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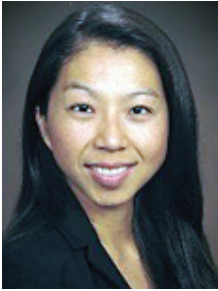
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Chi Chung

What's In Your Warranty?

A warranty is simply a promise. It generally is a promise that what you are selling is of a particular quality and is being sold without defect. An express (written or oral) warranty can give you a competitive edge. It can be used to improve your company's reputation and brand, build customer confidence or promote sales of a new product. Warranties are common place and are provided or implied with small and large purchases. This article aims to shed light on the oftentimes confusing world of warranties.

Warranties are of two types: express and implied. Implied warranties are unwritten and are implied with the sale or lease of the product. It is a promise the product will do what it is meant to do. There are two types of implied warranties: the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. The implied warranty of merchantability is a promise that the product reasonably

conforms to the public's general expectations. For example, the implied warranty of merchantability of a car is it will turn on and run, a refrigerator will keep food cold, a lawnmower will cut grass, and a hair dryer will dry hair. The implied warranty of fitness for a particular purpose is more specific. It is a promise that the thing you are selling will conform to a particular purpose versus an ordinary purpose. An example is shoes purchased for mountain climbing versus shoes for walking. Implied warranties are governed by each state's version of the Uniform Commercial Code ("U.C.C.").

Express warranties can be oral or written. Our focus here is on written warranties.

Written warranties are governed by state laws and the Magnusson-Moss Warranty Act, codified at 15 U.S.C.A. 2301 to 2312 ("MMWA"), a federal statute passed in 1975 to protect consumers and to promote competition. There is no requirement that you provide

a written warranty, but if you do, the MMWA should be your guide.

The MMWA¹ defines "written warranty" as a writing provided with the sale of a consumer product, which relates to the nature of the material or workmanship of that product, and which promises that such material or workmanship is defect free or will meet a specified level of performance over a period of time. A writing provided in connection with the sale of a consumer product by which the seller promises it will refund, repair, replace or take other remedial action if the product fails to meet the stated specification also qualifies as a "written warranty."

There are two types of written warranties: full warranty and limited warranty.

If your written warranty qualifies as a "written warranty" under the MMWA and it covers an item costing more than \$5.00, then the contents of the warranty must be in a single document, in clear, easy to read, and easily understandable language. It must be void of deceptive and misleading terms. The terms must be fully and conspicuously disclosed.

Chi Chung is an associate at Earp Cohn P.C. She represents large, sophisticated businesses to small family owned businesses, entrepreneurs and individuals. A large part of her practice is in the area of product warranty litigation, and she is well versed in the Uniform Commercial Code, Magnuson-Moss Warranty Improvement Act, state consumer protection laws and Lemon Law statutes.

Earp Cohn P.C.
20 Brace Road, 4th Floor
Cherry Hill, New Jersey 08034
856.409.5295 Phone
856.354.0766 Fax
cchung@earpcohn.com
www.earpcohn.com



The MMWA enumerates a list of the possible terms and conditions that the Federal Trade Commission may require to be included in a written warranty.² The terms and conditions include the warrantor's name and address; all those benefiting under the warranty; the products or parts covered; the parts not covered; a statement by the warrantor of what actions they will take in the event of a defect, at whose expense, and for how long; a statement of the consumer's responsibility; exceptions and exclusions to the warranty; the procedure which the consumer should follow to obtain warranty service; information regarding the availability of any informal dispute settlement procedure (if there is one); a description of the legal remedies available to the consumer; and time for performance under the warranty.

The written warranty must be made available to the customer prior to purchase. This does not mean you have to actually provide it to the customer but only that you make it available. For example, a written warranty sticker attached to the inside of a refrigerator is satisfactory.

If your written warranty covers an item costing more than \$10.00, then you must clearly title your warranty as either

a "full (statement of duration) warranty" or "limited warranty."

A full warranty meets the federal minimum standards³ set by Congress. Basically, a full warranty applies to the first and all subsequent owners during the warranty period. It is provided free of charge. The customer cannot be charged for costs of returning, removing or reinstalling. If the warrantor is unable to repair after a reasonable number of attempts (interpreted by some courts as two to three attempts), the customer is entitled to either a replacement or refund. There is no requirement that the customer must do something, such as return the warranty registration card, to obtain warranty service.

A limited warranty does not meet at least one of the federal minimum standards listed at 15 U.S.C.A. § 2304(a). If the warrantor breaches a limited warranty, the customer may or may not be entitled to a replacement or refund. The MMWA does not specifically provide for remedies for a limited warranty. Rather, the remedies are found in each state's version of the U.C.C. One feature of the MMWA, and the one of most concern to businesses involved in breach of warranty litigation, is its fee shifting provision whereby successful claimants may be awarded legal fees and costs.⁴

If your written warranty is a limited warranty, then you may limit the duration of any implied warranties to the duration of the limited written warranty. An example of this is a vehicle manufacturer often times will limit the implied warranties to the 3 years/36,000-mile limited written warranty. The limitation must be clear and prominently displayed. If you are providing a full written warranty, you cannot limit, disclaim or modify the implied warranties.

It is also possible to have a hybrid warranty⁵, one which includes both a full and limited warranty, as long as it is clearly labeled.

As the saying, "a stitch in time saves nine" goes, if you currently offer express warranties with your product or are contemplating offering a warranty to gain that competitive edge, now is the time to check if your warranty is up to par with your state's U.C.C. and the MMWA.

In our increasingly litigious society, taking such preventive measures is a routine necessity. **P**

1 15 U.S.C.A. § 2301(6)

2 15 U.S.C.A. § 2302

3 15 U.S.C.A. § 2304(a) lists the Federal minimum standards.

4 15 U.S.C.A. § 2310(d) (2).

5 15 U.S.C.A. § 2305.