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§24.3 Misuse of the terms "waterproof," "dustproof," "warpproof," "scuffproof," "scratchproof," "scuff resistant," and "scratch resistant."

It is unfair or deceptive to:

(a) Use the term ''Waterproof'' to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

(b) Use the term ''Dustproof'' to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term ''Warpproof'' to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term ''Scuffproof,'' ''Scratchproof,'' or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term ''Scuff Resistant,'' ''Scratch Resistant,'' or other terms indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

PARTS 25–227 [RESERVED]

PART 228—TIRE ADVERTISING AND LABELING GUIDES

Sec.

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AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 32 FR 15525, Nov. 8, 1967, unless otherwise noted.

§228.0 "Industry Product" and "Industry Member" defined.

As used in this part, the terms *Industry Product* or *Product* shall mean pneumatic tires for use on passenger automobiles, station wagons, and similar vehicles, or the materials used therein. The term *Industry Member* shall mean: All persons or firms who are engaged in the manufacture, sale or distribution of industry products as above defined whether under the manufacturer's or a private brand; and the manufacturers of passenger automobiles, station wagons, and similar vehicles for which industry products are provided as original equipment.

§228.0–1 Use of guide principles.

The following general principles will be used in determining whether terminology and other direct or indirect representations subject to the Commission's jurisdiction regarding industry products conform to laws administered by the Commission.

§228.1 Tire description.

(a) The purchase of tires for a motor vehicle is an extremely important matter to the consumer. Not only are substantial economic factors involved, but in most instances the purchaser will entrust the safety of himself and others to the performance of the product.

(b) To avoid being deceived, the consumer must have certain basic information. Certain of this information should be provided before the purchaser makes his choice but other is essential throughout the life of the tire.

(1) *Disclosure before the sale.* The following information should be disclosed in point of sale material which is

prominently displayed and of easy access, on the premises where the purchase is to be made in order to appraise the consumer:

(i) *Load-carrying capacity of the tire.* This information is essential to assure the purchaser that the tires he selects are capable of safely carrying the intended load. This information should consist of the maximum load-carrying capacity as related to various recommended air pressures and may include data which indicates the effect such varying pressures will have on the operation of the automobile. All such information shall be based on actual tests utilizing adequate and technically sound procedures. The test procedures and results shall be in writing and available for inspection.

(ii) *Generic name of cord material.* Different cord materials can have performance characteristics that will affect the consumer's selection of tires. These various characteristics are widely advertised, and the consumer is aware of the distinctions. Without a disclosure of the generic name of the cord material, the consumer is unable to consider this factor in his purchase.

(iii) *Actual number of plies.* Consumers have preference for industry products of a stated type of construction (e.g., 2 ply v. 4 ply). Without adequate disclosure the consumer is denied the basis for considering this factor in his selection.

NOTE: Where the tire is of radial construction the ply count disclosure will be satisfied by the statement ''radial ply.''

(2) *Disclosure on the tire.* The following information should be clearly disclosed in a permanent manner on the outside wall of the tire:

(i) *Size.* Size is extremely important not only to insure that the tire will fit the vehicle wheel, but because it also is a determining factor as to the load-carrying capacity of the vehicle.

(ii) *Whether tire is tubeless or tube type.*

(iii) *Actual number of plies.*

NOTE: Where the tire is of radial construction the ply count disclosure will be satisfied by the statement ''radial ply.''

(3) *Other disclosures*—(i) *Generic name of cord material used in ply.* A disclosure of the generic name of the cord material used in the ply of the tire should be made on a label or tag prominently displayed on the tire itself, and affixed in such a fashion that it cannot be easily removed prior to sale.

(ii) *Load-carrying capacity and inflation pressure.* One of the most important factors in obtaining tire performance is proper care and use. Included in such care is inflating the tire to the required level as related to load-carrying capacity and use. To insure that such pressures are maintained by the user and the tire is not overloaded beyond its safe capacity, a table or chart should be provided for retention by the purchaser. This will apprise the purchaser of the load-carrying capacity of the tires as related to the range of recommended air pressures and use. It may also supply data which indicate the effect such varying pressures will have on the operation of the automobile.

