

T. Morgan

Michael H. Bai
Littleton Joyce Ughetta Park & Kelly LLP
39 Broadway
34th Floor
New York, NY 10006

APR 20 2011

Re: Kumho Tire Foreign Recall Inquiry

Dear Mr. Bai:

This letter responds to your April 4, 2011 inquiry to the Enforcement Division of the National Highway Traffic Safety Administration (NHTSA). Pursuant to the foreign recall requirements of 49 CFR Part 579, you advise NHTSA of the recall campaign being conducted in China by Kumho Tire China Co., Inc (Kumho China). On behalf of your client, Kumho Tire U.S.A., Inc. (Kumho USA), you inquire as to whether Kumho USA should conduct a recall in the United States for the same tire models and sizes.

The requirements on defects and reporting are found in the Vehicle Safety Act, 49 United States Code Chapter 301, 49 U.S.C. §§ 30118, 30119. Specifically, 49 U.S.C. 30118(c), provides:

(c) Notification by manufacturer.--A manufacturer of a motor vehicle or replacement equipment shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer--

- (1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or
- (2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

A related section, 49 U.S.C. § 30119, provides that notification under section 30118(c) shall be given within a reasonable time after the manufacturer first decides that a safety-related defect exists under section 30118(c) of this title. NHTSA regulations require the manufacturer to submit a Defect and Noncompliance Information Report (Defect Information Report, DIR, or Part 573 report) not more than five working days after a defect has been determined to be safety-related:

49 CFR § 573.6 Defect and noncompliance information report.

(a) Each manufacturer shall furnish a report to the NHTSA for each defect in his vehicles or in his items of original or replacement equipment that he or the Administrator determines to be related to motor vehicle safety, and for each noncompliance with a motor vehicle safety standard in such vehicles or items of equipment which either he or the Administrator determines to exist.

(b) Each report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety-related, or a noncompliance with a motor vehicle safety standard has been determined to exist. . . .

Your letter states that on April 15, 2011, Kumho China is to commence a voluntary recall of 302,673 tires in China. The recalled tires were manufactured by Kumho Tire Tianjin Co., Inc. (Kumho Tianjin). Further, you state that Kumho USA imported 8,076 tires manufactured by Kumho Tianjin into the United States. The imported tires are the same tire model and size as those subject to the voluntary recall in China.

As noted in Kumho's press statement, the tires manufactured by the Tianjin plant did not follow its own internal protocols for quality. In particular, the tires produced at the Tianjin plant contained considerably more reworked rubber than allowed by internal standards.

The performance of a foreign recall is indicative of the need to perform a recall on motor vehicle equipment, such as a tire, sold in the United States. Also, a failure to meet a company's own standards often indicates the need for a recall in the United States. We are concerned that the safety consequence of a deviation in the material used in making a tire, such as the one in the Kumho tires, indicates a potentially adverse safety impact in tire performance, including the increased possibility of a tire rupture. Under the Vehicle Safety Act, a defect includes any defect in performance, construction, a component *or* material. 49 U.S.C. § 30102(a)(2). To establish a performance defect, there need only be a non-de minimus number of failures. *United States v. General Motors Corp.*, 518 F.2d 420, 438 n. 84 (D.C. Cir. 1975). Of course, it is wholly inappropriate for a manufacturer to await failures when they may be anticipated. If there are adverse safety consequences over the life of a tire from use of ingredients such as the reworked rubber used in the 8,076 Kumho tires imported into the United States, a recall would be warranted.

In the first instance, the obligation is on the manufacturer to decide if a recall is necessary. The manufacturer has information at hand and an obligation to assess the matter. NHTSA is not positioned to provide legal advice to a manufacturer on that manufacturer's regulatory obligations when the agency has limited facts. Based on what we know, we can say that this could be a very serious matter.

If you require further information on foreign defects reporting, please contact Ms. Tina Morgan, Chief of NHTSA's Early Warning Division at (202) 366-4238. If you require further information on legal issues, please contact Ms. Jessica Lang of my staff at (202) 366-5902.

Sincerely,

Original Signed By

O. Kevin Vincent
Chief Counsel

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