



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

October 31, 2022

DMS NOTICE
P – 22 – 01
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Diesel Exhaust Fluid on Motor Vehicle Fuel Advertising Medium

The Division of Measurement Standards (DMS) has been asked by county weights and measures officials if it is permissible to advertise the sale of Diesel Exhaust Fluid (DEF) on motor vehicle fuel advertising mediums.

The Division posed this question to California Department of Food and Agriculture (CDFA), Legal Counsel. CDFA Legal Counsel concluded that it is permissible for DEF to be advertised on the same advertising medium as motor vehicle fuel.

The intent behind Chapter 14 of the California Business and Professions Code (BPC) is to prevent brand and price advertising that might confuse or deceive a passing motorist and cause the motorist to enter the fueling station under a false impression as to the station's *merchandise* and prices. Reference Attorney General Opinion, 1969 Cal. AG. LEXIS 1. (attached).

BPC Section 13534 reads as follows:

- a. Except as provided by subdivision (b), and subdivisions (b), (c), and (d) of Section 13532, it is unlawful for any person to place any additional advertising matter on any advertising medium referred to in this article except:
 - (1) A description of the products offered for sale in letters or numerals not larger than the price numerals.
 - (2) Methods of sale, such as self-serve or full-serve, in letters not less than one-third the size of the price numerals.
 - (3) Words describing the type of services offered at the place of business, such as food market, carwash, tune up, and the registered trademark or trade name of the service, but not the price of the service.
- b. Subdivision (a) does not apply to electronic changeable message centers when the advertising content includes both the product offered for sale and its price in a single advertising message, or when the product and price components of the advertising message clearly relate to one another and the price neither starts nor ends the message.



In addition to the exception in BPC Section 13534(a)(1) for descriptions of products, there are also exceptions for price reductions on motor vehicle fuel that meet certain conditions and different grades of motor vehicle fuel sold or offered for sale at different prices.

Regarding the BPC Section 13534(a)(1) exception, "product" is not defined by the BPC or implementing regulations. Thus, the common dictionary definition applies that indicates a "product" is something that has been given being, form, or shape, especially in regard to manufacturing. For this purpose, DEF meets the definition of a "product." The BPC and regulations do not limit "product" in that exception to motor vehicle fuel products.

DEF and motor vehicle fuel are distinct products with different functions. The pricing of DEF and the pricing of motor vehicle fuels cannot be reasonably read as one message. Although the advertising of DEF may appear to closely resemble motor vehicle fuel products on an advertising medium, in the examples that were provided to CDFA Legal for their consideration of this matter, DEF is clearly identified "DEF," and it must be assumed a customer bears the responsibility of not mistaking DEF for a motor vehicle fuel in the same sense that a customer must be responsible for not mistaking gasoline for diesel. Furthermore, consumers often purchase DEF at the same time they purchase diesel fuel for the operation of their vehicles.

If you have questions, please contact John Larkin, Supervising Special Investigator, Fuels, Lubricants and Automotive Products Program at 916-229-3000 or john.larkin@cdfa.ca.gov.

Sincerely,



Kristin Macey
Director

Enclosure

cc: Hyrum Eastman, County/State Liaison, CDFA

CALIFORNIA DEPARTMENT OF AGRICULTURE



1220 N Street
Sacramento
95814

February 26, 1969

TO WEIGHTS AND MEASURES
OFFICIALS

Attached is a copy of Attorney General's Opinion #67/44 on gasoline price signs.

This concerns the following provisions:

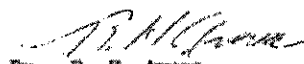
1. That the height of the tallest of the lower case letters in the brand will be the basis for determining that the price figures may be up to twice such height.
2. Supplemental words indicating grade are not considered part of the brand name. Examples: "Gulftans," "Half and Half."
3. If a service station offers both a self-service price and a non-self-service price, and either price is advertised on a gasoline price sign, then both prices must be advertised. Pump price posting is required to be identical with corresponding price signs.
4. Gasoline advertising signs that are not on or near the premises may be used to advertise price discounts with a full disclosure as provided by Section 20980(c).
5. Gasoline price signs must be plainly visible and a revolving sign would need to reveal the price to a driver traveling at the legal speed limit.