NOTE: Automobile manufacturers who provide tires as original equipment with new automobiles should incorporate such information in the owner's manual given to new car purchasers.

[Guide 1]

[32 FR 15525, Nov. 8, 1967, as amended at 33 FR 982, Jan. 26, 1968]

§ 228.2 Designations of grade, line, level, or quality.

(a) There exists today no industry-wide, government or other accepted system of quality standards or grading of industry products. Within the industry, however, a variety of trade terminology has developed which, when used in conjunction with consumer transactions, has the tendency to suggest that a system of quality standards or grading does in fact exist. Typical of such terminology are the expressions ''line,'' ''level,'' and ''premium.'' The exact meaning of such terminology may vary from one industry member to another. Therefore, the ''1st line'' or ''100 level'' or ''premium'' tire of one industry member may be grossly inferior to the ''1st line'' or ''100 level'' or ''premium'' tire of another member since in the absence of an accepted system of grading or quality standards, each member can determine what ''line,'' ''level,'' or ''premium'' classification to attach to a tire.

(b) The consumer does not understand the significance of the absence of accepted grading or quality standards and is likely to assume that the expressions ''line,'' ''level,'' and ''premium'' connote valid criteria. Since the consumer is likely to misinterpret the meaning of such terminology, he may be deceived into purchasing an inferior product because it has been given such designation.

(c) In the absence of an accepted system of grading or quality standards for industry products, it is improper to represent, either through the use of such expressions as ''line,'' ''level,'' ''premium'' or in any other manner, that such a system exists, unless the representation is accompanied by a clear and conspicuous disclosure:

(1) That no industrywide or other accepted system of quality standards or grading of industry products currently exists, and

(2) That representations as to grade, line, level, or quality, relate only to the private standard of the marketer of the tire so described (e.g., ''XYZ first line'').

(d) Additionally, products should not be described as being ''first line'' unless the products so described are the best products, exclusive of premium quality products embodying special features, of the manufacturer or brand name distributor applying such designation. [Guide 2]

§228.3 Deceptive designations.

In the advertising or labeling of products, industry members should not use designations for grades of products they offer to the public:

(a) Which have the capacity to deceive purchasers into believing that such products are equal or superior to a better grade or grades of their products when such conclusion would be contrary to fact (for example, if the ''first line'' tire of a manufacturer is designated as ''Standard,'' ''High Standard,'' or ''Deluxe High Standard,'' the tires of that manufacturer which are of lesser quality should not be designated or described as ''Super Standard,'' ''Supreme High Standard,'' ''Super Deluxe High Standard,'' or ''Premium''), or

(b) Which are otherwise false or misleading.

NOTE: When a manufacturer applies a designation to a product which falsely represents or implies the product is equal or superior in quality to its better grade or grades of products, it is responsible for any resulting deception whether it is a direct result of the designation or a result of the placing in the hands of others a means and instrumentality for the creation by them of a false and deceptive impression with respect to the comparative quality of products made by that manufacturer.

[Guide 3]

§228.4 Original equipment.

Original equipment tires are understood to mean the same brand and quality tires used generally as original equipment on new current models of vehicles of domestic manufacture. A tire which was formerly but is not currently used as ''Original Equipment,'' should not be described as ''Original Equipment'' without clear and conspicuous disclosure in close conjunction with the term, of the latest actual year such tire was used as ''Original Equipment.'' [Guide 4]

§228.5 Comparative quality and performance claims.

Representations and claims made by industry members that their products are superior in quality or performance to other products should not be made unless:

(a) The representation or claim is based on an actual test utilizing adequate and technically sound procedures of the performance of the advertised product and of the product with which it is compared; the test procedure, results of which are in writing and available for inspection; and

(b) The basis of the comparison is clearly stated and the comparison is based on identical conditions of use. Dangling comparatives should not be used.

(c) Claims or representations that one tire is comparable or identical to another should not be used unless the advertiser is able to establish that such tires are comparable not only as respects the molds in which the tires are made, but also as respects all significant materials used in their construction. [Guide 5]

§ 228.6 Ply count, plies, ply rating.

