

[BILLING CODE 6750-01]

FEDERAL TRADE COMMISSION

16 CFR PART 20

**GUIDES FOR THE REBUILT, RECONDITIONED, AND OTHER
USED AUTOMOBILE PARTS INDUSTRY**

AGENCY: Federal Trade Commission.

FINAL ACTION: Final rule.

SUMMARY: The Commission has completed its review of the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (“Used Auto Parts Guides” or “Guides”) and has determined to retain the Guides with updated language and minor revisions.

EFFECTIVE DATE: [Insert Date of Publication in Federal Register]

ADDRESS: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

The notice is available on the Internet at the Commission’s website <<http://www.ftc.gov>>.

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SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

The Used Auto Parts Guides address claims for automotive parts and assemblies that have been used or contain used parts. These parts or assemblies may have been rebuilt, repaired, reconditioned, etc., since they were last used, and may have been repainted and repackaged in such a way that they could easily be confused with new products. Even used parts that have not been rebuilt are usually cleaned and sometimes repainted before being marketed. The Guides suggest

that junk yards, rebuilders, auto parts stores, service garages and others in the distribution chain for these parts or assemblies not mislead purchasers about the prior use and/or the reconstructed nature of the parts and the identity of the rebuilder.

Rebuilt auto parts account for a significant portion of the total automobile replacement parts market. One large retailer/distributor commenting on the Guides reported that such parts account for 20% of its retail sales dollars. Some replacement components, alternators and power steering pumps, for example, are nearly always rebuilt because of the significant cost savings over new parts.

The Guides provide advice regarding the manner in which those who sell used automobile parts can avoid unfair or deceptive acts or practices that may violate section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 45. The Guides define industry products broadly to include not only used parts for automobiles, but also used parts and assemblies containing used parts for trucks, tractors, motorcycles and other similar self-propelled vehicles. Industry members are those who sell or distribute any of these parts. The Used Auto Parts Guides advise that industry members not:

- (1) deceive purchasers about the previous use of products;
- (2) deceive purchasers about the identity of the rebuilder, remanufacturer, reconditioner or reliner;
- (3) misrepresent the condition of products and misuse the terms “rebuilt,” “factory rebuilt,” “remanufactured,” or other similar terms.

II. REGULATORY REVIEW OF THE GUIDES

As part of its program to review current rules and guides, the Commission published in the *Federal Register* in 1998, a notice seeking comments about the regulatory and economic costs and

benefits of the Guides (63 FR 17132 (Apr. 8, 1998)). Eight written comments were received.¹ Seven comments favored keeping the Guides; one favored rescinding the Guides.

The comments in favor of retaining the Guides stated that the Guides provide clear guidance to industry members to assist them in determining what disclosures they should make to consumers about used, rebuilt and reconditioned automobile parts and assemblies, and how to make them in a consistent manner. Those who rebuild industry products especially supported retaining the Guides' clear definitions for the terms "rebuilt" and "remanufactured." The state Attorneys General supported retaining the Guides because they clearly advise industry of the disclosures necessary to prevent or reduce the incidence of fraudulent activity such as charging unknowing consumers for new parts when the parts are used or rebuilt, and to enable consumers to make informed, cost efficient decisions. The one commenter supporting rescinding the Guides, AutoZone, stated that the Guides are duplicative of state law -- statutory, regulatory and common -- and are no longer needed, especially in light of the written warranties that now often accompany rebuilt parts, assuring their quality.

III. DETERMINATION TO RETAIN THE GUIDES

The Commission has determined to retain the Guides for the following reasons. First, the Guides are based on well-established legal and policy grounds. Many prior Commission cases

¹ AutoZone, a retailer/distributor; CarQuest, a retailer/distributor; five trade groups speaking as one: the Automotive Parts and Accessories Association (APAA), the Automotive Service Industry Association (ASIA), the Automotive Parts Rebuilders Association (APRA), the Automotive Engine Rebuilders Association (AERA), and the Heavy Duty Distribution Association (HDDA); Charles P. Schwartz, Jr., an individual who is a former APRA chairman; the late United States Senator John Chafee; Consumers Union, a national consumer group; and, commenting as one, the state Attorneys General of Connecticut, Illinois, Iowa, Nevada, New York, Pennsylvania, and Tennessee. These comments have been placed on the public record as Document Nos. B2365600001 - 008, respectively, and are available for inspection and copying at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

hold that used articles restored to the appearance of new require an affirmative disclosure of prior use. A 1969 Commission Enforcement Policy Statement (34 FR 176) reiterates this principle.