Complete details are included on the attached reprint.

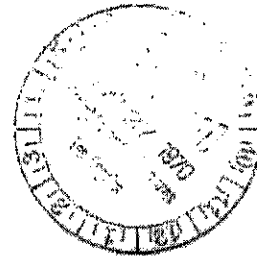
Sincerely

W. A. KERLIN, CHIEF

BUREAU OF WEIGHTS AND MEASURES


By: R. H. Avens
Program Supervisor
Petroleum Products

Attachment



OFFICE OF THE ATTORNEY GENERAL
State of California

THOMAS C. LYNCH
Attorney General

OPINION

of

THOMAS C. LYNCH
Attorney General
CHARLTON G. HOLLAND
Deputy Attorney General

NO. 67/44

January 29, 1969

THE HONORABLE EARL COKE, DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, has requested an opinion on the following questions relating to the regulation of price and brand advertising of petroleum products under sections 20880-95 of the Business and Professions Code:^{1/}

1. Does the brand name "Gulf" with one letter 17 inches high and three letters 31 inches high conform to the requirements of a gasoline price sign when used in conjunction with price figures 44 inches high?

2. (a) Using the brand name "Tahoe" with three letters 17 inches high and two letters 22 inches high, what would be the basis for determining the height of price figures on a gasoline price sign?

(b) Using an example of "NameE" as a brand name with two letters 17 inches high and two letters 22 inches high, what would be the basis for determining the height of price figures on a gasoline price sign?

3. (a) Referring to the two drawings in Appendix A, when drawing 1 is used in connection with drawing 2 as one price sign, should the letters of the words "Gulftane" in drawing 2 be considered part of the brand name for determining the height of the price figures?

1. All section references are to the Business and Professions Code unless otherwise indicated. All article references are to chapter 7, division 8 of the Business and Professions Code.

(b) In a similar display but substituting the phrase "Half and Half" for "Gulftane", should the letters of "Half and Half" be considered a part of the brand name for determining the height of the price figures?

4. If a service station equipped with coin-operated self-service pumps also has pumps operated by attendants who provide the usual services along with delivery of the brand name and grade of gasoline as is dispensed through the self-service pumps, but at a price two cents per gallon higher, does a gasoline price sign advertising only the lower self-service price conform to section 20880(a) and section 20895 of article 8?

5. Does a marketer who advertises gasoline price discounts for specified service stations on roadside signs that are out of sight of such service stations violate the provisions of section 20880(c)?

6. On a gasoline price sign where the price figures are stationary and the brand name is on one side of a rotating panel, does the intermittent display of the brand name--a required part of the sign--constitute compliance with article 8.

Our conclusions are as follows:

1. As this office interprets section 20883, all figures indicating the price of gasoline must be not more than twice the height of the tallest lower-case letters in the brand name of the gasoline. Therefore, the use of price figures 44 inches high in Gulf's price sign is proper since under section 20883 the maximum allowable height is 62 inches.

2. (a) The height of the price figures should be determined from the tallest letter of the lower-case letters in a brand name. Utilizing this formula, the letter "h" in the brand name "Tahoe" is the basis for calculating the proper height of the price figures pursuant to section 20883.

(b) The height of the price figures used in conjunction with the brand name "Name" must be calculated from the height of the lower-case letters. However, the use of "Name" violates section 20882 since the use of two upper-case letters is not part of a uniform letter pattern.

3. (a) Under section 20884 a gasoline price sign may, in addition to the brand name and price, contain words of description of the product. "Gulftane" is Gulf's description of a particular grade of gasoline. As such, "Gulftane" is descriptive of the product offered by Gulf for sale and must not be considered part of Gulf's brand name.

(b) Same conclusion as 3(a).

4. If a service station offers both a self-service price and a non-self-service price, both of these prices must be advertised in the manner set forth in section 20883 if either one of these prices is advertised at the station. The price, however, need not be advertised except at the pump itself as is required by section 20880(a) and the provisions of article 5.

