

# Motor Oil's Day in Court

BY STEVE SWEDBERG

Some of you no doubt saw the recent commercial from BP Castrol, claiming that Castrol Edge motor oil is superior to ExxonMobil's Mobil 1 motor oil. The National Advertising Division saw it too, and after a thorough review, is urging Castrol to drop it, saying the ad falsely disparages Mobil 1 on the basis of a "torture test" that lacks consumer relevance.

In Castrol's video advertisement, two Dodge

Challengers are shown in a torture test, both loaded with 1,600 pounds and run on a dynamometer at 75 miles per hour on a 7 percent incline. After five days of this punishment, the car using Castrol Edge continues to run perfectly while the Mobil 1-equipped engine begins smoking and shooting sparks. Citing the test as evidence, BP Castrol stated that Castrol Edge is "stronger" than Mobil 1.

Stung, ExxonMobil went to NAD to challenge the

accuracy of Castrol's torture test and question whether it had any relevance to everyday drivers. Castrol fired back, saying that the advertising industry's system of self-regulation has never explicitly set rules about whether torture testing must be consumer-relevant.

NAD didn't buy the Castrol argument. "Previous NAD cases have made clear that all advertising must be consumer-relevant," the reviewers said. They also noted, "Torture tests can be used to support product claims, but only if they represent conditions which have real-world experience," adding that ExxonMobil and Castrol both agree that consumers would never subject a car's engine to the conditions depicted in the test.

If you've never heard of the NAD, a little background is in order. The National Advertising Division of the Council of Better Business Bureaus serves as the dispute resolution mechanism for U.S. advertisers. Disputes often break out over advertising — or rather truth in advertising — so NAD's function is to review factual claims

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made in national advertisements and where necessary, resolve disputes between the parties.



In such cases, NAD typically reaches a conclusion within 90 days of a filing. Lest you think this is an easy way to complain about an ad that you don't like, you'll find there are some basic requirements which include pretty hefty filing fees: \$5,000 and up, depending on company size. (Companies with revenues over \$1 billion will pay four times that.) Compliance with NAD's findings is voluntary, and its decisions can be appealed (after paying another fee).

Castrol planned to appeal the decision to the National Advertising Review Board, according to a company

spokesperson. Its position is that consumers have to be the final judges of whether these product attributes are important to them. It looks like a chance to define relevance in an advertising setting.

Meanwhile ExxonMobil says it will continue to defend Mobil 1's performance. They also complimented NAD for its careful and thoughtful analysis of the situation.

As this exchange shows, the contests that play out before NAD and federal courts show motor oil marketing at its most combative. Long before I became

aware of the NAD, and after I went to work at Pennzoil, an issue came up between Pennzoil and Castrol. (These wrangles can be habit-forming, as you'll see later.) In this 1980 case the bone of contention was an ad series by Castrol in which three cars are shown driving across the television screen on what looks like graph paper. The Castrol car follows a line that goes straight across the screen. The other two cars, representing Pennzoil and Quaker State (this was before their merger) start curving down towards the bottom edge and are soon off screen.

Why was that so important? At the time, Castrol was promoting its use of shear-stable viscosity index improvers, and claiming superiority on that basis versus Pennzoil and Quaker State. In point of fact, all three oils met industry limits for shear-stability stay-in-grade viscosity.

Naturally, those at Pennzoil were none too pleased with this and took it up with Castrol. After a series of terse letters and some counter-testing on Pennzoil's part, and an injunction obtained by Quaker State, Castrol dropped the ads (which had probably run their course anyway).

Since that time, I've been keenly aware of the motor oil battles at the NAD, plus a few that have gone beyond to the court system. Most of these will involve either Pennzoil (now a division of Shell) or Castrol. Sure there are oth-

ers, but these two seem to show up most often. At any rate, I'll share a few cases and comment on what I think this all means.

1992 brought about another Castrol/Pennzoil dispute — and this time it was Castrol challenging shear-stability claims made by Pennzoil. This case was settled in court after Castrol filed suit against Pennzoil claiming false and misleading representations of facts; specifically, a Pennzoil television and print advertising campaign that stated it "outperforms any leading motor oil against viscosity breakdown." Pennzoil's claims further referred to "engine failure and premature engine wear, longer engine life and better engine protection."

