

CLIENT ALERT

November 1, 2022

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RIGHT-TO-REPAIR ORDERS ISSUED BY FEDERAL TRADE COMMISSION

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The Federal Trade Commission (“FTC”) has shifted its attention to repair restrictions. We had a head’s up that the decade-long hiatus was ending.¹ In its July 2021 policy statement and May 2021 report to Congress,² the FTC made clear it would devote more resources to address repair restrictions it considers adverse to open repair markets or outright unlawful.

On October 27, 2022, the FTC announced it had approved final orders in three cases. Most relevant to the automotive industry is the decision and final order against Harley-Davidson. Two other orders hold significance, following the theme that the FTC will not tolerate any express or implied statement to consumers that their warranty will be voided simply by using third-party repair shops or parts. The second order is against MWE Investments (a manufacturer of Westinghouse outdoor power equipment), and the third is against grill maker Weber-Stephen Products.

As explained by the FTC in its press release,³ the focus of all the orders is to “Prohibit further violations,” “Recognize consumers’ right to repair,” “Come clean with consumers,” and “Alert dealers to compete fairly.” Coming clean with consumers in Harley-Davidson’s case includes issuing a notice and a warranty addendum to its eligible customers. The notice, attached to the FTC order, answers five simple questions. Beginning with the question, “Do I have to use genuine Harley-Davidson parts and services to maintain my warranty?”, Harley-Davidson’s notice answers with a resounding “No.” The remainder of the notice mostly explains the situations where Harley-Davidson can deny warranty claims, what consumers should do if they think their warranty is not being honored, and how to contact Harley-Davidson or the FTC to report issues or learn about their rights.

The FTC orders don’t stop with just requiring consumer notices and amended warranties. In Harley-Davidson’s case, long-term obligations are required, namely compliance reporting and record-keeping obligations, compliance monitoring obligations, and a commitment by Harley-Davidson for the next five years to deliver a copy of the FTC’s order and obtain written acknowledgments of receipt from a long list of current and future constituents. The order does nothing to help Harley-Davidson defend against the many class actions currently pending around the country for alleged violations of federal and state laws concerning its written warranty.

If you haven’t recently reviewed your written warranties to ensure they comply with the myriad federal and state laws and regulations, now is the time. Right-to-repair advocates are pursuing lawsuits, and the FTC will no longer tolerate repair restrictions. As is usually the case, an ounce of prevention is worth a pound of cure.

Dickinson Wright PLLC is available to assist clients with federal and state law compliance matters.

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¹ In its policy statement, the FTC acknowledged it had “brought only one case alleging a violation of the Magnuson-Moss Warranty Act in the past decade.” *Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers* (July 21, 2021) (citing *In the Matter of BMW of North America, LLC*, No. 132-3150 (Oct. 2015)), found at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/policy-statement-federal-trade-commission-repair-restrictions-imposed-manufacturers-sellers>.

² *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), found at <https://www.ftc.gov/reports/nixing-fix-ftc-report-congress-repair-restrictions>.

³ FTC Press Release (Oct. 27, 2022), found at <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber>. Links to the orders and other related documents can be found in the press release.