

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

1200 New Jersey Avenue SE

Washington, DC 20590

In re:

MY 2009 WF650-C

NHTSA Recall No. 12V-031

**FINDINGS, CONCLUSIONS, AND
ORDER ON WILDFIRE’S FAILURE
TO REASONABLY MEET ITS
RECALL REMEDY REQUIREMENTS**

Following notice in the Federal Register and a public hearing held October 15, 2012, pursuant to 49 U.S.C. § 30120(e) and 49 C.F.R. § 557.8,¹ as set forth below, the National Highway Traffic Safety Administration (“NHTSA”) has determined that Snyder Computer Systems, Inc. and Snyder Systems, Inc., also known as Wildfire Motors (collectively, “Wildfire”), have not reasonably met their recall remedy requirements and orders Wildfire to take specified actions to meet those requirements.

FINDINGS

Background Regarding Wildfire and the MY 2009 WF650-C

1. Snyder Computer Systems, Inc. is a privately held corporation based in Steubenville, Ohio. Wildfire Motors is a registered trade name of Snyder Computer Systems, Inc. Wildfire has also used the name Snyder Systems, Inc. in correspondence with NHTSA.

2. Wildfire imported certain Model Year (“MY”) 2009 WF650-Cs (“vehicle” or “vehicles”) into the United States. The MY 2009 WF650-C is a three-wheeled motor vehicle with an enclosed body. As a three-wheeled vehicle, the MY 2009 WF650-C is a motorcycle pursuant to 49 C.F.R. § 571.3. The MY 2009 WF650-C is required to comply with Federal

¹ Delegations of authority: 49 C.F.R. §§ 1.95(a), 501.2(a)(1), and 501.8.

Motor Vehicle Safety Standard (“FMVSS”) No. 122, *Motorcycle brake systems* (49 C.F.R. § 571.122).²

3. Taixing Sandi Motorcycle Co., Ltd. (“TSM”) of China fabricated the MY 2009 WF650-C. Wildfire is the registered agent in the United States for TSM. Both Wildfire and TSM are a manufacturer of the MY 2009 WF650-C, pursuant to 49 U.S.C. § 30102(a)(5).

4. As of October 2012, the average market value of a MY 2009 WF650-C is \$3,400. The average market value of the MY 2009 WF650-C is equivalent to the purchase price, less a reasonable allowance for depreciation.

A MY 2009 WF650-C Failed FMVSS No. 122 Compliance Testing

5. A MY 2009 WF650-C purchased by NHTSA from a dealer and first tested at Transportation Research Center Inc. (“TRC”) in 2009 appeared noncompliant with the following requirements of FMVSS No. 122, *Motorcycle brake systems*:

A. FMVSS No. 122, S5.2.1, *Service brake system*, which is part of the first (preburnish) effectiveness requirement, because the vehicle’s service brakes did not stop the vehicle from 30 m.p.h. within 54 feet during NHTSA’s testing at TRC;

B. FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs*, because the vehicle did not have a separate reservoir for each brake circuit with each reservoir filler opening having its own cover, seal, and cover retention device;

C. FMVSS No. 122, S5.1.3.1, *Failure indicator lamp*, because the vehicle did not have a failure indicator lamp (which is required to activate for pressure failure, low fluid, and momentarily when the ignition switch is turned to the “on” or “start” position); and

D. FMVSS No. 122, S5.1.2.2, *Reservoir labeling*, because the vehicle did not have a reservoir label (which indicates the type of brake fluid required for the vehicle and warns that the brake fluid should come from a sealed container and that the filler cap should be cleaned before removing).

6. Also, the MY 2009 WF650-C owned by NHTSA did not stop within the distances

² Effective October 23, 2012, 49 C.F.R. § 571.122 was redesignated as 49 C.F.R. § 571.122a. 77 FED. REG. 51,650, 51,671 (Aug. 24, 2012). NHTSA intends all references to FMVSS No. 122 herein to refer to 49 C.F.R. § 571.122 prior to this change.

specified by the first effectiveness requirement of FMVSS No. 122 during additional testing at TRC in 2010, after NHTSA permitted Wildfire to make adjustments to the vehicle that Wildfire claimed would allow the vehicle to meet the stopping distance requirements.