The court determined that Pennzoil was wrong and was required to remove the advertising from both television and print media. At this point, I guess you could say that the two companies were even.

In March 1999, NAD came to one of its most far-reaching decisions ever. Castrol was challenged by Mobil Oil Corp. (now ExxonMobil) over statements that Castrol Syntec Engine Oil was both superior and synthetic. Previously, Castrol had used polyalphaolefin base stock in Syntec, but of late it had switched to hydroisomerized mineral base stocks. These, Castrol's experts argued, could be labeled synthetic because hydroisomerization changes the oil's linear paraffin into a branched-chain one, through the use of an

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intended chemical process and a solid catalyst. To Mobil's dismay, NAD found this persuasive. While NAD rejected Castrol's claims of "superiority" for Syntec, it concluded that the oil marketer had a reasonable basis for asserting that hydroisomerized base stocks are synthetics.

This one decision has resulted in significant formulation changes and upgrades as well as the wholesale introduction of "synthetic" and "partial synthetic" motor oils into the global marketplace. As Car and Driver columnist

Patrick Bedard put it in 2000, "Most guys know two things about synthetic oils. First, the price is three to four times that of conventional oils. Second, they're not real oil, not made from crude. News flash: Scratch that second part. Now motor oils derived from crude may be labeled 'synthetic.' But they still cost over four bucks a quart."

Moving now to 2000, it was back to a New Jersey federal court with a lawsuit filed by Castrol over a sludging claim made by Pennzoil based on a double-length Sequence IIIE engine test. (By then I was working for an additive company.) Some of you may remember the ad, in which quarterback Brett Favre took some sludge from the pan of a test engine (containing used Castrol motor oil) and smeared it below his eye while suggesting that the product's only useful pur-

pose was as black grease-paint to reduce the glare of sunlight during football games.

That October, after revealing testimony by several industry experts, the presiding judge called the ad "repugnant" and found it violated federal advertising laws. Among other things, the judge enjoined Pennzoil from making any claim (1) that its oil is in any way superior to Castrol or any other leading motor oil, and (2) that its oil provides better protection against engine wear or engine failure than Castrol or any other leading motor oil. The injunction applied to all forms of advertising, including television, cable television, print, the Internet and the World Wide Web. Pennzoil appealed but lost again. Castrol 2, Pennzoil 1.

In 2009 came Round 4 between Castrol and Pennzoil, as sludge-protection claims in Castrol GTX motor oil advertisements triggered a war of words between the two. Pennzoil objected to the claim that Castrol was "57% better" than other leading oils. This time they decided that NAD should make the call — and this time Pennzoil emerged on top.

Pointedly, NAD said Castrol should discontinue claiming that its sludge protection is "57% better" in television commercials. For website claims and technical bulletins, the organization said BP America should either discontinue the "57% better" claims or modify them to expressly limit the superiority claim to the motor oil's performance in

certain European Mercedes-Benz vehicles, as measured by that automaker's proprietary testing.

The call on the Mercedes-Benz vehicles was due to the fact that Castrol had used an M-B engine test to make its sludge control superiority claim. Pennzoil was satisfied with the decision, but Castrol argued that M-B testing should be relevant to the global market since, essentially, sludge is sludge no matter how it is generated. It said the test results are relevant for North American drivers, given the many similarities between the North American and European markets, and that European sludge standards are more demanding than North American standards.

Castrol agreed to withdraw this challenged advertising after a National Advertising Review Board panel recommended it do so, in all media. After four rounds, it's Castrol 2, Pennzoil 2.

As 2009 rolled along, Castrol returned to the NAD to contest advertising from Royal Purple (now part of Calumet Specialty Products). Porter, Texas-based Royal Purple had compared its synthetic motor oil's performance to Castrol, Shell, Amsoil and other brands. NAD examined these claims, and recommended that Royal Purple modify or discontinue a number of them.

To start, NAD pressed Royal Purple to discontinue its use of consumer testimonials without reliable

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 independent evidence (data) showing performance capability. In other words, testimonials, while comforting, are not a substitute for hard numbers. Castrol had stated as much in its challenge when it said, "If industry-standard tests or tests with carefully documented controls were abandoned, there would be no basis whatsoever for making any meaningful claims about the relative efficacy of motor oils." (Compare that to Castrol's stance in the case that opened this column.)