5. The provisions of article 8 do not prohibit marketers from advertising price discounts at places that are out of sight of the service station. However, these price discount signs must conform to section 20880(c).

6. Section 20887 provides that the figures, letters and other components of the gasoline brand and price signs must be "plainly visible." Consequently, if the rotation of a brand sign makes the sign anything less than "plainly visible," the sign is in violation of section 20887.

ANALYSIS

INTRODUCTION

The Legislature has enacted a comprehensive scheme of regulation relating to price and brand advertising of petroleum products from a gasoline service station. This regulation appears generally in article 8, chapter 7, division 8 (sections 20880-95) of the Business and Professions Code and has been judicially recognized as a scheme of regulation in part designed to prevent brand and price advertising at a gasoline service station which might confuse or deceive a passing motorist, and cause him to enter the service station under a false impression as to the station's merchandise and prices. Serve Yourself Gas, etc. Assn. v. Brock, 39 Cal.2d 813, 818-820 (1952); 43 Ops. Cal. Atty. Gen. 174 (1964); 36 Ops. Cal. Atty. Gen. 203, 207 (1960).

Question 1.

This question poses a situation where the brand name contains four letters, one of which is 17 inches high and three of which are 31 inches high. The price figures used with the brand name are 44 inches high. Section 20882 regulates the size of letters of brand names by providing:

"All letters, figures or numerals used in designating the brand name or words 'no brand' in any advertising medium referred to in this article shall be of uniform size and at least six inches in height and the height shall not be more than twice the dimension of the width of each such letter, figure or numeral."

Section 20882 calls for the lettering in the brand name to be of "uniform size." This requirement does not mean that each letter must be equal in height and width to its fellows. Rather, each letter must be part of a uniform lettering system.

Section 20883 provides:

"All letters, words, figures or numerals used on the advertising medium referred to in this article for the purpose of indicating or showing prices of gasoline or other motor vehicle fuel sold or advertised for sale shall be uniform in size and shall be not more than twice the size of the letters, figures or numerals used to designate the brand name, or the words 'no brand.'"

The Legislature was concerned that the brand name would be clear to the passing motorist and that the figures in the price would not be over-emphasized and thus obscure the brand name. Section 20882 requires that the brand lettering be of the same general pattern, so the brand name will be easy to read. Since section 20883 requires that the figures in the price be no more than twice the size of the brand lettering, it may be assumed that the Legislature intended to insure that a proper ratio between the height of the price figures and the height of the brand name lettering be maintained so that the sign would not deceive the motorist.

Since section 20882 does not require that all letters in the brand name be of equal height, it is necessary to determine what type of letter is the proper letter for determining the maximum allowable height of the price figures. For the reasons given below, we believe that the legislative purpose behind section 20883 is most appropriately effectuated where the height of the tallest lower-case letter is the basis for determining the maximum allowable height of the price figures.

It is reasonable to assume that since the Legislature did not spell out in section 20883 a complicated formula for determining the height of the price figures, the Legislature intended some relatively simple, easily applied standard. It cannot be assumed that the Legislature intended that the height of the smallest lower-case letter be used since this would unduly penalize a company with a brand name that contained only one of the smaller lower-case letters. Of course, if a company possessed a brand name that contained only the smaller lower-case letters, the company would be required to maintain a reasonable ratio between its brand name and its price figures, but it would not suffer in comparison with another company which had taller lower-case letters in its brand name since the former company is not restricted in the overall maximum height of its brand name. Nor can it be assumed that the Legislature intended the capital letter of the brand name to be used as a basis for determining the height of the price figures since the capital letters are

generally oversized and the purpose behind section 20883 to insure that a reasonable ratio is maintained between price figures and brand name would thereby be frustrated.

With the above process of elimination and the assumption that since the Legislature did not spell out a complicated formula it did not intend one, it becomes apparent that the most reasonable construction of section 20883 is one that establishes the height of the tallest lower-case letter as the proper height from which to measure the allowable height of price figures.

Under this standard, the price figures used in conjunction with the brand name "Gulf" must not exceed 62 inches. Since the price figures of Gulf are 44 inches, they do not violate section 20883.

