

# USPTO testimony 6-16-08

Thank you, I am George Gilbert, Crash Parts Sales Manager for Ford Motor Company. I am not an Intellectual Property attorney; I am not a lobbyist; I am just a businessman who has been selling Ford crash parts and protecting the rights of our customers to have a say in the type of parts used to repair their collision damaged vehicles. I like the idea of the Town Hall forum, and I certainly appreciate the opportunity to bring a business perspective to this issue. Today I would like to address some of the mischaracterizations presented during the many years this issue of imitation crash parts has been considered.

**#1.** The most common misperception is that car companies oppose the illegal copying of our collision parts mainly because they are only interested in maintaining their monopoly position in the collision parts market. This point of view is misleading and distorts the true nature of the market. We have heard earlier testimony that the insurance industry controls 85% of the purchase decisions in body shops----how can that be? If insurance companies are making the purchase decisions of what parts are used to repair collision damaged vehicles, and they prefer to use non-OE parts, then how did the OE parts share get to the "monopolistic" share of 75%. Later in this presentation, we'll try to decipher this dilemma.

At the outset of this discussion, let me define the types of parts under consideration--crash parts. Crash parts are the exterior sheet metal and plastic parts – such as hoods, fenders, bumpers, headlamps, and safety system components – that are frequently replaced after accidents. There are three main types of crash parts available for collision repairs today. Original Equipment Manufacturer, or OEM crash parts, which are made by or for vehicle manufacturers; new non-OEM crash parts – or “imitation” crash parts – which are unauthorized copies of OEM crash parts, most of which are produced in Taiwan; and finally salvaged and reconditioned crash parts, which are retrieved from total loss vehicles.

I'd like to clear up any misunderstanding about the scope of the parts universe we are describing today. This issues is about replacement "crash parts." This is not about aftermarket "hard parts or mechanical parts" – like batteries, shocks, oil and air filters, brake parts, suspension parts or the many other mechanical components that are part of a vehicle.

The reason for this distinction is that manufacturers of these legitimate aftermarket "hard parts" have made the required investments in design, engineering, testing, materials, manufacturing, packaging, inventorying, distribution, marketing and warranties to deliver unique products to the market, and to earn their place in the market

This is quite unlike those who copy only the highest-volume replacement crash parts. The imitators use questionable materials and manufacturing processes and are directly supported by the insurance industry, which controls 85% of parts purchase decisions in the collision industry.

In the collision parts line I manage for Ford there are over 212,000 unique collision part numbers. Ford produces and makes available every part that could be possibly needed to restore a Ford or Lincoln Mercury vehicle to pre-accident condition. We supply everything from bumpers to back-up lights, from hoods to headlamps, and roof panels to retainer clips.

In contrast, the largest distributor of imitation collision parts in the country (Keystone Automotive) carries only approximately 3,700 parts for Ford Motor Company vehicles. That's only 1.7% of our total, and of which, only 489 parts are CAPA certified.

**The truth is there is no conspiracy** on behave of the original equipment manufacturers that prevents imitation parts manufacturers from making any of the other 208,300 parts they choose not to produce. It should be fairly obvious to most people that for those parts the foreign

manufacturers choose not to make, the OE share is very close to 100%. The imitation part makers choose to make only the highest volume parts (fascias, lighting, and fenders) for our most popular vehicles. They choose not to make cowl panels, B-pillars or frame rails because, although these are essential for many repairs, --**The reason is simple, their sales volume is not nearly as great.** The manufacturers of imitation parts realize this fact and also that the larger variety of parts they make, the higher their cost structure will rise. Consequently, they wouldn't be able to offer the smaller universe of parts they do now at such low prices.

CCC (Crash Course 2008, page 23) data also supports our supposition ; for a current-three year old front fascia OE share is 68.5 %, for the a four-to-six year old vehicle, the OE share drops to 48.1%, and for a seven-plus-year-old vehicle is the OE share drops to 34%. The same percentage drops occur for hoods, fenders, headlamps and other popular parts the imitation parts makers specialize in. One might ask why such a dramatic drop in OE share occurs after the third year? As I said earlier these manufacturers of imitation parts are only interested in making the most popular parts for the best-selling vehicles. When a new vehicle is introduced, these manufacturers don't know if it's going to sell like a Ford Fusion or a Ford Thunderbird, so they wait until the vehicle reaches a critical mass before they start production of fenders, hoods, etc. That's why the CCC report shows such a dramatic drop off in OE share. According to CCC the market share for fenders is 46%, lighting 52%, hoods 51%, and bumpers 45%. --doesn't sound like much of a monopoly to me?

But when one considers the total number of collision parts sold, versus the self-limited number of imitation parts produced, it's pretty easy to understand why the generally accepted overall market share numbers show that Original Equipment Manufacturers (OEMs) have 75% share, imitation parts 15%, and salvage parts 10%.

**And if,** the imitation part manufactures' choice not to make more parts causes the OE market share to be categorized as monopolistic, then if

should be viewed as a benevolent monopoly, caused by no predatory action on the part of the OEs, but caused more by selective action on the part of imitation parts makers.