7. Noncompliances with these requirements of FMVSS No. 122 mean that the vehicles do not stop within a distance that is the minimum standard for motorcycle braking performance and do not meet the minimum standards for equipment to insure safe motorcycle braking performance. Noncompliances with these requirements could result in limited braking and vehicle crashes.

Wildfire Initiated a Recall of the MY 2009 WF650-C

8. Wildfire did not file a notice of a recall with NHTSA for more than two years after NHTSA first formally notified Wildfire, in December 2009, that the MY 2009 WF650-C appeared noncompliant with FMVSS No. 122. A manufacturer must file a notice of a recall, by submitting to NHTSA a Part 573 Defect and Noncompliant Report (“Part 573 Report”), not more than five working days after a noncompliance with a motor vehicle safety standard has been determined to exist. These reports are referred to as Part 573 Reports because they are filed pursuant to 49 C.F.R. Part 573.

9. In December 2011, NHTSA requested that Wildfire and/or TSM recall the WF650-C. NHTSA made this request since Wildfire had not filed a notice of a recall and had not provided sufficient information to rebut the apparent noncompliances with FMVSS No. 122 identified by NHTSA. This recall request was not an order.

10. In response to NHTSA’s recall request, Wildfire filed a notice of a recall of the MY 2009 WF650-C for noncompliances with FMVSS No. 122 by submitting to NHTSA a Part 573 Report prepared on January 30, 2012 (and amended February 3 and 20, 2012). As amended,

Wildfire's Part 573 Report notified NHTSA that Wildfire was recalling the WF650-C for noncompliances with the first effectiveness stopping distance requirement from 30 m.p.h, and the master cylinder reservoir, failure indicator lamp, and reservoir labeling requirements of FMVSS No. 122. NHTSA assigned Recall No. 12V-031 to this recall campaign.

11. Wildfire represented that there are 197 vehicles subject to its recall as of its most recent quarterly report to NHTSA, dated August 21, 2012.

Wildfire Failed to Remedy Any MY 2009 WF650-C

12. According to its Part 573 Report, as amended, Wildfire elected to repair the MY 2009 WF650-C as its remedy for the noncompliances with FMVSS No. 122. Based on a written Agreement with NHTSA, in July 2012, Wildfire repaired a MY 2009 WF650-C owned by NHTSA in accordance with the repair remedy for its recall campaign. In August and September of 2012, TRC tested the repaired MY 2009 WF650-C at NHTSA's direction.

13. MY 2009 WF650-Cs with Wildfire's repair remedy do not comply with FMVSS No. 122 for the following reasons:

A. A repaired vehicle does not comply with FMVSS No. 122, S5.2.1, *Service brake system*, because the vehicle's service brakes do not stop the vehicle as required by the first (preburnish) effectiveness test from 30 m.p.h. within 54 feet, as revealed in testing at TRC;

B. A repaired vehicle does not comply with FMVSS No. 122, S5.1.3.1, *Failure indicator lamp*, because the vehicle's failure indicator lamp does not activate as required for pressure failure, low fluid, and momentarily when the ignition switch is turned to the "on" or "start" position, as revealed in testing at TRC; and

C. A repaired vehicle does not comply with FMVSS No. 122, S5.1.3.1, *Failure indicator lamp*, because the vehicle's failure indicator lamp does not read "Brake Failure" as required.

14. Wildfire has not provided competent test information to rebut the results of NHTSA's testing at TRC of the vehicle Wildfire repaired. Wildfire has failed to establish that it

has a repair remedy that brings the MY 2009 WF650-C into full compliance with FMVSS No. 122. The stopping distance information Wildfire provided to NHTSA is inadequately documented and does not demonstrate that a MY 2009 WF650-C with Wildfire's repair remedy achieves the stopping distance requirement of FMVSS No. 122. Wildfire also did not adequately document its claim, made in written comments for purposes of NHTSA's October 15, 2012 public hearing, that the failure indicator lamp Wildfire mounted in the MY 2009 WF650-C owned by NHTSA worked properly when installed. Wildfire acknowledged that the failure indicator lamp does not read "Brake Failure" as required by FMVSS No. 122.