A ply is a layer of rubberized fabric contained in the body of the tire and extending from one bead of the tire to the other bead of the tire. The consumer is interested in, and is entitled to know, certain information in regard to plies in tires. However, a great deal of terminology connected with plies which is utilized in advertising has the tendency to confuse and deceive the public and is accordingly inappropriate.

(a) It is improper to utilize any statement or depiction which denotes or implies that tires possess more plies than they in fact actually possess. Phrases such as ''Super 6'' or ''Deluxe 8'' as descriptive of tires of less than 6 or 8 plies, respectively, should not be used.

(b) The actual number of plies in a tire is not necessarily determinative of the ultimate strength, performance or quality of the product. Variations in the amount and type of fabric utilized in the ply and other construction features of the tire will determine the ultimate strength, performance or quality of the product. Through variations in these construction aspects, a tire of a stated number of plies may be inferior in strength, quality, and performance to another tire of lesser actual ply count. Accordingly, it is improper to represent in advertising, or otherwise, that solely because a product has more plies than another, it is superior.

(c)(1) The expression ''ply rating'' as used in the trade is an index of tire strength. Each manufacturer, however, has his own system of computing ''ply rating.'' Thus, a product of one industry member of a stated ''ply rating'' is not necessarily of the same strength as the product of another member with the identical rating. While the expression ''ply rating'' may have significance to industry members, in the absence of a publicized system of standardized ratings, the use of such expressions in connection with sales to the general public may be deceptive.

(2) To avoid deception, the expression ''ply rated'' or ''ply rating'' or any similar language should not be used unless said claim is based on actual tests utilizing adequate and technically sound procedures, the results of which are in writing and available for inspection. Further, certain disclosures must be made when such expressions are used in connection with consumer transactions.

(3) When ply rating is stated on the tire itself, it must be accompanied in immediate conjunction therewith, and in identical size letters, the disclosure of the actual ply count. In addition, there must be a tag or label attached to the tire or its packaging, of such permanency that it cannot easily be removed prior to sale to the consumer, which tag or label contains a clear and conspicuous disclosure:

(i) That there is no industrywide definition of ply rating; and

(ii) Of the basis of comparison of the claimed rating. (For example, ''2-ply tire, 4-ply rating means this 2-ply tire is equivalent to our current or most recent 4-ply nylon cord tire.'')

(4) When ply rating is used in advertising or in other sales or promotional materials, in addition to the disclosure of actual ply count as indicated, it must be accompanied by the disclosure:

(i) That there is no industrywide definition of ply rating; and

(ii) Of the basis of comparison of the claimed rating. (For example, ''2-ply tire, 4-ply rating means this 2-ply tire is equivalent to our current or most recent 4-ply nylon cord tire.'') [Guide 6]

§ 228.7 Cord materials.

(a) The fabric that is utilized in the ply is known as the cord material. The use of a particular type of cord material may be determined by the use to which the tire will be placed. One type of cord material may provide one desired characteristic, but not be used because of other characteristics which may be unfavorable.

(b) The type of cord material utilized in a tire is not necessarily determinative of its ultimate quality, performance or strength. Through variations in the denier of the material, the amount to be used and other construction aspects of the tire, the ultimate quality, performance, and strength is determined.

(c) It is improper to represent in advertising, or otherwise, that solely because a particular type of cord material is utilized in the construction of a tire, it is superior to tires constructed

with other types of cord material. Such advertising is deceptive for it creates that impression in the consumer's mind whereas in fact it does not take into consideration the other variable aspects of tire construction.

(d) When the type of cord material is referred to in advertising, it must be made clear that it is only the cord that is of the particular material and not the entire tire. For example, it would be improper to refer to a product as ''Nylon Tire.'' The proper description is ''Nylon Cord Tire.'' Similarly, when the manufacturer of the cord material is mentioned, it should be made clear that he did not manufacture the tire. For example, a tire should be described as ''Brand X Nylon Cord Material'' and not ''Brand X Nylon Tire.''

(e) Cord material should be identified by its generic name when referred to in advertising. [Guide 7]

§228.8 "Change-Overs," "New Car Take Offs," etc.

