme Court has stated:

"The essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product [here, the networking/computer system] to force the buyer into the purchase of a tied product [here, the optic sold by the system manufacturer] that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms. When such "forcing" is present, competition on the merits in the market for the [optic module] is restrained and the Sherman Act is violated." (Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2 [1984])"

Companies and individuals that violate the antitrust laws are subject to a wide range of sanctions, including having triple damages imposed against them. The important point is that, regardless of their legality, these types of sales ploys are intended to intimidate and pressure unsophisticated purchasers into spending substantially more than they should for memory upgrades.

Without providing a complete copy of the Magnuson-Moss Warranty Act of 1975 and Sherman Antitrust Act, the below is meant to aid the customer in the interpretation of the acts and their comprehensive protection against any coercion around warranty by the OEM.

FULL WARRANTY REQUIREMENTS

Under a full warranty, in the case of a defect, malfunction, or failure to conform with the written warranty, the warrantor:

- must, as a minimum, remedy the consumer product within a reasonable time and without charge;
- may not impose any limitation on the duration of any implied warranty on the product;
- may not exclude or limit consequential damages for a breach of any written or implied warranty on the product, unless the exclusion or limitation conspicuously appears on the face of the warranty; and
- must permit the consumer to elect either a refund or replacement without charge, after a reasonable number of repair attempts, if the product, or a component(s) of the product, contains a defect or malfunctions.

REMEDIES UNDER THE ACT

The act is meant to provide consumers with access to reasonable and effective remedies where there is a breach of warranty on a consumer product. The ACT provides for informal dispute-settlement procedures and for actions brought by the government and by private parties.

The FTC has been mandated by Congress to promulgate rules to encourage the use of alternative dispute resolution. Full warranties may require mediation and/or arbitration as a first step toward settling disputes.

In addition, the federal government has the authority to take injunctive action against a supplier or warrantor who fails to meet the requirements of the act.

Finally, consumers may seek redress in the courts for alleged violations of the Magnuson-Moss Act. A consumer who has been injured by the noncompliance of a supplier may bring an action in federal court if the amount in controversy is over \$50,000, or a class action if the number of class plaintiffs is greater than 100. If the jurisdictional amount, or number of plaintiffs, do not meet these thresholds, an action under the act may be brought only in state court. Moreover, one of the key aids to the effectiveness of the act is that a prevailing plaintiff may recover reasonable costs of suit, including attorney fees.



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