Tooth whitening products have been at the centre of much speculation and discussion throughout Europe for many years. The view as to whether whitening products fall into the category of cosmetics or are in fact a “medical device” remains a divided and undecided one between the UK and Europe.

During recent years several cases that went to court backed by scientific papers failed to change the opinion of the UK courts and the fact remains that in the UK under the 1976 Cosmetics Directive Council directive 76/768/EEC provides in Annex III, part 1, n°12 a, whitening products do not fall under the category of cosmetics or are in fact a “medical device” remains a divided and undecided one between the UK and Europe.

One argument that has been brought to the retailers’ attention from one dental supplier is that the commonly used concentration of 10 per cent carbamide peroxide releases about three per cent of hydrogen peroxide; however, using a product with 0.1 per cent available hydrogen peroxide is unlikely to be an effective tooth whitening agent. As a result, many UK products have about three per cent or more and so are currently, under the legal requirements, illegal.

With this in mind, the recent whitening issue that has come to light is once again causing grave concern for dentists throughout the country.

Earlier this year in January 2011, a patient complained to a dentist about their tooth whitening treatment; the issue was brought to the attention of the Trading Standards Authority (TSA), and the Trading Standards Officer informed the dentist to stop offering tooth whitening and forced his dental supplier to stop selling tooth whitening products altogether: the case is threatening to reach the courts.

The consequence of this situation has resulted in a sudden suspension from dental suppliers in supplying whitening products. However, the whitening treatment has continued. It would seem that it all comes down to interpretation.

Speaking to Chris Wilson, City Trading Standards Manager, he was only able to say on the current situation that “Our inquiries are continuing and we cannot comment further until legal proceedings have been completed.”

With no clarity regarding the situation, the position that dentists are finding themselves in is an alarming one, as they must consider whether to continue providing the popular cosmetic treatment or to cease using it.

Speaking to Dr Wyman Chan, a dedicated teeth whitening dentist from Smile Studio, London, it was noted that the UK is the only country in the world where it is essentially illegal to practice tooth whitening because anything which has a percentage of hydrogen peroxide of more than 0.1 per cent is classed as illegal.

Speaking on the origins of the law, Dr Chan pointed out that originally the regulation under the ECC Cosmetic Directive was designed to regulate late oral hygiene products like mouth rinse and toothpaste that were freely and directly available to the consumers as Over The Counter (OTC) products. However, the area in which the law has been defined to label tooth whitening products is so grey that it now governs dentists instead of helping them. As Dr Chan explained, tooth whitening products do not fall into the category of an OTC oral hygiene product.

Delving further into the debate, into yet another area of the law that remains grey and obscure, Dr Chan stressed that when tooth whitening products are provided to patients for treatment it is a case of the products are prescribed to patients and NOT supplied to patients.

To solve the confusion and the issue that dentists are being confronted with on a daily basis, Dr Chan believes that the ideal situation would be for a Trading Standards Officer to take him to court to present a test case. Currently, the law can be interpreted differently. As Dr Chan has experienced, and Trading Standards Officers have the power to read into the law as they see fit; this means varying results for dentists across the country if they are brought to the attention of the Trading Standards Authority.

As Dr Chan argues, if the dispute of the law is taken to court, there would be no more doubts and whitening products can be reclassified to their correct field.

With the threat of the above case looming over many dental practices and dental suppliers, could it be that tooth whitening will soon be a forgotten treatment? Considering that according to a poll of dentists of the American Academy of Cosmetic Dentistry (AACD), whitening is a trend that will continue to rise throughout 2011: This current case could not have come at a more inappropriate time.

The poll recorded that AACD dentists are finding themselves in an alarming one, as they must consider whether to continue providing the popular cosmetic treatment or to cease using it.

When tooth whitening products are provided to patients for treatment it is a case of the products are prescribed to patients and NOT supplied to patients.

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that they expect this number to increase.

Quoted on the CODE website, Paul Mendlesohn said of the situation: “This messy legal situation has been going on for too long, whilst we can understand that it may take years for Europe to sort out its mistake, we can take a simple national action now for a local solution. The national coordinating authority for local authority regulation called LACORS could solve out this problem easily by informing Trading Standards to take low-key approach as they did in 2004 and subsequently withdrew in 2006.

“Encouraging LACORS to take action should be our main focus; we must lobby LACORS directly and indirectly. “It is my view that should there be prosecutions, dentists will stop providing tooth whitening altogether. But the huge patient demand for this effective, minimum intervention treatment will open the floodgates to its provision by non-qualified therapists, many of whom will use unsuitable or untested products.

“This poses a huge risk to the health of the public, which in turn could bring a substantial cost to the NHS for remedial treatment.” Dental Protection said on the situation: “On the information currently available to Dental Protection from the members involved, and from our discussions with the dental materials distributors and from discussions it would appear that Trading Standards’ interest lies primarily in pursuing supply companies rather than individual registered practitioners.

“We have also checked the position with the relevant contact person within Local Government Regulation (formerly LACORS* the Local Authorities Coordinators of Regulatory Services), as part of the Local Government Group, which is the local government central body responsible for overseeing local authority regulatory and related services in the UK.

“We are assured that the underlying position in terms of the legislation, regulation and co-ordination of the approach to the supply of these products is actually unchanged.

“The national coordinating authority for local authority regulation called LACORS could solve out this problem easily by informing Trading Standards to take low-key approach as they did in 2004.

“Many dental professionals have expressed concern about unregistered individuals providing tooth whitening from unregulated premises. On the 5th May 2011, BBC Breakfast TV and Radio 5 live ran a story highlighting the dangers of seeking tooth whitening treatments from unregistered individuals and reported that the GDC had successfully prosecuted the director of a national chain of tooth whitening salons.

“The Chief Executive and Registrar of the GDC appeared on these programmes and confirmed that in the view of the GDC, tooth whitening amounted to the practice of dentistry.

“In view of the recent publicity surrounding the provision of tooth whitening by unregistered individuals it is possible that Trading Standards’ actions are targeted at these individuals and supply companies rather than registered dental professionals, although this remains a matter of conjecture based on recent events.”

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*Finance is subject to status and for business purposes only.