



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Marketing Practices

May 5, 2008

Matthew K. Cordis, Esq.
Clarke Silvergate & Campbell, P.A.
799 Brickell Plaza, Suite 900
Miami, FL 33131

Dear Mr. Cordis:

This letter responds to your request of March 3, 2008 seeking an advisory opinion from staff of the Federal Trade Commission (the "Commission" or "FTC") regarding the application of the Magnuson-Moss Warranty Act ("the Act"), 15 U.S.C. § 2301, *et seq.*, to a 1300 horsepower diesel engine that your client imports and distributes. Your client also coordinates services of those engines in the United States.

You request guidance on whether this engine would be a "consumer product" under the Act. 15 U.S.C. § 2301(1). Based on your letter's description of the engine and relevant sales and industry data included in your letter, FTC staff's opinion is that the engine in question would not be a "consumer product" for purposes of the Act.

The Act requires companies that offer written warranties on the consumer products they manufacture or sell to provide consumers with detailed information about warranty coverage. For example, the Act and the regulations the FTC adopted under the Act require that the key terms of warranty coverage be disclosed in a single document, 16 C.F.R. Part 701, and that the document be available at the point of purchase for consumers to review before purchasing a warranted consumer product, 16 C.F.R. Part 702.

The Act defines a "consumer product" as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed)." 15 U.S.C. § 2301(1). The Commission has promulgated an interpretive rule that clarifies that "a product is a 'consumer product' if the use of that type of product [for personal, family, or household purposes] is not uncommon." 16 C.F.R. § 700.1(a).

The product you describe in your letter is a 1300 horsepower diesel engine commonly incorporated into industrial or commercial products such as cranes, buses, farm equipment, locomotives, mining equipment, and commercial vessels. According to the sales data you provide, the engine's manufacturer sold just 2% of these engines to manufacturers for incorporation into marine pleasure craft, and less than .01% directly to individuals for similar use. Although the FTC's interpretive rule states that "[t]he percentage of sales . . . is not determinative," 16 C.F.R. § 700.1(a), sales information is relevant in determining a product's

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normal use, and whether that use is for personal, family, or household purposes such that it falls within the Act's coverage. The sales data you provide suggests that this engine is not one for which the normal use is for personal, family, or household purposes. Therefore, based on the purposes of the Act and the data you provided, we agree that this engine is not a "consumer product" under the Act.¹

The opinions expressed in the foregoing discussion and the basis for this conclusion are those of Commission staff only and are not attributable to, nor binding on, the Commission itself or any individual Commissioner. I hope this discussion is helpful to you. If you have any further questions, please do not hesitate to contact me at (202) 326-2505.

Sincerely,

Allyson Himelfarb
Investigator/Magnuson-Moss
Program Coordinator

¹The industry data you provide also supports this conclusion. You indicate that in 2003, over 88% of all diesel engines with horsepower greater than 500 were incorporated into industrial vessels, equipment and machinery, as compared to approximately 12% that were incorporated into large motor yachts. As you note, it is likely that a significant percentage of these motor yachts are used solely for commercial purposes. Therefore, it appears uncommon for a 1300 horsepower diesel engine to be used for "personal, family, or household purposes."