



## Tenth Circuit prevents eBay auctions of radar detectors stripped of their serial numbers

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Beltronics made radar detectors, which two Beltronics distributors stripped of their serial number labels and sold in violation of their distributorship agreements to retailer Midwest. Midwest sold the radar detectors as "new" on eBay. Irate consumers complained when Beltronics refused to provide warranty coverage and other services for the radar detectors purchased from Midwest because they had no serial number labels. The District Court for the District of Kansas granted Beltronics motion for a preliminary injunction to stop Midwest sales and Midwest appealed. Midwest claimed its sale of the Beltronics radar detectors was protected by the first sale doctrine, which allows consumers to resell items they have purchased without triggering trademark liability. Midwest argued in the alternative that the district court erred in finding that its disclosures to consumers were insufficient to prevent confusion.

The Tenth Circuit followed a line of gray market goods cases to conclude that differences in warranty protection or service commitments constituted a material difference. As removal of the serial numbers voided Beltronics's warranty, the products sold by Midwest were materially different from genuine radar detectors. Thus, the Tenth Circuit found the first sale doctrine did not protect Midwest's activities. Midwest argued that the court's interpretation would permit any trademark owner to eliminate the unauthorized resale of its goods and shut down secondary markets by limiting warranty coverage and service commitments to those who buy from authorized outlets. The Tenth Circuit rejected this argument, because the Lanham Act—the federal trademark statute—only proscribes those sales that are likely to confuse consumers, and vendors who sell materially different goods but take sufficient steps to prevent consumer confusion, like fully disclosing the material differences, would not trigger liability under the Lanham Act.

The Tenth Circuit found Midwest's attempted disclosures insufficient. While Midwest stated on its auction page that it was retaining the serial number label because the detectors it sold were not covered by Beltronics' warranty, there were also material differences regarding product and service



assistance, product use information, software upgrades, rebates and recalls that Midwest did not endeavor to correct. Thus, the Tenth Circuit upheld the injunction.

[Beltronics USA, Inc. v. Midwest Inventory Distribution, LLC, No. 07-3340 \(10th Cir. 2009\)](#)

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