

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

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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

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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.