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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