Tooth whitening products have been at the centre of much speculation and discussion throughout Europe for many years. The view is 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 “medical devices” and therefore cannot exceed a stated dose of 0.1 per cent hydrogen 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 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.

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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 a 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.

“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.”