



**RUBBER**  
manufacturers  
association

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October 24, 2003

Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Re: Tire Guides, 16 CFR Part 228 – Comment

Dear Sir or Madam:

As the leading national trade association for the U.S. tire industry, the Rubber Manufacturers Association (“RMA”)<sup>1</sup> appreciates this opportunity to provide comments concerning the continuing need for the Federal Trade Commission’s (“Commission’s”) tire advertising and labeling guides (“Tire Guides”) and other issues presented in the “Request for Public Comments” in the above-captioned matter. 68 *Fed. Reg.* 50984-50985 (August 25, 2003). RMA members have considerable experience with the Tire Guides enforced by the Commission and are committed to ensuring fair trade and advertising practices in connection with the marketing, distribution, and sale of their products. Below, we provide responses to the seven (7) questions raised in the Request for Public Comments and, where we have relevant information, the various subparts to those questions.

### **RMA Comments In Response to Commission Questions**

(1) Is there a continuing need for the Tire Guides?

RMA believes most of the unfair trade practices specifically addressed in the Tire Guides have been virtually eliminated from today’s consumer tire market. It is therefore appropriate that the Commission consider whether the Guides are necessary to continue to protect tire consumers from the deceptive advertising and labeling practices that led to the adoption of the complete Guides in 1968. In addition, there have been significant changes in tire construction and engineering in the past 35 years. These changes have rendered certain sections of the Guides, such as §228.6, dealing with “plies,” and §228.7,

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<sup>1</sup> The Rubber Manufacturers Association (“RMA”) is the leading national trade association representing the interests of tire and rubber manufacturers in the United States. RMA’s membership includes all of the country’s major tire manufacturers: Bridgestone Americas Holding, Inc., Continental Tire N.A., Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation.

dealing with “cord materials,” obsolete. (See also response to Question (2), below.) In addition, other consumer protection laws enforced by the Commission also prohibit the general prohibitions in the Guides dealing with deceptive pricing and advertising practices. We therefore question the continued utility of provisions in the Guides that are clearly addressed by other state and federal consumer protection laws. Finally, the provisions of the Tire Guides dealing with the disclosure of information on the outside sidewall of the tire, 16 C.F.R. §228.1(b)(2)-(3), should be deleted. These provisions are superseded by the tire labeling provisions of the Transportation Recall Enhancement, Accountability and Documentation Act, Pub. L. 106-414, (“TREAD Act”) and recent regulations promulgated there under by the National Highway Traffic Safety Administration. *See 67 Fed. Reg.* 69600 (Nov. 18, 2002). (*See also* response to Question (4), below.)

Thus, as currently written, the Guides have limited utility to tire manufacturers, tire dealers and tire consumers, appear to be redundant with other consumer protection laws, and have been superseded, in part, by regulations issued by another government agency. While RMA does not advocate the elimination of the Tire Guides at this time, the Guides are in need of substantial revision, as we address in the responses to the questions below.

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

RMA recommends three major categories of changes to the Tire Guides to increase their benefit to tire purchasers.

- First, the Guides should be revised and updated to address the trade practices that affect consumers in today’s tire market. There have not only been significant changes in tires themselves over the past 40 years, but significant changes in the ways that consumers purchase tires. For example, RMA members have reported a steady increase in the number of tires sold via the Internet over the past several years. Telephone orders for tires are also more common today than they were even 10 years ago. The Guides should therefore be updated with specific examples of transactions involving Internet and telephone sales. RMA would be pleased to assist the Commission in developing these examples.
- Second, provisions of the Guides that have been rendered obsolete by changes in tire construction or technology should be deleted. As mentioned in response to Question (1), these provisions include §228.6, dealing with “plies,” and §228.7, dealing with “cord materials.” In addition, since the sale of snow tires with metal spikes is extremely rare, the provision on “snow tire advertising,” §228.19, also falls into the category of practices that are no longer a concern to consumers in today’s tire market and should therefore be deleted from the Guides. Finally, we question the continuing need for the provision dealing with “deceptive designations,” §228.3, since the example given in subpart (a) of that provision is dated (i.e., tire manufacturers no longer use the terms, “standard,” “high standard,” or “deluxe high standard” in

grading their products), and, with respect to subpart (b), there are other laws enforced by the Commission that also prohibit the false and misleading advertising of tires.