15. Wildfire has not repaired any MY 2009 WF650-C to be fully compliant with FMVSS No. 122.

16. Wildfire's failure to repair any MY 2009 WF650-C is contrary to representations Wildfire made to NHTSA and vehicle owners about its timeline for implementing a repair remedy. As of January 30, 2012, Wildfire represented to NHTSA in its Part 573 Report that repair parts should be available by approximately March 26, 2012. As of February 20, 2012, Wildfire represented to NHTSA in its second amended Part 573 Report that repair parts should be available by approximately April 16, 2012. On April 18, 2012, Wildfire mailed recall notices to vehicle owners that represented that repair parts should be available by May 14, 2012 and told the vehicle owners to "contact your Wildfire Motors dealer as soon as possible to arrange a service date." On June 1, 2012, Wildfire mailed the same recall notices it earlier mailed in April 2012 to additional vehicle owners, based on State motor vehicle registration records. The recall notices stated that vehicle owners should arrange a service date as soon as possible and that repair parts should be available by May 14, 2012, even though Wildfire knew that was incorrect. As of July 11, 2012, Wildfire represented to NHTSA in response to a Special Order that repair

parts should be available by approximately July 20, 2012 and that it hoped to have all MY 2009 WF650-Cs repaired by September 5, 2012.

17. In Wildfire's written comments for purposes of NHTSA's October 15, 2012 public hearing, Wildfire stated that it would prefer to repair the MY 2009 WF650-Cs because it has no money for refunds. Wildfire has not initiated a refund campaign. NHTSA has given no consideration to Wildfire's stated preference to repair the vehicles in light of its failure to effectuate a remedy prior to the hearing.

18. Wildfire's delay in repairing the vehicles to bring the MY 2009 WF650-Cs into full compliance with FMVSS No. 122 is unreasonable. Wildfire's failure to initiate a refund campaign for the MY 2009 WF650-C is unreasonable.

19. Wildfire's failure to remedy the MY 2009 WF650-Cs has left owners with noncomplying vehicles that Wildfire told owners in its recall notices are not safe to drive.

Complaints to NHTSA Regarding Wildfire's Recall

20. NHTSA received complaints that evidence Wildfire's failure to repair the MY 2009 WF650-C within a reasonable time. Several owners of MY 2009 WF650-Cs told NHTSA that Wildfire was unresponsive to their inquiries about the recall or did not provide repair parts after representing that it would. One owner reported that after repeated attempts to have his vehicle remedied, Wildfire's President, Don Snyder, told him that he should take his vehicle to a mechanic to have the brakes adjusted. This falsely indicated that the owner's vehicle would comply with FMVSS No. 122 if the brakes were adjusted, and did not need to be repaired pursuant to the recall. It also contradicted Wildfire's obligation to remedy the vehicles without charge.

21. Several MY 2009 WF650-C owners also reported to NHTSA that they received a

letter from Wildfire dated September 14, 2012. That letter provided false and misleading information about the recall. The letter contradicted the recall notices Wildfire sent to vehicle owners on April 18 and June 1, 2012, which told owners the brakes on the MY 2009 WF650-C will not stop the vehicle within the stopping distances required by FMVSS No. 122. The September 14, 2012 letter falsely indicated that the vehicles comply with the stopping distance requirements of FMVSS No. 122, notwithstanding Wildfire's recall and failure to remedy the vehicles.

CONCLUSIONS

1. Wildfire has not reasonably met the remedy requirements under 49 U.S.C. § 30120.
 - A. Wildfire chose to remedy the MY 2009 WF650-Cs to make them compliant with FMVSS No. 122 by repairing them, according to its Part 573 Report, as amended. Wildfire has not repaired these vehicles to be compliant with FMVSS No. 122 within a reasonable time. This is a violation of 49 U.S.C. §§ 30120(a) and (c).
 - B. After failing to repair the MY 2009 WF650-Cs adequately within a reasonable time, Wildfire failed to refund the purchase price of the vehicles, less a reasonable allowance for depreciation (or replace the vehicles without charge with identical or reasonably equivalent vehicles). This is a violation of 49 U.S.C. § 30120(a).

ORDER

Based on the Findings and Conclusions set forth above, Wildfire is ordered to remedy the MY 2009 WF650-C by refunding the purchase price, less a reasonable allowance for depreciation (the "refund remedy"). Noncompliant vehicles may not be sold, offered for sale, introduced or delivered into interstate commerce. 49 U.S.C. § 30112. To prevent resale, offering for sale, and introduction or delivery into interstate commerce of the noncompliant vehicles, Wildfire is ordered to pick up each vehicle for which it provides a refund and submit

documentation of the destruction or permanent disablement of such vehicles as specified below.

