

**Case No. 18-60144**  
**In the United States Court of Appeals for the Fifth Circuit**

EXPRESS OIL CHANGE, L.L.C.; TE, L.L.C.,  
doing business as Tire Engineers,  
*Plaintiffs-Appellants,*

v.

MISSISSIPPI BOARD OF LICENSURE FOR PROFESSIONAL  
ENGINEERS & SURVEYORS; TERRELL TEMPLE, in their individual  
and official capacities as the members of the Mississippi Board of  
Licensure for Professional Engineers & Surveyors; RICK TURNER, in  
their individual and official capacities as the members of the  
Mississippi Board of Licensure for Professional Engineers & Surveyors;  
JOSEPH FRANKLIN LAUDERDALE, in their individual and official  
capacities as the members of the Mississippi Board of Licensure for  
Professional Engineers & Surveyors; JOSEPH E. LAUDERDALE, in  
their individual and official capacities as the members of the  
Mississippi Board of Licensure for Professional Engineers & Surveyors;  
BENNIE J. SELLERS, in their individual and official capacities as the  
members of the Mississippi Board of Licensure for Professional  
Engineers & Surveyors; DR. DENNIS D. TRUAX, in their individual  
and official capacities as the members of the Mississippi Board of  
Licensure for Professional Engineers & Surveyors; JAMES MATTHEW  
RANKIN, in their individual and official capacities as the members of  
the Mississippi Board of Licensure for Professional Engineers &  
Surveyors; JOE W. BYRD, in their individual and official capacities as  
the members of the Mississippi Board of Licensure for Professional  
Engineers & Surveyors; SHANNON D. TIDWELL, in their individual  
and official capacities as the members of the Mississippi,  
*Defendants-Appellees*

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On Appeal from the United States District Court  
for the Southern District of Mississippi  
Cause No. 3:16-cv-00414

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**BRIEF OF *AMICI CURIAE* AMERICAN COUNSEL OF  
ENGINEERING COMPANIES, AMERICAN COUNSEL OF  
ENGINEERING COMPANIES-MISSISSIPPI, AMERICAN  
SOCIETY OF CIVIL ENGINEERS, AND NATIONAL SOCIETY  
OF PROFESSIONAL ENGINEERS  
IN SUPPORT OF DEFENDANTS-APPELLEES**

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## SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, which requires a “supplemental statement of interested parties, if necessary to fully disclose all those with an interest in the amicus brief,” undersigned counsel of record certifies that, in addition to the persons listed in Defendants-Appellees’ Certificate of Interested Persons in their principal brief, the following have an interest in this brief, but no financial interest in this litigation. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. The American Counsel of Engineering Companies, the American Counsel of Engineering Companies-Mississippi, the American Society of Civil Engineers, and the National Society of Professional Engineers, as *amici curiae*;

2. Kaytie M. Pickett, and the law firm of Jones Walker, LLP, counsel for *amici curiae*.

Respectfully submitted,

/s/ Kaytie M. Pickett

Kaytie M. Pickett

*Counsel of Record for Amici Curiae*

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**IDENTITY OF THE AMICI CURIAE, THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE**

*Amici curiae* comprise one regional professional association and three national professional associations dedicated to upholding the public's trust in the practice of professional engineering.

The American Council of Engineering Companies-Mississippi ("ACEC/MS") is the non-profit trade association of the engineering consulting industry in the State of Mississippi. ACEC/MS represents more than 100 firms employing over 1,500 people engaged in the independent practice of engineering. Its mission is to advance Mississippi's prosperity, health, safety and welfare through legislative advocacy and business education services on behalf of the engineering industry.

ACEC/MS is a member of the American Council of Engineering Companies ("ACEC National"), headquartered in Washington, D.C. ACEC National is organized into 51 state and regional member organizations and has over 5,000 firms, representing more than 500,000 engineers, architects, land surveyors, and other specialists. ACEC National members are responsible for more than \$200 billion of private and public works annually.