Industry products should not be represented as ''Change-Overs'' or ''New Car Take Offs'' unless the products so described have been subjected to but insignificant use necessary in moving new vehicles prior to delivery of such vehicles to franchised distributor or retailer. ''Change-Overs'' or ''New Car Take Offs'' should not be described as new. Advertisements of such products should include a clear and conspicuous disclosure that ''Change-Overs'' or ''New Car Take Offs'' have been subjected to previous use. [Guide 8]

§228.9 Retreaded and used tires.

Advertisements of used or retreaded products should clearly and conspicuously disclose that same are not new products. Unexplained terms, such as ''New Tread,'' ''Nu-Tread'' and ''Snow Tread'' as descriptive of such tires do not constitute adequate disclosure that tires so described are not new. Any terms disclosing that tires are not new also shall not misrepresent the performance, the type of manufacture, or any other attribute of such tires. See §228.18. [Guide 9]

[32 FR 15525, Nov. 8, 1967, as amended at 58 FR 64882, Dec. 10, 1993]

§228.10 Disclosure that products are obsolete or discontinued models.

Advertisements should clearly and conspicuously disclose that the products offered are discontinued models or designs or are obsolete when such is the fact.

NOTE: The words ''model'' and ''design'' used in connection with tires include width, depth, and pattern of the tread as well as other aspects of their construction.

[Guide 10]

§228.11 Blemished, imperfect, defective, etc., products.

Advertisements of products which are blemished, imperfect, or which for any reason are defective, should contain conspicuous disclosure of that fact. In addition, such products should have permanently stamped or molded thereon or affixed thereto and to the wrappings in which they are encased a plain and conspicuous legend or statement to the effect that such products are blemished, imperfect, or defective. Such markings by a legend such as ''XX'' or by a color marking or by any other code designation which is not generally understood by the public are not considered to be an adequate disclosure. [Guide 11]

§228.12 Pictorial misrepresentations.

(a) It is improper to utilize in advertising, any picture or depiction of an industry product other than the product offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith should be the exact tire offered for sale at the advertised price.

(b) For example, it would be improper to depict a white side wall tire with a designated price when the price is applicable to black wall tires. Such practice would be improper even if a disclosure is made elsewhere in the advertisement that the featured price is not for the depicted whitewalls. [Guide 12]

§228.13 Racing claims.

(a) Advertising in connection with racing, speed records, or similar events should clearly and conspicuously disclose that the tires on the vehicle are not generally available all purpose tires, unless such is the fact.

(b) The requirement of this section is applicable also to special purpose racing tires, which although available for such special purpose, are not the advertiser's general purpose product.

(c) Similarly, designations should not be utilized in conjunction with any industry product which falsely suggest, directly or indirectly, that such product is the identical one utilized in racing events or in a particular event. [Guide 13]

§ 228.14 Bait advertising.

(a) Bait advertising is an alluring but insincere offer to sell a product which the advertiser in truth does not intend or want to sell. Its purpose is to obtain leads as to persons interested in buying industry products and to induce them to visit the member's premises. After the person visits the premises, the primary effort is to switch him from buying the advertised product in order to sell something else, usually at a higher price.

(b) No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. Among the acts and practices which will be considered in determining if an advertisement is bona fide are:

(1) The advertising of a product at a price applicable only to unusual or off size tires or for special purpose tires;

(2) The refusal to show or sell the product offered in accordance with the terms of the offer;

(3) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that the supply is limited and/or the merchandise is available only at designated outlets;

(4) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, or in any other respect in connection with it;

(5) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 14]

§ 228.15 Deceptive pricing.

(a) *Former price comparisons.* One form of advertising in the replacement market is the offering of reductions or savings from the advertiser's former price. This type of advertising may take many forms, of which the following are examples:

Formerly $_____ Reduced to $_____.
50% Off—Sale Priced at $_____.

