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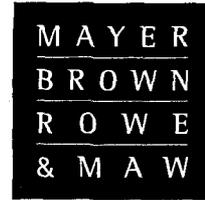
NHTSA-04-18923-1

DEPT. OF TRANSPORTATION
DOCUMENTS

EXECUTIVE SECRETARIAT

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August 6, 2004

NATIONAL HIGHWAY
TRAFFIC SAFETY ADM.

Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

BY AIR COURIER

Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Room 5220
Washington, D.C. 20590

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Re: Petition of CCI Manufacturing IL Corporation for
a Determination of Inconsequential
Noncompliance

Dear Dr. Runge:

The undersigned, an attorney for CCI Manufacturing IL Corporation ("CCI"), hereby submits the enclosed Petition for Determination of Inconsequential Noncompliance. CCI submitted a noncompliance information report (pursuant to 49 C.F.R. Part 573) relating to the noncompliance on July 8, 2004.

Pursuant to your regulations (49 C.F.R. § 556.4), I am submitting three copies of the petition (including the original) and three copies of the *previously-submitted* Part 573 report.

If you have any questions, please do not hesitate to contact Erika Z. Jones (202-263-3232) or me.

Thank you.

Sincerely,

Adam C. Sloane

cc: Jeffrey Giuseppe, Chief, Equipment Division, OVSC

ES04-005520

**PETITION FOR DETERMINATION
OF INCONSEQUENTIAL NONCOMPLIANCE**

Pursuant to the former National Traffic and Motor Vehicle Safety Act, 49 U.S.C. Chapter 301 (the "Safety Act") and 49 C.F.R. Part 556, CCI Manufacturing IL Corporation ("CCI"), formerly doing business as "Intac Automotive Products, Inc." ("Intac"), submits this petition for exemption from the notification and remedy requirements of Chapter 301 because its noncompliance is inconsequential as it relates to motor vehicle safety.

I. BACKGROUND

CCI is a manufacturer of brake fluid, with its principal place of business at 15550 Canal Bank Road, Lemont, Illinois, 60439.

Recently, CCI learned that certain brake fluid containers manufactured by its supplier, Gold Eagle, on a specific date in March 2004, do not comply with FMVSS 116 S5.2.2.2 in that the lot/date codes required by S5.2.2.2(d) are not legible after the containers are subjected to the test conditions of S6.14 of the Standard. The brake fluid containers comply with all other requirements of FMVSS 116, including the durability of the labeling of all the substantive safety warnings required by the Standard, and the brake fluid itself complies with the substantive performance requirements of FMVSS 116.

CCI notified NHTSA of the noncompliance on July 8, 2004.

Before turning to the discussion of the reasons why the noncompliance is inconsequential to motor vehicle safety, CCI wishes to note that its container supplier, Gold Eagle, was also the packager of the brake fluid at issue in the previous petitions for determinations of inconsequential noncompliance filed by Intac. Despite the fact that Gold Eagle assured CCI that it would change its processes to prevent future noncompliances with S5.2.2.2(d), and did in fact change its processes with regard to packages that were the subject of previous noncompliances,

Gold Eagle failed to implement such processes with regard to labeling of the one liter flask bottle for which this petition is being filed.

CCI has selected a new packager to replace Gold Eagle. The new packager will install a laser date code system, and will undertake further steps to avoid similar noncompliances in the future.

Since FMVSS 116 appears to impose the requirement for a durable lot/date code marking on the *packager*, and not the brake fluid manufacturer, it may be that Gold Eagle, rather than CCI, is the appropriate party to seek a determination that the noncompliance is inconsequential. Nevertheless, the Safety Act (49 U.S.C. § 30118) imposes a duty on CCI to notify the Department and conduct a notification and remedy campaign in the event that CCI decides, in good faith, that brake fluid manufactured and sold by it fails to comply with FMVSS 116 (including the packaging requirements), and the Safety Act does not appear to impose any such requirements on packagers of motor vehicle equipment, nor does the Act appear to confer standing on a packager to apply for an exemption from the notification and remedy requirements of the Act. (*See* 49 U.S.C. § 30118(d) (“On application of a *manufacturer*, the Secretary shall exempt the *manufacturer* from this section....”) (emphasis supplied)).

Even though Gold Eagle happened to manufacture the brake fluid container in this case, Standard 116 does not declare the container to be an “item of motor vehicle equipment” separate from the brake fluid it contains, nor does the Standard impose requirements on the container manufacturer, as such. Rather, the Standard imposes compliance requirements on the brake fluid *packager*, who will not necessarily be the container manufacturer. Moreover, since independent packagers appear to have no obligations under the Safety Act to notify NHTSA of a noncompliance, nor to carry out a notification and remedy campaign addressing any such

noncompliance, the Safety Act apparently contemplates that such responsibilities will fall to the brake fluid manufacturer. Therefore, in an abundance of caution, CCI filed its noncompliance determination with NHTSA in July, and is filing this petition as a protective matter.