Question 2(a).

Under the standard stated above that the proper height for a price figure according to section 20883 must be determined by measurement from the height of the tallest lower-case letter, the maximum permissible height for the price figures in the word "Tahoe" would be 44 inches.

Question 2(b).

In relation to this question, the permissible height for the price figures, using the tallest of the lower case letters as the proper guide, is 34 inches. However, the manner in which the brand name "Name" is presented violates section 20882.

Section 20882 requires that the brand lettering be of a uniform lettering pattern. Consequently, a brand name which contains, as the example "Name" does, two capital letters is hardly uniform. The intent of the Legislature in requiring uniformity was to insure that brand names could be easily read by the passing motorist. The use of upper and lower case letters in a uniform lettering pattern, as, for example, was done in "Gulf" and in "Tahoe," advances this legislative purpose. However, to permit a lack of uniformity in brand name lettering as used in "Name" would open the door to purposeful or even unintentional distortion of a brand or trade name in a manner that could mislead a passing motorist.

Question 3(a).

When drawing 1 and drawing 2 are considered as one price sign and are thus regulated by section 20883, the question arises whether "Gulftane" need be utilized as part of the basis for determining the maximum allowable height of the price figures. "Gulftane" is a grade of gasoline which is offered for sale by the Gulf Oil Company. Consequently, when "Gulftane" appears on a price sign,

the knowledgeable customer understands that the price figures on the sign relate to a particular grade of gasoline offered by the company.

Aside from the brand name and the price figures, the only other advertising material which may appear on a price sign are "words of description of the products sold or offered for sale" according to section 20884. This section reads as follows:

"The advertising medium referred to in this article shall not contain any other advertising matter whatsoever, except words of description of the products sold or offered for sale, and if words of description of the product offered for sale or advertised for sale by any such sign are used, the letters, figures or numerals which form any words, marks, letters, figures, or numerals of description shall not be larger than the words, marks, letters or numerals used in forming or designating the brand name or the words 'no brand.'"

"Gulftane," as required by section 20884, is not larger than the brand name "Gulf." Since "Gulftane" meets this height criterion and is a word descriptive of a particular grade of gasoline that the Gulf Oil Company offers for sale, "Gulftane" may lawfully appear on a price sign and need not be considered as part of the brand name for the purposes of section 20883.

Question 3(b).

The Gulf Oil Company offers for sale a medium grade of gasoline which is rated between "Gulftane" and the company's premium grade of gasoline. The company calls this grade of gasoline "Half and Half." "Half and Half" is descriptive of the medium grade of gasoline which the company offers for sale, and if it meets the height requirements of section 20884, "Half and Half" may appear on the company's price sign. Since it is descriptive it need not be used as a basis for determining the height of the price figures pursuant to section 20883.

Question 4.

According to section 20820, in article 5, there must be displayed on every gasoline dispensing apparatus at least one sign showing the actual price per gallon of the gasoline which is sold from that dispensing apparatus.^{2/} Section 20880(a) in article 8 provides that the price sign on the dispensing apparatus must have the same numerical value as the figure on the price sign

2. Section 20820 reads as follows: (See following page)

permitted and regulated by section 20883.^{3/} Consequently, if a service station sells the identical brand and grade of gasoline

(Continued from Footnote 2, page 6)

"No person shall sell, offer for sale, or advertise for sale, at retail to the general public, any gasoline or other motor vehicle fuel from any place of business in this State by use of or through or from any dispensing apparatus, unless there is displayed on such dispensing apparatus in a conspicuous place at least one sign showing the actual total price per gallon of all gasoline or other motor vehicle fuel sold, offered for sale, or advertised for sale therefrom. The actual total price per gallon shall include fuel taxes and where sales tax is to be added the sign shall so state and show the rate and tax base."

3. Section 20880 reads in full as follows:

"(a) Nothing in this article shall be construed to apply to the price signs referred to in Article 5 of this chapter; provided, however, that any numerals designating the net tax-included price per gallon for a particular brand or trade name of gasoline or motor vehicle fuel permitted under the provisions of Article 5 of this chapter, unless otherwise stated herein, shall be identical in numerical value with numerals designating the net tax-included price per gallon for the same brand or trade name of gasoline or other motor vehicle fuel permitted under the provisions of this Article 8.

