



EPP Rapid Research

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EPP Rapid Research **Legal Documentation for After Market Suppliers** **King County, WA**

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Request:

Eric Nelson from King County requested research assistance on legal support to purchase environmentally-preferable aftermarket supplies or parts without voiding OEM warranties. He remembers a court case from years ago that had been decided in favor of after market manufacturers of supplies. The threat of voiding warranties continues to re-surface every few years, and it would be useful to have legal citations at hand when working with vendors.

Key Findings:

In many cases, the Magnuson-Moss Act protects your right to purchase supplies or parts from an alternate vendor instead of the OEM; however if patents, copyrights or intellectual property protections are in place, the implicit right to purchase from an aftermarket vendor without voiding a warranty is not clear.

Several different legal regimes come into play regarding aftermarket supplies and parts including; contract, patent, copyright, trade secret and intellectual property laws. Contract case law appears to favor the consumer's right to choose supplies and parts from non-OEM sources. The Magnuson-Moss Act contains a provision against "Tie-in Sales" described below, that allows the consumer to select aftermarket supplies and parts in most cases without violating an OEM warranty. Patent, trade secret and intellectual property decisions however have been mixed, sometimes favoring the OEM and sometimes the competing company. It is possible although not probable that an OEM could sue the customer (in addition to voiding a warranty) as well as an aftermarket supplier for infringement of intellectual property or patent protection.

According to the Electric Frontier Foundation, a non-profit that works to preserve the consumer's "digital rights", to be protected legally, ask an aftermarket supply/parts vendor if they are aware of any patent that covers the technology in question and then request that an indemnification clause is added to the purchase contract for protection against any potential violations. This shifts the burden of any potential patent violation to the aftermarket vendor.

That being said, Consumer Action, a San Francisco based education and advocacy organization stated that an organization "would have to seek an attorney if they wanted to challenge a manufacturer on their warranty".

Examples of relevant legislation and legal decisions are described below and illustrate the complexity in this field. In a worst case scenario a product could be protected under one legal regime and in danger under another. Links to the full case descriptions are listed in Additional Resources.

Copyright decision favoring aftermarket manufacturers

Lexmark Case

In the Lexmark Case it was determined that the aftermarket manufacturer was not violating copyright law by reverse engineering a laser cartridge and mimicking a proprietary code in order to enable refilled and remanufactured cartridges to work with Lexmark printers.

Contract law favoring the consumer

Magnuson-Moss Act

A critical piece of federal warranty legislation is the Magnuson-Moss Act of 1975. The Magnuson-Moss Act relates to contracts and protects the rights of consumers "in most cases" to use non-OEM aftermarket products. Section 102(c) of the Act addresses the general prohibition of "tie-in sales" as follows:

"Tie-In Sales" Provisions

Generally, tie-in sales provisions are not allowed. Such a provision would require a purchaser of the warranted product to buy an item or service from a particular company to use with the warranted product in order to be eligible to receive a remedy under the warranty. The following are examples of prohibited tie-in sales provisions.

In order to keep your new Plenum Brand Vacuum Cleaner warranty in effect, you must use genuine Plenum Brand Filter Bags. Failure to have scheduled maintenance performed, at your expense, by the Great American Maintenance Company, Inc., voids this warranty.

While you cannot use a tie-in sales provision, your warranty need not cover use of replacement parts, repairs, or maintenance that is inappropriate for your product. The following is an example of a permissible provision that excludes coverage of such things.

While necessary maintenance or repairs on your AudioMundo Stereo System can be performed by any company, we recommend that you use only authorized AudioMundo dealers. Improper or incorrectly performed maintenance or repair voids this warranty.

Although tie-in sales provisions generally are not allowed, you can include such a provision in your warranty if you can demonstrate to the satisfaction of the FTC that your product will not work properly without a specified item or service. If you believe that this is the case, you should contact the warranty staff of the FTC's Bureau of Consumer Protection for information on how to apply for a waiver of the tie-in sales prohibition.

In addition, there have been other cases supporting competition in after-market parts, such as for garage door openers as well as for automobiles.

Patent law favoring OEM

Hewlett Packard v InkCycle Case

When HP sued InkCycle, a company refurbishing and refilling HP cartridges, the court decided in favor of HP as the OEM because of HP's extensive patent protection on various specific chemical compositions of HP inks. This decision did not affect HP's end user warranties. HP's warranties are not voided by use of non-HP parts or supplies unless it is determined that they are causing a problem.

Additional Resources:

A Businessperson's Guide to Federal Warranty Law

<http://www.ftc.gov/bcp/online/pubs/buspubs/warranty.shtml#Magnuson-Moss>,

Consumer Action homepage <http://www.consumer-action.org/>

It Warrants a Look: Understanding the Magnuson-Moss Act

http://www.ts-mag.com/t_stx.cfm?action=current_issue_pick&id=281

Court Ruling Opens Door to More Competition in After-Market Parts (Garage Door Openers)

<http://www.law.berkeley.edu/clinics/samuelson/news/SkylinkWinfcapress.pdf>

Electronic Frontiers Foundation “Defending freedom in a digital world”

<http://www.eff.org/about/>

HP sues firms that refill ink cartridges

<http://news.zdnet.com/2100-9595-5643687.html>

HP, InkCycle settle inkjet refilling suit

<http://news.zdnet.com/2100-1040-5737561.html>

Lexmark v. Static Control Case Archive

http://www.eff.org/legal/cases/Lexmark_v_Static_Control/

Will my warranty be affected if I install a non-HP upgrade/option in my HP product?

<http://h40059.www4.hp.com/warranty/information/faq.php#17>