JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190
TELEPHONE: 216.586.3939 • FACSIMILE: 216.579.0212

July 26, 2010

NCC-110
RECEIVED
7/27/10

VIA EMAIL AND OVERNIGHT DELIVERY

O. Kevin Vincent, Esq.
Office of the Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE Rm W41-227
Washington, DC 20590

Re: Petition for Reconsideration Regarding CTS Corporation's April 30, 2010 Request for Confidential Treatment/EQ10-002

Dear Mr. Vincent:

Jones Day is legal counsel for CTS Corporation ("CTS" or the "Company") and provides this petition for reconsideration in response to NHTSA's June 28, 2010 letter on behalf of CTS. By way of background, on June 28, 2010, CTS received a letter from NHTSA Senior Attorney Otto G. Matheke, III, which granted in part and denied in part CTS's April 30, 2010 request for permanent confidential treatment of materials submitted to NHTSA pursuant to an Office of Defects Investigation information request letter dated February 1, 2010. On June 30, 2010, NHTSA closed Equipment Query ("EQ") investigation EQ10-002, stating that "[a]s all defective CTS accelerator pedal assemblies were included in Toyota recall 10V-017 (and GM recall 10V-018 for the Pontiac Vibe), this EQ is closed."

CTS respectfully disagrees with portions of NHTSA's partial denial of its request and submits this petition for reconsideration pursuant to 49 C.F.R. Part 512, which states in part that "[a] submitter of information whose request for confidential treatment is denied in whole or in part, may petition for reconsideration of that decision." 49 C.F.R. § 512.19(a). This petition for reconsideration is limited to eight reports total: two individual reports and one group of six. CTS is not seeking reconsideration as to any other items cited in the June 28, 2010 letter.

As stated in its April 30, 2010 request for confidential treatment, the Automotive Products business unit of CTS is a supplier of accelerator pedal assemblies to motor vehicle manufacturers ("OEMs"). The automotive industry is highly competitive and closely guards against the public disclosure of information about operations, including highly confidential engineering documentation and analysis. CTS's April 30, 2010 confidential submission sought to balance the need to prevent competitive harm to CTS and its suppliers and OEM customers, while at the same time providing information that may be of assistance to the agency in the subject investigation. CTS has determined that certain information and documents described in the April 30, 2010 confidentiality log and denied confidential treatment by NHTSA should be accorded permanent confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).

The confidentiality standard that applies here is set forth in 49 C.F.R. § 512.15(b) for information that a submitter is required to provide to the agency. Under this standard, information qualifies for confidential treatment if its disclosure would likely result in substantial harm to the competitive position of the submitter or of the entity that originally prepared the information. Under this agency's regulations and FOIA Exemption 4, information should be withheld if its disclosure would likely cause substantial competitive harm to the submitter. *See, e.g., National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); 49 C.F.R. § 512.15(b). 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 documents and information described in additional detail below should be protected under this standard. This information would provide competitors with insights into proprietary design information, engineering testing and analysis, and the problem solving capabilities of CTS and its customer, Toyota. Disclosure of such information would provide competitors and potential competitors virtually free access to proprietary information and a competitive advantage that they otherwise would not have. The following contains additional descriptions and justifications supporting CTS's claims for confidential treatment consistent with 49 C.F.R. Part 512 and applicable case law.

1. CTS - Camry PV\PV 78110-07011\180PV TestingEMI etr35798-01

This document is Bates numbered CTS-NHTSA-0007389 through CTS-NHTSA-0007458 and consists of a report originated by Elite Electronic Engineering, Inc. at the request of CTS (the "Elite Report"). CTS believes that the Elite Report is confidential on the grounds that it reveals testing procedures, product evaluation procedures, testing facilities and instrumentation as well as conclusions of testing performed for the Company. In the June 28, 2010 letter, NHTSA states that it denied CTS's request for permanent confidential treatment of the Elite Report solely because CTS did not provide certification from Elite. CTS hereby encloses a Certificate in Support of Request for Confidentiality from Elite for NHTSA's reconsideration.

2. CTS - Camry PV\PV 78110-07010\ PV Testing FMVSS.pdf

This document is Bates numbered CTS-NHTSA-0007145 through CTS-NHTSA-0007162 and consists of a November 2004 report regarding the return to idle at low temperature for series 770 and 990 left and right hand drive pedals (the "2004 Report"). NHTSA denied CTS's request for permanent confidential treatment of this document, stating that the agency "will not protect from disclosure test data that forms the basis for certification with federal motor vehicle safety standards." CTS respectfully disagrees with NHTSA's assessment of the 2004

Report as simply the testing of and certification for federal motor vehicle safety standards ("FMVSS"). To begin, the testing and analysis here go well beyond the standard required by the FMVSS, which requires that

> Except as provided below, maximum time to return to idle position shall be 1 second for vehicles of 4536 kilograms or less GVWR, and 2 seconds for vehicles of more than 4536 kilograms GVWR. Maximum time of return to idle position shall be 3 seconds for any vehicle that is exposed to ambient air at -18 degrees Celsius to -40 degrees Celsius during the test or for any portion of the 12-hour conditioning period.

