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NHTSA
WASHINGTON, DC 20590

2007 JUL 13 A 11: 57

OFFICE OF CHIEF
COUNSEL

July 12, 2007

VIA OVERNIGHT MAIL

Office of Chief Counsel (NCC-111)
National Highway Traffic Safety Administration
Room W-41
1200 New Jersey Avenue, SE
Washington, D.C. 20590

**Re: Request for Confidential Treatment Pursuant to 49 C.F.R.
Part 512 by Omni United (USA) Inc.**

Dear Sir or Madam:

We are counsel to Omni United (USA) Inc. ("Omni" or the "Company"), to request confidential treatment of Exhibits 1.1, 3.1, and 4.1 (the "Confidential Information") to the letter dated July 11, 2007 (the "Response") from Omni United (USA) Inc. addressed to George F. Pierson and Ric Willard, Recall Management Division, Office of Defects Investigation of the National Highway Traffic Safety Administration ("NHTSA"). Two copies of the Response including the Confidential Information and one copy of the Response from which the Confidential Information has been deleted are attached, along with a Certificate in Support of Request for Confidentiality as required by 49 C.F.R. Part 512.

No Previous Disclosure

Because of concern over possible competitive injury, and to preserve eligibility for confidentiality, the Company has not made public any of the Confidential Information. The Confidential Information has been carefully safeguarded at the Company's facilities, and attorneys, accountants and other third parties who have reviewed the Confidential Information in the course of performing services for the Company have done so only under the strictures of confidentiality.

Grounds for Confidential Treatment

The Company objects to the public disclosure of the Confidential Information under 5 U.S.C. §552(a) on the grounds that it constitutes "trade secrets and commercial or financial information obtained from a person and privileged or confidential" pursuant to 5 U.S.C. §552(b)(4). The Company also relies upon the Trade Secrets Act, 18 U.S.C. §1905, as additional grounds for nondisclosure of the Confidential Information. See the section entitled "*Description of Confidential Information*," below.

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The Company believes that public disclosure of the Confidential Information would be injurious to, and would have an adverse effect on, the Company's business and competitive position for the reasons described below. The Company also believes that disclosure of the Confidential Information is not essential for protection of the public or to advance any public purpose. The Confidential Information is not otherwise available to the public.

Existence of Actual Competition

The Company is one of many importers of tires in the United States, and its industry is highly competitive. As such, the Company expects to encounter intense and incessant competition, as competitors vie to increase their own sales and market share. The ability of the Company to effectively compete on a current and long-term basis within this industry depends on its ability to maintain the confidential nature of certain information, including its own customer and sales data. The Company believes that the disclosure of the Confidential Information would frustrate its ability to maintain its current and long-term competitive position.

Description of Confidential Information

The Confidential Information is comprised of Omni's customer list (Exhibit 4.1) as well as a summary of its sales by customer (Exhibit 3.1) and by month (Exhibit 1.1).

Competitive Injury from Disclosure of Confidential Information

As discussed above, public disclosure of the Confidential Information would result in competitive harm to the Company by effectively providing its competitors with information concerning the Company's customer base and sales to customers. The Company believes that such disclosure would be used by competitors to eviscerate its current and long-term competitive position by calling on Omni's customer base.

The Confidential Information is protected from disclosure under the Freedom of Information Act pursuant to the exemption provided by 5 U.S.C. 552(b)(4) for certain trade secrets and commercial or financial information that is privileged or confidential. The Confidential Information constitutes such protected information pursuant to the well-established standards developed by the courts for determining what is exempt under 5 U.S.C. §552(b)(4). The cases defining protected information under 5 U.S.C. §552(b)(4) provide protection from disclosure of commercial or financial information, the disclosure of which may result in substantial harm to the competitive position of the provider of such information. This exemption has been construed by the courts to include certain customer data of the type constituting the Confidential Information here, because, if revealed, such information can be used by competitors to undercut the competitive position of the Company. §552(b)(4) applies to the Confidential Information because, as described above, the disclosure of the Confidential Information would result in substantial competitive harm to the Company.

