

## Trading Standards Legislation and Heavy Duty Engine Oil Sequences – products for Businesses

*Primary Authority Advice from Buckinghamshire & Surrey Trading Standards*

The release of updated heavy 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 business 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.

### Understanding the difference between a ‘consumer’ and a ‘business’

The law differentiates between those who purchase as consumers and those who are acting in the course of business. Understanding the status of the client is fundamental to understanding what rights and protections apply.

In general, it is considered unlikely that a ‘consumer’ (defined as an individual not acting the course of business) would be purchasing heavy duty oils for commercial vehicles however this is not impossible (e.g. a collector).

If the product being purchased is for a commercial vehicle or the vehicle is being used for commercial purposes then it is more than likely a business purchaser and a commercial transaction.

### **Business Protection from Misleading Marketing Regulations 2008 (“BPRs”)**

These regulations control unfair practices used by traders when dealing with other traders. They are similar in nature to the *Consumer Protection from Unfair Trading Regulations (CPRs)*.

The regulations prohibit misleading business-to-business advertising and impose further restrictions on how businesses compare their products to rival products from other companies.

If you are selling to businesses the Regulations prohibit you from giving misleading information to the other business that would deceive that business and affect, or be likely to affect, its economic behaviour. You are also prohibited from giving misleading information that injures, or is likely to injure, a competitor. The regulations cover issues such as misleading advertising to traders and comparative advertising (comparing your product with a competitor).

If your advertising is relevant to both consumers and businesses then both these and the CPRs can be applied.

## Misleading Advertising

The regulations prohibit misleading advertising to traders and businesses. There are four main areas that are taken into consideration as follows

1. The characteristics of the product (see below)
2. The price or how the price is calculated
3. Conditions on which the product is supplied or provided
4. The nature, attributes and rights of the advertiser.

There are 13 main characteristics of the product that are controlled,

1. availability of the product;
2. nature of the product;
3. execution of the product;
4. composition of the product;
5. method and date of manufacture of the product;
6. method and date of provision of the product;
7. fitness for purpose of the product;
8. uses of the product;
9. quantity of the product;
10. specification of the product;
11. geographical or commercial origin of the product;
12. results to be expected from use of the product; or
13. results and material features of tests or checks carried out on the product.

## Comparative Advertising

Comparative advertising is where a trader advertises products comparing their product to competitors for example 'Tim's Oil lasts 50% longer than Martin's Oil'. Such advertising is only permitted where certain conditions are met as follows

1. it is not misleading under the BPRs or the CPRs
2. it compares products that meet the same needs or are intended for the same purpose
3. it objectively compares one or more material, relevant, verifiable and representative feature(s) of those products (may include price)
4. it does not create confusion among traders, either between the advertiser and competitor, or between trade marks (or similar) of products of the advertiser and those of a competitor
5. it does not discredit, denigrate or take unfair advantage of a competitor's trade mark (or similar)
6. for products with designation of origin, it relates in each case to products with the same designation
7. it does not take unfair advantage of the reputation of a trade mark (or similar) of a competitor or of the designation of origin of competing products
8. it does not present products as imitations or replicas of products bearing a protected trade mark or trade name

## **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 BPRs do not contain any civil law redress mechanism like the CPRs as businesses are considered capable of looking after their own interests. This means that civil disputes about monies paid or whether the product is correctly described would be subject to the normal civil courts process.

The protection for businesses is not as comprehensive as for consumers but it is still strong and care should be taken in all transactions and contracts not to fall foul of the regulations.

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