DOREL
Juvenile Group

NHTSA
WASHINGTON, DC 20590
2010 APR 30 P 2:56
OFFICE OF CHIEF
COUNSEL

April 29, 2010

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: PE10-009: Request for Confidential Treatment of Information Request Response

Dear Mr. Vincent:

Today, Dorel Juvenile Group ("DJG") is submitting its response to an 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. Such information appears in the responses to Requests 3, 4, and 9 and in the Excel spreadsheet titled "Request Number Two Data", Exhibit C, Excel spreadsheet titled Warranty Data", and DJG Record numbers in Table I and Table II. 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, control plans and quality requirements, and an engineering report. This confidential information appears in the following files: Exhibit G and Exhibit I. We

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have marked the pages in which confidential material appears to indicate the presence of confidential business information.

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 information also could provide insights into DJG's operations and operational strengths. Such insights have been deemed harmful under Exemption 4. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976); *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. Civ-03 C 195-SBC, 2005 WL 1241141, at *7 (D.D.C. May 24, 2005) ("likelihood of substantial injury" can be established "by demonstrating

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that disclosure would provide competitors with valuable insights into the company's operations").

The control plans and quality requirements provide competitively valuable insights into DJG's manufacturing and quality controls methods and standards. Such information could be used by competitors in benchmarking and refining their own manufacturing processes and quality control procedures, enabling them to improve their products to better compete against DJG's products and to bring competitive products to market faster and at less cost than would be required if those competitors had to develop such procedures independently. In addition, such information could be used to assess the operational capacities of DJG.

In addition, the control plans and quality requirements include confidential design standards and tolerances that could be used by competitors in assessing and attempting to replicate DJG's products. The disclosure of such information would reveal critical design and design standards information to competitors and, therefore, would cause DJG to suffer substantial competitive harm

The engineering report would provide valuable insights into DJG's product evaluation processes and remediation processes. The disclosure of such information could enable competitors to refine their own approaches to product assessment issues, and to evaluate DJG's 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 certificates from suppliers who have furnished information included in this submission. We will forward those certificates to your office upon receipt.

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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 each page 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

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Certificate in Support of Request for Confidentiality

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

(1) I am Director of Quality Assurance of Dorel Juvenile Group (DJG), and I am authorized by DJG to execute documents on its behalf;

(2) I certify that the information contained in the indicated document 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 indicated document be protected on a permanent basis;

(4) This certification is based on the information provided by the responsible DJG 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 DJG;

(5) Based upon that information, to the best of my knowledge, information and belief the information for which DJG has claimed confidential treatment has never been released or become available outside DJG, except for disclosures to suppliers that were made with the understanding that the confidentiality of the information would be protected;

(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 DJG 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 29th day April, 2010.

Mr. Terry Emerson

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