Founded in 1852, the American Society of Civil Engineers (“ASCE”) is an educational and scientific society representing more than 146,000 members worldwide, including some 110,000 engineers and comprising hundreds of technical and geographic organizations, chapters, and committees. Its objective is to advance the science and profession of engineering to enhance the welfare of humanity. The ASCE facilitates education in the science of engineering by publishing technical and professional papers, books, standards, codes, and other works; by conducting educational conferences, seminars, and other forums related to the engineering field, and by encouraging and promoting professionalism, leadership, career growth, and environmental stewardship within the profession to protect public health and safety and improve quality of life.

The National Society of Professional Engineers (“NSPE”) is an individual professional society with over 30,000 members in all U.S. states and territories who are actively employed in industry, government, education, construction, and private practice. NSPE works to serve the public and the engineering profession by (1) defining the PE license as the highest measure of professionalism and qualification to protect the

public health, safety, and welfare; (2) promoting awareness and recognition of the value and meaning of the PE license; (3) protecting the integrity of the profession and the public welfare by vigorously opposing the practice of engineering by unqualified persons; and (4) advocating the highest standards of licensure, ethics, and professional practice.

As is clear from their respective mission statements, the common purpose of the *amici curiae* is the protection of the public through the practice of engineering. The district court's opinion in this case upholds *amici curiae*'s purpose by protecting the public from the false and misleading use of the title "tire engineers." Accordingly, *amici curiae* have a significant interest in having the district court's decision upheld.

The source of authority for filing this brief is the Court's order granting their unopposed Motion for Leave to File Amicus Brief.

#### **STATEMENT OF COMPLIANCE WITH RULE 29(c)(5)**

The undersigned counsel authored this brief in whole, and the *amici curiae* solely funded the preparation of this brief. No party or party's counsel has contributed to the authorship of this brief or to funding the preparation of this brief.



## ARGUMENT

The brief of the Mississippi Board of Licensure for Professional Engineers & Surveyors<sup>1</sup> thoroughly addresses the complete absence of a genuine dispute of material fact on actual or potential customer confusion, and *amici curiae* will not violate Fifth Circuit Rule 29 by needlessly repeating the Board’s factual or legal arguments. Instead, *amici curiae* focus this brief on how use of the term “tire engineers” as a description of auto service mechanics is inherently misleading, which is a question of law for the Court.

### **I. The title “tire engineer” has a well-established, singular ordinary meaning.**

When a term is “used in a way that is distinct from its ordinary meaning,” that use is inherently misleading and unprotected by the First Amendment. *See Am. Acad. of Implant Dentistry v. Parker*, 860 F.3d 300, 308 (5th Cir. 2017). The uncontradicted summary judgment record amply demonstrates the ordinary meaning of the phrase “tire engineer” as a professional engineer with specialized knowledge and experience working with tires. *See Appellees’ Br.* at 5-7. As shown below, historical,

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<sup>1</sup> *Amici curiae* refer to Appellees collectively throughout this brief as the “Board,” and Appellants as “Tire Engineers.”

governmental, and scientific use of the phrase establishes this ordinary meaning beyond peradventure. Because Tire Engineers does *not* use the ordinary meaning of the phrase and instead uses it to describe “artful” mechanics, *see* Appellants’ Br. at 30, the district court correctly found Tire Engineers’ use to be inherently misleading.

**A. Newspapers and magazines have always used the phrase “tire engineers” in only one way.**

The field of tire engineering arose not long after the advent of the mass-produced automobile. Since at least 1915, “tire engineer” has been used in print media to mean a professional engineer working on the design, manufacture, and science of tires, not a mechanic rotating or patching tires:

**Tire making bears a resemblance to the steel industry: the progress in the fabrication of steel parts in the car has been responsible for many car improvements. By producing better alloy steels we have been able to lighten parts and yet have them much stronger. Add some ingredient to a steel and you make it tougher. Add another ingredient and you give it the ability to withstand fatigue under constant strain.**

**Go to the tire engineer and he is working in chemistry just the same as the steel man. Take a trip through the calendering room of a tire factory where the crude rubber and the score-and-one chemicals entering into a tire are thrown into metal boxes a couple of feet square, and there you see the starting of the tire.**

*Tire Makers Enlarge Plants and Develop Product*, 33 THE AUTOMOBILE, no. 22, Nov. 25, 1916, at 957; *see also 15,000,000 Pneumatic Tires for 1916 Motor Equipment*, MOTOR AGE, Nov. 25, 1916, at 28; *M. & W. Tests Truck Tires*, 37 THE AUTOMOBILE, no. 22, Nov. 29, 1917, at 980 (“Morgan & Wright . . . has been experimenting with pneumatic truck tires for some time. . . H.J. White, United States Tire engineer, supervised the test.”); 18 INDIA RUBBER & TIRE REVIEW, no. 7, July 15, 1918, at 434 (“Liet. Preston has represented the Goodyear Tire & Rubber Company . . . and has had practical and scientific experience as both a tire engineer and as an aeronautical engineer.”).

