



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, Virginia 22102
703/821-7040 • 703/821-7041

Legal & Regulatory Group

October 24, 2003

Honorable Donald S. Clark
Secretary
Federal Trade Commission (FTC)
Room H-159
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: Tire Advertising and Labeling Guides; 16 CFR Part 228; Comments

Dear Mr. Clark:

The National Automobile Dealers Association (NADA) represents 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ in excess of 1,250,000 people nationwide, yet approximately 50% are small businesses as defined by the Small Business Administration.

Last summer, the FTC requested comment on a review of its Tire Advertising and Labeling Guides ("Guides"). 68 Fed. Reg. 50984-5 (August 25, 2003). In response, NADA offers the following comments and suggestions.

I. Is There a Continuing Need for the Tire Guides?

Automobile dealers have sold tires installed on new and used vehicles since long before the Commission first promulgated rules in 1936 and Guides in 1968. Since 1994, when the Guides were last modified, franchised dealers have become increasingly involved in selling aftermarket tires in conjunction with their service and parts operations. Thus, NADA is concerned about the need for and nature of the information set out in the Guides.

NADA generally supports FTC initiatives designed to provide the regulated community (and the public) with guidance on how it interprets the laws it administers. Such guidance often serves as an invaluable tool to help promote and enhance compliance, especially when many small businesses are involved. Without question, the FTC's tire advertising and labeling guides have helped to promote a better understanding on the part of the motoring public about the tires

they buy and use, as well as to deter unfair and deceptive tire advertising and sales practices. Nonetheless, the Guides warrant significant revision and streamlining, especially with respect to information required to be provided at the point-of-sale.

II. What Changes, If Any, Should Be Made to the Guides to Increase the Benefits of the Guides to Purchasers?

Before revising and updating its Guides, the FTC should endeavor to understand how tires are marketed and sold in today's retailing environment. Once the province of single-line tire dealers and full service gas stations, tire sales also now occur over the Internet, through "big box" stores, and at automobile dealerships. Knowing how tires are sold will help the FTC determine the type and manner of consumer information and sales practices to be covered by the Guides.

The FTC needs to understand today's tires and issues of importance to today's tire purchasers. Since certain tire advertising terms have changed, current tire advertisements warrant some review. For example, it may be unnecessary for the Guides to continue to focus on "plies," "cord materials" or spiked snow tires. Moreover, it may not make sense to continue to refer to tires removed from new vehicles and resold as "change-overs" or "new car take offs." Are the terms "line," "level" or "premium" used at all in tire advertisements?

Why is the term "original equipment," as used in 16 CFR §228.4 (Guide 4), limited to "vehicles of domestic manufacture"? Shouldn't it be broadened to relate to all new vehicles? Regarding used, remanufactured, and retreaded tires, NADA supports changes recommended by the Rubber Manufacturers Association (RMA).

Sections 228.14-18 are particularly important, and revisions to them should reflect the FTC's real world experience with tire advertising and sales practices since 1968, including enforcement actions and perceived abuses. When revised, these sections should include updated examples or, better yet, examples that won't require revision in the future.

III. What Significant Burdens or Costs, Including Costs of Compliance, Have the Guides Imposed on Firms Following Their Suggestions?

While recognizing that many tire retailers are small businesses, NADA is unaware of any excessive costs or undue burdens imposed by the Guides.

IV. What Changes, If Any, Should Be Made to the Guides to Reduce the Burdens or Costs Imposed on Firms Following Their Suggestions?

No changes are suggested in this regard.

V. Do the Guides Overlap or Conflict with Other Federal, State or Local Laws or Regulations?

The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000, required the National Highway Traffic Safety Administration (NHTSA) to issue several new rules addressing tire safety, tire labeling and information, tire pressure monitoring, tire disposal, and tire defects. See, http://www.nhtsa.dot.gov/cars/rules/rulings/Index_tire.html. The FTC should strive to harmonize its Guides with NHTSA's tire rules and public information programs. More often than not, this simply may involve deleting certain language now found in the Guides and incorporating key NHTSA information by reference.

The Guides fail to appropriately reference NHTSA's Uniform Tire Quality Grading Standards. 49 CFR §575.104. These Standards should be referenced, perhaps in lieu of the language currently found in Section 228.2 (Guide 2).

Since tire warranties are provided by tire manufacturers, and not by vehicle dealers or manufacturers, NADA has no specific comments on whether the Magnuson-Moss Warranty Act, or the regulations promulgated thereunder, supersede the need for all or part of the Guides. The Guides currently do not appear to address tire warranties or warranty advertising, other than in Guide 16. 16 CFR §228.16. Given the pervasive nature of mileage representations and pro rata adjustments, the FTC should continue to devote adequate attention to these topics. The FTC may well conclude that Magnuson-Moss warranty law, in conjunction with state laws and other FTC Guides, provide adequate regulation and guidance in these areas. If so, appropriate references should be incorporated into Part 228.

VI. 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 definition of "industry product" set out in Section 228.0 should be revised to read: "Tires for sale to or use by consumers on motorized vehicles less than 14, 000 lbs. Gross Vehicle Weight Rating." This new definition would cover all existing (and future) "light-duty" motor vehicle categories. It would also exclude potential business purchasers. The only consumers likely to shop for tires for vehicles above this cut off would be those owning or in the market for large recreational vehicles (i.e., motor homes).

(b) The Shift to Radial Tires (As Opposed to the Bias-ply Tires Popular When the

Honorable Donald S. Clark
October 24, 2003
Page 4

Guides Were Issued) in Today's Tire Market?

According to the RMA, while nearly all passenger car tires sold in the US were of bias or bias-belted construction in 1968, today nearly all passenger tires sold in the US are radials.

(c) Changes in Tire Distribution or Sales, Including Use of E-mail, the Internet, Internet Advertising or Carom Advertising.

As discussed above, the FTC should attempt to fully understand how tires are marketed at present. To this end, and for purposes of producing the most effective revisions to its Guides, the FTC should consider convening a workshop of interested stakeholders to review and discuss draft Guide revisions prior to their formal proposal.

(d) The Declining Market for Retreaded Passenger Car Tires.

While the market for retreaded and used passenger car tires has declined since 1968, the FTC should retain some version of Guide 9. 16 CFR§228.9. A reference to NHTSA's restrictions on the resale of recalled tires should be considered.

VII. 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)?

No such abuses have been brought to NADA's attention. To the extent abuses addressed by the existing Guides or other tire-related concerns involve franchised automobile dealerships, NADA stands ready to work with the FTC to see that appropriate compliance-oriented outreach and assistance is provided.

On behalf of NADA, I thank NHTSA for the opportunity to comment on this matter.

Respectfully submitted,



Douglas I.

Greenhaus

Director, Environment Health and Safety