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December 17, 2014

David J. Friedman
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building
Washington D.C., 20590

Re: *Request for Recall Query of Hercules Radial LT Tires*

Dear Acting Administrator Friedman:

I am writing to request that you open an Equipment Query investigation into Hercules brand Radial A/T tires, manufactured by Shandong Yongsheng Rubber Group Co. Ltd. and imported and distributed by the Hercules Rubber & Tire Company. My request is based on evidence obtained during litigation showing that several models share a common green designation with the Capitol Precision Trac II tires, which were recalled by the ITG Voma Corp. on October 20.¹

I represent Krystal Cantu, who suffered a permanent and disabling injury in an August 2, 2013 crash caused by a catastrophic tread separation. Cantu, then 24, was a front-seat, belted passenger in a 2004 Ford Explorer Sport Trac, when the left-rear tire – a Capitol Precision Trac II, DOT No. JEMJ ETP 1510 – failed as the vehicle traveled southbound on Interstate 37 in Atascosa County, Texas.² The driver lost control when the vehicle skidded; Ms. Cantu’s right arm was crushed in the subsequent rollover, resulting in an above-the-elbow amputation.

This claim was one of two that ITG Voma referenced in its Oct. 19 Part 573 Notice of Defect and Noncompliance, “alleging in-service tread separation and injury:”

During the course of discovery in the lawsuits, ITG Voma learned in September, 2014 that the tires had originally been designed and produced with a partial nylon cap, and that the manufacturer had decided in May, 2010 to apply a full nylon cap.³

ITG Voma recalled 95,000 of the tires manufactured between March 2009 and May 2010.⁴

In addition to the Capitol Precision Trac II tires, Yongsheng is also the maker of some of the Hercules brand tires.⁵ In February 2013, Hercules recalled seven different sizes of its Hercules brand LT, load range E tires manufactured in China by Shandong Yongsheng Rubber Co., Ltd. from a Yongsheng design. Hercules described the defect as tires that can experience in-service belt and tread separations, discovered when the tires designed and manufactured by Yongsheng had a higher than

¹ Recall14T013; Notice of Defect and Noncompliance; ITG Voma; October 20, 2014

² Texas Peace Officer’s Report; Crash ID 210328667; August 4, 2013

³ Recall14T013; Notice of Defect and Noncompliance; ITG Voma; October 20, 2014

⁴ Recall14T013; Notice of Defect and Noncompliance; ITG Voma; October 20, 2014

⁵ Private label tire marketers directory, Tire Business, December 6, 2010

usual adjustment rate.^{6 7 8} These recalled tires are not the size or load range as the Capitol Precision Trac II, but they were built at the same plant during the timeframe.

In responses to discovery in *Cantu v. American Tire Distributors, Inc.*, Shandong Yongsheng's corporate representative Jin Xu Xue testified that the Hercules All Trac A/T shares the same green tire specifications as the Presicion Trac II. Those tire models include:

1. 235/70R16 106T
2. 235/75R15 109T XL
3. 245/70R16 107T
4. 245/70R16 111T XL
5. 255/70R1 6 111T
6. 265/70R1 6 112T
7. 265/75R16 116T
8. 265/70R1 7 115T

As you know, under federal regulations, a tire's brand name owner is responsible for notifying the National Highway Traffic Safety Administration of a defect within five days of its identification and for launching a recall:


573.3 Application (d) In the case of a defect or noncompliance decided to exist in an item of replacement equipment (except tires) compliance with §§573.6 and 573.7 by the brand name or trademark owner shall be considered compliance by the manufacturer. Tire brand name owners are considered manufacturers (49 U.S.C. 10102(b)(1)(E)) and have the same reporting requirements as manufacturers.⁹

In the past, the agency has followed up on allegations that defective, recalled tires manufactured overseas may have been sold in the U.S. by different importers/distributors under different brand names by opening an Equipment Query. In July 2007, the Recall Management Division sent letters to 17 tire importers/distributors after Foreign Tire Sales discovered that tires manufactured Hangzhou Zhongce Rubber Co. Ltd had been built without or with inadequate .6mm c-shaped gum strips used to prevent the separation of belts.¹⁰ On June 11, 2007, FTS launched a recall after a legal claim was filed in a fatal rollover crash touched off by a catastrophic tread separation of a Telluride 245175R16 tire manufactured by Hangzhou and sold by FTS.¹¹ FTS had claimed that Hangzhou sold similar tires via other importers.

In light of this information, the agency must act swiftly to ensure that tires that are essentially the same as the recalled Capitol Precision Trac II models are removed from service before another individual is seriously injured or killed in a tire-related crash. I believe that the Capitol Precision Trac II and the Hercules Radial A/T's shared common green tire designation obligates the Hercules Rubber & Tire Company to file a Part 573 Notice of Defect and Noncompliance and announce a recall.

I am available to discuss this further and I look forward to your reply.

Yours truly,



Michael Cowen

⁶ Hercules Tire and Rubber Co. Recall 13T-002

⁷ "Hercules recalls 7 All Trac A/T Sizes", Modern Tire Dealer, February 26, 2013

⁸ "Hercules recalls Chinese-made All Trac A/T Tires", Tire Business, February 26, 2013

⁹ 49 CFR Part 573 Defect and Noncompliance Responsibilities and Reports; 573.3 Application

¹⁰ EQ08012; Closing Resume; National Highway Traffic Safety Administration; August 23, 2007

¹¹ Recall 07T003; Notice of Defect and Noncompliance; Foreign Tire Sales; June 11, 2007