UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:	)
	)
AQ16-001	)
Helmet City, Inc. Helmets	)
Recall Nos. 16E-008, 16E-010	)
	)

SPECIAL ORDER DIRECTED TO HELMET CITY, INC.

To:

Alan Sobel, President
Helmet City, Inc.
1119 Gateway Blvd.
Boynton Beach, FL 33426

Steven W. Hansen, Esquire
Law Offices of Steven W. Hansen
5913 Lorelei Avenue
Lakewood, CA 90712-1347

This Special Order[1] is issued by the Secretary of Transportation pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7 and 510.8, and pursuant to a delegation of authority to the Chief Counsel of the National Highway Traffic Safety Administration ("NHTSA"), an Operating Administration of the United States Department of Transportation, 49 C.F.R. §§ 1.95, 501.8(d).

Helmet City, Inc. ("HCI") is an importer and distributor of motorcycle helmets including, but not limited to, the HCI 100 and HCI 115 models. In March and April 2015, NHTSA had four HCI 100 (size M), four HCI 100 (size XL), and four HCI 115 (size XL) helmets tested according to Federal Motor Vehicle Safety Standard ("FMVSS") 218. Through this testing, the helmets were found non-compliant with several of the minimum safety standards established in

[1] A Special Order is the functional equivalent of a subpoena. *See* 49 U.S.C. § 30166(g).

FMVSS 218. On September 23, 2015, NTHSA issued a pair of Information Request ("IR") letters to HCI (one specific to model HCI 100 helmets, one specific to model HCI 115 helmets) including the test report data, seeking information as to any reason why HCI should not conduct a non-compliance recall for models HCI 100 and HCI 115 helmets and the appropriate scope of any such recall. Following NHTSA's grant of an extension to file, HCI submitted responses to the IR letters on November 12, 2015. On February 2, 2016, HCI filed two Part 573 Safety Recall Reports ("DIR"), for 900 HCI 100 helmets (recall number 16E-008) and 270 HCI 115 helmets (recall number 16E-010). As part of NHTSA's ongoing investigation into the non-compliances and resulting recalls, this Special Order now demands certain information and documents from HCI.

HCI's response to this Special Order must be provided by Friday, April 29, 2016. HCI's response must be signed under oath, i.e., accompanied by an affidavit, signed by a responsible officer of HCI, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of HCI to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses, and may subject HCI to civil penalties of up to $21,000 per day, up to a maximum penalty of $105,000,000 for a related series of daily violations. 49 U.S.C. § 30165(a)(3); Notice of Increase in Civil Penalty for Violations of National Traffic and Motor Vehicle Safety Act, 81 FR 15413 (Mar. 22, 2016).

Falsifying or withholding information in response to this Special Order may also lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C. § 30170(a)(1).

DEFINITIONS

To the extent used in this Special Order, the following definitions apply:

1. **"Affiliates"** means a corporation that is related to another corporation (such as a subsidiary, parent, or sibling corporation) by shareholdings or other means of control.

2. **"Agent"** means an individual, such as a representative, who is authorized to act for or in place of another.

3. **"Association"** means an unincorporated organization that is not a legal entity separate from the persons who compose it.

4. **"Document(s)"** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure, and includes all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, electronic communications (existing in hard copy and/or in electronic storage), invoices, contracts, agreements, manuals, publications, photographs of all types, and all mechanical, magnetic, and electronic records or recordings of any kind. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.

5. **"Employee"** means a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

6. **"HCI," "You," or "Your"** means Helmet City, Inc. and any affiliated company, and all of their past and present officers and employees, including all of their divisions, associations, and subsidiaries (whether or not incorporated) and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Helmet City, Inc. (including all business units and persons previously referred to).

7. **"Officer"** means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.

INSTRUCTIONS

1. The response to this Special Order, including the document requests, must be submitted in duplicate to this office **not later than Friday, April 29, 2016.**

2. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590.

3. Repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered. If any documents are provided as part of the response, clearly state which document(s) using Exhibit numbers/letters and page(s) within that Exhibit.

4. After your response to each request, state whether you previously had any

responsive documents that are no longer within your possession, custody, or control, including but not limited to because the documents were lost or destroyed. If so, describe the documents; identify the reason that the documents are no longer in your possession, custody, or control; and identify the date that you last had the documents.

5. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced. All documents shall be produced in electronic format on either a CD or flash drive.

6. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, state the reason why you are unable to do so. You are instructed and cautioned not to assert privilege in connection with any information you submit to the Agency. Should you anticipate doing so for any reason (and the Agency can contemplate none), you are instructed to contact Arija Flowers at (202) 366-5263 to discuss why any information you submit would constitute privileged information.

7. We expect that you will not claim that materials we request contain confidential business information. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of Chief Counsel (NCC-100), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. You are required to submit two copies of the

documents containing allegedly confidential information and one copy of the documents from which information claimed to be confidential has been deleted. Failure to adhere to the requirements of 49 C.F.R. Part 512 will result in a rejection of your request for confidential treatment.

8. All documents shall be produced electronically. Please provide all documents identified as being responsive to a question, including copies of communications, on a CD submitted with the written responses. Documents shall be saved to folders organized and titled by the Question number to which those documents are responsive. If this is not possible, please contact Arija Flowers, Trial Attorney, at arija.flowers@dot.gov to determine an appropriate format for providing this information.

a. Copies of paper documents and PDF documents shall be produced in PDF format.

b. Word documents (and other word processing files) shall be produced both in native and PDF formats.

c. Electronic mail shall be produced along with attachments to the extent the message or any attachment is responsive, relevant, and not privileged. As a general matter, subject to specific review, a message and its attachments shall not be withheld from production based on the fact that one or more attachments are privileged, irrelevant, or non-responsive.

d. Excel spreadsheets, PowerPoint files (or like presentations), photographs, and brochures shall be produced both in native and TIFF formats. For Excel documents or *any* documents with embedded links to other files or documents, any linked files should be sequentially numbered and produced after the source file and the Attach Beg/Attach End fields be used to denote the parent/child

relationship.

e. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, you must provide a copy of that software with its submission.

9. Provide all documents requested in this Special Order, even if such documents have been previously produced.

10. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document requests all responses which might otherwise be construed to be outside its scope.

11. Helmet City, Inc.'s response to this Special Order must be under oath, i.e., accompanied by an affidavit, signed by a responsible officer of Helmet City, Inc., stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Helmet City, Inc. to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

QUESTIONS

1. State the month and year in which HCI first began using Beijing Shenzhou Rodia Industry & Trade Co., Ltd. ("BSR") to manufacture motorcycle helmets bearing the "DOT" certification label for importation and sale in the United States. If you do not know the month and year that manufacturing began, state the month and year in which HCI first contracted with BSR for such helmets. In either case, also state in which month and year the first shipment of such helmets was received, or imported, by HCI in the United States. Provide any supporting documentation.

2. Provide a clear narrative explanation of what, if any, business relationship HCI has with BSR as of the date of this letter. If no business relationship, state the date (month/day/year) on which (1) the business relationship between BSR and HCI formally ended; and (2) BSR ceased manufacture of helmets for HCI. Provide any supporting documentation.

3. Provide, in an Excel spreadsheet according to the format provide in the sample below, a complete list of all the model names or model numbers of helmets manufactured by BSR for HCI, by model and size, that have ever been imported for sale into the United States, up to and including the date of this Order, as well as the date range (month/day/year) that BSR was the manufacturer of those helmet models for HCI, the month(s) of importation, and total volume of helmet models manufactured during that period of importation, using the template provided in the example below. This list must include all models of helmets, not only the HCI 100 and HCI 115. If a helmet was manufactured by BSR for HCI but branded with a name other than HCI, include the brand name used in the Helmet Model box with the model. Include in this list any helmets not labeled with the "DOT" certification label but manufactured by BSR and imported by HCI. The list should be in alphanumeric order (numbers first) by model, then chronological

order. Again, this list must be provided as an Excel spreadsheet using the below example format.