Pursuant to 49 U.S.C. §§ 30112, 30118-30120, 30166, and 49 C.F.R. Parts 573 and 577, Wildfire shall take the following specified actions to meet its recall remedy requirements; to provide notice of this refund remedy to owners, purchasers, and dealers; and to provide information to NHTSA:

1. By November 26, 2012, Wildfire shall provide a written report to NHTSA stating, under oath, that it will remedy the MY 2009 WF650-C by refunding each owner of a MY 2009 WF650-C the average market value of \$3,400, as required by this Order.
2. By November 26, 2012, Wildfire shall submit to NHTSA for approval a draft notification letter to owners consistent with the requirements of 49 C.F.R. § 577.10, which specifies that Wildfire will provide a remedy of refunding each owner of a MY 2009 WF650-C the average market value of \$3,400 and specifies a method for owners to request such a refund (including requirements that the owner transfer title and possession of the MY 2009 WF650-C to Wildfire upon payment). If NHTSA does not approve the draft notification, Wildfire shall provide NHTSA with a revised draft incorporating NHTSA's revisions within five business days of receiving NHTSA's revisions to Wildfire's draft.
3. Within five business days of receiving NHTSA's written approval on a draft notification to owners or revisions to Wildfire's draft, Wildfire shall mail the notification by registered mail with return receipt service to each registered owner based on State motor vehicle registration records (or, if the vehicle is not identified in any State motor vehicle registration records, most recent purchaser, in accordance with 49 U.S.C. § 30119(d) and 49 C.F.R. § 577.7) of a MY 2009 WF650-C.
4. On the same date of mailing the notification to owners, Wildfire shall mail a notification by registered mail with return receipt service to each MY 2009 WF650-C dealer, consistent with the requirements of 49 C.F.R. § 577.13. This notice shall specify that Wildfire will provide a remedy of refunding each owner of a MY 2009 WF650-C the average market value of \$3,400.
5. Within five business days of mailing the notification to owners, Wildfire shall provide NHTSA with a list of the name, address, and vehicle identification number ("VIN") for each person to whom Wildfire mailed a notification. This list shall account for each of the 197 vehicles subject to the recalls. If Wildfire

becomes aware that an owner did not receive the notice (whether because the notice was returned by mail, or otherwise), Wildfire shall make a reasonable effort to obtain current contact information for that owner and to resend the notice to the owner. Within five business days of becoming aware that an owner did not receive the notice, Wildfire shall notify NHTSA and provide NHTSA with a written declaration under oath identifying the reasonable effort made by Wildfire to resend the notice to the owner.

6. Within five business days of mailing the notification to dealers, Wildfire shall provide NHTSA with a copy of the notification and a list of the name and address for each dealer to whom Wildfire mailed a notification. If Wildfire becomes aware that a dealer did not receive the notice (whether because the notice was returned by mail, or otherwise), Wildfire shall make a reasonable effort to obtain current contact information for that dealer and to resend the notice to the dealer. Within five business days of becoming aware that a dealer did not receive the notice, Wildfire shall notify NHTSA and provide NHTSA with a written declaration under oath identifying the reasonable effort made by Wildfire to resend the notice to the dealer.
7. For any MY 2009 WF650-C owner who requests a refund of \$3,400, Wildfire shall make a payment to the owner by a bank cashier's check no later than 30 calendar days of the date of the owner's request for a refund. Wildfire may condition payment on the owner's transfer of title and possession of the MY 2009 WF650-C to Wildfire upon payment.
8. For any title to a MY 2009 WF650-C in Wildfire's possession (whether because the owner requested a refund or otherwise), within 10 days of obtaining the title or within 10 days of this Order, whichever is later, Wildfire shall permanently mark the title on each side "Junk Automobile—Does Not Meet Federal Standards." Within 10 days of so marking the title for a vehicle, Wildfire shall hire an approved third-party data consolidator³ to report the vehicle to the National Motor Vehicle Title Information System as a Junk Automobile.
9. For any MY 2009 WF650-C for which Wildfire issues a refund, Wildfire shall arrange to pick up, transport, and dispose of the vehicle (as specified in paragraph 10 of this Order) at Wildfire's sole expense no later than 30 calendar days of issuing a refund.

