

An Overview of the Magnuson-Moss Act, Industry and Consumer Response to its  
Institution, and its Relevance in the Modern Economic Environment

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The Magnuson-Moss Act has had profound implications on the manner in which the consumer is protected against defects in manufacturing and product quality. Prior to the institution of the Magnuson-Moss Act in 1975, the consumer was subject to vagary on behalf of the manufacturer in warranty terms, and since its implementation, the consumer is guaranteed remedy under the Act. The Act has been a critical factor in the development of consumer rights awareness, and resulted in a new approach to both providing and purchasing consumer goods. While the language of warranties may not yet be completely clear as a result of Magnuson-Moss Act, and while there yet exist loopholes and areas of contention as to how to apply the Act in the enforcement of warranties, the over-arching aim of Magnuson-Moss Act has successfully been indoctrinated in the minds of the American Consumer.

The Magnuson-Moss Act was introduced and passed in 1975 by Senator Warren G. Magnuson (D-Washington) and Senator John E. Moss (D-California) in response to the widespread abuse of manufacturers of express warranties and disclaimers. Prior to Magnuson-Moss, the warranty that accompanied a consumer product was not subject to clear definitions of terms that Magnuson-Moss purposely defined. Manufacturers often misinformed the consumer of the actual coverage and remedy provided under an express warranty, offering a guarantee of quality or suitability for purpose that far exceeded what was actually provided for under warranty. This approach was one of both marketing and deception, often consisting of an over-promise initially and then backed up with exclusions and disclaimers that rendered the original claim of warranty ineffective.

Historically the example cited has been the rise of the American automobile and other “big-ticket” items such as a washer or other appliances, where the product involved significant financial outlay on behalf of the consumer. Magnuson-Moss aimed to protect the consumer from making such a significant investment without some adequate guarantee against defect, which could be costly.

Also known as the “lemon law”—based on the early 1900’s slang term for “something of no value”—in reference to the Act’s protection against the purchase of a useless good, the Magnuson-Moss Act requires a manufacturer of consumer products to adhere to 3 essential requirements:

Requirement I: The Magnuson-Moss Warranty Act, Section 102 states that the warranty for a consumer good must be either “Full” or “Limited” and the type of warranty must be conspicuously titled as such. A Full warranty adheres to 5 rules: that the warranty does not limit the duration of implied warranty; that the warranty of service is provided to any owner of the good during the warranty period (not just the initial buyer); that warranty service is free of charge including cost for returns or installation; that the consumer is given the choice either of replacement or refund if no reasonable replacement can be made; and that the consumer need only notify the warrantor of needed service to receive remedy.

If any of these requirements are not satisfied, the warranty is effectively “limited.” The warranty may also incorporate both a “full” warranty for a specific duration and a

“limited” warranty for a separate set of conditions or duration; however, these are seen as two separate warranties and are considered a “multiple” warranty.

Requirement II: The FTC’s Disclosure Rule, 16 F.C.R. Part 701 states that the warranty must state specific terms and conditions of the written warranty, including the duration of said warranty and any exclusions, limitations and disclosure of actions that may void the warranty. Also, remedy must be written so as to inform the consumer of how remedy will be satisfied—whether through arbitrary means, or through a service center dedicated to the resolution of any disputes of warranty. The consumer must be given clear expectations for how the manufacturer intends to correct any problems under warranty.

Requirement III: The FTC’s Pre-Sale Availability Rule, 10 C.F.R Part 702 states that the warranty must be available for review by the consumer prior to sale, effectively making the warranty part of consideration. This applies to any consumer good costing more than \$15. Different instructions to satisfy this requirement are given for retailers, mail-order companies (also internet-based companies) and door-to-door sales companies. Retailers must provide written warranties at the point of sale, and must include any product warranty by the manufacturer as well as any extended warranties for service. The consumer must be given the opportunity to make herself aware of the warranty, by at least being notified as to their availability for review. In the case of mail order or on-line sales, the warranty must be either published or the consumer must be made aware of the manner in which a warranty may be provided to her. There must be a reference to any

published warranty and the reference must accompany the product picture or description. In the instance of outside sales, the warranty must be provided to the consumer before the sale is finalized. In each of these situations, the impetus is on making the consumer aware of warranty terms, so as to ensure the consideration includes the warranty as well as the product and price.

The Magnuson-Moss Act further ensures that a product's implied warranty of fit for purpose or suitability may not be replaced by an express warranty; effectively making an express warranty an extension of the product's value and part of the consideration.

Over 30 years after the passing of the Magnuson-Moss Act, there has been considerable discourse pertaining to the efficacy of the Act's language, and to which extent the goal of the Act—to inform consumers of their right to remedy and to ensure the guarantee of a manufacturer—has been achieved. Research published in the *Journal of Consumer Affairs* in 1993 suggests that the level of education required to fully understand the language of an average consumer warranty is significantly higher than the average level of education for individuals over 25 years of age. (Shuptrine, Moore, 1993). In this research, 121 warranties were collected for products that spanned the spectrum of warranted goods including but not exclusive to bicycles, can openers, microwave ovens, automobiles, hair dryers, coffee makers, and televisions. These warranties were evaluated for their level of complexity using the Fog Index of ease of wording and the Flesch Count of grade level equivalency (Flesch, 1951). The study found that the average level of education required to understand the warranty language

was between 14.5 and 16.9 years, or between college junior to beginning graduate school level. The average number of years of school completed by individuals 25 years or older in the United States the United States is 12.7, or just past high school graduate-level.