- Third, there is a need for the Guides to recognize the ongoing sale of used, retreaded, and remanufactured tires. A “remanufactured” tire is one whose used tire casing has been retreaded from bead to bead and whose sidewall has been covered with a thin envelope of tread rubber, thereby giving it the appearance of a brand new tire. Retreaded tires, by contrast, have new tread rubber applied to the tire casing. Although the manufacturing processes may differ, for the purposes of the Guides it is important for consumers to understand that these are not new products. Used passenger and light truck tires continue to exist today, and many tire stores sell such products exclusively. Used tires are neither retreaded nor remanufactured. RMA members are concerned that purchasers of used, retreaded or remanufactured tires may not be aware that such tires may not be covered under the original manufacturer’s warranty. Requiring advertisers of used, remanufactured, and retreaded tires to disclose that such products may not be covered under a warranty program of the original manufacturer would enhance the benefits of the Guides to tire consumers. Accordingly, RMA recommends that 16 C.F.R. §228.9 be revised as follows (addition in underline):

Advertisements of products that are used or retreaded, including retreads described as “remanufactured” tires should clearly and conspicuously disclose that they are not new products and may not be covered under a warranty by the original manufacturer. ~~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.

The Guides should also require that advertisements of used, retreaded or remanufactured passenger and light truck tires inform the consumer of the nature of the product.

- (3) What significant burdens or costs, including costs of compliance, have the Guides imposed on firms following their suggestions?

RMA has not measured the cost of compliance with the Guides on tire manufacturers. Nor are we aware of any similar analysis conducted by other entities.

- (4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms following their suggestions?

Sections of the Guides that have been superseded or rendered unnecessary by other state, federal or local laws or regulations, should be deleted in order to ensure that tire manufacturers are not required to comply with redundant, duplicative, or conflicting government mandates. Taking this action will reduce the costs and burdens on tire

manufacturers, while continuing to ensure that consumers are protected in the marketplace. *See also* response to Question (5), below.

(5) Do the Guides overlap or conflict with other Federal, state or local laws or regulations?

As mentioned in response to Question (1), above, the new tire labeling regulations issued by the National Highway Traffic Safety Administration (“NHTSA”), 67 *Fed. Reg.* 69600-69632, supersede the provisions in the Guides dealing with disclosures that must be made on the tires, 16 C.F.R. §228.1(b)(2)-(3). The Commission should therefore amend the Guides to delete these provisions.

In addition, it is no longer true that, “There exists today no industry-wide, government or other accepted system of quality standards or grading of industry products.” 16 C.F.R. §228.2(a). Such standards were adopted in 1970, when NHTSA issued the Uniform Tire Quality Grading Standards, 49 C.F.R. §575.104 (“UTQGS”). Because the UTQGS provide consumers with the information necessary to compare the quality of tire products, the Guides should be amended to delete the provision dealing with “designations of grade, line, level or quality.” Accordingly, the Commission should amend the Guides to delete 16 C.F.R. §228.2 in its entirety.

The Commission has also specifically requested comments on whether the Magnuson-Moss Warranty Act, 15 U.S.C. §2301-2312, and the regulations promulgated there under, 16 C.F.R. Parts 700-703 and Part 239, supersede the need for all or part of the Guides. Warranties are an important aspect of competition in the tire industry, and the tire manufacturers represented by RMA devote significant resources to ensuring that the warranties on their products fully comply with the provisions of Magnuson-Moss concerning written warranties and state laws dealing with implied warranties. Because the Guides do not specifically address written tire warranties, there does not appear to be a direct conflict with Magnuson-Moss or other warranty laws that may be applicable to tires. We note that the provision dealing with “guarantees,” 16 C.F.R. §228.16, applies only to representations made by manufactures or dealers in advertisements for tires. It is RMA’s understanding that such representations in advertisements are not “warranties” for purposes of Magnuson-Moss. According to a publication on the FTC’s website, “A Businessperson’s Guide to Federal Warranty Law”:

The Magnuson-Moss Warranty Act does not cover the advertising of warranties. However, warranty advertising falls within the scope of the FTC Act, which generally prohibits “unfair or deceptive acts or practices in or affecting commerce.” Therefore, it is a violation of the FTC Act to advertise a warranty deceptively.