As cars gained in popularity, so did the media’s use of the phrase “tire engineers” to mean professional engineers specializing in tires. For example, a 1922 article in the journal *Automobile Topics* states, “[A]s in the past, the tire engineer has played a major part in solving the problems of the automobile engineer.” *New U.S. Truck Tire Takes 16-Inch Rim*, 65 AUTOMOBILE TOPICS, no. 1, Feb. 18, 1922, at 26. *See also* A. H. Edgerton, *Decreasing Unsprung Weight by the Use of Aluminum*, 15 THE SOCIETY OF AUTOMOTIVE ENGINEERS TRANSACTIONS, no. 1, 1920 at 692 (“A tire engineer of one of the largest companies recently stated that this was

one of the greatest difficulties the tire manufacturers had to face.”); *Work of Setting Up Balloon Tire Standards Scarcely Started*, 50 AUTOMOBILE INDUSTRIES, no. 4, Jan. 24, 1924, at 164 (“Knowledge of tire manufacture and construction possessed by the tire engineer . . . is absolutely essential to any intelligent consideration of standards involving tire dimensions.”); *Balloon Tires for Buses May Come Soon; Many Problems Face Tire Engineers*, 25 INDIA RUBBER & TIRE REVIEW, 1925, at 18; 34 S.A.E. TRANSACTIONS, 1939, at 43, 46 (“Third, the road surface. Here the problem concerns the car and tire engineers as well as the road engineer.”). In each of these articles, the phrase “tire engineer” is used to denote an engineer working in the field of tire manufacture, testing, and design. It is never used to describe a mere mechanic.

Through the 1950s and 1960s, car ownership became more common. As a result, newspapers began to devote sections to the automotive industry. Use of the phrase “tire engineers” to mean professional engineers with tire expertise only increased, further cementing the ordinary meaning of the phrase. *See, e.g., Tire Engineers Get ‘The Pitch’*, THE HAMMOND TIMES (MUNSTER, INDIANA), May 5, 1951, at 44 (“A tire engineer pays as much attention to the rhythmic sound

produced by tires as a musician. . . . Tests are being conducted by B.F. Goodrich engineers to find out what point tire noise becomes a nuisance and distraction to most drivers.”); *Dimpled Tires*, STATE JOURNAL (LANSING, MICH.), March 12, 1952, at 7 (“Airplane tires are getting a face lifting. In fact, tire engineers at B.F. Goodrich have added dimples in a novel departure from conventional rib-type tires.”); Joseph Kuebler, *End to Innertube in Five Years Seen by Rubber Firms*, AKRON BEACON JOURNAL, Dec. 9, 1954, at A4 (“All tires are made in plies—four or six, or more. . . . The big job of the tire engineers was to make the plies airtight.”); Frank Snyder, *Figures on Cars Indicate Needs for Better Roads*, THE CORSICANA (TEXAS) DAILY SUN, June 16, 1955, at 11 (“General tire engineers say the secret of the new materials is in the binder or backing for the vinyl coating.”); Rey W. Brune, *14-Inch Tire Due*, THE AUSTIN AMERICAN, Oct. 29, 1955, at 4 (“Tire engineers will build more wear in the tires, but it is a frustrating [sic] problem to keep ahead of the game. . . . Tire engineers also have to be guided by specifications laid down by the automobile companies.”); *There’s More to Tires Than Rubber, Air*, THE POST-CRESCENT (APPLETON, WISCONSIN), Oct. 6, 1963, at 11 (“Tire engineers have kept up with these fast-changing requirements by