Such advertising is valid where the basis of comparison, that is, the price on which the represented savings are based, is the actual bona fide price at which the advertiser recently and regularly sold the advertised tire to the public for a reasonably substantial period of time prior to the advertised sale. However, where the basis of comparison (1) is not the advertiser's actual selling price, (2) is a price which was not used in the recent past but at some remote period in the past, or (3) is a price which has been used for only a short period of time and a reduction is claimed therefrom, the claimed savings or reduction is fictitious and the purchaser deceived. Following are examples illustrating the application of this provision:

Example 1. Dealer A advertises a tire as follows: ''Memorial Day Sale—Regular price of tire, $15.95—Reduced to $13.95.'' During the preceding 6 months Dealer A has conducted numerous ''sales'' at which the tire was sold in large quantities at the $13.95 price. The tire was sold at $15.95 only during periods between the so-called ''sales.'' In these circumstances, the advertised reduction from a ''regular'' price of $15.95 would be improper, since that was not the price at which the tire was recently and regularly sold to the public for a reasonably substantial period of time prior to the advertised sale.

Example 2. Dealer B engaged in sale advertising weekly on the last 3 days of the week. It was his practice during the selling week to offer a particular line of tires at $24.95 on Monday, Tuesday, and Wednesday, and advertise the same line as ''Sale Priced $19.95'' on the final 3 days of the selling week. Use of the price for only 3 days prior to the reduction, even though the higher price is resumed after 3 days of ''sale'' advertising would not constitute a basis for claiming a price reduction. The higher price was not the regular selling price for a reasonably substantial period of time. Furthermore, when the higher price is used only for the first 3 days of the week and another price is used for the final 3 days, the higher price has not

been established as a regular price, especially when most sales are made at the lower price during the final 3-day period.

(b) *Trade area price comparisons.* (1) Another recognized form of bargain advertising is to offer tires at prices lower than those being charged by others for the same tires in the area where the advertiser is doing business. Examples of this type of advertising where used in connection with the advertiser's own price are:

Sold Elsewhere at $_____.
Retail Value $_____.

(2) The tire market, because of its nature, requires that special care and precaution be exercised before this type of advertising is used. Trade area price comparisons are understood by purchasers to mean that the represented bargain is a reduction or saving from the price being charged by representative retail outlets for the same tires at the time of the advertisement.

(3) If a tire manufacturer decides to conduct a promotion of a particular tire, reduces the price in his wholly owned stores and independent dealers follow the promotion price, the ''sale'' price has become the retail price in the area and it would be deceptive to represent that this ''sale'' price is reduced from that charged by others. In most circumstances where a promotion is sponsored by the manufacturer and is followed by the wholly owned stores and most of the independent dealers in the area, such trade area price comparisons would be improper.

(4) A trade area price comparison would be valid where an individual dealer, acting on his own, decides to lower the price of a tire significantly below that being charged by others in his area. In this situation, he would be honestly offering a genuine reduction from the price charged by others in his area.

(5) When using a retail price comparison great care should be exercised to make the advertising clear that the basis of the reduction or saving is the price being charged by others and not the advertiser's own former selling price.

(c) *Substantiality of reduction or savings.* In order for an advertiser to represent that a price is reduced or offers savings to purchasers without specifying the extent thereof, it is necessary that the represented reduction or savings be significant. When the amount of the reduction or savings is not stated in advertising and is not substantial enough to attract and influence prospective purchasers if they knew the true facts, the representation is deceptive.

Example Dealer C advertises a Fourth of July sale featuring X brand tires at a claimed reduction in price. The sale price in the advertisement is stated as $14.75 per tire. The advertisement does not state the former price of the tire. The tire previously had been sold at $14.95. Under the circumstances, the advertisement would be deceptive. The 20-cent reduction in price is insignificant when compared with the actual selling price of the tire. Purchasers generally, if they knew the amount of the reduction, would not be influenced sufficiently thereby to cause them to purchase the tire at the reduced price.

(d) *Representations of specific price reductions and savings.* (1) Advertisements which offer a specified amount or percentage of price reduction or savings should not be used where there is no determinable regular selling price, whether it be the advertiser's former price or the retail price in the area.

(2) The lack of a determinable actual selling price does not preclude all ''sale'' advertising. For example, if a dealer desires to offer a tire at a price which represents a significant reduction from the lowest price in the range of prices at which he has actually sold the tire in the recent regular course of his business, it would not be deceptive to advertise the tire with such representations as ''Sale Priced,'' ''Reduced'' or ''Save.''