49 C.F.R. § 571.124 ("FMVSS N124").

In our view, the 2004 Report contains a significant amount of proprietary test methods and proprietary test results that have nothing to do with the defined limitations of the actual FMVSS requirements and, indeed, the data go far beyond FMVSS certification. Here, the testing itself is based on RDDP DD13-0014 ("Request for Design & Development of Parts"), a Toyota prototype and new design testing requirements document. RDDP DD13-0014 requires rigorous testing of, among many other things, the pedals' electrical and mechanical hysteresis at certain points in the pedals' travel. In the 2004 Report itself, CTS included nine voltage and force gradient graphs for the various pedal parts tested pursuant to RDDP DD13-0014, measuring initial and post voltages and forces (both forward and reverse). These graphs record the pedals' return not as a measure of time—as required under the FMVSS standard—but rather as a measure of position, both in degrees and millimeters. The 2004 Report also contains several data tables, summarizing the pedals' return at low temperature results for both electrical and mechanical hysteresis.

Moreover, the 2004 Report tested the after-durability standard, which is a Toyota criterion within its Engineering Change Instruction ("ECI") document associated with these Toyota pedals. This standard requires the voltage output at full close—beginning of travel—to be within a certain range of volts. These data points are not requirements under the FMVSS and do not serve as a basis for FMVSS certification. Nor are they industry standards or practices widely known and used by the market at large. Furthermore, the only table that does provide the actual "time to return to idle position," as required under FMVSS N124, includes not only a measure of full return, but also of 10% return. The 10% return standard is a test unique to Toyota that measures accelerator pedal performance from a position barely off of idle stop. The purpose of the test is to verify that the pedals return within the same duration throughout the pedals' range of motion.

OEMs do not share proprietary requirements for product validation. The requirements within RDDP DD13-0014 and reported in the 2004 Report are unique to Toyota. Although the acronym "FMVSS" appears a few times on this document, the 2004 Report utilizes proprietary test methods and proprietary test results to convey to Toyota that CTS's pedals conform with the requirements of RDDP DD13-0014 as well as FMVSS N124. The denial of permanent confidential treatment of the 2004 Report would cause CTS substantial competitive harm by revealing engineering methods, tests, and results otherwise unknown to the rest of the market

that go far beyond the limitations of FMVSS N124. As such, CTS asks NHTSA to reconsider its denial of permanent confidential treatment for the 2004 Report.

3. CTS - Camry PV\PV_78110-07010\ PV Testing_FMVSS.pdf;
CTS - Camry PV\PV_78110-07011\15027 PV_FMVSSReport.pdf;
CTS - Camry PV\PV_78110-08010\770 ReturnAtLowTemp-090930.pdf;
CTS - Camry PV\PV_78110-08010\78110-08010-C FMVSS.pdf;
CTS - Camry PV\PV_78110-08010\78110-08010CFMVSS.pdf;
CTS - Camry PV\PV_78110-08010\78110-080l0FMVSS.pdf

These documents, all of which are similar in scope and in purpose, consist of product validation testing reports measuring various pedals' return at low temperatures as tested in 2007, 2009, and 2010 (the "Testing Reports").[1] As with the 2004 Report described above, NHTSA denied CTS's request for permanent confidential treatment of the Testing Reports, stating that the agency "will not protect from disclosure test data that forms the basis for certification with federal motor vehicle safety standards." As above, CTS respectfully disagrees with NHTSA's assessment of the Testing Reports as simply the testing of and certification for FMVSS. The Testing Reports contain a significant amount of proprietary test methods and proprietary test results that have nothing to do with the defined limitations of the actual FMVSS requirements and, indeed, the data goes far beyond FMVSS certification. Here, the tests themselves are based on TIS 1204-00231A ("Technical Instruction Sheet") and TSF5606G, both of which are Toyota engineering standards and testing requirements documents.

In the Testing Reports themselves, CTS tested and analyzed both the quick release and normal release methods, which are methods unique to Toyota's testing requirements under TIS 1204-00231A. The quick release method requires CTS to test the pedal as if a driver was sliding her foot off the pedal as quickly as possible. The normal release method tests the pedal as if the driver removed her foot from the pedal slowly, simulating real world vehicle operation. These criteria are outlined in Toyota's TIS, not in the FMVSS requirements. The Testing Reports also contain several graphs that show the actual scope plot during the pedals' travel. On these graphs, the x-axis measures time and the y-axis is the voltage reading. These graphs depict the voltage reading of the pedals beginning at both full stroke and 10% return and throughout the pedals' travel until they reach and settle in at the idle position. The graphs in the Testing Reports describe CTS's pedals' performance to a level of rigor and sophistication not required under the FMVSS.

