



**Written Testimony before the United States Senate Committee on Homeland
Security and Governmental Affairs, Subcommittee on Oversight of Government
Management, the Federal Workforce and the District of Columbia**

*Title: STOP!: A Progress Report on Protecting and Enforcing Intellectual Property Rights Here
and Abroad*

Anthony C. LaPlaca
Vice President and General Counsel
Bendix Commercial Vehicle Systems LLC

Washington, DC

July 26, 2006

**Statement Prepared by Anthony C. LaPlaca, Vice President & General Counsel of
Bendix Commercial Vehicle Systems LLC**

Introduction

Mr. Chairman and distinguished members of the Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, my name is Anthony LaPlaca and I am Vice President and General Counsel for Bendix Commercial Vehicle Systems LLC. I am testifying on behalf of Bendix and will be sharing our views and experiences on dealing with intellectual property theft, one of the fastest growing and most concerning issues we face not only as an individual company, but as a transportation industry in total.

First, I would like to thank the Subcommittee for the invitation. We are honored to represent business interests in this matter and hope that our testimony will lead to greater understanding of the issue and how government action can further address counterfeiting and other intellectual property violations that impact American companies.

Introduction to Bendix Commercial Vehicle Systems LLC

Bendix Commercial Vehicle Systems is a global leader of commercial vehicle safety and braking system technologies. The company develops and supplies leading-edge active safety technologies, air brake charging and control systems and components under the Bendix® brand name for medium- and heavy-duty trucks, tractors, trailers, buses and other commercial vehicles throughout North America and abroad. Bendix, and its joint venture, Bendix Spicer Foundation Brake LLC, are headquartered in Elyria, Ohio, outside of Cleveland, Ohio, and employ 2,200 people in North America.

Bendix markets and sells both original equipment and aftermarket replacement products to the global commercial vehicle industry. Its customers and end users include original equipment truck manufacturers, trucking fleets, distributors, dealers and owner operators.

Bendix and its predecessors have shaped the commercial vehicle industry by developing and delivering innovative air brake system design, system components and vehicle safety systems for the past 76 years. Throughout that time, Bendix has been responsible for a number of revolutionary changes in the commercial vehicle market, and its innovations often become industry standards. In 2005, Bendix experienced one of its most prolific years for technological advances as it was granted 16 patents and filed applications for 40 more. In summary, intellectual property protection and a desire to continually advance commercial vehicle safety and braking system technology are mission critical at Bendix and help drive the company's success.

Impact of Product Counterfeiting on Bendix

While the Motor and Equipment Manufacturers Association (MEMA) estimates counterfeiting to have a \$12 billion impact on the transportation industry, Bendix is equally concerned about the issue's potential impact on vehicle brake performance, overall highway safety and the equity in the Bendix® brand.

The financial impact to Bendix from this influx of knock-off and non-genuine parts, and the infringement of intellectual property rights, is significant. For the valves product portfolio alone, an estimated \$10 – 20 million in lost revenue is realized annually attributed to this issue. Valves are not isolated in this financial drain. Bendix product lines such as air dryers and compressors are also currently affected, with other component groups becoming prime targets for this activity.

The challenge is more than financial, however. At Bendix, we're concerned about the dire consequences that knock-off parts can create for users. Bendix components and systems relate directly to the safe and reliable function of the air brake system on commercial vehicles. Disruption to the uninterrupted flow of clean air to vehicle wheel ends – sometimes even from just one valve or poorly constructed component – can adversely impact the air brake system's performance. Bendix' brand reputation, meanwhile, is built on products that are highly engineered and validated through extensive testing to ensure quality and reliability to withstand the demanding operating conditions of commercial vehicle use. Customers rely on Bendix air brake systems to stop commercial vehicles that weigh as much as 80,000 pounds and transport valuable commercial goods (e.g., consumer electronics valued at hundreds of thousands of dollars), hazardous or dangerous cargo loads (e.g., tankers hauling gasoline or chemicals), or the most precious of cargo (e.g., busses carrying school children).

High-volume “wear components” such as brake valves and air dryers are among the most commonly copied parts that affect Bendix. While they may look similar on the outside, these knock-off parts lack the design, testing and quality control that goes into every Bendix component to ensure consistent performance and durability. Instead, the non-genuine parts are reverse engineered and mass produced using inferior materials, in many cases, and substandard manufacturing processes that produce inconsistent to poor quality and performance.

Potential risks of using knock-off replacement parts range from performance issues such as premature brake wear, poor brake timing, overheating of brakes, longer stopping distances and cracked brake drums to catastrophic brake failure.

One recent example of a component returned from the field demonstrates how a poorly built knock-off relay valve can have a potentially serious safety impact. Following his purchase of a replacement relay valve, an air brake technician experienced significant issues in getting the new valve to work after replacing the current component. After numerous adjustments and rechecking of the air lines as a part of this standard repair, he then removed the component to check it as well. While the valve appeared fully functional on the exterior, a closer inspection by the technician of the valve's disassembled interior revealed that its control port was not drilled all the way through. Without the diligent work of the technician in detecting the problem, use of this valve with the partially blocked port would have led to inadequate airflow and a 30 – 70 percent decrease in braking capability for the commercial vehicle on which it was installed. This can pose a significant safety risk both to the driver of the vehicle as well as to the others who share the highway. Thankfully, catastrophic brake failure was avoided in this situation.