developing tires that are not only stronger but longer wearing and more comfortable to ride on.”); *Is this fact or just sales talk?*, THE LOS ANGELES TIMES, Dec. 16, 1967, at 15 (“A well-known tire engineer, L.R. Sperberg, very recently concluded a series of tests he had been making from 1959 to 1967. They totaled over 9,000,000 miles.”); *Goodyear Has Highest Hopes for New Tire*, CHICAGO TRIBUNE, Feb. 25, 1968, at 111 (“As one tire engineer put it, ‘the radial-ply tire is no tire at all without a belt; whereas the bias-play tire can stand on its own.’”); Len Scandur, *For Drivers Only-Technical Stuff*, DAILY NEWS (NEW YORK, NEW YORK), April 13, 1969, at 208 (“Now tire engineers can run tests on a moving car instead of on indoor facilities and can find out exactly what forces are acting on the cords at various locations in the tire.”). Again, *none* of these articles use the phrase “tire engineer” to mean a mechanic.

By the 1970s, the ordinary meaning of “tire engineer” was well-established, and that meaning has remained consistent to the present. *See, e.g.*, Jan P. Norbye, Jim Dunn, *New Research on Steel-Belted Radial TIRES Fights the Hazards of Rain-Slick Roads*, POPULAR SCIENCE, May 1973, at 74 (“Tire construction and tread pattern determine how much of the footprint will actually be in contact with the road surface. The rest is

entirely up to the rubber compound. This is where the tire engineer quits, and the chemists take over.”); *Tire Grading is Criticized*, THE NEW YORK TIMES, Feb. 16, 1981, at Section D, p. 1 (“The grading system is misleading to the point that consumers are getting a bum rap,’ said John Eagleburger, a tire engineer and manager of technical coordination for product quality and safety at the Goodyear Tire and Rubber Company.”); Shav Glick, *Indianapolis 500/Daily Report; Youth Served on Pole Sunday*, LOS ANGELES TIMES, May 21, 1996, Part C, p. 7 (“Bridgestone-Firestone officials, after calling in tire engineer specialists from Akron, declared that the deflated tire that caused Brayton's fatal accident was punctured and that there was no indication of internal structural damage.”); Lawrence Ulrich, *Laser Diagnostics Seen as Rx for Passenger Vehicle Tires*, Chicago Tribune, Nov. 5, 2000, at 1 (“Harold Herzlich, a tire engineer and technical editor of *Rubber & Plastics News*, sees shearography’s potential for making more uniform tires that offer better ride and handling.”). The Mississippi Board of Licensure for Professional Engineers & Surveyors supplied the district court with substantial evidence of current media use of the term “tire engineer.” See Appellees’ Br. at 4-7. Tire Engineers supplied no evidence to the

contrary,<sup>2</sup> and over 100 years of journalism reveals no use of the phrase “tire engineers” to mean mechanics.

**B. The federal government uses “tire engineers” as the phrase is ordinarily understood.**

It is unsurprising that government use of the phrase “tire engineers” is consistent with the media’s use. In the Senate debates on the National Traffic and Motor Safety Act of 1966, Senator Gaylord Nelson relied on the testimony of Arthur W. Bull of Clearwater, Florida, “who served as a top tire engineer for U.S. Rubber Co. and who was once president of the Tire and Rim Association, the industry’s principal source of data on tire loads.” 112 CONG. REC. 6,918 (1966); *see also* 112 CONG. REC. 2,387 (1966) (reprinting letters to Sen. Nelson, stating, “I obtained

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<sup>2</sup> Tire Engineers contends that the statutory definition of an “engineer” only means a person holding a Mississippi engineering license. Thus, Tire Engineers argues that examples of use of the words “tire engineers” to mean an engineer with tire experience is unpersuasive without proof of Mississippi licensure. Appellants’ Br. at 33.