II. DISCUSSION

The Safety Act requires that each FMVSS that is promulgated be practicable and designed to “meet[] the need for motor vehicle safety.” 49 U.S.C. § 30111(a). The Safety Act defines “motor vehicle safety” as follows:

“motor vehicle safety” means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

49 U.S.C. § 30102(a).

Under Section 30118(d) of the Safety Act, the Secretary may exempt manufacturers from the Act’s notification and remedy requirements when the Secretary determines that a noncompliance is inconsequential as it relates to motor vehicle safety. Thus, Congress recognized that there are situations in which a manufacturer may fail to comply with an FMVSS, and yet the risk to motor vehicle safety in the real world is so slight that an exemption from the notification and remedy requirements of the Act is justified. This is such a situation.

The original FMVSS 116 was proposed in 1970. 35 Fed. Reg. 15229 (September 30, 1970). The proposal called for “indelible” marking of the lot/date code on the brake fluid container itself “to facilitate determination of the extent of defective brake fluid should such be discovered.” *Id.* The final rule was adopted in 1971 essentially as proposed. 36 Fed. Reg. 11987 (June 24, 1971).

More than 15 years later, NHTSA proposed to allow the required markings (including substantive safety warnings) to be placed on a label permanently attached to the container, as

long as the label was robust enough to withstand several specified durability requirements, including exposure to the brake fluid packaged in the container. 52 Fed. Reg. 10775 (April 3, 1987). About a year later, NHTSA adopted the proposal to permit labels. 53 Fed. Reg. 24272 (June 28, 1988). In the final rule, NHTSA emphasized the “utmost importance” of ensuring that “consumers will be provided the information necessary for the *proper storage and use* of the brake fluids.” *Id.* at 24274 (emphasis supplied). There was no discussion in the 1987 proposal or the 1988 final rule that focused specifically on the lot/date code marking requirement.

The requirements have continued essentially unchanged for the past sixteen years.

Here, there is no issue respecting the durability of the substantive safety warnings on the brake fluid containers. They remain legible after exposure to the brake fluid immersion test of S6.14 of FMVSS 116. The only marking that loses legibility is the lot/date code marking. NHTSA has identified only one purpose for that marking: namely, “to facilitate determination of the extent of defective brake fluid should such be discovered.” 35 Fed. Reg. 15229 (September 30, 1970). While it is clearly in the manufacturer’s interest to be able to limit the “extent of defective brake fluid should such be discovered,” by reference to lot/date code markings, there is no serious risk to motor vehicle safety if that information is lost. Instead, in the event of a defect or noncompliance determination affecting certain batches of brake fluid, the brake fluid manufacturer would be compelled to recall a larger population of brake fluid containers than it otherwise would need to do, because it could not rely on the presence of a legible lot/date code marking to limit the population of the recall. Motor vehicle safety would not suffer; instead, the cost of the recall to the manufacturer would be higher.

Moreover, in this case, CCI sold the subject brake fluid to only one customer: Mercedes-Benz. Mercedes-Benz distributed the CCI brake fluid to its dealerships and authorized repair

facilities for their use in servicing Mercedes-Benz motor vehicles. As far as CCI knows, Mercedes-Benz does not offer the brake fluid for retail sale to consumers apart from using the brake fluid in the course of servicing customers' vehicles. Thus, there may have been no retail distribution of the brake fluid in the noncompliant containers supplied by Gold Eagle. Nevertheless, since the product is packaged in small containers that are suitable for resale at retail, CCI cannot be certain that none of the noncompliant containers reached consumers.

With respect to the products sold to Mercedes-Benz, two points need be made. First, Mercedes-Benz purchases and distributes the brake fluid to its dealerships and authorized repair facilities in bulk quantities, and those products are used quickly. Even in the unlikely event that a dealership or repair facility could not read the lot/date code on a particular container of brake fluid, that entity would likely have other containers from the same lot/date code on its premises, and could ascertain the lot/date code for the fouled container from its companion products. Second, CCI believes that all of the noncompliant containers in Mercedes-Benz's inventory may already have been used. Thus, it is highly probable that there is no need for a consumer notification and remedy campaign in this case. Against the possibility that an occasional container of brake fluid was resold at retail to a consumer, however, CCI is seeking NHTSA's agreement that the reported noncompliance is inconsequential as it relates to motor vehicle safety, thereby exempting CCI from the requirement to conduct a notification and remedy campaign regarding this noncompliance.