"(b) No person shall keep, maintain or display on or near the premises of any place of business in this State any advertising medium, which indicates or shows or advertises the price of gasoline or other motor vehicle fuel sold, offered for sale or advertised for sale from such premises, unless the actual price per gallon of gasoline or other motor vehicle fuel including taxes is also shown on such advertising medium, together with the word or words "gasoline" or "motor fuel" and the trade name or brand of the gasoline or other motor vehicle fuel product advertised for sale by such advertising medium.

"(c) No person offering for sale or selling any gasoline or motor vehicle fuel from any place of business in the State of California shall post or display a sign or statement or other advertising medium reading, in substance, 'save' a designated amount, or a designated amount per gallon, such as 'save 5 cents' or 'save 5 cents per gallon,' or using the expression 'off' a designated amount, such as '5 cents off' or '5 cents less', or 'discount' of a given amount, such as '5 cents discount,' or otherwise using the words 'save', 'off', 'discount', 'less', 'below', or any of them, or a word or words of similar meaning or other phraseology indicating

at two different prices depending upon whether it is dispensed from a self-service pump or a non-self-service pump, section 20820 requires two pump side price signs. If the station wishes to advertise in a manner permitted by article 8, it must advertise both prices which it offers. Clearly, only one price listing would not give the same numerical value as given on the signs on both the self-service and non-self-service pumps. In order to conform to section 20880(a), therefore, a station which has two different prices for the same gasoline must have two price signs to reflect the two different price figures on the pumps.

A service station which only advertises the lower self-service price would thereby be in violation of section 20880(a). Since the service station would be in violation of section 20880(a), it is unnecessary that the issue be resolved whether a service station which only advertises the self-service price is engaging in false, deceptive or misleading advertising in violation of section 20895.4/ However, if the station advertised both prices, but failed to make it clear to the passing motorist that the lower price advertised was the self-service price, this practice might be in violation of section 20895.

(Continued from Footnote 3, page 7)

a reduced price, unless there is posted and displayed in letters and numerals of at least equal size and as part of the same sign, statement or other advertising medium, the total price, or prices per gallon, including all taxes from which such reduction will be made, the reduction given and the total net price per gallon, including all taxes, at which gasoline or other motor vehicle fuel is being sold or offered for sale. Words shall be used to explain the reduced price, the amount of reduction, and the price from which the reduction is made. Such words shall be clearly shown in letters at least half the size of the numerals indicating price."

4. Section 20895 provides:

"It is unlawful for any person, firm, corporation, or association, or any employee thereof, to make or disseminate or cause to be made or disseminated before the public in this State, from either upon or off the premises of such person, firm, corporation, or association, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement relative to quality, quantity, performance price, discount or saving used in the sale or selling of any commodity which comes under the provisions of this chapter which is, or which could reasonably be construed as being false, deceptive or misleading in any particular and which is known, or which by the exercise of reasonable care should be known, to be untrue, false, or misleading."

Question 5.

Section 20880(c) establishes certain minimum information requirements for discount advertising. However, nowhere in article 8 is there a requirement that the price signs be within sight of a service station. Consequently, a service station does not violate section 20880(c) by advertising its prices, even if they are discount prices, away from the service station. Nevertheless, the advertisement of such a discount must be accompanied with the information required by section 20880(c) since this section applies to any discount sign regardless of its location.

Question 6.

Section 20887 requires that all the words, letters, figures or numerals that are part of the medium advertising the brand and prices be plainly visible. Since the purpose behind article 8 is to insure that the passing motorist will be adequately informed of the brand and price of the product sold at the service station, a rotating panel would be in violation of section 20887 if the rotation of the sign prevented a passing motorist from clearly viewing the brand name and price of the gasoline offered for sale at the service station. For example, such a sign would be in violation of section 20887 if its rotation prevented a passing motorist, traveling at the legally permissible rate of speed, from reading its contents.

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