

ZOOX

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November 7, 2022

John Donaldson
Acting Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590
VIA SECURE FILE TRANSFER

Re: Request for Confidential Treatment - In re Zook FMVSS Certified Vehicle; Response to Special Order

Dear Mr. Donaldson:

On behalf of Zook, Inc., and pursuant to 5 U.S.C. § 552 and 49 C.F.R. Part 512, this submission to the National Highway Traffic Safety Administration ("NHTSA") seeks confidential treatment for the attached Response to Special Order (the "Response"). The information for which Zook seeks confidential treatment has been marked "Confidential Business Information" or "CBI" as required by 49 C.F.R. § 512.6.

The information in the Response is entitled to confidential treatment under 5 U.S.C. § 552(b)(4), as modified pursuant to 49 U.S.C. § 32910, and NHTSA regulations at 49 C.F.R. § 512 because release of this information would cause substantial competitive harm to Zook. *See Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). The Response outlines specific business and technical information regarding the Zook vehicles, its automated driving system and associated software, and Zook's methods for evaluating compliance. If released, such information would cause substantial competitive harm to Zook by revealing to competitors information about Zook's proprietary operations, strategy, and technology not otherwise available outside of Zook.

Zook is seeking confidential treatment under the test announced in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019), finding that confidential protection under FOIA Exemption 4 requires two conditions: (1) that the information is kept private or closely held by the person providing it; and (2) that the person receiving it provides some assurance that the information will be kept secret. In this case, granting confidential treatment for the Response is consistent with these principles.

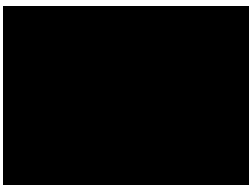
First, the information provided by Zook is customarily and actually treated as private. Zook does not release or otherwise provide this information or any information like it to the public. The information contained in the Response has not been publicly disclosed and Zook has taken measures to ensure that this information is not disclosed or otherwise made available to any persons outside of the company, or its parents, suppliers, or

affiliates. Insofar as is known by Zoox, this information is not known outside of the company, except for these related parties. The information may have been disclosed, only as necessary for the purposes of obtaining advice and assistance from counsel and other confidential advisers. However, such disclosures do not compromise the confidential nature of the information.

Second, consistent with the agency's longstanding practice of maintaining confidential treatment of this type of internal and sensitive business information, this constitutes assurance that NHTSA will continue to treat the information that Zoox has provided as confidential. The Response contains detailed, proprietary information about the Zoox vehicle, as well as our internal methods for capturing and reviewing vehicle data and assessing compliance. Maintaining the confidential nature of all of this information is necessary for Zoox to remain competitive in the industry. All of this information is used for internal operations and analysis only and it is precisely the type of information for which the agency has traditionally granted confidential treatment.

Zoox seeks confidential treatment of the Response and requests that the information be treated as confidential for an indefinite period of time. Please contact me if you have any questions, or in the event that NHTSA receives a request for disclosure or otherwise seeks to disclose the information.

Sincerely,



Elizabeth Mykytiuk
Associate General Counsel
Product & Regulatory

Enclosures

**CERTIFICATE IN SUPPORT OF
REQUEST FOR CONFIDENTIALITY**

I, Elizabeth Mykytiuk, pursuant to the provisions of 49 CFR Part 512, state as follows:

(1) I am the Associate General Counsel, Product & Regulatory for Zoox, Inc., and I am authorized by Zoox to execute this certificate on its behalf;

(2) I certify that the information contained in the Response 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) (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 the Response be protected indefinitely.

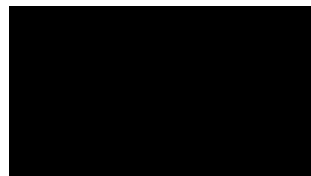
(4) This certification is based on the information provided by the responsible Zoox personnel who have the authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside of Zoox;

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which Zoox has claimed confidential treatment has never been released or become available outside of the company;

(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 of Zoox because of unauthorized or inadvertent disclosure; and

(7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on the 7th day of November 2022



Elizabeth Mykytiuk