DOREL Juvenile Group

NHTSA
WASHINGTON DC 20590
2011 FEB -7 P 4:26
OFFICE OF
CHIEF
COUNSEL

February 4, 2011

By Overnight Courier

Mr. O. Kevin Vincent
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE, Room W41-227
Washington, DC 20590

Re: EA10-005 Request for Confidential Treatment of

Dear Mr. Vincent:

Today, Dorel Juvenile Group ("DJG") is submitting its response to a Supplemental Information Request from the NHTSA Office of Defects Investigation in connection with the above-referenced proceeding. Based on a review of the response, DJG has determined that it includes information that should be accorded confidential treatment pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4). Accordingly, DJG is hereby requesting confidential treatment for this information and is submitting it, together with this request and the certificate required under Part 512, to your office.

DJG also wishes to call your attention to the consumer-identifying information in the submission. It is DJG's understanding that, under the Privacy Act, NHTSA must withhold such consumer-identifying information from public disclosure. DJG has not redacted this information from the public copy of the information, but would be willing to do on request.

The information required by Part 512 is set forth below.

A. Description of the Information (49 C.F.R. § 512.8(a))

The information for which confidential treatment is being sought consists of production numbers for child restraint systems, testing and statistical analyses, an evaluation prepared by Exponent, and a root cause analysis. We have marked the files in which confidential material appears to indicate the presence of confidential business information.

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B. Confidentiality Standard (49 C.F.R. § 512.8(b))

This submission is subject to the substantial-competitive-harm standard set forth in 49 C.F.R. § 512.15(b).

C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))

Part 512 and FOIA Exemption 4 protect the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed. *See* 49 C.F.R. § 512.15(b); *see also, e.g., Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). FOIA Exemption 4 was enacted to prevent disclosures that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter's] product." *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government." *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981). The information for which DJG is requesting confidential treatment merits protection from disclosure under these standards.

The disclosure of DJG's production numbers would be competitively harmful. Child restraint manufacturers protect the confidentiality of production numbers because such information is likely to reveal competitively sensitive, commercially-valuable information about market penetration, marketing plans, and commercial strategies. Competitors could use such information in production planning to compete more effectively, resulting in substantial harm to the submitter's competitive position. *See McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 306-307 (D.C. Cir. 1999) (a disclosure "would be to the competitor's advantage," and, therefore, "[o]f course, it follows that appellant would be competitively harmed by that disclosure").

The root cause analysis and the test and statistical analysis documents also should be protected from disclosure. These documents reveal commercially valuable information about DJG's manufacturing process and the design and performance of DJG components, as well as DJG's (and its contractor's) testing and analytic practices, protocols, and expertise. A competitor could use such information to improve and benchmark its processes, evaluate DJG's processes and products, and assess DJG's overall operational capacities.

D. Class Determination (49 C.F.R. § 512.8(d))

The confidential information is not subject to a class determination.

E. Duration For Which Confidential Treatment Is Sought (49 C.F.R. § 512.8(e))

Because the information will retain its competitive value indefinitely, DJG requests that the information be accorded confidential treatment indefinitely.

F. Contact Information (49 C.F.R. § 512.8(f))

Please direct all inquiries to the undersigned at the address and telephone number on the letterhead.

* * *

A certificate in support of confidentiality is attached to this letter. DJG is seeking a certificate from Exponent. We will forward that certificate to your office upon receipt.

We are enclosing two copies of the submission in its entirety and one copy from which the confidential information has been deleted. As noted above, we have marked the documents to indicate the presence of confidential business information.

If you receive a request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, DJG respectfully requests notification of the request and an opportunity to provide further justification for confidential treatment, if warranted.

Sincerely,

Terry Emerson

Enclosures

Certificate in Support of Request for Confidentiality

I, Paul Ledwith, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

(1) I am Paul Ledwith **Associate,** and I am authorized by **Exponent** to execute documents on its behalf;

(2) I certify that the information described in the attached request for confidential treatment is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4);

(3) I hereby request that the information contained in the pertinent documents be protected on a permanent basis;

(4) This certification is based on the information provided by the responsible **Exponent** personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside **Exponent;**

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which **Exponent** has claimed confidential treatment has never been released or become available outside **Exponent,** except for limited disclosures that may have been made to representatives of Dorel Juvenile Group, which were made with the understanding that such information must be maintained in strict confidence;

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside **Exponent** because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

(7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 4th day of JAN, 2011

Executed on this 12th day of Apr, 2011

Paul a. Ledwith

Paul A. Ledwith
Exponent

Paul a. Ledwith
Exponent