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CLIENT/MATTER NUMBER
111224-0101

September 24, 2021

Via NHTSA's Secure FTP

Ann Carlson
Chief Counsel
National Highway Traffic Safety Administration
W41-227
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Triumph Motorcycles (America) Limited – Request for
Confidential Treatment for its Response to July 28, 2021
Information Request – PE21-017

Dear Ms. Carlson:

This letter serves as the request for confidential treatment by Triumph Motorcycles (America) Limited (TMA) with respect to the enclosed documents, which are being submitted in response to the Agency's July 28, 2021 Information Request in the above-referenced investigation. TMA also notes that its parent, Triumph Motorcycles Limited (UK) (TML), is simultaneously submitting a separate request for confidential treatment for information that it is voluntarily providing to ODI in support of TMA's response to the above-referenced information request.

In accordance with 49 C.F.R. Part 512.5, TMA is submitting the confidential portions of its response with the file names and content of these files marked "CONFIDENTIAL BUSINESS INFORMATION." These files contain detailed product testing and 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 the information is being submitted via NHTSA's secure FTP site, TMA included a single file as the confidential copy of the response.

As set forth below, TMA requests confidential treatment for the enclosed materials on the grounds that they contain trade secrets and/or confidential, proprietary information that would likely subject TMA to substantial harm if disclosed. See 49 C.F.R. § 512.3(c)(1) and (2); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("commercial or

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Ann Carlson

National Highway Traffic Safety Administration

September 24, 2021

Page 2

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).

Release of this information would give competitors detailed and commercially valuable information regarding TMA’s sales data, production information, warranty systems, and quality testing and analysis. Specifically, TMA requests confidential treatment for the information provided in the following categories of information:

- **Detailed Production Data**

- The detailed production data submitted in response to Request No. 1 of the information request contains detailed model and sales information that could be used by competitors to better understand TMA’s market position in order to focus their resources to compete with TMA.

- **Detailed Field Information Related to Alleged Issues in the Field**

- The detailed information related to alleged issues in the field (including customer complaints, field reports, warranty claims, and other paid claims) in response to Request Nos. 2 through 7 of the information request contain detailed customer information, sales information, cost information, TMA analysis, processes for managing these issues, and supporting documents for this information. Competitors could use this information to gain customer information, better understand TMA’s costs and liabilities, and understand TMA’s testing and customer care procedures, which could be used to improve their own processes without the related expenses of developing these systems and customer contacts.

- **Description of Development Testing Procedures**

- TMA’s written response to Request No. 8 contains details concerning development testing conducted by Triumph. Competitors could use this information to develop their own testing processes without the associated expense of developing these processes.



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Ann Carlson
National Highway Traffic Safety Administration
September 24, 2021
Page 3

- **Component Sales Information**

- The detailed sales information related to replacement components in response to Request No. 10 of the information request could be used by competitors to better understand the volume of sales and supplier information, which competitors could use to understand how to compete with TMA in this part of the market.

- **Analysis of Alleged Field Complaints**

- TMA's response to Request No. 11 contains detailed analysis of the braking system of the motorcycles subject to NHTSA's preliminary evaluation, including design information, analysis of testing, and root cause analysis. Competitors could use this information to better understand the subject motorcycle's design information, testing procedures, and engineering analysis that could be used to improve their products without the expense of developing this information.

The information identified above was a result of TMA's development efforts and involved significant financial investment. As the Agency is aware, the automotive industry is highly competitive and closely guards against public disclosure of such information. Disclosure of this information would provide TMA's competitors valuable information concerning its products testing and manufacturing processes. Such disclosure would, in turn, compromise TMA's position by, among other things, reducing or eliminating its competitors' investment of time and resources in improving their products. Accordingly, TMA requests that this information be granted confidential treatment under National Parks for an indefinite period of time.

Please contact me if you have any questions or need additional information.

Sincerely,

Christopher H. Grigorian

CHG:krb
Enclosures

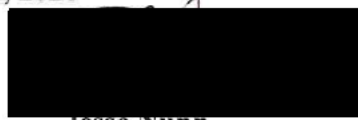
cc: Peter Kivett (NHTSA ODI)
Sean Ward (NHTSA NCC)
R. Nicholas Englund (Foley & Lardner LLP)
Jesse Nunn (TMA)

Certificate in Support of Request for Confidentiality

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

- (1) I am the Regional Business Manager, for Triumph Motorcycles (America) Limited (TMA) and I am authorized to execute this certificate on behalf of TMA.
- (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 TMA 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 TMA.
- (5) Based upon that information, to the best of my knowledge, information and belief, TMA 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 TMA, 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 TMA 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 24th day of September, 2021



Jesse Nunn
Regional Business Manager
Triumph Motorcycles (America) Limited