



GO THE

DISTA

» **I**ncreasingly in the fitness industry, manufacturers have begun to offer lifetime warranties—a benefit that retailers say can help make a sale and even sway a consumer toward a brand that offers such a warranty versus one that does not.

A lifetime warranty sounds great when selling products, but how is that time period measured? Whose lifetime are we talking about? How does a retailer explain the fine points to consumers of such warranties since they may sound the same on their face, but really can be quite different? How do warranties vary? Unfortunately, no law provides an answer to all the questions. But there are some guidelines to follow and definitions to be aware of to help you interpret, understand and explain a lifetime warranty.

California is one state that does provide some help in defining lifetime warranty, not by defining the term “lifetime,” but by requiring the manufacturer to define it. California Civil Code (Cal Civ Code § 1797.93) states that if any seller uses the terms “lifetime” or “life” in describing a warranty, the actual term or length of time must be specifically defined. Because California is such a big market, many manufacturers may define the term of the warranty in all states when complying with California’s laws because of the potential-

ly high cost of separating California sales from the other 49 states.

As a retailer, taking the time to read the fine print of a manufacturer’s warranty, and being clear with your customers when they express interest in the warranty can help you avoid pitfalls.

WHEN IS A LIFETIME WARRANTY VALID?

The first rule is defined by the business or manufacturer making the offer. If the manufacturer disappears, so does the lifetime warranty. Courts have universally agreed that a bankruptcy, reorganization or insolvency of the manufacturer ends any warranty obligations to purchasers. Simply put, if there is no manufacturer, there is no warranty.

When a new company purchases the old company that offered a lifetime warranty and went out of business, there may also be no mandate to honor the warranty. If only the assets are purchased—not the entire company, stocks and all—then no warranty will be honored. Consequently, the stronger the manufacturer, the better the chances the

warranty will be honored for the lifetime.

RETAILERS MUST BE INFORMED AND INFORM

Just what is a “lifetime?” may seem clearcut as a lifetime, but can vary. Some warranties specify only the lifetime of the original buyer, while some mean the lifetime of the equipment no matter who owns it. Some lay out details about mandated care, and some manufacturers say they’ll take care of the equipment no matter what the consumer did with it. But there’s more on your to-do list:

- » **Analyze the warranty language** to make sure you are clear whether a so-called lifetime warranty isn’t really just a sales gimmick. A warranty that has a definite term, too many hurdles to exercise the rights under the warranty, or pre-warranty qualifications may indicate a marketing scheme. Look at the warranty as a consumer: Could you complete the paperwork properly to have the manufacturer honor the warranty? Don’t let your customers think you are selling empty promises.
- » **Read the fine print and explain it clearly to customers** so there are no surprises. Some manufacturers have eliminated a once-offered lifetime warranty on a piece of equipment, changed its small print, or even dropped the offering companywide. Make sure your customers keep their dated proof

of purchase so they can prove they bought the piece when it had the lifetime guarantee.

- » **Be very precise when selling the warranty as an added value**, otherwise you could be required to honor the warranty of a defunct manufacturer. Courts have held that sellers of equipment who confused the warranty issues to the consumer or intentionally misled the consumer can be held liable for the original manufacturer's warranty. This has been forced by courts on retailers as well as asset purchasers of an old manufacturer where the seller misled the consumer prior to or after the manufacturer went under.
- » Make sure when you are selling equip-

when closing down fraudulent companies or con artists. Like piling on in football, failure to honor lifetime warranties is always one of several complaints the attorney general uses to prove the manufacturer or service provider was just ripping off the public.

One landmine for manufacturers offering a lifetime warranty is that the clock on statute of limitations (the length of time a person has to file a lawsuit) on a product in most states does not start running because of the lifetime warranty. Once the statute of limitations expires, the person cannot file a lawsuit. For torts (claims of negligence), the statute of limitations is two or three years in most states.

manufacturer is notified within those three years of a warranty claim, the warranty period does not end nor does the statute expire until after the repair has been made. Even if the warranty period has ended, the manufacturer must make the repair once notified of a claim under the warranty.

And, leave it to the law to come up with exceptions: In rare instances, a lifetime warranty may be modified by a federal statute. If a statute states the warranty will only be five years, then five years it is, even if it was sold with a lifetime warranty. Several federal regulations for transportation parts (airplanes, etc.) specifically limit the time limit of the product, although none have been found to date that would apply to exercise equipment.


NOTE

BY JIM MOSS

CONSUMERS CARRY THE BIG STICK

It's the consumer who has all the power in warranty issues, so be extra aware. Any product sold to consumers is subject to state consumer protection statutes, and every state allows the consumer to sue for fraudulent sales. Most of these were meant to deal with fraudulent sales practices; however, warranty issues have been added in most states. The burden of proof may be lower than in normal lawsuits, and the statute is written to assist consumers in suing.

These consumer protection statutes can provide incentives for consumers to litigate such as payment of attorney fees, interest and even double or treble damages. Consequently, a broken piece of equipment worth \$2,000 with a \$100 warranty problem could end up costing the manufacturer or retailer in excess of \$10,000.

Lifetime warranties are great sales incentives and that's the reason many manufacturers have been adding them. But that doesn't mean they should be taken at face value or left for the consumer to interpret as he or she thinks is correct. It behooves the retailer and sales staff to be utterly clear about what a warranty covers, how strong it is, and what its exceptions and parameters are. Manufacturers too must take responsibility to explain to their dealers point-by-point the details of their warranties. That way, every sale results in a satisfied customer who not only returns to the store, but also tells friends and family what a great experience the purchase was. 

SNEWS® has launched a division with legal advice, case reviews and articles about legal action pertaining to fitness, sporting goods, clubs, outdoor and other physical activities. Jim Moss, the Law Review division manager, is not only an attorney but also a really nice guy who speaks English. Go to www.snewsnet.com/lawreview. Direct legal questions to LawReview@snewsnet.com.

» Whether offering or explaining them, be clear with the wording of **LIFETIME WARRANTIES** so they don't turn into a lifetime of headaches.

ment with a lifetime warranty that you **do not imply that you will stand behind that warranty, if you will not**. Failure to identify the terms of the warranty, who stands behind the warranty, and how to exercise rights under warranty, are important issues to discuss with your customers.

- » As part of your sales or after-sale care, **carefully explain the procedures to not void the warranty** and how to contact the manufacturer or the manufacturer's representative to fulfill warranty issues. Educate customers about how to fulfill warranty requirements involving care. Consider offering a maintenance list just as a car comes with care checkpoints by time or use.

STATUTES AND STATUTES OF LIMITATIONS

There are no state statutes defining lifetime warranties, nor have we been able to find any court case where the basis of the case was the failure to honor a lifetime warranty. However, there are dozens of cases where failing to honor a lifetime warranty is a major portion of the litigation by a state

For contracts, the category under which a warranty usually falls, the statute is three to six years, depending on the state. For many warranty claims, the statute runs when the product breaks or when the warranty is not fulfilled. That is then defined by the statute of limitations for a contract, or three to six years. However, the courts have carved out an extension to the statute of limitations: If the warranty is for a lifetime, then the statute limitations must last as long as the warranty.

Some states have adopted Section 2-725 of the Uniform Commercial Code that places a four-year statute of limitations on warranty claims, unless the statute is extended by the manufacturer, such as in offering a lifetime warranty.

Also of note is that with warranties, the statute of limitations does not end once repair has started or the manufacturer has been notified of the claim; the statute ends once the repair is completed to the customer's satisfaction. For example, if your warranty is a limited one, say for three years, and if the