

By Jim McFarland

Fuel Economy Claims on Retrofit Devices

Toeing the Line...

**A**

s the opportunity to sell “fuel economy” looms, there are some guidelines that need to be considered when making fuel-savings claims.

Virtually since introduction of the automobile, part of its evolution has included a fascination about both the type and efficiency of fuel used. Even when the price of gasoline hovered around \$.25 per gallon many years ago, the entrepreneurial community was experimenting with a variety of fuel alternatives. When fuel shortages (both real and perceived) later became part of the automotive landscape, products

emerged that focused on claimed benefits for mileage improvement. Over time, as new-vehicle manufacturers vied for market share and began focusing on specific features to distinguish one brand from another, fuel economy continued to be a marketing component.

Then the U.S. Environmental Protection Agency (EPA) entered the picture by providing a means to “estimate” fuel econ-

omy. While initially intended as a guide for consumers to compare fuel-economy performance from vehicle to vehicle, the EPA’s approach utilized the so-called “carbon-balance” method for calculating city and highway mileage based on mandated emissions-testing procedures. Interestingly, a major portion of this calculation includes the amount of CO₂ also present in a vehicle’s exhaust constituents,



■ New-vehicle manufacturers vied for market share and began focusing on specific features to distinguish one brand from another, fuel economy continued to be a marketing component.

possibly raising questions about how this component will eventually be regulated.

Regardless, today's specialty-parts manufacturers of engine and other vehicle components that can affect fuel economy (including aerodynamic parts) face an opportunity. However, it comes with some responsibilities linked directly to how such products can be marketed; specifically, how they can be advertised. Certain guide-

lines have been established by the Federal Trade Commission (FTC), and the EPA has developed methods by which these types of products can be and are evaluated. While the FTC has the authority to take legal action against marketers who have misrepresented the fuel-economy benefits of their products, the EPA simply has a means by which they can be evaluated.

In particular, the EPA has developed

and currently offers an "EPA Motor Vehicle Aftermarket Retrofit Device Evaluation Program." This program does not include any approval or certification of components. However, even though the agency does not certify or endorse products, companies may publicize that their product was tested by the EPA. This program essentially deals with the development of technical information derived from tests or

statistical evaluation of aftermarket products for which fuel economy or emissions reductions benefits are claimed. Documents that describe this program and its elements can be found at www.epa.gov/otaq/consumer/reports.htm. It should be noted that results gathered through this voluntary evaluation will be published and available for public inspection.

Within the scope of product advertising monitored by the FTC, you will find automotive aftermarket parts which claimed to increase vehicle fuel economy. Language included in FTC letters dealing with "deceptive marketing practices" sent to such product providers describes a six-point "check list" that comprises a guide to advertising mileage improvements. The following information outlines the contents of that list.

Scientific evidence is needed to support claims: "Competent and reliable scientific evidence" are the bywords of this section. Such claims include emissions reduction, references to vehicle operational cost reduction, so-called "pay-back" features and outright mileage improvements. Further, in order to satisfy the "competent and reliable scientific evidence" requirement, it is acceptable to rely on a qualified independent company to perform fuel-economy measurements.

You can also conduct in-house testing by the same means used in a professional environment, particularly if you include unbiased witnesses who are qualified to observe such testing. Another approach is to have tests performed using the same techniques employed by the California Air Resources Board (CARB) in the course of issuing Executive Orders (EO) for emissions compliance. The more progressive aftermarket companies have utilized these methods in the normal course of developing emissions- or mileage-related products, subsequently using independent testing services for verification and record-keeping purposes.

Exercise care when incorporating "up to..." advertising claims: Essentially, this means the claims you make should lead to results "the average consumer can reasonably expect to achieve." Claims based on out-of-the-ordinary or specially contrived test methods tend to fall outside the boundaries of what average consum-

ers can obtain during normal use of their vehicles.

Validating claims made by a third-party source: If you are the seller of a product claiming to improve fuel economy, it's your responsibility to make certain that the information has basis in fact. This means you'll need to determine whether the basis on which the parts manufacturer is staking the claim has the "scientific evidence" previously mentioned. In particular, don't take the liberty to embellish the claim in your own advertising materials. If you do, and there is no basis for your embellishment, responsibility for its accuracy transfers directly to you. Furthermore, if the evidence you seek from the manufacturer appears questionable, you may be at risk (and partially responsible) for conveying inaccurate information to consumers. Forums for this type information include ads, catalogs and any information shared on websites or in electronic information formats.

The EPA has developed and currently offers an "EPA Motor Vehicle Aftermarket Retrofit Device Evaluation Program" that essentially deals with the development of technical information derived from tests or statistical evaluation of aftermarket products for which fuel economy or emissions reductions benefits are claimed.

Truthful references to any standards or test procedures: If you make reference to approval or review by any group or agency outside the parts manufacturing company, it's critical such references be both truthful and accurate. For example, while some government agencies (state and federal) may provide review or evaluation tests of products related to fuel economy, exercise caution that you do not state or imply their approval unless such approval can

be validated. Most agencies will provide evaluations but will not endorse products by an "approval" process. In the same context, if a product claims to meet certain specifications (industry or governmental), the claim must be accurate and clearly not misrepresent the specifications cited.

The conspicuousness of disclosures: Quoting from the FTC document, "When you make a disclosure to avoid deception, it must be clear and understandable, and be made prominently and in close proximity to the claim it modifies." False claims may not be corrected by the use of a disclaimer.

Product "testimonials" should be used cautiously: This is a common path taken to support a given product's performance credibility, but it should only be used when an advertiser can confirm its validity. By methods previously mentioned, the product claims should be validated in advance of using testimonials. In other words, "A statement that not all consumers will get the same results is not a legally acceptable substitute for substantiating your product claims," according to the FTC.

Finally, in the interest of making certain you've satisfied the FTC's requirements for providing "scientific evidence" for mileage improvements, you might consider some additional thoughts. For example, other than the Federal Test Procedure followed in the CARB EO process, you may want to consider fuel-economy measurements (still using the carbon-balance method) made during the EPA's Highway Fuel Economy Test. This procedure takes highway use of a vehicle more into account, as opposed to the start-and-stop application associated with pure city driving.

If you are planning to participate in tests designed to validate advertising claims for products that boost mileage, another viable approach is to discuss your objectives with an independent testing facility. By outlining your needs and objectives, you can probably formulate a suitable plan that satisfies both your needs and those of the FTC. In combination with the aforementioned steps outlined in the FTC's guide to acceptable marketing practices for products intended to impact vehicle fuel economy, this overall approach should aid compliance when advertising these types of products. ■