But Mississippi does not require tire engineers practicing outside the state to hold a Mississippi license, nor does it require testifying expert tire engineers within the state to do so, or even in some cases the tire engineer employees of industrial manufacturers. *See* Miss. Code Ann. § 73-13-41. Those persons are still tire engineers within the ordinary meaning of the term, and Tire Engineers’ mechanics are not. Because Tire Engineers holds its employees out to the Mississippi public as tire engineers, the requirement of licensure *does* apply to them.



a complete engineering report from a tire engineer out of Detroit which indicated that the adhesion in the various strands making up the tire was defective. . .”); *Tire Safety: Hearing before the S. Comm. on Commerce*, 89th Congr. 83, 85, 96, 115-116, 161, 239, 278-279 (1965). And when Senator Nelson recommended the National Highway Safety Bureau demand a recall of certain tires, he relied on actual tire engineers, not mechanics. *Sen. Nelson Punctures Wide Tire*, THE NEWS JOURNAL (WILMINGTON, DELAWARE), March 25, 1968, at 27 (“Sen. Gaylord Nelson, D-Wis., and the Firestone Tire and Rubber Co. were at odds today . . . Nelson, citing his sources as Firestone tire engineers, urged the National Highway Safety Bureau to demand the recall of the tire.”). And again, in 1973, when Congress considered tire safety, it relied on reports of professional tire engineers. 119 CONG. REC. 9,862 (1973) (“Leading vehicle and tire engineers are close to agreement on terminology for vehicle directional control and tire characteristics . . . .”); *see also Safety of Firestone Steel-Belted Radial 500 Tires: Hearings Before the Subcomm. On the Oversight and Investigations of the H. Comm. On Interstate and Foreign Commerce*, 95th Cong. 204, 455 (1978) (testimony of Robert S. Lee, Tire Engineer, and Donald F. Avila, Independent Tire Engineer).

Indeed, Congress has frequently looked to “tire engineers,” as the term is ordinarily used, to advise on tire safety. *See, e.g., The Recent Firestone Tire Recall Action, Focusing on the Action as It Pertains to Relevant Ford Vehicles: Hearing Before the Subcomm. on Telecommunications, Trade, and Consumer Protection and the Subcomm. on Oversight and Investigations of the H. Comm. on Commerce, 106th Cong. 396 (2000); Ford Motor Company’s Recall of Certain Firestone Tires: Joint Hearing Before the Subcomm. on Commerce, Trade, and Consumer Protection and the Oversight and Investigations of the H. Comm. on Energy and Commerce, 107th Cong. 465-66 (2001).*

The Board has pointed the Court to use of the phrase “tire engineers” in judicial opinions. Likewise, decisions of the Patent Trial and Appeal Board and the Trademark Trial and Appeal Board use the phrase “tire engineers” in its established, ordinary sense. *See, e.g., Ex parte GORGES MARCEL VICTOR THIELEN, UWE ERNST FRANK and FRANK SCHMITZ, 2012 Pat. App. LEXIS 6881, \*7 (P.T.A.B. December 11, 2012)* (“We find that disclosure to be sufficient to support the conclusion that the skilled polymer chemist or tire engineer would have been motivated at the time Appellants made their invention to have

used a ‘rubber containing a nitrile moiety’ as the rubber in the second non-productive mixing step.”); *Bridgestone/Firestone, Inc. v. Interco Tire Corp.*, 1998 TTAB LEXIS 689, \*11 (Trademark Trial & App. Bd. September 25, 1998) (“Mr. Clark added, on redirect examination, that as a tire engineer he can quickly spot tread details due to his ‘trained eye’ in tire design.”); *Goodyear Tire & Rubber Co. v. Interco Tire Corp.*, 1998 TTAB LEXIS 328, \*26, 49 U.S.P.Q.2D (BNA) 1705, 1714 (Trademark Trial & App. Bd. September 11, 1998) (“However, Mr. Kolowski acknowledged that while, to a tire engineer, a tire with a two-stage lug design would be different in appearance to a tire with a three-stage lug design, he added that he was ‘not sure’ that such would be apparent to a non-engineer.”). Of course, the experts referred to in the decisions of these administrative tribunals were engineers, not mechanics.

