CONSUMER LIAISON COMMITTEE

Aftermarket Parts: Imitation Often is Not Equal

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AFTERMARKET PARTS: IMITATION IS OFTEN NOT EQUAL

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AFTERMARKET PARTS: WHAT ARE THEY?

ANY part that is not factory-installed.

- Original Equipment Manufacture (“OEM”) (auto maker) part installed after vehicle has left assembly line.
- Part made by any third party (“imitation”), whether the third party is unrelated or makes parts for an OEM.
Imitation PARTS: WHAT ARE THEY?

- Any part made for use in the repair of a motor vehicle that has not been authorized or sanctioned by the auto maker.
NAIC

• Aftermarket (imitation) parts Model Act MDL 891
  • Adopted in 1987
  • Uses “like, kind and quality” as standard
  • Only applies to external sheet metal and plastic parts

• No requirements over:
  • Structural parts: (e.g.)
    • Bumper reinforcement (where airbag timing sensors are)
    • Core support
  • Functional components: (e.g.)
    • Suspension components
    • Radiators
    • Air conditioning condensers
Like, Kind, and Quality:

Evolution of arguments in favor of imitation parts

- Purely cosmetic; no impact on crashworthiness or safety
- Identical to OEM parts
- Made by the same part manufacturer as the OEM
Like, Kind, and Quality: Evolution

• Ford Motor Co. successfully sues parts makers and distributors for design patent infringement
  • Now, imitation parts, NOT “purely” cosmetic

• Identical to OEM parts
  • TX House introduces HB 1131 requiring non-OE parts to: 1) meet fit, finish, and quality criteria established by OEM; 2) be of same weight and metal hardness as OE; and 3) be crash and safety tested using same criteria as OE
  • LKQ argues no auto maker would ever provide specifications or standards information to imitation parts makers (April 13, 2021)

• Made by the same factory/part manufacturer as the OEM
  • Implied that imitation parts made with manufacturer specifications, stamping tools, and materials
  • CAPA launches “Tier 1” replacement parts program Summer 2021
    • Tier 1 parts identified as those made by “the same factory, [with same] tooling, materials, and manufacturing processes”
    • https://www.capacertified.org/wp-content/uploads/2021/06/CAPA_Launches_Tier_1_Replacement_Parts_Verification_Program-.pdf (Wayback machine)
Imitation Parts Organizations

• CAPA (Certified Automotive Parts Association)
• ABPA (Automotive Body Parts Association)
• AutoCare Association
• APA (Automotive Parts Association)
• LKQ Corp.
  • Keystone
• Many, many others

• SEMA (Specialty Equipment Market Association)
Vehicle Warranty Implications

- Auto makers routinely void/restrict auto warranties
  - Damage
  - Neglect or abuse
  - Any portion of vehicle on which insurance claim paid


- 15 USC § 2304(c) Waiver of standards. The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).
“Extended Warranty” Implications

• "Warranty" by federal definition applies solely to consumer products and are included in the sale price of the product. 15 USC § 2301, et seq., 16 C.F.R. 700.1, et seq.

• Mechanical Breakdown Insurance Policies or Service Contracts
  • Typically apply same restrictions to coverage as vehicle limited written warranty

• Good News: If the “EW” is regulated as insurance, it is pro rata refundable to the insured/consumer
Use Your Melon

• Honda demonstrates dire results of airbag timing issues

• https://mygarage.honda.com/s/video-detail-page?key=MCB6DAOQFX2ZGD5OMECP46SCLOWE
Imitation Parts Failures

• Nov. 2009 Collision Industry Conference (CIC) expert demonstrated functional differences and weaknesses between OEM and imitation bumper reinforcements
  • Toby Chess followed up with specifics: https://www.vehicleservicepros.com/collision-repair/article/21180416/toby-chess-has-some-questions-on-aftermarket-parts

• CAPA issues press release Feb. 1, 2010:
  • "CAPA has tested numerous bumpers for comparability to their car-company-brand counterparts. 'In testing what appear on the surface to be reasonably well-manufactured aftermarket bumpers, our laboratories discovered serious deficiencies in mechanical properties such as strength and metal hardness, material thickness, and fit. These deficiencies potentially place the driving public, who trust body shops to repair their vehicles with safe quality parts, at serious risk.'"
CAPA Decertification: NON-OEM Headlights

• 100% of Imitation Headlights failed FMVSS 108 (federal motor vehicle safety standard) 2003 and 2004 testing

• CAPA Decertification Parts Report
  • Parts routinely “decertified” every month
    • March 2021, 12 lots of headlights decertified
    • April 2021, 3 lots of headlights decertified
      • Also 1 lot of bumper reinforcement decertified

• Register for CAPA decertification reports at: https://e1.intertek.com/capa/
Who is Responsible for Curing?

Consumer Notification, Payment, Method?

• Not CAPA
• Not Insurer ("We guarantee the repair"?)
• Not Distributor
• Not Repairer
• Manufacturer (largely in Asia)
NHTSA?

• NHTSA (National Highway Traffic Safety Administration)
  
  • Almost NO ability to recall imitation parts (or salvage)
  
  • GAO (Government Accountability Office)
SEMA Federal Regulation FAQ

• **What is “self-certification”?**
  When offering a product for sale, the manufacturer is required to certify that the product meets all applicable FMVSS (since it is illegal to market a product that does not comply). Most aftermarket products are not covered by the FMVSS.

• **How do I certify my product?**
  Manufacturers must have some reasonable basis for certification but “crash-testing a car” is not required. Certifications may be based on, among other things, engineering analyses, actual testing and computer simulations.

• **Does NHSTA “approve” vehicles and equipment?**
  No. NHTSA relies on self-certification. It does not require submission of any documentation regarding the safety of aftermarket parts unless it is triggered by an investigation. Each year, NHTSA crash-tests a limited number of cars manufactured by the automakers to confirm that they meet the FMVSS.

[https://www.sema.org/federal-regulation-aftermarket-parts](https://www.sema.org/federal-regulation-aftermarket-parts)
Recommendations

• Require auto insurers to establish and publish:
  • Recall methodology for decertified or defective imitation part (whether “AM” part or not)
  • Mechanism for insured/consumer to obtain replacement part and installation
  • Mandate payment for replacement part and installation

• Establish charge in C Committee for NAIC/States to:
  • Revisit what an “aftermarket part” is
  • Establish concrete definition and criteria for determining proper use in insured/consumer repair
QUESTIONS?

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