In recent actions, the Commission has continued to protect consumers from sellers passing off used goods as new. For example, the Commission recently announced two consent orders against mattress retailers who claimed that their new-looking used mattresses were all new, but for the springs, when in fact, they were entirely used mattresses but for their new outer covers.² In addition, when the Commission amended the Guides for Environmental Marketing in 1998 to allow sellers to use the term “recycled content” to describe used and reconditioned products, not just products made from recycled raw material, it cautioned that for products that contained used or reconditioned materials, a recycled content claim should be adequately qualified to avoid consumer deception (i.e., generally, recycled alone is insufficient; used or reconditioned materials must be so identified). 16 CFR 260.7(e) and Example 12.

Second, various states also prohibit misrepresenting used merchandise as new, either by specific statute or by common law, and some rely on the Commission’s Guides to complement their laws and enhance their enforcement efforts.³ For example, some states have statutes or regulations requiring automobile service garages and mechanics to inform a vehicle owner whenever a used part is installed during the course of a repair.⁴ The garages and other mechanics need information from their vendors regarding prior use or refurbishing to be able to comply with these requirements. The Guides provide members of the rebuilding industry with clear guidance

² See FTC Press Release, *Consumers Can Rest Easy Following FTC Settlements with Two Used Mattress Resellers* (June 14, 2000).

³ AutoZone, at 2.

⁴ APRA/AERA, at 7.

that assists them in determining what disclosures regarding prior use or refurbishing they should make to consumers and other purchasers, including vendors who resell the products to consumers, and how they should make them in a consistent manner.

Third, there are no private, industry-wide standards covering the use of terms such as “rebuilt” or “remanufactured” in the sale of used automobile parts generally. This industry is not in a good position to set its own standards because there are many very small, “mom and pop” type rebuilding companies that are not members of the major industry trade associations. These associations, however, use the FTC Guides to educate and police industry members about potentially deceptive practices.

It can be argued that if the Commission were to repeal these Guides, section 5, FTC Act would still protect the public from the deceptive practice of passing off used goods as new.⁵ However, should that happen, states and industry associations would lack a tool that they currently find helpful. Thus, on balance, these guides provide sufficient benefits that are not outweighed by costs to merit their retention.

IV. DETERMINATIONS REGARDING REVISIONS TO THE GUIDES

A number of commenters suggested changes to the Guides, which are discussed below. The Commission has determined to update the list of commonly rebuilt used automobile parts contained in section 20.0 of the Guides and to clarify that the Guides apply to advertising in

⁵ Civil case law also tends to protect consumers. Champion Spark Plug Co. v Sanders, 331 U.S. 125 (1947), a trademark infringement suit, held that Champion, a spark plug manufacturer, could not prohibit Sanders, a spark plug rebuilder, from marketing his rebuilt Champion spark plugs **so long as he clearly labeled** the products as having been **rebuilt** and **clearly identified himself** -- not Champion -- on the label as the rebuilder.

electronic format, such as on the Internet. In addition, the Commission has updated and streamlined certain language in the Guides to conform to current FTC practices.

A. Further Defining the Standards Set Out in the Guides

CarQuest and the state Attorneys General ⁶ suggested that consumers might benefit from wider ranging and more specifically written standards describing the various levels of dismantling and reconstructing that take place in the industry. For example, the Guides use the terms “rebuilt,” and “remanufactured” interchangeably, but to some in the industry the term “remanufactured” denotes a higher level of reconstruction than does the term “rebuilt.”⁷ Similarly, “reconditioned,” may connote a level somewhat lower than “rebuilt,” and “refurbished” might connote a product that has received very little use in the first place or little additional work before resale in the second. These commenters suggest that the Commission specifically define each of the terms used in the Guides. The state Attorneys General suggest further that the general procedure used in rebuilding or remanufacturing, etc. also be spelled out in label disclosures to consumers.

The descriptive terms used in the Guides are fluid to accommodate the wide range of rebuilding that takes place. All commenters agree that the standard contained in the Guides seems to have worked well. In addition, the Commission has no substantive basis in the record of this review proceeding to define the terms differently or more precisely. The Commission, therefore, has determined not to revise the Guides to adopt more specific standards or procedures than those

⁶ CarQuest, at 3; State Attorneys General, at 4.

⁷ This distinction appears to be common in the industry. For example, Ford Motor Company’s website cautions consumers that a rebuilt part merely has had its broken components repaired while a “remanufactured” part has undergone a much more thorough reconstruction. Ford Motor Company Website, “Genuine Parts. The Difference Between Remanufactured and Rebuilt” (<http://www/ford.com/customerservice/genuine/versus.html>, March 11, 1999)(copy on file at the Federal Trade Commission, East Central Regional Office).

currently contained in the Guides. The Commission, on the other hand, welcomes industry-sponsored measures to provide more information to consumers through voluntary standards specifying more precise terms, or defining meanings for the various terms, so long as those standards would not mislead consumers about the extent of prior use or the amount of reconstructing that has been done.

