



NHTSA
WASHINGTON, DC 20590

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OFFICE OF CHIEF
COUNSEL

July 08, 2008

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Eric Ebenstein, Chief Counsel – NCC – 111
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building W41-227
Washington, DC 20590

Re: Robert Bosch LLC's Request for Confidential Treatment of Proprietary Information
Submitted to NHTSA regarding Ea 07-016

Dear Mr. Ebenstein:

Robert Bosch LLC ("Bosch") seeks confidential treatment, pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4"), 5 U.S.C. § 552(b)(4), for proprietary Bosch information submitted to NHTSA related to EA 07-016. Bosch requests that all the information be treated as confidential. The information required by your regulations is set forth below, along with two copies of the confidential documents. Also, a certificate in the form set out in Appendix A to 49 C.F.R. Part 512 is attached.

§ 512.8(a) – Information for Which Confidential Treatment Is Requested

The documents for which Bosch seeks confidential treatment are three different documents, totaling 49 pages of material related to a testing, evaluation and analysis of braking systems (hereinafter referred to as "Confidential Bosch Material"). The Confidential Bosch Material reveals testing process and procedures, testing results, product evaluation, warranty analysis and Bosch capabilities which competitors could use to improve their own processes and designs. The first document is 21 pages and is titled "NHTSA/Workhorse Custom Chassis/Robert Bosch LLC WCC Drag – Engineering, Analysis" dated July 12, 2008. The second document is 6 pages and is titled "Warranty Analysis for Workhorse Custom Chassis Claim Data, Period: July 2000 through May 27, 2008." The third document is 22 pages and titled "WCC Drag Issue Field Visit Summary," dated July 1, 2008. The Confidential Bosch Material contains information which competitors would not have and could not develop without substantial time and expense.

§ 512.8(b) – Applicable Confidentiality Standard

The applicable confidentiality standard is set forth at 49 C.F.R. § 512.15(b), (c) and (d). Under the standard set forth in § 512.15(b), information is exempt from disclosure if its disclosure would cause substantial harm to the competitive position of the submitter. Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), protect the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed, and was enacted to prevent disclosures that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter's] product." See, e.g., 49 C.F.R. § 512.15(b); *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) *Public Citizen Health Research Grp. V. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1990).



Under § 512.15(c) the information may be afforded confidential treatment if the Chief Counsel determines the “[p]ublic disclosure of the information would be likely to impair NHTSA’s ability to obtain necessary information in the future.”

Bosch also requests confidentiality pursuant to § 512.15(d) because the information is submitted voluntarily and it is not customarily disclosed or otherwise made available to the public.

§ 512.8(c)(2): Substantial Competitive Harm

Bosch submits that the disclosure of the Confidential Bosch Material would cause substantial competitive harm. As is well known, the automotive industry is highly competitive. “Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA’s principal aim of promoting openness in government.” *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981). Substantial competitive harm also may result from disclosures that would reveal a firm’s “operational strengths and weaknesses” to competitors. See *Nat’l Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976).

The Confidential Bosch Material includes confidential and proprietary data utilized by Bosch in the analysis and design of brake products. This is a highly competitive field, and the disclosure of this warranty analysis, test data and product analysis would enable Bosch’s competitors to obtain highly valuable information developed by Bosch, and to do so without incurring the costs and undertaking the effort typically required for independent development of the information. This would enable Bosch’s competitors to develop or improve their own products at Bosch’s expense. Disclosure would allow them to bring competitive products to market in far less time and at far less expense than otherwise would be required. Moreover, the Confidential Bosch Material could allow a competitor to develop a product or improve a product that without the Confidential Bosch Material the competitor would never develop. Such consequences have been recognized as competitively significant and have been deemed to constitute substantial competitive harm. See, e.g., *Public Citizen Health Research Grp. v. FDA*, 185 F.2d 898, 905 (D.C. Cir. 1999); *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51-52 (D.C. Cir. 1981).

For example, the Confidential Bosch Material includes documents which describe tests and dimensions developed by Bosch for the purpose of analyzing brake products. The development of tests and the analysis of the results of the tests included in the Confidential Bosch Material reveal important information regarding Bosch’s design parameters. If the Confidential Bosch Material is disclosed, it would allow a competitor to develop competitive products without the time and money Bosch has had to spend.

Bosch’s competitors would greatly benefit – at Bosch’s expense—from the disclosure of the Confidential Bosch Material. Thus, the disclosure of this information would cause substantial harm to Bosch’s competitive position. See, e.g., *Worthington Compressors*, 662 F.2d at 52.



§ 512.8(c)(3): Likely to Impair Government Interests in the Future

Bosch has been working with NHTSA related to the referenced investigation. Bosch is willing to share its Confidential Bosch Material to assist NHTSA. However, if confidential business information was to become publicly available because Bosch assisted in the investigation, it would be reluctant to provide such information on a voluntary basis in the future.

§ 512.8(c)(4): Voluntary Submission of Data Not Customarily Available to the Public

The information contained in the Confidential Bosch Material has not been distributed outside of Bosch, except to Bosch's customer Workhorse. This technical data is used to enhance product performance, to monitor field performance and to identify trends. Bosch is willing to provide the data for NHTSA on a voluntary basis.

§ 512.8(d) – Class Determinations

The Confidential Bosch Material is not subject to a class determination.

§ 512.8(e) – Time Period for Which Confidential Treatment is Sought

Bosch anticipates that this information will continue to have great competitive value for the foreseeable future. Accordingly, Bosch requests that the information be protected from disclosure permanently.

Thank you for your assistance. If you have any questions, please direct inquiries regarding this matter to Jerry L. Johnson, Assistant General Counsel (RBNA/LEG), Robert Bosch LLC, 38000 Hill Tech Drive, Farmington Hills, MI 48331, at (248) 876-7381.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jerry L. Johnson', written over a printed name.

Jerry L. Johnson
Assistant General Counsel

Certificate in Support of Request for Confidentiality

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

(1) I am the Director of Medium/Heavy Truck Brake Engineering for Robert Bosch LLC ("Bosch") and I am authorized by Bosch to execute documents on its behalf;

(2) I certify that the information contained in the documents described in the accompanying request for confidential treatment and defined as Confidential Bosch Material are confidential and proprietary data and are 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 statute under which the information is being submitted);

(3) I hereby request that the information contained in the indicated documents be protected on a permanent basis;

(4) This certification is based on the information provided by the responsible Bosch 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 Bosch;

(5) Based upon that information, to the best of my knowledge, information and belief, the documents for which Bosch has claimed confidential treatment has never been released or become available outside Bosch, except that the information was shown as a presentation to Workhorse Custom Chassis LLC and representatives of NHTSA with the understanding that such information must be maintained as confidential;

(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 Bosch because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

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

Executed on this 8th day of July, 2008