(3) However, an advertiser is not precluded from offering specific savings from the lowest price at which he has actually sold tires, provided that the advertising clearly states that the offered savings are a reduction from the lowest previous selling price and not from the advertiser's regular selling price.

(e) *No trade-in prices.* (1) The most common device used in advertising is to offer a purported reduction or savings from a so-called ''no trade-in'' price. Prospective purchasers are entitled to believe this to mean that they would realize a savings from the price they would have had to pay for the tire

prior to the ''Sale,'' either in cash or in cash plus the fair value of a traded-in tire. If this is not true, purchasers are deceived. Where a significant number of sales in relation to a seller's total sales is not made at the so-called ''no trade-in'' price and such price appreciably exceeds the price purchasers would normally pay the seller (including the fair value of any trade-in), use of the price as a basis for claiming a reduction or savings would be deceptive and contrary to this part.

(2) Representations of high trade-in allowances are sometimes used in combination with fictitious ''no trade-in'' prices to deceive purchasers. These may take the form of direct representations that a specified amount (usually significantly higher than the value of the tire carcass) will be allowed for a trade-in tire, or, representations of specific savings in the purchase of a new tire when a tire is traded in during a ''sale.'' In either case, the purchaser is given the illusion of a bargain in the guise of a high trade-in allowance which he does not in fact receive if the amount of the allowance is deducted from a fictitiously high ''no trade-in'' price.

Example 1. An advertisement offers a 25 percent reduction during a May tire sale. The body of the advertisement sets forth a ''no trade-in'' price as the price from which the represented 25 percent reduction is made. However, such price represents the price at which only 15 percent of the advertiser's total sales were made and which was appreciably higher than the price at which the tire usually sold with a trade-in even with the addition of an amount representing a reasonable, bona fide trade-in allowance. Use of the ''no trade-in'' price in the advertisement is deceptive.

Example 2. Dealer D advertises, ''Now Get $4 to $10 Per Tire Trade-In Allowance'' in connection with the sale of a certain tire. Dealer D has regularly sold the tire for $12 to customers having a good recappable tire to offer in trade. During the regular course of Dealer D's business he has granted allowances ranging from 50 cents to $3, depending upon the condition of the tire taken in trade. During the advertised sale, however, Dealer D sells all of the tires at the manufacturer's suggested ''no trade-in'' price of $22 and deducts from that price the inflated trade-in allowances. Under the circumstances, the advertisement would be deceptive. Dealer D has not granted the allowances in connection with his regular selling price but has used instead the fictitious ''no trade-in'' price as a basis for offering the inflated allowances. The consumer has been led to believe that his old tire is worth far more than its actual value and Dealer D receives what has been his regular selling price or, in some instances, an amount in excess of the regular price, depending upon the allowance granted.

(f) *Combination offers.* (1) Frequent use is made in the tire market of purported bargain advertising which offers ''free'' or at a represented reduced price a tire, some other article of merchandise or a service, with the purchase of one or more tires at a specified price. The following are typical examples of this type of offer:

Buy 3, get four at no additional cost.
Buy one tire at $____, get second tire at 50% off.
Get a wheel free with purchase of each snow tire.
Free wheel alignment with purchase of two new tires.

Such advertising is understood by purchasers to mean that the price charged by the advertiser for the initial tire or tires to be purchased is the price at which they have been regularly sold by the advertiser for a reasonably substantial period of time prior to the sale, and that the amount of the purported reduction or the value of the so-called ''free'' article or service represents actual savings. If the price of the tires to be purchased is not the advertiser's regular selling price, purchasers are deceived.

Example. Dealer E advertises ''2nd Tire ½ Off When You Buy First Tire At Price Listed Below—No Trade-In Needed!'' In the body of the advertisement the first tire is listed as costing $25.15 and the second tire $12.57. The figure listed as the price for the first tire is not Dealer E's regular selling price, but the manufacturer's suggested ''no trade-in'' price. E's regular selling price prior to the so-called sale had been $18.85 per tire. Under the circumstances, the ''½ Off'' offer would be deceptive. The basis for the advertised offer is not the advertiser's actual selling price for the tire. While consumers are led to believe that they are being afforded substantial savings by purchasing a second tire, in fact they are paying Dealer E's regular selling price for two tires.