**C. “Tire engineering” is a legitimate scientific field, as the ordinary meaning of the phrase reflects.**

The phrase “tire engineer” encapsulates a well-known and extensive body of engineering activities. Tire development, like the development of any complex product, contains seven engineering elements: development planning, design inputs, design outputs, design reviews, design verifications, design validation, and engineering change

orders.<sup>3</sup> In addition to design, tire engineers address manufacturing issues, including training of assemblers and inspectors, calibration of manufacturing equipment and tooling, and inspection and sampling procedures. The practice of tire engineering requires familiarity with and adherence to state and federal standards, including but not limited to the National Highway Traffic Safety Administration's Uniform Tire Quality Grading Standards. *See* 49 C.F.R. § 575.104.<sup>4</sup>

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<sup>3</sup> *Cf.* U.S. INTERNATIONAL TRADE COMM'N, REPORT TO THE S. COMMITTEE ON FINANCE, INVESTIGATION NO. 332-232 UNDER SECTION 332(G) OF THE TARIFF ACT OF 1930 (1987), 1987 ITC LEXIS 166, \*267-268 (Int'l Trade Comm'n December 01, 1987):

In designing a tire, engineers must weigh the needs of vehicle manufacturers and consumers, and generally settle on a compromise that emphasizes such characteristics as safety and tread life. Factors taken into consideration include:

1. Vehicle weight distribution, which determines the load-carrying capacity of the tire and the operating inflation pressure;
2. Axle height and clearance for the chassis, suspension, and braking system, which determines the diameter, section width, and bead diameter of the tire;
3. The vehicle suspension system, which determines the basic tire construction (radial or bias-ply construction); and
4. The speed capability and operating conditions (in relation to construction, composition, and tread pattern).

<sup>4</sup> The Associate Administrator for Vehicle Safety Research at NHTSA holds a master's degree in mechanical engineering. <https://www.nhtsa.gov/nhtsa-leadership/associate-administrator-vehicle-safety-research-nat-beuse> (last accessed July 5, 2018). The NHTSA employs professional engineers to perform its research. <https://www.usajobs.gov/GetJob/ViewDetails/503484000> (last accessed July 5, 2018).

A well-recognized body in the field of tire engineering is the Center for Tire Research (CenTiRe), a consortium of tire-related industry members with two universities, Virginia Tech and the University of Akron, that operates under a National Science Foundation program called the Industry/University Cooperative Research Center.<sup>5</sup> Ronald Kennedy, its managing director, holds a Ph.D. in mechanical engineering.<sup>6</sup> In September of this year, CenTiRe will put on a five-day educational and developmental course to “provide engineers and scientists with an in-depth, intense study of developments surrounding tire engineering,” including classes on tire modeling, the impact of rubber and reinforcement properties on tire footprint mechanics, tire constructions and materials, and tire stress and deformation analysis.<sup>7</sup> All of the courses will be taught by persons holding doctorates in engineering.<sup>8</sup>

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<sup>5</sup> <https://centire.org/> (last accessed July 5, 2018).

<sup>6</sup> <http://www.me.vt.edu/people/faculty/ronald-h-kennedy/> (last accessed July 5, 2018).

<sup>7</sup> <https://www.uakron.edu/engineering/ME/tmsc/> (last accessed July 5, 2018).

<sup>8</sup> <https://www.uakron.edu/engineering/ME/tmsc/speakers.dot#TrinkoM> (last accessed July 5, 2018).

Tire engineering is not only a recognized course of study but also a topic of published, scholarly research. In 1978, the Tire Society was established “to disseminate knowledge and stimulate scientific and engineering development in the science and technology of tires through seminars, technical meetings, and publication of the authoritative journal *Tire Science and Technology*.”<sup>9</sup> *Tire Science and Technology* is an engineering journal that is edited by professional engineers, publishing papers on tire engineering research. See, e.g., Flavio Farroni, Riccardo Russo, and Francesco Timpone, *Experimental Investigations on Rubber Friction Coefficient Dependence on Visco-Elastic Characteristics, Track Roughness, Contact Force, and Slide Velocity*, 45 TIRE SCIENCE AND TECHNOLOGY, no. 1, January-March 2017, at 3-24.

The ordinary meaning of the phrase “tire engineers,” as found by the district court, is consistent with its meaning in the scientific community. No one uses the phrase “tire engineers” to mean mechanics, no matter how “skilled” or “artful” those mechanics may be. Tire Engineers’ argument otherwise punctures credulity.

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<sup>9</sup> <http://www.tiresociety.org/tire/ABOUTUS.aspx> (last accessed July 4, 2018).