**#2.** A second misperception is that without the presence of imitation parts in the market, car manufacturers would charge any price they wish for replacement parts. Again, this assertion represents a lack of knowledge of how the market actually operates.

When Ford or other car companies introduce completely new vehicles into the market like the Ford Edge or the Chrysler 300, there obviously isn't any competition from imitation parts. However, there is still price competition.

At the time of each vehicle's introduction, it has already received an insurance company rating. Months before introduction insurance companies are provided these vehicles for evaluations. They are rated on the design of the vehicle from a reparability standpoint, labor time to repair the vehicle and of course parts costs. Each vehicle then receives an insurance company rating. These insurance ratings, which take into account cost of ownership, are important to many people and are used to help make vehicle purchase decisions.

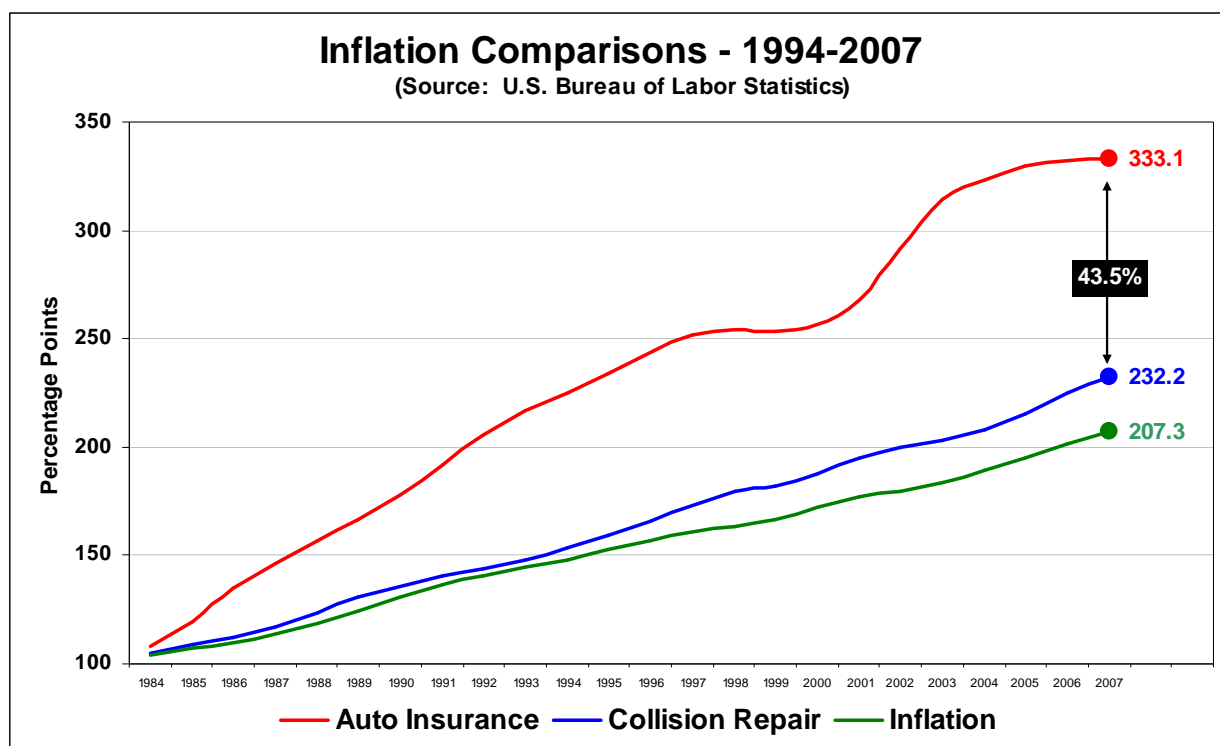
Similar-sized makes and models from various OE manufactures are rated against each other. If one company was foolish enough to over-price a fender compared to similar models, they would receive a lower insurance rating, which could negatively impact their sales, and as anyone who has read a newspaper lately knows, every vehicle sold is extremely important to each vehicle manufacturer.

So although there is no imitation crash parts pricing pressure on these new vehicles, there is a formidable price pressure provided by each of the other OEs to secure a favorable insurance company rating.

**#3.** Another common misconception is that the use of these cheaper imitation crash parts somehow benefit consumers.

During the years of greatest increase in the use of new aftermarket, or imitation parts by insurance companies for collision repairs, auto insurance premium costs rose significantly more rapidly than collision repair costs, which closely tracked overall inflation.

Half of collision repair cost is allocated for parts and the vast majority of parts used for collision repairs are OEM parts.



Perhaps the use of cheaper imitation crash parts is benefiting someone, but it certainly doesn't appear to be benefiting the consumer.

