

Trading Standards Legislation and Light Duty Engine Oil Sequences

Primary Authority Advice from Buckinghamshire & Surrey Trading Standards

The release of updated light duty engine oil sequences by the European Automobile Manufacturers Association, ACEA, raises questions about the compliance implications of specifications which are voluntary and not statutory. This guidance document provides a summary of consumer protection measures which are available for regulators to call upon where compliance with published market standards is:

- Absent,
- Present, or partially present, but not sufficiently evidenced, or
- Fraudulently claimed (or implied) by means of false labelling or claims.

Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”)

These regulations control unfair practices used by traders when dealing with consumers. They prohibit specific practices that are always considered to be unfair, and also prohibit misleading actions and omissions.

The assessment that is made is the extent to which a trading practice has an effect on the ‘average consumer’, who is taken to be reasonably well informed, observant and circumspect. If there are objective published standards, it is reasonable to expect the consumer to know they exist, but not necessarily to have any in-depth knowledge of how they are policed. So there are potential abuses of the CPRs where a marketer makes claims for an engine oil that cannot be substantiated: the buyer could reasonably take it that the claim had been verified and was validly made.

Banned practices

Among the practices that are always considered to be unfair and therefore automatically prohibited by the CPRs are:

- **False endorsements / authorisations.** This would include claiming (by false labelling or inadequate testing that a motor oil meets a specific standard).
- **Claiming a product has been approved by a public or private body when it has not.** This would include a situation where the logo of a testing body is used to imply compliance with a standard that cannot be objectively evidenced.

Misleading actions

Misleading actions are also prohibited by the CPRs, though can be rather more difficult for trading standards to prove because there can be elements of subjectivity. One relevant type of misleading action here is the creation of confusion with competitors' products. Thus an oil that is designed by its

packaging to resemble another product (maybe a market leader) can be challenged if an average consumer is likely to be deceived into buying it instead of the trusted competing product.

Misleading omissions

It is also a breach of the CPRs to fail to give consumers the information they need to make an informed choice in relation to a product if this would cause, or be likely to cause, the average consumer to take a different transactional decision. For example, in order to make an informed decision about whether to buy (or how much to pay for) a particular motor oil, the consumer needs to know whether it is suitable for their vehicle. Simply to make a blanket statement that an oil is suitable for cars made by a particular manufacturer is not likely to satisfy the law in this respect: consumers must be given information to allow them to establish whether the oil is suitable for their specific model and age of vehicle.

At the very least, consumers should be given information about where the find compatibility data if there is too much of it to show on the label (for example a link to an up-to-date web page).

General duty not to trade unfairly

This duty imposes a need to act in accordance with reasonable expectations of acceptable trading practice. The existence of the duty means that the CPRs prohibit practices that contravene the requirements of professional diligence (defined as the standard of special skill and care that a trader may reasonably be expected to exercise towards consumers). This clearly includes a responsibility to respect and take account of published industry standards.

The level of professional diligence expected of suppliers in this context would depend on a number of factors including their size and market position, but marketers quoting ACEA sequences for their own finished formulations could reasonably be expected to have had sight of supporting Candidate Data Packages.

Compliance with the criminal law

Anyone making claims or quoting performance data in the course of a business needs to exercise diligence to make sure that claims can be defended and substantiated if challenged. ACEA sequences are self-certifying so the onus is on both the retailer and lubricant marketer to ensure that the product meets the claims it is making. Simple reliance on information provided by a third party is unlikely to succeed as a defence. Such reliance will only ever be acceptable if it accompanied by reasonable steps being taken to verify that the information is correct.

The larger the retailer, and the more specialist they are, the greater the checks they would be expected to make on the accuracy of claims made by their suppliers. Doing nothing to check will rarely be sufficient to safeguard a reseller of misdescribed products from scrutiny and legal challenge.

The position in civil law

The CPRs also provide consumers with rights to redress enforceable through the civil courts if they enter into a contract to buy a product from a trader where the latter has engaged in a prohibited practice. Traders are also liable for misleading actions or aggressive practices carried out by their suppliers (including manufacturers) if they could reasonably have known of the prohibited practice.

An example of this would be where a retailer continues to sell an engine oil having been made aware that it does not meet standards it claims to have been tested to.

It is often assumed that where a defective product is sold by a retailer, any infringement of the buyer's rights is the responsibility of the manufacturer. In fact, it is the seller who has the contract with the buyer, so the legal responsibility lies with them.

If a motor oil, for example, makes an engine suitability claim that cannot be supported, and damage to a consumer's vehicle is caused by that misdescription, the retailer is vulnerable to being sued for damages. Of course, the retailer could attempt to sue their supplier in turn, but in practice it is highly advisable for retailers to exercise great care in their choice of suppliers and ensure that they protect themselves from claims.

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