



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

SEP - 7 2012

ZAP
c/o Mr. Charles Schillings, CEO
501 4th Street
Santa Rosa, CA 95401

Re: Special Order Including Request for the Production of Documents

Dear Mr. Schillings:

The National Highway Traffic Safety Administration (“NHTSA”) administers the National Traffic and Motor Vehicle Safety Act, as amended and recodified, 49 U.S.C. § 30101 et seq.

ZAP filed reports pursuant to 49 C.F.R. Part 573, *Defect and Noncompliance Responsibility and Reports*, on the noncompliance of the MY 2008 ZAP Xebra with Federal Motor Vehicle Safety Standard (“FMVSS”) No. 122, *Motorcycle brake systems*. NHTSA has assigned recall numbers 09V-177/12V-230 and 09V-385/12V-363 to these recalls.

NHTSA is sending you this Special Order because it is seeking further information regarding the vehicles subject to these recalls.

Your response to this Special Order must be provided by **September 17, 2012**. Your response must be signed under oath. 49 U.S.C. § 30166(g)(1)(A). Failure to answer or answering untruthfully may subject you to civil penalties under 49 U.S.C. § 30165.

If you have any questions about the Special Order, please contact Ms. Kerry Kolodziej at (202) 366-5902.

Sincerely yours,

Stephen Wood
Acting Chief Counsel

Enclosure

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

1200 New Jersey Avenue, SE

West Building, W41-326

Washington, DC 20590

In re:

MY 2008 ZAP Xebra

NHTSA Recall Nos.

09V-177/12V-230 and

09V-385/12V-363

**SPECIAL ORDER
INCLUDING
REQUEST FOR THE PRODUCTION OF DOCUMENTS**

To:

ZAP

c/o Mr. Charles Schillings, CEO

501 4th Street

Santa Rosa, CA 95401

This Special Order Including Request for the Production of Documents (“Special Order”) from the National Highway Traffic Safety Administration (“NHTSA”) is issued pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. Part 510.7 and 510.8.

ZAP filed reports pursuant to 49 C.F.R. Part 573, *Defect and Noncompliance Responsibility and Reports*, on the noncompliance of the MY 2008 ZAP Xebra with Federal Motor Vehicle Safety Standard (“FMVSS”) No. 122, *Motorcycle brake systems*. NHTSA has assigned recall numbers 09V-177/12V-230 and 09V-385/12V-363 to these recalls.

NHTSA is sending you this Special Order because it is seeking further information regarding the vehicles subject to these recalls.

Your response to this Special Order must be provided by **September 17, 2012**. Your response must be signed under oath.

Definitions and Instructions for this Special Order are contained in the attached Appendix.

Respond to the following questions and request:

Interrogatories:

1. Is ZAP aware of any reports of crashes, deaths, or injuries involving the MY 2008 ZAP Xebra? Include, but do not limit your response to any reports of crashes, deaths, or injuries related to vehicle braking.
2. If your answer to Interrogatory No. 1 is yes, state the total number of reported: (a) crashes, (b) deaths, and (c) injuries.
3. If your answer to Interrogatory No. 1 is yes, separately for each reported crash, death, or injury:
 - a. State the basis for ZAP's knowledge of the crash, death, or injury (e.g. warranty claim, owner complaint, dealer report, demand, lawsuit, etc.).
 - b. Provide the VIN of the MY 2008 ZAP Xebra associated with the matter.
 - c. Provide the name, address, telephone number, and other contact information for the owner/purchaser of the MY 2008 ZAP Xebra associated with the reported crash, death, or injury.
 - d. Identify each injured or deceased person.
 - e. Describe in detail the facts of the crash and/or incident reportedly resulting in a death or injury (including, but not limited to, the date of the crash and/or incident, and the cause of the crash and/or the nature of the incident).
 - f. State whether there was any property damage associated with (or alleged to have been associated with) the crash and/or incident reportedly resulting in a death or injury. If so, describe the damage, including the value of the damage.
 - g. State ZAP's response, if any, to the crash and/or incident reportedly resulting in a death or injury.

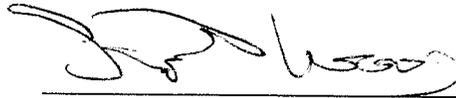
Request for the Production of Documents:

1. If you responded yes to Interrogatory No. 1, provide all documents related to each reported crash, death, or injury.

Failure to respond promptly and fully to this Special Order could subject you to civil penalties of \$6,000.00 per day (up to a maximum of \$17,350,000) pursuant to 49 U.S.C. § 30165 and 49 C.F.R. § 578.6(a)(3) or lead to an action for enforcement of the Special Order. Other remedies and sanctions are available as well.

If you have any questions concerning this matter, please call Ms. Kerry Kolodziej at (202) 366-5902. Please note that this Special Order may be modified, if at all, only in writing.

Dated: September 7, 2012

A handwritten signature in black ink, appearing to read "Stephen Wood", written over a horizontal line.

Stephen Wood
Acting Chief Counsel

APPENDIX

I. Definitions

To the extent used in this Special Order, the following definitions apply:

(A) Business Entity Names

- (1) **“ZAP”** means ZAP d/b/a ZAP Jonway, and any United States-based subsidiaries and affiliates (collectively referred to as “ZAP”), including all of its officers, employees, and agents.

Terminology

- (2) **“Affiliates”** means a corporation that is related to another corporation (such as a subsidiary, parent, or sibling corporation) by shareholdings or other means of control.
 - (3) **“Agent”** means an individual, such as a representative, who is authorized to act for or in place of another.
 - (4) **“Employee”** means a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.
 - (5) **“Officer”** means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.
- (B) **“Document(s)”** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure, and includes all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, electronic communications (existing in hard copy and/or in electronic storage), invoices, contracts, agreements, manuals, publications, photographs of all types, and all mechanical, magnetic, and electronic records or recordings of any kind. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.
- (C) **“You”** or **“your”** refers to ZAP, as defined above.

II. Instructions

In order for NHTSA to evaluate this matter, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the interrogatories and production request above.

Your response to the Special Order shall be sent 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.

Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. If, on the basis of attorney-client, attorney work product, or other privilege, you do not submit one or more requested documents or items of information in response to this Special Order, you must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

The response to this Special Order, including the document request, must be submitted in duplicate, together with a copy of any confidentiality request, to this office by September 17, 2012.

If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. You are required to submit two copies of the documents containing allegedly confidential information and one copy of the documents from which information claimed to be confidential has been deleted. Failure to adhere to the requirements of 49 C.F.R.

Part 512 will result in a rejection of your request for confidential treatment.

- A. If any information is submitted electronically, the information should be submitted on a CD-ROM that is labeled with the subject matter (Recall Number 09V-177/12V-230 and/or 09V-385/12V-363) and the date of its submission to NHTSA. Each file should be named and labeled in a manner that readily identifies the request to which the information contained therein is responsive. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, you must provide a copy of that software with its submission. If you seek confidential treatment on the basis of Exemption 4 of the Freedom of Information Act for any of the materials you submit, it must follow the procedures set out in 49 C.F.R. Part 512.
- B. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document request all responses which might otherwise be construed to be outside its scope.
- C. ZAP's response to this Special Order must be under oath, i.e., accompanied by an affidavit, signed by a responsible officer of ZAP, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of ZAP to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.