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July 1, 2024

Via U.S. DOT's SLFTS

Adam Raviv
Chief Counsel
National Highway Traffic Safety Administration
W41-227
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Request for Confidential Treatment – Triumph Motorcycles
America Ltd. (Triumph) – Voluntary Submission RE NHTSA
Investigation No. PE21-017

Dear Mr. Raviv:

This letter serves as the request for confidential treatment by Triumph Motorcycles America Ltd. (Triumph), with respect to the enclosed information concerning the above referenced investigation. Triumph is voluntarily submitting this information.

In accordance with 49 CFR 512.5, Triumph is submitting the information with the filenames and, where possible, the contents of confidential files marked “CONFIDENTIAL BUSINESS INFORMATION.” The files include detailed descriptions of Triumph’s field inspection of customer motorcycles, Triumph’s assessment of these motorcycles related to NHTSA Investigation No. PE21-017, and the information Triumph collected as part of its analysis. Also enclosed is a Certificate in Support of Confidentiality. To facilitate social distancing due to COVID-19, NHTSA is treating electronic submissions, using email or secure File Transfer Protocol (FTP), as an acceptable method for submitting confidential business information. *See* <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>. Because Triumph is submitting via the U.S. Department of Transportation’s “Secure Large File Transfer Solution” (SLFTS), the request includes a single copy of the confidential file. Because all of the information constitutes confidential business information, Triumph is not submitting public copies of the materials.

As set forth below, Triumph requests confidential treatment for the enclosed materials on the grounds that they contain trade secrets and/or confidential, proprietary information that is closely held by Triumph and would likely subject Triumph to substantial competitive harm if disclosed. *See* 49 C.F.R. § 512.3(c)(1) and (2); *Food Marketing Institute v. Argus Leader Media*,

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139 S. Ct. 2356, 2364 (2019) (FOIA Exemption 4 protects information that "is customarily kept private, or at least closely held, by the person imparting it"); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("commercial or financial matter is 'confidential' . . . if disclosure of the information is likely to . . . cause substantial harm to the competitive position of the person from whom the information was obtained."); *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (a trade secret is a "secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort"); *Center for Auto Safety v. Nat'l Hwy. Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000), *remanded for further proceedings*, 244 F.3d 144 (D.C. Cir. 2001) (air bag specifications representing "years of research and development and enormous financial investment" not subject to FOIA disclosure).

The enclosed information contains Triumph's detailed assessment of motorcycles that were the subject of vehicle owner questionnaires (VOQs) to the Agency. The information includes a description of the inspection, evaluation of the motorcycles, service histories used in Triumph's analysis, details related to which motorcycles were selected for inspection, photographs and videos of inspections with accompanying observations, measurements and other data collected during the inspection, and assessments of the braking performance of the motorcycles. As the Agency is aware, the motorcycle industry is highly competitive. Triumph closely guards against public disclosure of such information, which is "customarily kept private" and "closely held" by Triumph. *See Food Marketing Institute v. Argus Leader Media*, *supra*.

Disclosure of this information would provide Triumph's competitors valuable information related to investigating and analyzing reports from the field, without the corresponding expense of developing their own techniques and processes. Accordingly, Triumph requests that this information be given confidential treatment indefinitely.



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Please contact me if you have any questions.



R. Nicholas Englund

Enclosures

cc: Josh Neff (NHTSA ODI)
Santiago Maldonado (NHTSA ODI)
Nate Seymour (NHTSA ODI)
Sean Ward (NHTSA NCC)
Charles Smart (TML)
Christopher H. Grigorian (Foley & Lardner)

Certificate in Support of Request for Confidentiality

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

(1) I am Head of Department, Claims Management, for Triumph Motorcycles Limited (UK) (TML) and I am authorized to execute this certificate on behalf of TML.

(2) I certify that the information accompanying this confidential treatment request is confidential and proprietary 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 be protected indefinitely.

(4) This certification is based on the information provided by the responsible TML 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 TML.

(5) Based upon that information, to the best of my knowledge, information and belief, TML does not customarily release this information to the public. Further, the information for which confidential treatment is being sought has never been released or become available outside TML, with exception of being shared within the scope of confidential relationships.

(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 TML because of unauthorized or inadvertent disclosure (except as stated in paragraph 5).

(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 1st day of July 2024



Charles Smart
Head of Department
Claims Management
Triumph Motorcycles Limited (UK)