

Campagne Européenne
pour la Liberté du Marché
des Pièces de Rechange
et de la Réparation Automobile

Die europäische Bewegung
für die Freiheit
des Kfz-Ersatzteile-
und Kfz-Reparatur-Marktes

The European Campaign
for the Freedom
of the Automotive Parts
and Repair Market



Presentation

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Ladies and gentlemen,

I am Alfred Franke. My name sounds German but I am really Polish. I coordinate ECAR's activities in Poland.

Like some other new Member States Poland was not aware of the spare parts problem when it had to adjust its design law to European rules. This is why no special provision for spare parts was included in the new Industrial Property Act of 2002. Soon, however, the businesses world and the public at large were shaken up because vehicle makers started to rigidly use design rights in order to stop independent competition of spare parts.

Let me just mention a few striking aspects of these activities:

Instead of using normal civil actions vehicle makers more and more relied on criminal proceedings. They caused public prosecutors to indict independent distributors for selling aftermarket body panels - on the charge of infringing vehicle makers' design rights which is punishable in Poland with fines and imprisonment up to 2 years. Take a recent example (out of many): *Tomala*, a family-owned wholesaler with 40 employees, sold body spare parts for *Skoda* cars for more than 15 years. Now, he was sentenced by a criminal court of 1st instance to refrain from selling the full range of body parts the design of which *Skoda* had registered, to destroy 300 grilles worth almost 4000 Euro and to pay a fine that equals 3000 Euro. This way *Skoda* could reach its objective to eliminate competition without getting its own hands dirty. In the circumstances the judiciary does the job for a big player - on tax payer's expense and to the detriment of a small business!

Remarkable in this context is the fact that American companies, in particular GM, - supported by the U.S. Chamber of Commerce in Poland - play a leading role in fighting for and executing design protection in Poland. This is strange to me because in the United States design protection for spare parts does not exist. Why should U.S. companies be allowed to exploit Polish and EU consumers by monopoly prices - whereas at the same time they have to live with competition in their home market and the 236 million U.S. vehicle owners enjoy competition-controlled spare parts prices?

Finally, another intervention came to us as a real surprise. In February this year a junior minister of the German Government contacted our Government and doggedly urged it to abstain from legislation intended to liberalise the Polish spare parts market.

Fortunately, he did not get his way and the dire and damaging situation in Poland seems to come to an end. Our Parliament, the Sejm, adopted a "Repairs Clause" as proposed by the Commission just a few days ago, on the 24th of May with an overwhelming majority of 85%. Subject to confirmation by the Senate (which is expected in June) there will be a free aftermarket in Poland.

Thank you for your attention.