B. Modifying the Guides to Specifically Include Foreign Rebuilders

Several commenters suggested that the Commission revise the Guides and take other actions to make clear that foreign rebuilders and importers of used auto parts, rebuilt and otherwise, are covered by the Guides.⁸ Some comments suggested that the Commission educate U.S. Customs officials about the Guides; others that the Commission require country-of-origin markings on foreign rebuilt parts packaged in boxes bearing the brand name of a United States distributor.

The Commission has determined that it is not necessary to revise the Guides to address these concerns. First, the Commission has jurisdiction over entities conducting business in the United States regardless of the country of origin of the original new product or of the reconstructed or otherwise used product. The Guides, therefore, currently cover foreign rebuilders and importers of used auto parts who distribute or sell used auto parts in the United States. Second, the Commission's staff can ensure that the U.S. Customs Service is aware of the Guides; no revision to the Guides is required to do so. Finally, the Commission does not ordinarily require country of origin disclosures; it only prohibits false "made in U.S.A." claims. Ordinarily the Commission will not consider a marketer's use of an American brand name or trademark, or the listing of a

⁸ APRA/AERA, at 3, 4; Schwartz, at 3; Consumers Union, at 4.

company's U.S. address in a nonprominent manner, without more, to constitute a U.S. origin claim.⁹

C. Requiring Original Equipment Manufacturers to Cooperate with Rebuilders

Two commenters¹⁰ suggested that original equipment manufacturers (“OEMs”) should be prohibited from limiting the ability of independent rebuilders to obtain parts for rebuilding and should be required to share product design specifications, which would enhance the efficiency of the rebuilding process. It also was suggested that the Commission prohibit OEMs from requiring rebuilders to grind off or otherwise remove model numbers, part numbers and other identifying information.¹¹ These marks, according to two commenters, often help identify the application for that particular part.

The Commission has determined not to revise the Guides to require the cooperation suggested by the comments. The Auto Parts Guides concern the disclosures regarding prior use or reconstruction of used automobile parts that are necessary to avoid misleading consumers. These other issues, while relevant to the marketplace for used automobile parts in general, have little to do with the disclosures suggested by the Guides.

D. Requiring Repair Facilities to Disclose the Installation of Used or Rebuilt Parts

Three comments¹² reiterated the suggestions of a 1995 National Association Of Attorneys-General Auto Repair Task Force that service technicians and repair garages should be required to

⁹ Enforcement Policy Statement on U.S. Origin Claims, 62 FR 63756, at 63768 (1997).

¹⁰ Schwartz, at 3; CarQuest, at 4.

¹¹ Schwartz, at 4; APRA/AERA, at 6.

¹² Consumers Union, at 3; CarQuest, at 3; state Attorneys General at 3.

disclose whenever used parts have been installed in a customer's vehicle. These comments suggested that the Guides should be changed to more clearly reflect such recommendation.

No modification of the Guides in this regard is necessary. The Guides already apply to all who sell or distribute industry products. Mechanics and service garages nearly always both sell and install the parts needed to repair a consumer's automobile and are therefore included under the Guides.

E. Updating the List of Commonly Rebuilt Auto Parts and Components

Several commenters suggested that the list of commonly rebuilt automobile parts included in section 20.0 of the Guides should be updated to reflect modern practices. The Commission agrees and has revised the Guides accordingly.

F. Prohibiting the Use of the Word "Recycled" Alone to Describe Unreconstructed Used Auto Parts

Three commenters suggested that the Commission should revise the Guides to make it clear that the term "Recycled," by itself, is not adequate to disclose the used nature of used automobile parts which have received little or no reconstruction.

The Commission has already responded to this issue in its Environmental Marketing Guides, 16 CFR Part 260. Section 260.7(e) states that the word "recycled," used by itself, cannot substitute for the words "used," "rebuilt," "reconditioned," and other similar descriptors except when the environment in which the product is being offered for sale makes the used nature of the product clear, for example, a used part offered for sale at a junkyard. Therefore, a cross reference to the Environmental Marketing Guides has been added as a footnote to section 20.1(b) of the Used Auto Parts Guides.

List of Subjects in 16 CFR Part 20: Advertising, Motor vehicles, Trade practices.

Text of Amendments

**PART 20 -- GUIDES FOR THE REBUILT, RECONDITIONED AND
OTHER USED AUTOMOBILE PARTS INDUSTRY**

1. The authority citation for 16 CFR Part 20 is revised to read as follows:

Authority: 15 U.S.C. 41-58.

2. The heading for § 20.0 and the text of § 20.0 are revised to read as follows:

§ 20.0 Scope and purpose of the guides.