(g) *Federal Excise Tax.* Since the Federal Excise Tax on tires is assessed on the manufacturer and is based on the weight of the materials used and not the retail selling price, the tax should be included in the price quoted for a

particular tire, or the amount of the tax set out in immediate conjunction with the tire price. For example, assuming the tax on a particular tire to be $1 and the advertised selling price $9.95, the price should be stated as ''$10.95'' or ''$9.95 plus $1 Federal Excise Tax'' and not ''$9.95 plus Federal Excise Tax.''

(h) *Advertising furnished by tire manufacturers.* It is the practice of some tire manufacturers to supply advertising to independent as well as to wholly owned retail outlets in local trade areas. A tire manufacturer providing advertising material to be used in local trade areas by either wholly owned or independent outlets is responsible for the representations made in such advertising and should base price and savings claims on conditions actually existing in the particular areas. In view of price fluctuations at the local level, the general dissemination (i.e., in more than one trade area) to independent retail outlets of advertising material containing stated prices or reduction claims results in deception[1] and is, accordingly, contrary to this part. [Guide 15]

§ 228.16 Guarantees.

(a) In general, any advertising containing a guarantee representation shall clearly and conspicuously disclose:

(1) *The nature and extent of the guarantee.* (i) The general nature of the guarantee should be disclosed. If the guarantee is, for example, against defects in material or workmanship, this should be clearly revealed.

(ii) Disclosure should be made of any material conditions or limitations in the guarantee. This would include any limitation as to the duration of a guarantee, whether stated in terms of treadwear, time, mileage, or otherwise. Exclusion of tire punctures also would constitute a material limitation. If the guarantor's performance is conditioned on the return of the tire to the dealer who made the original sale, this fact should be revealed.

(iii) When a tire is represented as ''guaranteed for life'' or as having a ''lifetime guarantee,'' the meaning of the term *life* or *lifetime* should be explained.

(iv) Guarantees which under normal conditions are impractical of fulfillment or for such a period of time or number of miles as to mislead purchasers into the belief the tires so guaranteed have a greater degree of serviceability or durability than is true in fact, should not be used.

(2) *The manner in which the guarantor will perform.* This consists generally of a statement of what the guarantor undertakes to do under the guarantee. Types of performance would be repair of the tire, refund of purchase price or replacement of the tire. If the guarantor has an option as to the manner of the performance, this should be expressly stated.

(3) *The identity of the guarantor.* The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the retailer is the guarantor.

(4) *Pro rata adjustment of guarantees*—(i) *Disclosure in advertising.* Many guarantees provide that in the event of tire failure during the guarantee period a credit will be allowed on the purchase price of a replacement tire, the amount of the credit being in proportion to the treadwear or time remaining under the guarantee. All advertising of the guarantee should clearly disclose the pro rata nature of the guarantee and the price basis upon which adjustments will be made.

(ii) *Price basis for adjustments.* Usually under this type of guarantee the same predetermined amount is used as a basis for the prorated credit and the purchase price of the replacement tire. If this so-called ''adjustment'' price is not the actual selling price but is an artificial, inflated price the purchaser does not receive the full value of his guarantee. This is illustrated by the following example:

''A'' purchases a tire which is represented as being guaranteed for the life of the tread.

[1] This part does not deal with the question of whether such practice may be improper as contributing to unlawful restraints of trade connected with the enforcement of the Antitrust Laws and the Federal Trade Commission Act.

After 75 percent of the tread is worn, the tire fails. The dealer from whom ''A'' seeks an adjustment under his guarantee is currently selling the tire for $15 but the ''adjustment'' price of the tire is $20. ''A'' receives a credit of 25 percent or $5 toward the price of the replacement tire. This credit is applied not on the actual selling price but on the artificial ''adjustment'' price of $20. Thus, ''A'' pays $15 for the new tire which is the current selling price of the tire.