III. CONCLUSION

CCI does not question the value of ensuring the durability of lot/date code information on brake fluid containers. Under these circumstances, however, where (1) the substantive safety warnings remain intact after exposure to brake fluid, and (2) the noncompliance would lead (at

CCI Manufacturing IL Corporation
Petition for Determination of Inconsequential Noncompliance

most) to CCI's wider responsibility in the event of a substantive defect or noncompliance determination respecting the subject brake fluid, and (3) it is not at all clear that there are any noncompliant products at large with consumers in the market, CCI respectfully submits that the noncompliance is inconsequential as it relates to motor vehicle safety. CCI respectfully requests that NHTSA grant its petition for exemption.

Sincerely,



Erika Z. Jones
Adam C. Sloane
Mayer, Brown, Rowe & Maw LLP

Counsel to CCI Manufacturing IL Corporation

August 6, 2004

July 8, 2004

Mr. Kenneth Weinstein – Associate Administrator for Enforcement

National Highway Traffic Safety Administration

400 Seventh Street, S.W.

Washington, D.C. 20590

NONCOMPLIANCE INFORMATION REPORT

This report is being filed by CCI Manufacturing IL Corporation (“CCI”), formerly known as INTAC Automotive Products, Inc. As set forth below, the noncompliance concerns the labeling of Mercedes-Benz Brake Fluid containers in Lot No. E0764. CCI has not yet determined whether other brake fluid containers may also be affected by the noncompliance.

1. CCI’s Name and Address.

CCI Manufacturing IL Corporation
P.O. Box 339
Lemont, Illinois 60439

CCI is the manufacturer of the brake fluid, but is not the manufacturer of the container and does not package the brake fluid into the containers. CCI contracts with Gold Eagle Company (“Gold Eagle”) to supply the containers and packaging services to CCI.

2. Items of Equipment Involved in this Notification.

At this time, CCI has identified the items of equipment involved in this notification as containers of brake fluid labeled as “Mercedes-Benz Brake Fluid,” in Lot No. E0764.

3. Total Number of Items of Equipment Potentially Containing the Noncompliance.

The total population of potentially affected brake fluid containers is 21,204 units.



4. *Percentage of Items of Equipment Estimated to Contain the Noncompliance.*

CCI currently is unable to determine the percentage of items of equipment identified in item 2 that actually contain the noncompliance, however, CCI believes that 100% of the containers of brake fluid identified in item 2 may contain the noncompliance.

5. *Description of the Noncompliance.*

The containers identified in item 2 do not comply with FMVSS No. 116 S5.2.2.2, in that the lot/date code required by S5.2.2.2(d) is not legible after the containers are subjected to the test conditions specified in S6.14 of the Standard.

6. *Test Results Leading to this Noncompliance Determination.*

On or about June 3, 2004, Case Consulting Laboratories, Inc. ("Case Consulting") reported to Gold Eagle that five containers of brake fluid filled and labeled as "Mercedes-Benz Brake Fluid," Lot No. E0764, which Gold Eagle had submitted for testing, had failed to meet the lot number packaging and labeling legibility requirements set forth in FMVSS No. 116. (A copy of Case Consulting's test report is enclosed.)

Gold Eagle did not inform CCI of the results of Case Consulting's tests until the last week of June. When CCI received the Case Consulting test report from Gold Eagle, CCI reviewed the report, consulted with Gold Eagle, and proceeded to prepare and file this report.

7. *Program for Remedying the Noncompliance.*

CCI intends to file a petition for a determination that this noncompliance is inconsequential to motor vehicle safety within 30 days and, therefore, has not prepared a program to remedy the noncompliance. Under these circumstances, and because the noncompliance is highly unlikely to have resulted in any owner or purchaser having incurred costs to obtain a remedy previously, CCI has not prepared a plan for reimbursing pre-notification remedies.



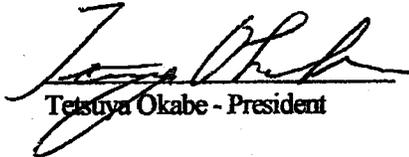
MANUFACTURING IL CORPORATION

8. *Representative Copies of Notices, Bulletins, and Other Communications Relating Directly to the Noncompliance that have been Sent to More than One Manufacturer, Distributor, Dealer, or Purchaser.*

There are no notices, bulletins, or other communications that relate directly to the noncompliance and that have been sent by CCI to more than one manufacturer, distributor, dealer, or purchaser.

If you have any questions, please don't hesitate to contact me at (630)-685-7533.

Sincerely,



Tetsuya Okabe - President