

# The Warranty Game

Understanding the Magnuson-Moss Act as it Pertains to Flooring Manufacturers

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We have all heard the claim that some flooring manufacturer will not honor their advertised warranty if an alternate adhesive is used. While many manufacturers will state this to protect their financial interests, it doesn't square with current Federal law. In the United States, it's against the law for manufacturers to withdraw warranty of a product, after it has been sold, if the consumer chooses to use an installation material manufactured by a third party. In every case, the adhesive manufacturer ALONE is responsible for the adhesive bond of the flooring to the concrete. Flooring manufacturers DO NOT produce adhesive. Rather, they resale adhesive under a private label; just like any old distributor. Combining one manufacturer's warranty to another manufacturer's warranty is called a "Tie-In" warranty... and it's against the law. It has been since 1975 with passage of the Magnuson-Moss Warranty Act (MMWA). MMWA is a federal statute that was enacted by congress to protect consumer warranties provided by manufacturers. MMWA is regulated by the Federal Trade Commission and specifically restricts the use of "tie-in" warranties making them illegal and unenforceable.

The act provides the Federal Trade Commission with the tools needed to properly regulate and oversee warranty claims in order to better protect consumers from questionable warranty practices. This law, when called into question, is meant to side in the consumer's favor to ensure NO BUYER is left without the manufacturer's advertised warranty, no matter who they choose to purchase the product from, or what they use to install the material with.

## Protections Afforded by the Magnuson-Moss Warranty Act Disclaimer or Modification of Implied Warranties

No matter how broad or narrow your written warranty is, the customers will always receive the basic protection of the implied warranty of merchantability. This implied warranty is an unwritten expectation that the material represented will function according to the provided description. Flooring adhesive is expected to bond flooring (implied merchantability) but it wouldn't be expected to function as a garage floor coating or exterior paint. It's basically not designed that way. Implied merchantability is a minimal and logical expectation that at some level, product performance as described is validated.

Exceptions can be made, but must be provided as a limitation to product performance. Additionally, if a consumable product is sold with a written warranty from the product manufacturer (adhesive mfr), and the distributor (flooring mfr) does not warrant the product in writing, then the distributor (flooring mfr) can disclaim all implied warranties. This is how most flooring manufacturers walk away from warranty obligations for adhesive bond. It comes down to the fact, they don't make the glue and if they don't offer a written performance warranty related to the glue, then the flooring manufacturers are not responsible for its failure. (These are the implied warranties under which the seller, not the manufacturer, can avoid responsibility.) Regardless of whether the product is distributed or sold direct from the manufacturer, a copy of a written warranty related to product performance, offered by the responsible party, must be provided to the consumer.

## "Tie-In Sales" Provisions

Tie-in sales provisions are NOT permitted. 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 "Insert Name" wear and defect warranty for your flooring purchased in effect, you must use genuine "Insert Name" flooring manufacturer's adhesive and installation materials. Failure to use the flooring manufacturer's adhesive voids this warranty."

While the manufacturer cannot use a tie-in sales provision, the manufacturer's warranty need not cover use of replacement parts, repairs, maintenance installation materials that is inappropriate for the flooring. These are acceptable exclusions. The following is an example of warranty language having a permissible provision that excludes coverage of accessory materials:

*"While necessary maintenance or repairs on your new Mercedes ML350 can be performed by any company, we recommend that you use only authorized Mercedes dealers. Improper or incorrectly performed maintenance or repair voids this warranty."*

Although tie-in sales provisions are illegal, 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. This documentation must be provided prior to sale. If a third party manufacturer of adhesive has a competent system of evaluation for flooring bond by issuance of a general statement of performance; then it becomes impossible for the flooring manufacturer to hold fast to warranty exclusions and the tie-in provision.

## Conclusion

Know your rights. Don't allow yourself or your customer to be manipulated. If it doesn't sound logical, then it probably isn't and worst yet, it may even be illegal. Obtain written warranties from manufacturers not their distributors. A distributor's warranty isn't worth the proverbial "weight of the paper it is written on". A private label adhesive is a product sold under distribution. The flooring manufacturer has only invested the cost of a new label. If an adhesive has a warranted moisture tolerance then obtain a written statement of performance from that manufacturer. Full disclosure of product limitations and warranty considerations will protect your interests and/or your clients.