³ A list of approved third-party data consolidators is available on the National Motor Vehicle Title Information System website at http://www.vehiclehistory.gov/nmvtis_auto.html.

10. For any MY 2009 WF650-C in Wildfire's possession (whether because the owner requested a refund or otherwise), within 30 calendar days of having taken possession of the vehicle, Wildfire shall either (1) permanently disable the MY 2009 WF650-C by following the procedures set out at 49 C.F.R. Part 599, Appendix B (except that the first sentence of the label required by procedure 12 should use the words "This engine has been permanently disabled." rather than those shown in the Appendix) and storing it on Wildfire's property, or (2) deliver the vehicle to a facility with the capability to crush or shred a motor vehicle and that is a participant in the End of Life Vehicle Solutions (ELVS) Mercury Switch Recovery Program.⁴ Wildfire shall deliver the vehicle to such a facility for the purpose of disposing of the vehicle by crushing or shredding. Wildfire shall expressly engage the disposal facility to remove and dispose of all antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to crushing or shredding in accordance with applicable Federal and State requirements.

11. Within one month of mailing the notification to owners and again within every month thereafter for a total of 18 occurrences, Wildfire shall provide NHTSA with a list as specified by 49 C.F.R. § 573.8, which includes the status of the refund remedy with respect to each MY 2009 WF650-C. The status of the refund remedy for each vehicle shall include: (1) a statement of whether the owner of the vehicle responded to Wildfire's notice; (2) a description of the owner's response, if any (such as a request for a refund), including the date of the response; and (3) a description of any action taken by Wildfire (such as payment of a refund), including the date of such action. For each MY 2009 WF650-C for which Wildfire issues a refund, the list shall also state the dates on which Wildfire picked up the vehicle and either (1) permanently disabled the vehicle and stored it on its own property, or (2) delivered the vehicle to a facility, as specified above, for the purpose of disposing of the vehicle by crushing or shredding. Wildfire shall provide a written declaration under oath certifying that the information is accurate and complete and, where the vehicle has been delivered to a facility for crushing or shredding, attaching a statement from the disposal facility or facilities verifying that the vehicles were disposed of as required. For each such vehicle, whether delivered to a facility or disabled and retained by Wildfire on its property, Wildfire shall submit with its monthly report a copy of the title, marked as required by paragraph 8, above.

⁴ Participants in the End of Life Vehicle Solutions (ELVS) Mercury Switch Recovery Program are listed in a database accessible on the website <http://www.eqonline.com/services/ELVS-Mercury-Switch-Recovery-Program/state-report-all.asp?state=all>.

12. At the same time as each list required by paragraph 11 of this Order, Wildfire shall provide NHTSA with a copy of each return receipt for the notifications Wildfire mailed to owners and dealers. Wildfire shall also provide NHTSA with a copy of each title to a MY 2009 WF650-C marked as required by paragraph 8 of this Order. Wildfire need not provide NHTSA a copy of any return receipt or title Wildfire previously provided to NHTSA. If Wildfire has no new return receipts or titles in any given month, Wildfire shall provide NHTSA with a written declaration under oath so stating.

Wildfire shall provide each required submission to: Office of the Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue SE, Washington, DC 20590.

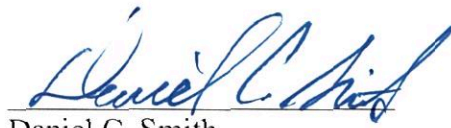
If NHTSA determines that these specified actions do not result in an adequate number of vehicles being remedied, NHTSA may require Wildfire to take additional specified action, and may take any other action authorized by law.

By issuing this Order, NHTSA is not foregoing any remedies available to it under the law, including without limitation any civil or criminal action to seek penalties or other appropriate relief. NHTSA reserves all rights and remedies available to enforce any violation cited in this Order and to enforce this Order.

This Order does not waive or modify Wildfire's responsibility and obligation to comply with all applicable laws.

This Order is effective upon the date of issuance.

Issued: November 13, 2012

A handwritten signature in blue ink, appearing to read "Daniel C. Smith". The signature is written in a cursive style with a horizontal line underneath it.

Daniel C. Smith
Senior Associate Administrator
for Vehicle Safety