



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

400 Seventh Street, S.W.
Washington, D.C. 20590

JAN 14 1993

Mr. M. J. Hannigan
Commissioner
Department of California Highway Patrol
P.O. Box 942898
Sacramento, CA 94298-0001

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Re: Motorcycle Helmets

Dear Mr. Hannigan:

The National Highway Traffic Safety Administration ("NHTSA") has received a copy of California Highway Patrol ("CHP") Information Bulletin No. 34 (June 1, 1992), entitled "Unapproved Motorcycle Helmet," which refers to the "Baby Beanie" helmet manufactured by E&R Fiberglass of Tacoma, Washington ("E&R"). We have also reviewed Court Information Memo 92-19, issued by the California Department of Motor Vehicles ("DMV") on November 30, 1992, and have received correspondence on this subject from several individuals who have been cited by California law enforcement personnel for violation of the State's helmet law. Because there has apparently been some misunderstanding in California regarding the role of NHTSA with respect to motorcycle helmet safety standards and the agency's views regarding the current status of the "Baby Beanie" helmet, I believe that it would be appropriate for me to clarify NHTSA's position on these matters.

By delegation from the Secretary of the U.S. Department of Transportation ("DOT"), NHTSA is the Federal government agency responsible for improving safety on our Nation's highways. As part of our efforts to achieve this goal, we are authorized, under the National Traffic and Motor Vehicle Safety Act of 1966 ("Act"), 15 U.S.C. § 1381 et seq., to issue and enforce Federal motor vehicle safety standards ("FMVSS"). These standards require minimum levels of performance for new vehicles and items of motor vehicle equipment. Pursuant to this authority, NHTSA has promulgated FMVSS No. 218, "Motorcycle helmets," which applies to all helmets designed for use by motorcyclists.

CHP Bulletin No. 34 refers to the "Baby Beanie" helmet as "unapproved," and suggests that the U.S. Department of Transportation ("DOT") approves and/or disapproves motorcycle helmets. Similarly, DMV Memo 92-19 indicates that the "Baby Beanie" helmet is "unapproved" by DOT and contains an attachment that identifies other helmet styles from other manufacturers that allegedly are "DOT approved."



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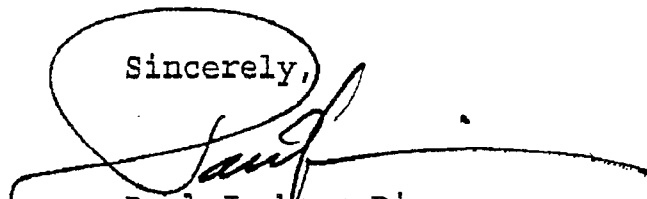
Under the Act, the agency neither "approves" nor "disapproves" a manufacturer's product. Rather, under section 114 of the Act, 15 U.S.C. § 1403, the manufacturer is required to certify that its products, such as motorcycle helmets, conform to all applicable FMVSS. NHTSA's function is to enforce the requirements of the Act by taking action to determine whether certain products comply with all applicable safety standards and to ensure that noncompliant products are recalled by their manufacturers.

With respect to the "Baby Beanie" helmets, it is abundantly clear that they do not comply with the applicable performance requirements of FMVSS No. 218. This fact is supported by tests performed at NHTSA's request by two independent testing facilities as well as tests conducted by E&R. Thus, the manufacture and sale of the helmets by E&R constituted a violation of section 108(a)(1)(A) of the Act, 15 U.S.C. § 1397(a)(1)(A), and the certification of those helmets by E&R was a violation of section 108(a)(1)(C) of the Act, 15 U.S.C. § 1397(a)(1)(C), because it was "false and misleading."

Following the above-referenced testing, E&R agreed to conduct a notification and remedy campaign (popularly known as a recall) pursuant to sections 151-154 of the Act, 15 U.S.C. § 1411-1414, under which owners are entitled to return their helmets for a full refund. In addition, the company has agreed to cease its manufacture of the helmets in question and to pay \$10,000 in settlement of civil penalty claims arising out of its manufacture, sale, and improper certification of helmets that fail to comply with FMVSS No. 218.

While it is clear, for the reasons noted above, that the "Baby Beanie" helmets do not comply with FMVSS No. 218, there has been no formal "disapproval" by DOT or any other Federal agency. We take no position on the issue of whether a motorcycle rider wearing a "Baby Beanie" on the California highways may be convicted of a violation of the California helmet law, since that is a question that must be resolved by the California courts.

Sincerely,



Paul Jackson Rice
Chief Counsel

cc: Carole Waggoner Bedwell, California DMV
Richard Quigley