Under the facts described in this illustration the guarantee was worthless as the purchaser could have purchased a new tire at the same price without a guarantee. If 50 percent of the tread remained when the adjustment was made, the purchaser would have received a credit of $10 toward the $20 replacement price. He must still pay $10 for a replacement tire. Had the adjustment been made on the basis of the actual selling price he would have obtained a new tire for $7.50. Thus, while deriving some value from his guarantee he did not receive the value he had reason to expect under the guarantee.

(b) Accordingly, to avoid deception of purchasers as to the value of guarantees, adjustments should be made on the basis of a price which realistically reflects the actual selling price of the tire. The following would be considered appropriate price bases for making guarantee adjustments:

(1) The original purchase price of the guaranteed tire; or

(2) The adjusting dealer's actual current selling price at the time of adjustment; or

(3) A predetermined price which fairly represents the actual selling price of the tire.

Whenever an advertisement for tires includes reference to a guarantee, the advertisement should also disclose, clearly and conspicuously, the price basis on which adjustments will be made. Such disclosure of the price basis for adjustments should be in terms of actual purchase or selling price, e.g., original purchase price, adjusting dealer's current selling price, etc. A mere reference to a guarantor's ''adjustment price,'' for example, would not satisfy this disclosure requirement. In addition, written material disclosing the basis for adjustments should be made available to prospective purchasers at the point of sale, and if the third method of adjustment is chosen, such written material should include the actual price on which guarantee adjustments will be made. [Guide 16]

§ 228.17 Safety or performance features.

Absolute terms such as ''skidproof,'' ''blowout proof,'' ''blow proof,'' ''puncture proof'' should not be unqualifiedly used unless the product so described affords complete and absolute protection from skidding, blowouts, or punctures, as the case may be, under any and all driving conditions. [Guide 17]

§ 228.18 Other claims and representations.

(a) No claim or representation should be made concerning an industry product which directly, by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving purchasers or prospective purchasers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, safety, strength, condition or life expectancy of such products.

(b) Also included among the prohibitions of this section are claims or representations by members of this industry or by distributors of any component parts of materials used in the manufacture of industry products, concerning the merits or comparative merits (as to strength, safety, cooler running, wear, or resistance to shock, heat, moisture, etc.) of such products, components or materials, which are not true in fact or which are otherwise false or misleading. [Guide 18]

§ 228.19 Snow tire advertising.

Many manufacturers are now offering winter tread tires with metal spikes. Certain States, or other jurisdictions, however, prohibit the use of such tires because of possible road damage. Accordingly, in the advertising of such products, a clear and conspicuous statement should be made that the use of such tires is illegal in certain States or jurisdictions. Further, when such tires are locally advertised in areas where their use is prohibited, a clear

and conspicuous statement to this effect must be included. [Guide 19]

PART 233—GUIDES AGAINST DECEPTIVE PRICING

Sec.
233.1 Former price comparisons.
233.2 Retail price comparisons; comparable value comparisons.
233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).
233.4 Bargain offers based upon the purchase of other merchandise.
233.5 Miscellaneous price comparisons.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 32 FR 15534, Nov. 8, 1967, unless otherwise noted.

§233.1 Former price comparisons.

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the ''bargain'' being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the ''reduced'' price is, in reality, probably just the seller's regular price.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith—and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, ''Formerly sold at $_____''), unless substantial sales at that price were actually made.

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him $5 each. His usual markup is 50 percent over cost; that is, his regular retail price is $7.50. In order subsequently to offer an unusual ''bargain'', Doe begins offering Brand X at $10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he ''cuts'' the price to its usual level—$7.50—and advertises: ''Terrific Bargain: X Pens, Were $10, Now Only $7.50!'' This is obviously a false claim. The advertised ''bargain'' is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he never offered the article at all; he might feature a price which was not used in the regular course of business, or which was not used in the recent past but at some remote period in the past, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was not maintained for a reasonable length of time, but was immediately reduced.

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as ''Regularly,'' ''Usually,'' ''Formerly,'' etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, ''Sale,'' the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been ''Reduced to $9.99,'' when the former price