By the way, Royal Purple also was claiming that its motor oil was "API Certified." As Castrol pointed out, only products that are licensed by the American Petroleum Institute can display the trademarked "donut" Service Symbol or its "starburst" Certification Mark. Oil buyers may or may not rely on the starburst but the logo does clearly signify that the oil meets current industry standards. In fact, no Royal Purple products were certified to current API "starburst" standards, so NAD recommended that the company discontinue saying that its synthetic oils are "generally 'API/ILSAC Certified.'"

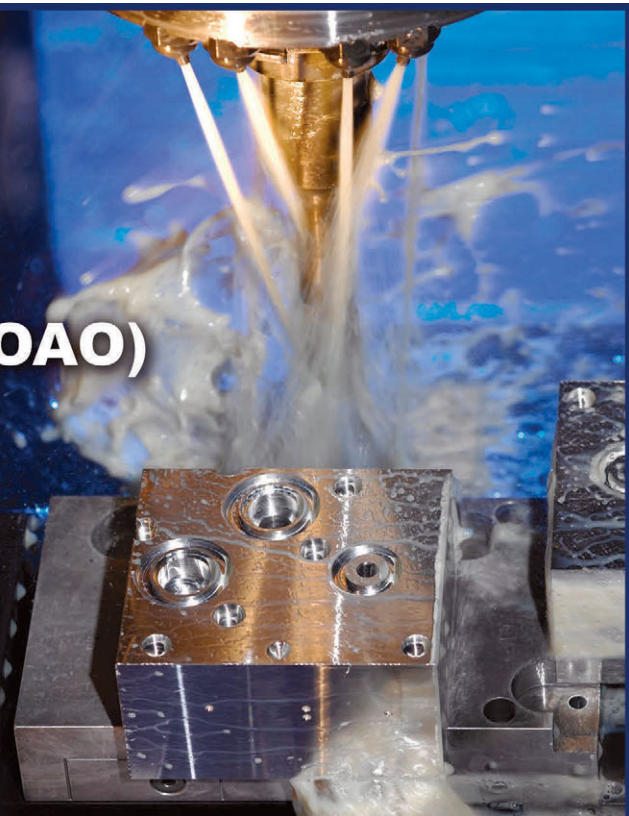
In 2012 Pennzoil and Valvoline went to the NARB (the NAD appeals body) over Valvoline's engine warranty program. Valvoline said its program guaranteed engines for up to 300,000 miles if the customer uses its oil and changes it regularly. Not surprisingly, Pennzoil has a similar warranty program in place. Initially, NAD agreed with Valvoline that its claims were OK for advertising purposes. Pennzoil appealed on the basis that it has a similar program so Valvoline couldn't claim "first and/or only engine guarantee," nor that only Valvoline guarantees engines for up to 300,000 miles. After reviewing all of the

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intricate details about how to tell whether or not an engine had failed for lubricant related reasons, NARB recommended Valvoline cease making those claims for its motor oil — and also concluded that very few consumer claims would be covered under either Valvoline's or Pennzoil-Quaker State's engine guarantees.

So what have we learned from our ringside seat at these matches? First, big oil marketers have more to defend and are more likely to challenge advertising that either denigrates them directly or through guilt-by-association.

Second, you better have reliable data using proper test methodologies and

good statistical analyses before you try to use comparative advertising. Testimonials and meaningless "torture tests" just won't cut it.

Third, API can be zealous in guarding its donut and starburst trademarks. You shouldn't even think about putting either on a container without having a current license in place to back it up.

Last, don't underestimate what impact NAD rulings have on the marketplace. Just look at the "synthetic" decision.

There's no question that advertising plays an important role in the battle for motor oil sales. All the more reason to make sure it's right. ■



*Industry consultant Steve Swedberg has over 40 years experience in lubricants, most notably with Pennzoil and Chevron Oronite. He is a longtime member of the American Chemical Society and SAE International, where he was chairman of Technical Committee 1 on automotive engine oils. He can be reached at [steveswedberg@cox.net](mailto:steveswedberg@cox.net).*



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