## **II. Tire Engineers misleads the public by trading on the education and expertise of actual tire engineers.**

Unlike “Jiffy Lube” or “Tire Town,” the name “Tire Engineers” is not catchy. It does not roll off the tongue. Why, then, would an auto service store name itself “Tire Engineers”? Tire Engineers states the reason is “to distinguish its automotive services from those offered by competitors.” Appellants’ Br. at 14. But the only distinguishing characteristic that Tire Engineers’ name suggests is that, unlike its competitors, Tire Engineers employs actual professional tire engineers. This suggestion is false.

The value in this false suggestion is obvious. Because the profession of engineering is regulated, the public has well-justified (and hard-earned) trust in professional engineers. Professional engineers in Mississippi must hold at least a four-year degree in engineering, pass two exams, have four full years of qualifying engineering experience, and complete fifteen hours of continuing professional competency education per year. MISS. CODE ANN. § 73-13-23; 30 MISS. ADMIN. CODE. Part 901, R. 23.1. Moreover, professional engineers in Mississippi are held to a duty of competency that extends even to parties with which they lack privity. *See Grenada Ready-Mix Concrete, Inc. v. Watkins*, 453 F. Supp.

1298, 1310 (N.D. Miss. 1978) (“[A]rchitect-engineers may be liable to third parties foreseeable relying thereon for negligent breach of professional duty and proximately causing economic loss . . . .”) (citing *Owen v. Dodd*, 431 F. Supp. 1239, 1242 (N.D. Miss. 1977); *Engle Acoustic & Tile, Inc. v. Grenfell*, 223 So. 2d 613 (Miss. 1969)). And because tire engineering is a well-known and well-established branch of professional engineering, Tire Engineers’ name conveys a clear message to the public that its employees have education, training, and regulatory oversight that they admittedly lack.

Had Tire Engineers called itself Tire Doctors, no one would be confused, because doctors treat people, not tires. But Tire Engineers called itself Tire Engineers for a reason: Because tire engineers exist, and they *do* have specialized training and knowledge of tires. Because no tire engineers work for Tire Engineers, the name is inherently misleading. Just as it would be inherently misleading for a paralegal to call himself a lawyer, it is false and inherently misleading for mechanics to call themselves tire engineers.



## CONCLUSION

*Amici curiae* are committed to preserving what it means to be a professional engineer, and more specifically, a professional tire engineer. In this age of “truthiness,”<sup>10</sup> when many feel free to make assertions untethered to facts, *amici curiae* urge the Court to draw a clear line between what is true and what is false. And what is plainly false is that Tire Engineers are tire engineers. For these reasons, *amici curiae* the American Counsel of Engineering Companies, the American Counsel of Engineering Companies-Mississippi, the American Society of Civil Engineers, and the National Society of Professional Engineers, respectfully ask that the Court affirm the district court’s judgment.

Respectfully submitted this 9th day of July 2018,

/s/ Kaytie M. Pickett

Kaytie M. Pickett

*Counsel of Record for Amici  
Curiae*

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<sup>10</sup> Ben Zimmer, *Truthiness*, The New York Times Magazine, October 13, 2010, available at <https://www.nytimes.com/2010/10/17/magazine/17FOB-onlanguage-t.html> (last accessed July 5, 2018); see also Charles Sykes, *Does the truth matter? This is no longer a theoretical question*, AMERICA THE JESUIT REVIEW, June 5, 2017, available at <https://www.americamagazine.org/> (last accessed July 5, 2018).

## CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit through the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served through the appellate CM/ECF system.

This the 9th day of July, 2018.

/s/ Kaytie M. Pickett  
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## CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because it contains \_\_\_\_ words, as determined by the word-count function of Microsoft Word 2016.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

This the 9th day of July, 2018.

/s/ Kaytie M. Pickett  
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**CERTIFICATE OF ELECTRONIC COMPLIANCE**

I hereby certify that, in the foregoing motion filed using the Fifth Circuit CM/ECF document filing system, (1) the privacy redactions required by Fifth Circuit Rule 25.2.13 have been made, (2) the electronic submission is an exact copy of the paper document, and (3) the document has been scanned for viruses with the most recent version of use Symantec Endpoint Protection and is free of viruses.

This the 9th day of July, 2018.

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