The Confidential Information is the type of sensitive customer data and commercial information that has been consistently recognized under the law as entitled to confidential treatment. Section 552(b)(4) of the Freedom of Information Act ("Exemption Four of FOIA"), 5 U.S.C.A. § 552(b)(4) (1976), and 49 C.F.R. § 512.15 exempt from public disclosure "trade

secrets and commercial or financial information obtained from a person and privileged or confidential." The Confidential Information fits within this exemption, as the information was obtained from a person, as defined in 5 U.S.C.A. § 551(2) (1976), has been kept confidential, would not normally be released to the public and would cause substantial competitive harm if released. See Doherty v. Federal Trade Commission, Case No. 80-0513, 1981 WL 2094 (D.D.C. June 24, 1981) (holding that customer lists were protected from disclosure under FOIA Exemption Four. See also Greenberg v. Food and Drug Administration, 803 F.2d 1213, 1217 (D.C. Cir. 1986) (holding that customer lists could qualify as confidential trade secret information protected by FOIA Exemption Four, but that question of fact existed precluding summary judgment); National Parks & Conservation Assoc. v. Kleppe, 547 F.2d 673, 682 (D.C. Cir. 1976) (confidential treatment permitted for financial records of those private operators of National Park Service concessions after showing that release of records would cause substantial competitive injury); Continental Oil v. Federal Power Comm'n, 519 F.2d 31 (5th Cir. 1975) (pricing terms of natural gas contracts filed with Federal Power Commission shall be kept confidential under Exemption Four of FOIA); National Parks & Conservation Assoc. v. Morton, 498 F.2d 765 (D.C. Cir. 1974) (financial records of those private operators of National Park Service concessions showing that release of records would cause substantial competitive injury shall be kept confidential under Exemption Four of FOIA); and Goldstein v. Interstate Commerce Comm'n, Civ. A. No. 82-1511, 1984 WL 3228 (D.D.C. July 21, 1985) (pricing, volume and sale terms excluded from railroad shipping contracts submitted to Interstate Commerce Commission shall be kept confidential under Exemption Four of FOIA).

No Public Purpose Served by Disclosure

As discussed above, the Company does not believe that disclosure of the Confidential Information not necessary for the protection of the public or for any public purpose. The Confidential Information is only meaningful to the Company's competitors attempting to gain a competitive advantage over the Company.

The Company reserves the right to renew this Application in order to request an extension of the nondisclosure period as and to the extent prescribed under the applicable regulations.

Period of Confidentiality

The Company requests that the Confidential Information receive confidential treatment for a period of three (3) years. The Company believes that such time period is justified because any disclosure of the Confidential Information prior to such dates would result in competitive harm to the Company as described herein. The Company hereby reserves its right to request an extension of confidential treatment should such extension be proper.

Class Determination in 49 C.F.R. Part 512, App. B

The Confidential Information does not fall within the class determinations found in 49 C.F.R. Part 512, App. B.

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Notices

All notices, orders and questions regarding this Application should be directed to Eliot Pedrosa of Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131, telephone (305) 579-00743, facsimile (305) 579-0717.

Additional Information

The Company would be pleased to submit any additional information that the Commission or the staff may require in support of this request.

In the event your determination on this request may be adverse to the Company as to some or all of the Confidential Information, the Company respectfully requests that you contact the undersigned in order that we may arrange a conference or make additional submissions in support of this request.

Miscellaneous Matters

The Company hereby requests FOIA Confidentiality Treatment for this Application and its exhibit for the same reasons cited herein that apply to the Confidential Information.

Please acknowledge receipt of this Application and its exhibit by stamping and returning the copy hereof enclosed for that purpose and returning the same to the undersigned in the enclosed self-addressed, stamped envelope.

Very truly yours,



Eliot Pedrosa

cc: Ric Willard (by email)
Steve Tamietti (by email)

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, T V Vasudev, Vice President Finance of Omni United (USA) Inc pursuant to the provisions of 49 CFR part 512, state as follows:

- (1) I am T V Vasudev, Vice President Finance and I am authorized by Omni United (USA) Inc. ("Omni") to execute this certificate on its behalf;
- (2) I certify that the information contained in the letter from me dated July 11, 2007 and the attached Exhibits 1.1, 3.1, and 4.1 (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 for a period of no less than three (3) years;
- (4) This certification is based on the information provided by the responsible Omni 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 Omni;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Omni has claimed confidential treatment has never been released or become available outside Omni; (except as in the Response);
- (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 Omni because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (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 the 11th day of July, 2007



Name: T V Vasudev

Title: Vice President Finance