See the **example** in the chart below (which continues on the next page) for a hypothetical situation where:

- BSR manufactured the HCI 100 for HCI from January 2, 2010 to July 8, 2011 (imported February 2010 to August 2011) with total production volume during that period of 1,150 size XS helmets, 2,490 size S helmets, 2,660 size M helmets, 8,685 size L helmets, 3,440 size XL helmets, 600 size XXL helmets, and 320 size XXXL helmets;
- BSR manufactured the HCI 115 from January 17, 2010 to May 18, 2015 (imported February 2011 to June 2015) with total production volume during that period of 355 size XS helmets, 620 size S helmets, 1,355 size M helmets, 755 size L helmets, 555 size XL helmets, 185 size XXL helmets, and zero size XXXL helmets.
- **NOTE:** In the example chart below, if HCI used a different manufacturer for the HCI 100 for a period after July 8, 2011, and then returned to using BSR as a manufacturer of the HCI 100, you would need to add that additional production information as a separate set of entries for the appropriate manufacturing period after the HCI 100 entries shown and before the HCI 115 reporting. However, if HCI continuously used BSR as a manufacturer for the HCI 100, then only one set of entries, by model and size, will be required.

EXAMPLE

HCI Helmet Model	Size	Import Month(s)	Start of BSR Manufacturing	End of BSR Manufacturing	Total Number Produced
HCI 100	XS	2/2010 – 8/2011	1/2/2010	7/8/2011	1,150
HCI 100	S	2/2010 – 8/2011	1/2/2010	7/8/2011	2,490
HCI 100	M	2/2010 – 8/2011	1/2/2010	7/8/2011	2,660
HCI 100	L	2/2010 – 8/2011	1/2/2010	7/8/2011	8,685
HCI 100	XL	2/2010 – 8/2011	1/2/2010	7/8/2011	3,440
HCI 100	XXL	2/2010 – 8/2011	1/2/2010	7/8/2011	600
HCI 100	XXXL	2/2010 – 8/2011	1/2/2010	7/8/2011	320

HCI 115	XS	2/2011 – 6/2015	1/17/2010	5/18/2015	355
HCI 115	S	2/2011 – 6/2015	1/17/2010	5/18/2015	620
HCI 115	M	2/2011 – 6/2015	1/17/2010	5/18/2015	1,355
HCI 115	L	2/2011 – 6/2015	1/17/2010	5/18/2015	755
HCI 115	XL	2/2011 – 6/2015	1/17/2010	5/18/2015	555
HCI 115	XXL	2/2011 – 6/2015	1/17/2010	5/18/2015	185

4. If the total number of each helmet model manufactured by BSR and imported by HCI is not the same as the number calculated by adding the numbers in the "Total Number Produced" column for each model, state (1) the total number of HCI 100 helmets and (2) the total number of HCI 115, ever manufactured by BSR and imported by HCI. Explain the discrepancy in total production numbers and provide any supporting documentation, as appropriate.

5. Provide a list of all manufacturers, other than BSR, that manufactured model HCI 100 or HCI 115 helmets for HCI, including:

a. Full business name;
b. Any different commonly used name or brand, if applicable;
c. Business address;
d. Business contact name;
e. Business contact name email;
f. Business contact name phone number;
g. Complete dates of production for each model (month/day/year to month/day/year);
h. The total number of helmets manufactured and imported, by model, during that period; and
i. A description of any visual differences between the BSR version of the model and the version manufactured by the companies identified in response to this question.

Clearly list this information for each manufacturer, with a heading of "ADDITIONAL MANUFACTURER" above each separate entity. Use the same alphabetical list as used in this

question for your response.