## So the question is, what are CAPA and insurance companies **really** seeking with this amendment

When legislation, that would have provided certain imitation crash parts with a favored status, was debated during 2002 and 2005 at the National Conference of Insurance Legislators (NCOIL), one of the committee members (State Senator Geller from Florida) asked a very pertinent question, "Why isn't the committee considering legislation that would certify the quality of other parts whose level of quality could certainly impact customer satisfaction and even safety?"

These are the parts we've already mentioned--brakes, shocks, fuel injectors--why not legislation that assures the quality of those parts?--why then consider legislation for a class of parts, mainly fenders and hoods that by CAPA and the Insurance Institute for Highway Safety (IIHS) own definition are cosmetic only and have no impact on safety? Why do these parts warrant special consideration?

Perhaps the answer lies in the environments in which these respective parts are sold. As I mentioned earlier, there are legitimate parts manufacturers who compete for our dollars on a daily basis. On the mechanical side, you and I as customers can walk into any Advance Auto, Auto Zone, Sears, or PEP Boys across the country and there they are, all lined up neatly on the shelves. Here is where the similarity between legitimate aftermarket parts and the imitation copies that CAPA promotes stops.

Brands such as Monroe shocks, FRAM filters, Champion spark plugs, and Bosch brakes have all earned their reputation by designing, engineering and producing parts that compete with our Ford Motorcraft brand of parts on a performance level everyday in the marketplace. But CAPA and insurance companies continue to try to confuse the issue by promoting the cheap imitation sheet metal and plastic parts they promote as if they were composed of the same quality materials and workmanship as the legitimate parts brands.

This ploy hasn't worked in the past, nor should it work in the future because in the environment in which these legitimate parts compete, **the consumer is KING**; in that environment the consumer defines quality and decides what level of quality they are willing to pay for. In that environment there is no need for special exemptions or special protection because the parts either perform to the consumers' expectations or GET OFF the shelf.

This, however, is not the case with cheap imitation crash parts. The parts chosen for collision repairs are specified by the insurance company – whose priority is cost containment – and oftentimes these part replacement decisions are made without the knowledge or consent of the consumer. It is our contention that if these imitation parts had to compete in the- mechanical parts world, they would have been off the shelf years ago.

We suggest that what imitation parts (CAPA certified and Non-CAPA certified) seek before the USPTO is a legislative crutch for a failed marketing and quality system. Cheap, copied parts have consistently failed on their promise to deliver better quality. Even with the full backing of the insurance industry. CAPA, by its own admission, has less than a three % market share, and that's after 15 years of operation.

CAPA can't grow in the market because the market is not buying what they're selling because they continue to fail in delivering the quality parts their rhetoric suggests. Even the Executive Director of CAPA admits to its shortfalls.

In the April-May edition of *Body Language* (Voice of the Automotive Body Parts Association), a statement prepared by Mr. Gillis was quoted as saying:

"CAPA is keenly aware of the growing frustration in the market when CAPA certified parts are identified and called for on repair estimates, but CAPA certified parts are simply not available or

readily available. "This is due to the fact that, as of the end of 2007, only 31% of the parts listed as CAPA certified, manufacturers are either not making as certified or making in very small numbers. At the end of 2007 there were 908 CAPA part applications which manufacturers simply chose not to offer as CAPA certified.

"There was an additional 835 CAPA part applications which manufactures offered in quantities of less than 250 parts as CAPA certified. This means that nearly one-third of the parts listed on estimates have little or no chance of actually being available as CAPA certified.

"One of the reasons for this serious problem is because the manufacturers often practice what they call 'dual production'. They make CAPA-certified and non-certified versions of the same part.

In the article, Mr. Gillis also said "This practice of 'part switching' when CAPA certified parts appear on the estimates and non-CAPA parts are actually delivered, has the potential to set the industry back to the days when parts were terribly characterized as "Taiwan Tin".

Madam Deputy Under Secretary you stated on the USPTO web site that the goal of your listening tour is to hear all perspectives on issues surrounding industrial design protection so the USPTO can evaluate and assess what policies are best for our intellectual property system'.

Action has been introduced that would amend Title 35 of the United States Code to create an exception from infringement for certain component parts used to repair another article. Just listening to what Jack Gillis had to say to distributors of these imitation parts, you must certainly consider that any decision to exempt Original Equipment Manufacturers' sheet metal parts from the patent protection afforded under U.S. law has implications that go beyond pure intellectual



Property Rights. CAPA has admitted that Taiwan manufacturers can't even make bad parts consistently, and many have shown little interest in making good parts vs. bad parts.

The collision parts being considered for amendment to Title 35 are ones used to restore collision damaged vehicles back to pre-accident condition. To strip away the patent protection that help assure Ford and Lincoln Mercury vehicles owners the best chance of getting back the Ford or Lincoln Mercury vehicle they had before the accident, not only does an injustice to the thousands of hard-working Ford employees that design, test, and produce these parts, but also does an injustice to the millions of Ford Motor Company vehicle owners who at sometime during their ownership lifecycle will have face the experience of having a collision-damaged vehicle repaired. Those customers deserve the right to have a voice in the type of parts used in the collision repair of their vehicle.