Memorandum

U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Subject: Forwarding documents to public file
Related to Dayton Confidentiality Request

Date: October 29, 2011

From: Bob Young

To: Public file, DP10-002

Please place the attached May 14, 2010 request for confidential treatment, and NHTSA Chief Counsel's April 28, 2011 response, in this petition's public file.

APR 28 2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Jeffrey P. Hinebaugh
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

Re: Confidentiality Determination/Information Request Response in DP10-002

Dear Mr. Hinebaugh:

This responds to your May 14, 2010 request for confidential treatment for Dayton Wire Wheel, Inc. (Dayton) materials submitted in the above-referenced investigation (your letter refers to PC10-002 and PE09-052). These materials were provided in response to a March 9, 2010 agency information request (IR) and are contained in two paper copies enclosed with your request. You request that this information be kept confidential until such time as the information becomes generally known to the public.

The information Dayton submitted consists of information regarding the specific number of subject products manufactured by Dayton; consumer complaints and settlement documentation associated with the subject products; test reports and analyses; and a narrative description of the development and design process for the BA wheel.

You state that the above information is customarily not released to the public by Dayton and that disclosure of this information would be likely to cause Dayton to suffer substantial competitive harm.

I am granting your request in part and denying it in part.

I note first that your submission contains potentially personally identifying information for consumers and owners of vehicles containing products produced by your company. Potentially personally identifying information—for example, names, addresses, telephone numbers, and the last six digits of any VINs—are accorded confidential treatment pursuant to Exemption 6 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b).

Materials or data generated by, or under the control of, parties other than the submitter must be accompanied by a certification from that entity. *See* 49 CFR 512.9. Some of the information Dayton submitted consists of test reports and analyses originating from third parties

as well as repair invoices and estimates from warranty and other claims. Dayton did not provide certifications from these parties. Therefore Dayton's request for confidential treatment for the following materials originating from third parties is denied:

- Response No. 3: All items in Tabs 3a, 3b and 3c originating from or transmitted to claimants.
- Response No. 6: Materials originating from Goal Automotive Technical Services; Standards Testing Labs (a.k.a. Standards Testing Laboratories, Inc.); and Rhamm Technologies, LLC;
- Response No. 9, Appendix A: Report prepared by Met-Stress Services.

This third party information was not substantively reviewed

Because the remaining documents were submitted to the agency in response to an agency IR, I reviewed your claim for confidential treatment under the test in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Under that test, information is confidential under Exemption 4 of the Freedom of Information Act (FOIA) if its disclosure would be likely to cause substantial competitive harm to the submitter or to impair the government's ability to collect the information in the future.

I am denying your request for the "Subject Product" column in Response No. 1. This is a list of subject products. This information is contained in the agency's IR, and is also publicly available. Publicly-available information is not eligible for confidential treatment. Dayton's request for confidential treatment for the foregoing information is denied.

Dayton also requests confidential treatment for the number of consumer complaints. The agency does not view the release of the number of consumer complaints originating from a specific product line as causing competitive harm. NHTSA commonly denies requests for confidentiality of information such as this. Moreover, Dayton has not demonstrated that the release of this information would be likely to cause it to suffer substantial competitive harm under Exemption 4. The information contained in the "Subject Product" column is also not eligible for confidential treatment, for the reasons given above. Your request for confidential treatment for Response No. 2 is therefore denied.

With the exception of the materials listed above, I concur with your assertion that the information in your submission, if released, would be likely to cause substantial competitive harm and grant confidential treatment for these materials.

Subject to the conditions below, this partial grant of confidential treatment will remain in effect indefinitely.

This partial grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information. 49 CFR § 512.10. If necessary, you will be notified prior to the

release of any information under the procedures established by our regulations. 49 CFR § 512.22 (b). Furthermore, this information may be disclosed if such disclosure would be in the public interest, pursuant to the procedures established in 49 C.F.R. § 512.23.

If you disagree with this partial denial, you may request reconsideration. If you seek reconsideration, your request must be addressed to NHTSA's Chief Counsel and filed within 20 working days after the receipt of this letter (49 CFR 512.19(a)). Any such request should contain additional justification supporting your claims for confidential treatment consistent with 49 CFR Part 512 and applicable case law.