6. Explain in detail, by size and date of manufacture, any differences between the retention systems used in the HCI 115 helmets subject to Recall Number 16E-010 and the retention systems used in all other HCI 115 model motorcycle helmets. Provide any supporting documentation of data or analysis used, or relied upon, by HCI in providing this explanation.

7. State the company or business(es) that manufactured, or otherwise fabricated, the following items used on the model HCI 115 helmets subject to Recall Number 16E-010:

a. Webbing;
b. Buckle;
c. Entire retention system.

8. Provide a complete list of HCI helmet models using either (1) the same, or similar, webbing as the model HCI 115 helmets subject to Recall Number 16E-010; (2) the same, or similar, buckle as the model HCI 115 helmets subject to Recall Number 16E-010; or (3) the same, or similar, retention system as the model HCI 115 helmets subject to Recall Number 16E-010. Organize your response according to the categories identified in this question, specifying which component (webbing, buckle, or retention system) is the same, or similar. "The same" means it is manufactured by the same manufacturer and identified by the same product identifier by the manufacturing company, regardless of date of manufacture or color. "Similar" includes components made of the same or similar materials or that have similar principles of engineering and physics that explain why the component behaves the way it does; this could include components made by the same or different component manufacturers.

9. If HCI is unable to provide any of the information requested in questions 7 and 8, explain why HCI believes the webbing, buckle, and retention system for all model HCI 115 helmets is not subject to the same non-compliance as identified in Recall Number 16E-010.

Provide any supporting documentation of data or analysis used, or relied upon, by HCI in providing this explanation.

10. Provide a complete list, by helmet model, of colors and logos in which the HCI 100 and HCI 115 have been manufactured by BSR and imported into the United States.

11. Describe in detail *any* changes in design or manufacture (including effective date and reason for change) that were implemented in the helmet lines for the models subject to Recall Numbers 16E-008 and 16E-010. Stating that there have been no "significant" changes is not responsive. If HCI does not know whether design or manufacturing changes were implemented for the HCI 100 and HCI 115 models, so state.

12. Explain why HCI recalled only HCI 100 size M helmets manufactured in December 2013, when the helmets tested and found non-compliant in Final Report 218-ACT-15-031 included HCI 100 size M helmets manufactured in both November and December 2013. Provide any supporting documentation HCI relied upon in making this determination.

13. Explain in detail HCI's rationale for the scope of helmets recalled in Recall Numbers 16E-008 and 16E-010. Specifically, explain how the shipment date or helmet color, or any other factors used in HCI's decision-making process, affects performance of the helmet. Provide any data or analysis you relied upon in making the scope determinations. If no data or analysis was relied upon, so state.

14. State the remedy helmet make and model being provided to consumers under Recalls 16E-008 and 16E-010. If more than one make or model is being used as a remedy helmet, specifically state which makes and models are being used as remedy helmets for each HCI model and size subject to Recall Numbers 16E-008 and 16E-010.

15. For the remedy helmets being provided to consumers for Recall Numbers 16E-

008 and 16E-010, provide the remedy helmet manufacturers':

a. Full business name;
b. Any different commonly used name or brand, if applicable;
c. Business address;
d. Business contact name;
e. Business contact name email; and
f. Business contact name phone number.

16. Provide any certification data in your possession for the remedy helmets being provided to consumers for Recall Numbers 16E-008 and 16E-010. If any explanation of the data is required, or would in HCI's opinion be beneficial, for NHTSA to understand or appreciated the data, please provide that explanation as a detailed narrative response.

17. Provide a list, by model and size, of helmets subject to Recall Number 16E-008 and 16E-010 that are in HCI's inventory as of the date of this letter. Specify the number of any such helmets that were in HCI inventory available for sale prior to the initiation of these recalls and the number of such helmets in HCI's possession that have been returned as part of same.

18. Provide the name, company, address and contact name email or phone number for each of HCI's five largest domestic purchasers for resale for the helmets subject to Recall Numbers 16E-008 and 16E-010.

Dated: April 14, 2016

Paul A. Hemmersbaugh
Chief Counsel