

GUD wins ASA case

The [Advertising Standards Authority](#) (ASA) handed down its ruling in the case of GUD Holdings and Federal-Mogul at the end of last month.



Federal-Mogul entered the automotive filters market in late 2011 with its Champion brand of products as a competitor to GUD, a manufacturer and distributor of automotive filters since 1950. The company sells products under the trade mark GUD and FRAM, for which it is a licensee. The company's products have developed an elaborate parts numbering system for its products over the past 60 years and it has copyright on this system. It also has the rights to the numbering system used for the FRAM products. Both parts numbering systems are distinctive, well-known and associated with the company.

Comparative advertising claim

GUD lodged a complaint with the ASA about a brochure that Federal-Mogul used for its Champion brand, which was headed 'Quick Reference Code Guide for Champion Filters'. The complaint was that the brochure made claims that could not be substantiated and that were therefore misleading.

The complaint went on to say that the brochure contravened the provisions of the ASA Code relating to comparative advertisement and disparagement. This related to the fact that the brochure compared Champion filters to those of a competitor and declared the Champion products to be superior. Although the brochure did not refer to the GUD or FRAM trademarks, it did cross-reference all the Champion part codes against the corresponding GUD and FRAM part codes. In the process, Federal-Mogul made it quite clear that the competitor concerned was GUD. In addition, it blatantly used the distinctive and well-known GUD and FRAM parts numbering systems as a marketing tool for the Champion products. GUD gave notice that it would consider filing a separate copyright infringement case.

On the issue of misleading claims, GUD argued that the comparisons contained in the brochure were unfair and that the results used were selective. GUD argued that Federal-Mogul was wrongly comparing the filters simply in terms of efficiency, without considering life/capacity. It argued that you could not evaluate a filter simply with reference to its ability to stop dirt, contaminants and particles passing through it, because once the filter has clogged, a valve opens up to bypass it - the valve then allows these impurities to pass through, and this is obviously undesirable. GUD claimed that its products are designed to get optimal life/capacity according to OEM (Original Equipment Manufacturers') specifications.

Claims continued

During the course of the ASA proceedings, certain issues were resolved but although Federal-Mogul made it clear that it would no longer be using the brochure, it did not give any undertaking to stop using various claims. The ASA therefore had to decide whether the following claims that were made by Federal-Mogul about its Champion filters and about how these filters compared to the GUD and FRAM filters, complied with the ASA Code:

- 'Not only protect engines from harmful particles, but enhance performance as well.'
- 'Champion came out tops.'
- 'Independent laboratory ... undergoing efficiency and capacity test, results showed the impressive performance of Champion oil filters.'
- 'Enough holding capacity to last between service intervals.'

- 'Clear that Champion Oil Filters outperform the tested competitor.'

No documentary support

The ASA ruled that the Code makes it very clear that an advertiser must have documentary evidence to support any claims that are capable of objective substantiation and that this evidence must come from an independent credible expert. The ASA did not accept Federal-Mogul's argument that its brochure simply claimed that its filters outperformed GUD and FRAM filters in terms of filtration efficiency, because it also referred to life/capacity. The evidence, which Federal-Mogul had, and which came from a US-based testing facility called IBR, did not support the various claims. In fact, it consisted of no more than raw data, and it offered no conclusions at all. This meant that the claims could not be substantiated, and that they had to be withdrawn.

A comprehensive victory for GUD and a reminder that one has to be very careful about making unsubstantiated claims in advertising.

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