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The American
Antitrust Institute

July 14, 2008

Mail Stop External Affairs
Director of the United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Written Testimony in Support of H.R. 5638

Dear Director:

Consistent with the testimony given by the American Antitrust Institute (AAI) at the United States Patent and Trademark Office Town Hall Meeting on the Protection of Industrial Designs on June 16, 2008, we would like to take this opportunity to reiterate our support for H.R. 5638, a bill that would create an exception to infringement of design patents for certain component parts used to repair another article of manufacture.

As an independent non-profit education, research, and advocacy organization that supports the role of competition in the interests of consumers, the AAI has been studying competition issue in the aftermarkets for the past few years. For instance, in 2006 we hosted "The Future of Aftermarkets in Systems Competition," where prominent professionals and policymakers gathered to seek more desirable policies. Many of the papers presented were subsequently published in the Spring 2007 issue of the Antitrust Bulletin.

We expect H.R. 5638 to bring more competition to the component parts markets so that consumers benefit from much lower prices, broader choices and higher quality. The bill will ensure a more competitive environment so that independent parts providers can effectively compete with the manufacturers of original products.

Consumers have only a limited ability to protect themselves against exploitation in the aftermarket for many products because of the difficulty in assessing total cost of ownership at the time of purchase. Several empirical studies support the conclusion that the existence of independent parts providers can lower the price of repair parts, especially in the automotive industry.

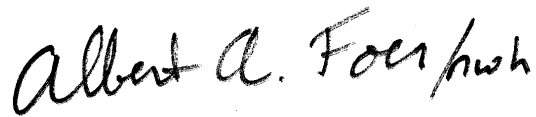
Consumers would benefit from the emergence of aftermarket manufacturers, not only from lower prices but also from innovations that fall outside the scope of the design, such as use of different and potentially better ways to build the repair parts. We firmly believe that the purpose of the patent laws is to protect innovation, not innovators. *See Harry First, Controlling The Intellectual Property Grab: Protect Innovation, Not Innovators*, 38 Rutgers L. J. 365, 367 (2007). As for the original manufacturers, their main incentive to innovate should not be to earn high profits in monopoly aftermarkets by locking consumers into a single source of supply for repair parts but to differentiate their products

and make them more attractive to consumers.

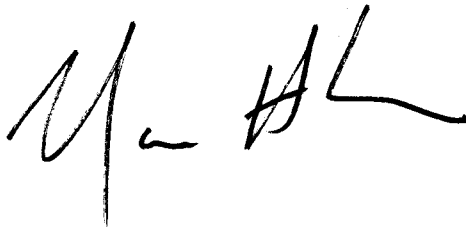
Contrary to some of the comments offered at Town Hall, H.R. 5638 allows designers to fully recoup their investment through the prices they charge for their products. This bill does not allow for the creation of knock offs of the original product. Rather, the bill is narrowly tailored to the special case of the aftermarket since it does not extend beyond repair parts needed to restore a product to its original condition.

Thank you for this opportunity to elaborate on the comments made on June 16 and for the opportunity to reiterate the AAI's support for H.R. 5638.

Sincerely,

Handwritten signature of Albert A. Foer in black ink.

Albert A. Foer, President
American Antitrust Institute

Handwritten signature of Norman Hawker in black ink.

Norman Hawker, Senior Fellow
American Antitrust Institute