Other laws and regulations enforced by the Commission may, however, overlap with the Guides. For example, tire manufacturers and dealers are also covered by Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. §45(a)(1), described on the agency’s website as “the basic consumer protection statute enforced by the Commission.” Section

5(a) prohibits “unfair or deceptive acts or practices in or affecting commerce,” including many of the same unfair or deceptive practices identified in the Guides. Practices addressed in the Tire Guides are also addressed by other Guides enforced by the Commission, including “Guides against deceptive pricing,” 15 C.F.R. §233; “Guides against bait advertising,” 15 C.F.R. §238; “Guides for the advertising of warranties and guarantees,” 15 C.F.R. §239; and the “Guide concerning use of the word ‘free’ and similar representations,” 15 C.F.R. §251.

Finally, RMA recommends that in any revised version of the Guides, the sections dealing with “bait advertising,” §228.14, and “comparative quality and performance claims,” §228.5, should be retained substantially in their present form. Even if other laws address these issues, we believe consumers will be well served by the continued applicability of these provisions specifically to tire advertising.

We will continue to solicit feedback from our members on the issue of other laws that may overlap or conflict with the Guides and provide additional information to the Commission if necessary to clarify or amend our position.

(6) Since 1968 when the main provisions of the Guides were issued, what effects, if any, have the following changes in relevant technology or economic conditions had on the Guides:

(a) The recent increased sales of pickup trucks, sport utility vehicles, and similar new vehicles, the tires of which may not be covered by the Guides?

The increased sale of sport utility vehicles, pickup trucks and other light trucks has dramatically increased the types of tires sold by tire manufacturers and dealers and demanded by consumers. The definition of “industry product” in 16 C.F.R. §228.0 should therefore be amended to ensure that the Guides cover tires used on SUVs and light trucks.

(b) The shift to radial tires (as opposed to the bias-ply tires popular when the Guides were issued) in today’s tire market?

In 1968 nearly all passenger car tires in the U.S. (more than 99%) were of bias, or bias-belted construction. Today the vast majority (more than 95%) of passenger tires in the U.S. are radials. As discussed above, this change in tire design and construction renders many of the Tire Guides’ provisions obsolete.

(c) Changes in tire distribution or sales, including use of E-mail, the Internet, Internet advertising or CD-ROM advertising.

See response to Question (2), above.

(d) The declining market for retreaded passenger car tires.

The Commission is correct that the market for retreaded passenger car tires has steadily declined over the past several years. As explained in response to Question (2), above, however, RMA recommends that the section of the guides dealing with retreaded and used tires, §228.9, be revised to include “remanufactured” tires and to require a new disclaimer in advertisements for such tires.

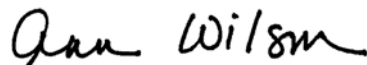
- (7) Are there any abuses occurring in the distribution, promotion, sale or manufacture of tires that are not addressed by the Guides? If so, what mechanisms should be explored to address such abuses (e.g., consumer education, industry self-regulation, Guide amendment)?

RMA is not aware of any abuses occurring in the distribution, promotion, sale or manufacture of tires that are not addressed by the Guides or by other federal or state laws or regulations designed to protect consumers from unfair or deceptive trade practices. To the extent the Commission receives information about such abuses in connection with this proceeding, RMA would be pleased to work with the Commission to consider appropriate mechanisms to address these abuses. We would also be happy to assist the Commission in educating consumers about the proper maintenance of their tires through a link to RMA’s website, [www.rma.org](http://www.rma.org), which contains information about our ongoing “Be Tire Smart” tire safety campaign and other useful information for tire purchasers.

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Please contact me at 202-682-4837 if you have any questions about RMA’s comments in response to the Request for Public Comments on the Commission’s Tire Guides, 16 C.F.R. Part 528.

Sincerely,



Ann Wilson  
Senior Vice President  
Government Affairs