The Guides in this part apply to the manufacture, sale, distribution, marketing and advertising (including advertising in electronic format, such as on the Internet) of used parts and assemblies containing used parts designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles whether or not such parts or assemblies have been reconstructed in any way (hereinafter “industry products”). Such automotive parts and assemblies include, but are not limited to, anti-lock brake systems, air conditioners, alternators, armatures, air brakes, brake cylinders, ball bearings, brake shoes, heavy duty vacuum brakes, calipers, carburetors, cruise controls, cylinder heads, clutches, crankshafts, constant velocity joints, differentials, drive shafts, distributors, electronic control modules, engines, fan clutches, fuel injectors, fuel pumps, front wheel drive axles, generators, master cylinders, oil pumps, power brake units, power steering gears, power steering pumps, power window motors, rack and pinion steering units, rotors, starter drives, speedometers, solenoids, smog pumps, starters, stators, throttle body injectors, torque convertors, transmissions, turbo chargers, voltage regulators, windshield wiper motors, and water pumps. Tires are not included. (Tires are covered by the Tire Advertising and Labeling Guides, 16 CFR Part 228.)

3. The heading for § 20.1 and the text of § 20.1 are revised to read as follows:

§ 20.1 Deception generally.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product or part of an industry product is new or unused when such is not the fact, or to misrepresent the current condition, or extent of previous use, reconstruction or repair of any industry product.

(b) It is unfair or deceptive to offer for sale or sell any industry product unless a clear and conspicuous disclosure that such product has been used or contains used parts is made in advertising, sales promotional literature and invoices and on product packaging. Additionally, it is unfair or deceptive to offer for sale or to sell any rebuilt, remanufactured, reconditioned, or otherwise new-appearing industry product unless such disclosure using appropriate descriptive terms is made on the product itself with sufficient permanency to remain visible for a reasonable period of time after installation. Examples of appropriate descriptive terms include, but are not limited to “Used,” “Secondhand,” “Repaired,” “Remanufactured,” “Reconditioned,” “Rebuilt,” or “Relined.”¹³ On invoices to the trade only, the disclosure may be made by use of any number, mark, or other symbol that is clearly understood by industry members as meaning that the products or parts identified on the invoices have been used.

(c) It is unfair or deceptive to place any means or instrumentality in the hands of others so that they may mislead consumers as to the previous use of industry products or parts.

¹³ If the term “recycled” is used, it should be used in a manner consistent with the requirements for that term set forth in the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e).

4. The text of § 20.2 (a) and (b) is revised to read as follows:

(a) It is unfair or deceptive to misrepresent the identity of the rebuilder, remanufacturer, reconditioner or reliner of an industry product.

(b) In connection with the sale or offering for sale of an industry product, if the identity of the original manufacturer of the product, or the identity of the manufacturer for which the product was originally made, is revealed and the product was rebuilt, remanufactured, reconditioned or relined by someone else, it is unfair or deceptive to fail to disclose such fact wherever the original manufacturer is identified in advertising and sales promotional literature concerning the product, on the container in which the product is packed, and on the product, in close conjunction with, and of the same permanency and conspicuousness as, the disclosure of previous use of the product described by this section. Examples of such disclosures include:

(1) Disclosure of the identity of the rebuilder:

Rebuilt by John Doe Co.

(2) Disclosure that the product was rebuilt by an independent rebuilder:

Rebuilt by an Independent Rebuilder

(3) Disclosure that the product was rebuilt by someone other than the manufacturer so identified:

Rebuilt by other than XYZ Motors

(4) Disclosure that the product was rebuilt for the identified manufacturer, if such is the case:

Rebuilt for XYZ Motors

5. The heading for § 20.3 and the text of § 20.3 are revised to read as follows:

§ 20.3 Misrepresentation of the terms “rebuilt,” “factory rebuilt,” “remanufactured,” etc.

(a) It is unfair or deceptive to use the words “Rebuilt,” “Remanufactured,” or words of similar import, to describe an industry product which, since it was last subjected to any use, has not been dismantled and reconstructed as necessary, all of its internal and external parts cleaned and made rust and corrosion free, all impaired, defective or substantially worn parts restored to a sound condition or replaced with new, rebuilt (in accord with the provisions of this paragraph) or unimpaired used parts, all missing parts replaced with new, rebuilt or unimpaired used parts, and such rewinding or machining and other operations performed as are necessary to put the industry product in sound working condition.

(b) It is unfair or deceptive to represent an industry product as “Factory Rebuilt” unless the product was rebuilt as described in paragraph (a) of this section at a factory generally engaged in the rebuilding of such products. (See also § 20.2)

By direction of the Commission.

Donald S. Clark
Secretary