Moreover, the Testing Reports also test the sensor output voltage at full close to satisfy the after-durability standard at each testing temperature, which is a Toyota criterion within both TIS 1204-00231A and the ECI. This standard requires the voltage output at full close—beginning of travel—to be within a certain range of volts. These data points are not requirements under the FMVSS and do not serve as a basis for FMVSS certification. Nor are they industry standards or practices widely known and used by the market at large. Finally,

[1] These documents, as listed in the order presented in NHTSA's June 28, 2010 letter, are Bates numbered CTS-NHTSA-0007463 through CTS-NHTSA-0007467, CTS-NHTSA-0007534 through CTS-NHTSA-0007536, CTS-NHTSA-0007548 through CTS-NHTSA-0007550, CTS-NHTSA-0007545 through CTS-NHTSA-0007547, and CTS-NHTSA-000007542 through CTS-NHTSA-0007544, respectively.

when CTS does measure the amount of time it takes for the pedal to return to idle, Toyota takes a conservative approach and requires that CTS run each test five separate times and adopt the maximum value as the result.

As noted above, OEMs do not share proprietary requirements for product validation. The requirements within TIS 1204-00231A and TSF5606G and reported in the Testing Reports are unique to Toyota. Although the acronym "FMVSS" appears a few times on these documents, the Testing Reports use proprietary test methods and proprietary test results to convey to Toyota that CTS's pedals conform with the requirements of TIS 1204-00231A and TSF5606G as well as FMVSS N124. The denial of permanent confidential treatment of the Testing Reports would cause CTS substantial competitive harm by revealing engineering methods, tests, and results otherwise unknown to the rest of the market that go far beyond the limitations of FMVSS N124. As such, CTS asks NHTSA to reconsider its denial of permanent confidential treatment for the Testing Reports.

Finally, CTS believes that in this instance, sections 30167(a)(4) and 30101 of the Vehicle Safety Act should not compel NHTSA to disclose CTS's confidential information. Section 30101 states that "[t]he purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents" through the prescription of "motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce." 49 U.S.C. § 30101(1). Here, the disclosure of the 2004 Report and the Testing Reports would not reduce traffic accidents, injuries, or deaths. As an initial matter, NHTSA itself has acknowledged, both on its website and in the ODI Resume opening this investigation, there are no reported complaints, crashes, injuries, or fatalities associated with "sticky pedals" produced by CTS. Moreover, as stated in NHTSA's June 30, 2010 ODI Resume closing the EQI, "all defective CTS accelerator pedal assemblies were included in Toyota recall 10V-017 (and GM recall 10V-018 for the Pontiac Vibe)." Therefore, though CTS disagrees that any of its pedals are defective, disclosing confidential information regarding subject pedals no longer in the market will not contribute to the reduction of traffic accidents.

For the foregoing reasons, CTS requests that NHTSA reconsider certain of the Company's requests for permanent confidential treatment as outlined above.[2] If you have any questions or additional comments, kindly let us know.

Very truly yours,

Robert S. Faxon, Esq.

Enclosures

[2] While we believe that NHTSA should grant permanent confidential treatment to CTS's 2004 Report and Testing Reports as outlined above, we ask that in the alternative you will consider allowing CTS to redact those portions that reflect proprietary information. We remind NHTSA that the February 1, 2010 information request letter required CTS to produce all tests related to the January 21, 2010 recall, not just FMVSS certification tests. Under this alternative, CTS would like the opportunity to work with NHTSA on the necessary redactions.

cc: Otto Matheke, III Esq. (by e-mail and overnight mail)

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

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

(1) I am Elite Electronic Engineering, Inc.'s EMC Laboratory Manager and I am authorized by Elite Electronic Engineering, Inc. ('Elite") to execute documents on its behalf;

(2) I certify that Elite Engineering Test Report No. 35798-01, entitled Electromagnetic Compatibiliy Tests on a Model 180L Accelerator Pedal (test dates October 25-28, 2005) and detailed in CTS Corporation's Confidentiality Log (CTS-NHTSA-0007389 through CTS-NHTSA-0007458), is confidential and proprietary to Elite and CTS 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 indicated document be protected on a permanent basis;

(4) This certification is based on the information provided by the responsible Elite 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 of Elite;.

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which Elite has claimed confidential treatment has never been released or become available outside of Elite except for disclosures to selected customers (CTS Corporation, the party which contracted to have the testing performed) and contractors under agreements to preserve the confidentiality of the information;

(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 of Elite because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

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

Executed on this 19th day of July, 2010.



Craig Fanning
EMC Laboratory Manager
Elite Electronic Engineering, Inc.
1516 Centre Circle
Downers Grove, IL 60515
Email: cfanning@elitetest.com
PH: 630-495-9770 x112