Sincerely,

Original Signed By

Otto G. Matheke, III
Senior Attorney

Dinsmore&Shohl LLP
ATTORNEYS

17

Jeffrey P. Hinebaugh
513-977-8605
jeff.hinebaugh@dinslaw.com

May 14, 2010

VIA FEDERAL EXPRESS

Office of Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Dayton Wire Wheel, Inc. -- PC10-002

To the Office of Chief Counsel:

Please be advised that we represent Dayton Wire Wheel, Inc. ("Dayton") with respect to the recent request for information received by Dayton on March 9, 2010 from the National Highway Traffic Safety Administration ("NHTSA") ("PE09-052"). As a portion of the responsive information and documentation being provided by Dayton in response to the request contains confidential business and commercial material, Dayton hereby requests that the following information and documentation be considered confidential pursuant to 49 CFR Part 512:

Confidential Business and Commercial Material

- Response No. 1 identifies the specific number of Subject Products manufactured by Dayton. This information is not known outside of the company and, if subject to public's disclosure, would cause substantial harm to the competitive position of Dayton as it would allow competing companies to ascertain market opportunities. The confidentiality of production numbers for specific products and/or parts was discussed in connection with NHTSA's final rule regarding Confidential Business Information and identified that disclosures to the public of production numbers would enable competitors to analyze other competitors' businesses.

  Responses Nos. 2 and 3 identify the number of Specific Products manufactured by Dayton and the consumer complaints associated with each of the Subject Products and supporting documentation. This information is not made available, known outside of the company and, if subject to public disclosure, would cause substantial harm to the competitive position of Dayton through competitors' use of consumer complaints, even if unsubstantiated. Moreover, the associated settlement documentation with respect to one of the consumer complaints is subject to a confidentiality provision and the consumer complaints also contain personal customer information.

255 East Fifth Street, Suite 1900 Cincinnati, OH 45202
513.977.8200 513.977.8141 fax www.dinslaw.com

Response No. 6 and certain of the attachments to Response No. 9 are copies of test reports and analysis relating to Specific Products. These test reports and analysis, which are not made available to the public, contain confidential and proprietary information with respect to the design and manufacturing process of the products. Moreover, public disclosure of this information would cause substantial harm to the competitive position of Dayton as the manufacturing, design and testing process utilized by Dayton is not known outside of the company and allows Dayton to maintain a competitive advantage in the industry.

- Response No. 7 contains a narrative description of the development and design process for a specific Dayton product ("BA wheel"). The development and design process of any Dayton products is proprietary and confidential and not is known outside the company. Public disclosure of this information would cause substantial harm to the competitive position of Dayton by providing competitors with a step-by-step guide to Dayton's design and development process for its products.

Two complete sets of Responses and documentation are provided for your review. A Certificate of Confidentiality is also enclosed. If you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

Jeffrey P. Hinebaugh

/ld

Enclosures

c: Mr. Charles Schroeder

Dinsmore&Shohl LLP
ATTORNEYS

Jeffrey P. Hinebaugh
513-977-8605
jeff.hinebaugh@dinslaw.com

May 17, 2010

VIA FEDERAL EXPRESS

Office of Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Dayton Wire Wheel, Inc. -- PC10-002

To the Office of Chief Counsel:

Per my correspondence dated May 14, 2010, enclosed is the Certificate of Confidentiality signed by Charles Schroeder.

If you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

Jeffrey P. Hinebaugh

/ld

Enclosure

c: Mr. Charles Schroeder

255 East Fifth Street, Suite 1900 Cincinnati, OH 45202
513.977.8200 513.977.8141 fax www.dinslaw.com

CERTIFICATE IN SUPPORT OF

REQUEST FOR CONFIDENTIALITY

I, Charles Schroeder, pursuant to the provisions of 49 CFR part 512, state as follows:

1. I am President of Dayton Wire Wheel, Inc. and I am authorized by Dayton Wire Wheel, Inc. to execute this Certificate on its behalf;

2. I certify that the information contained in the documents being produced in Response Nos. 1, 2, 3, 6, 7 and 9 is confidential and proprietary data and is being submitted with the clam that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);

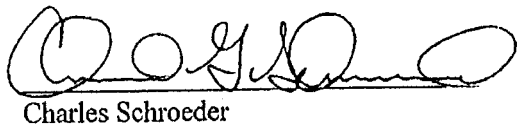
3. I hereby request that the information contained in these documents be protected until such time as the information becomes generally known to the public;

4. This Certification is based on the information provided by Dayton Wire Wheel, Inc. personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made as ascertain whether such information has ever been released outside of Dayton Wire Wheel, Inc.;

5. Based upon that information, to the best of my knowledge, information and belief, the information for which Dayton Wire Wheel, Inc. has claimed confidential treatment has never been released or become available outside of Dayton Wire Wheel, Inc.; except to legal counsel or per a confidentiality agreement;

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 Dayton Wire Wheel, Inc. 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 the 13th day of May, 2010.



Charles Schroeder

1774243