Yet for discerning consumers, there exists a direct correlation between the wording of warranties and their use as a comparative gage in determining reliability of a product, and therefore the value of a good. (Wiener, 1988). Prior marketing research shows that extrinsic cues influence consumers' perceptions of product quality (Purohit and Srivastava 2001). For example, warranties as an extrinsic cue in the form of statements about product quality or performance are an important part of a firm's marketing strategy (Barsky 1995), based on the assumption that consumers will perceive a product to be of higher quality when such external cue statements are present versus when they are not (Lwin, Williams, 2006).

This evidence suggests that while the Magnuson-Moss Act has made it more clear what is expected of the manufacturer in providing warranty terms, it may not go far enough in requiring the language used in the written warranty be clear enough for a common consumer to understand, nor might it go far enough in adequately standardizing the terms of the warranty so as to benefit the average American consumer. In fact, the possibility exists, that the complex warranty language is an effort to confuse the less educated consumer into not taking advantage of the warranty, while at the same time leading the consumer to believe the product quality is of a high value.

The predominant volume of research on the effect of warranty terms on consumer perception of quality or reliability has been performed on consumer goods that are available in retail stores or other traditional outlets. Not much research has been conducted on the effect of warranties on consumer perception in on-line purchases, an arena of consumer activity that is notorious for risk of fraud. The Uniform Electronic Transactions Act (EUTA) addresses the issue of transparency in the actual on-line transaction so far as the validity of agreement, yet it does not address the issue of warranty of consumer goods sold online. The Uniform Computer Information Transactions Act addresses the sale of computer software using a licensing model that better suits the rapidly changing information technology environment (Lwin, Williams, 2006), yet the general understanding is that on-line transactions are covered under the Magnuson-Moss Act. What little research has been conducted shows that consumer tendencies for perception of product quality and value derived from warranty claims are insignificant when the product is purchased in an on-line environment. The growing prevalence of on-line transactions may potentially undermine the advances of the Magnuson-Moss Act. The Internet, with its intangible nature and lack of physical evidence to the quality of the product, often uses brand names as opposed to the warranty to provide the consumer with relief from risk. The warranty therefore is not so much a part of the consideration, as Magnuson-Moss intended it to be. This opens Magnuson-Moss up to re-interpretation and amendment in order to suit the forecasted growth of on-line transactions; it should also be said that while it is very simple to provide the consumer with the warranty on-line—and effectively meet the requirements of the

Magnuson-Moss Act—this requirement does not adequately engage the consumer by providing value.

While the original intent of the Magnuson-Moss Act was to protect consumers in the purchase of items of significant value such as cars, appliances and reusable goods, there have been significant advances of the Act at the state level to expand coverage under Federal Warranty law to people who lease cars that come with a warranty. Recently, courts in at least six jurisdictions—Arizona, Florida, Illinois, New Jersey, Ohio and Wisconsin—have decided that the federal law applies when consumers have leased cars (Davis, 2006). In instances where the consumer leases a vehicle owned by the bank, the consumer may enforce the warranty as if he owned it himself.

In Missouri, another interpretation of the Magnuson-Moss Act has expanded the protection of the consumer by accessing the statute of limitations at the state level to fill in where the Magnuson-Moss Act provides inadequate consumer protection. In the case of *Edwards v. Hyundai Motor America*, 163 S.W.3d 494 (May 3, 2005), Jimmy and Julie Edwards bought a car in 2001 that came with a six-year, 72,000-mile warranty. The Edwardses claimed they had problems with the transmission, brakes, engine and trim. When they sued under the Magnuson-Moss Act, Hyundai argued that the court dismiss the case because the state lemon law has an 18-month statute of limitations. However, the court held that Missouri's UCC, which has a 4-year statute of limitations, should apply; or else the plaintiffs would not have a way of enforcing a warranty longer than 18 months.

And while the marketing value of providing warranties cannot be denied, it has also been found that dealers have influenced the aftermarket sales of products related to their vehicles, such as anti-freeze, by directing the consumer that using anything except the manufacturer's suggested anti-freeze, will void the warranty. Under Magnuson-Moss Act, the warranty for a product cannot be voided by the substitution of another anti-freeze brand so long as it satisfies the basic functional requirements of a product (Shutovich, 2004). Therefore misinformation on behalf of salesmen and dealers should not overrule the consumer's own diligence in understanding the value implied and the rights afforded in a warranty.

These recent instances exemplify the way the Magnuson-Moss Act is interpreted as a living-breathing legislation, meant to serve as a compass for state legislation in the protection of consumers' rights, while at the same time it is obvious that Magnuson-Moss suffers from technical obsolescence in the new, high-tech, on-line consumer arena. However, the underlying objective of Magnuson-Moss Act has been clearly met by giving the consumer another factor to consider in determining the value of a purchase; namely, that of warranty protection along with product quality and price. Though it is not always certain that the consumer is aware of the warranty, and though the written word of the warranty may not always be understood, and while the marketing of a warranty is on the side of the manufacturer; the law is on the side of the consumer when it comes to state jurisdiction, and the letter of the law may be interpreted beyond the

Magnuson-Moss Act, in an effort to evolve with changes in technology, consumer habits and the actions of dealers and sellers.

In effect, the consumer has been made aware of her right to know a product's express warranty, and to consider this in making a purchase. This simple benefit alone makes the Magnuson-Moss Act a worthwhile legislation.

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