Bendix believes customer confusion is a major contributor to the proliferation of knock-off replacement parts. Through warranty claims and ongoing anecdotal evidence from the field, Bendix is aware of multiple instances of end users being confused or misled at the time of purchase. Daily, in scenarios taking place across North America, customers are under the impression that they were purchasing genuine Bendix replacement parts – influenced in a number of ways, including by the look of the part and by the use of Bendix part names and part numbers. Only after a problem surfaces do they eventually learn that the component they bought wasn't genuine Bendix.

Deception occurs easily. Unless they specifically request an original Bendix replacement part, purchasers run the risk of getting a “will fit” or non-genuine part in return. Many of these knockoffs look so similar to genuine parts that they are often returned to Bendix as part of a

warranty claim. Even Bendix personnel at times have trouble telling the difference until the parts are disassembled to examine the interior. (See *Exhibit A*)

Asia is the most common source of counterfeit and other knock-off parts that Bendix encounters. Typical differences in quality include cheaper, inferior materials, thinner walls and the lack of design improvements that would be evident in a genuine Bendix component throughout a product's life time. With the copied parts, quality control is lacking, there is no consistency in the manufacturing process, and there's no product warranty or field service support.

What Bendix has Done to Combat the Issue

Bendix has taken numerous actions, legal and otherwise, to protect its intellectual property rights and enforce those rights against entities that infringe on Bendix' trademarks, patents and other intellectual property. Counterfeit and knock-off replacement parts are entering the North American market at alarming rates, and their product depth and level of sophistication are expanding as well. This has caused great concern within Bendix.

Bendix has instituted a three-pronged Intellectual Property Protection and Enforcement Program, which focuses on protection, enforcement, and education and awareness. Examples of the intellectual property protection and enforcement actions Bendix has taken include:

-- Instituted patent and trademark infringement action in United States District Court against a company that sold and distributed knock-off parts that infringed Bendix patents and trademark rights.

-- Trade show enforcement actions at major industry events around the world, including at one of the industry's largest, the annual Automotive Aftermarket Products Expo (AAPEX) in Las Vegas; Bendix successfully worked with this show's sponsors to have infringing products, product literature and promotional materials removed from the offending party's trade show booth.

-- Sent numerous cease and desist letters to successfully stop patent and trademark infringing sales by companies in the United States and Canada.

-- We continually file for patent and trademark registrations in the United States Patent and Trademark Office (USPTO) and other foreign filing offices (49 patent applications and 26 trademark registration applications in the last 18 months).

-- Circulation of Bendix Trademark Usage Guidelines to our distributors and dealers.

While our efforts to enforce our patent and trademarks against infringement have been successful, the problem of customer confusion with the proliferation of knock-offs still persists. Look-alike products sold with the same names and part numbers continue to exacerbate the situation. With that in mind, Bendix has taken the following steps and actions to promote industry awareness:

-- Continuous training of Bendix sales force and customer service people.

-- A multi-faceted customer and industry awareness campaign aimed at fleets, our distributors and dealers, and end-users.

-- Ongoing meetings with senior level management at distributors to discuss the importance of IP compliance.

-- Bendix trade show booth displays and sales support materials including various print and audio/visual depictions of side-by-side comparisons of inferior quality of knock-off products compared to genuine Bendix products.

Overview of Government Intervention

To date, Bendix has conducted its program entirely with its own resources, spending over \$1 million annually on intellectual property protection and enforcement activities, in addition to the significant expenditures of internal management time and attention. Although Bendix has not had occasion to utilize many of the government's resources, Bendix representatives did attend an anti-counterfeiting conference sponsored by the National Intellectual Property Rights Coordination Center in September 2004. There, representatives from many U.S. government agencies, including Immigrations and Customs Enforcement, gave presentations that provided specialized training and guidance to businesses. The seminar provided participants with clear direction as to what the government can and cannot do for companies, trained them to register trademarks with the USPTO for enforcement by U.S. Customs and positioned them to take advantage of government services. Bendix received value from the seminar by developing solid contacts within the respective government organizations and learning more about available government resources. In addition, after attending this seminar Bendix accelerated its process of registering common law trademarks as another step in its multi-faceted program. Bendix recommends expanding and promoting these seminars and making them more widely accessible, particularly to the distributors and dealer segment.

In many instances, existing intellectual property laws do not adequately address Bendix' current problem with customer confusion with knock-offs. The buying and selling of look-alike products is a problem propagated by the knock-off reseller's use of the company part names and part numbers as the genuine Bendix products. Often, the part numbers are not eligible for trademark protection. For this reason, Bendix would benefit from extending intellectual property protection to industrial designs of its safety critical air brake products and components. In fact, the entire automotive industry, and perhaps other key US sectors, would benefit from this type of legal protection. (See *Exhibit B*)

Conclusion

Instances of knock-off parts in the commercial vehicle industry are happening all too often. The sophistication of counterfeit operations has improved to the point of making it difficult for consumers to discern the real from the fake. But in terms of performance, quality and actual costs, there are obvious differences. And for Bendix, in particular, dealing with components and systems that directly influence the braking ability of a heavy truck – with its impact on vehicle operation, driver safety and the safety of others who share the highway – underscores the need to control this issue.

The transportation industry, through the MEMA Brand Protection Council, of which Bendix is a charter member, has taken steps to raise awareness through education programs provided by governmental agencies and the private sector, as well as jointly policing the counterfeiting issue. Government agencies should proactively seek out and join with industry groups such as this to combine resources and collectively battle this serious problem. The ability to share in best practices and programs across industries will help all of us more effectively and efficiently address the situation.

Bendix would like to thank the members of the Subcommittee for the invitation to testify and for focusing much needed attention on this issue. Bendix welcomes the opportunity to answer questions or provide any additional information requested by the Subcommittee.

Respectfully submitted,

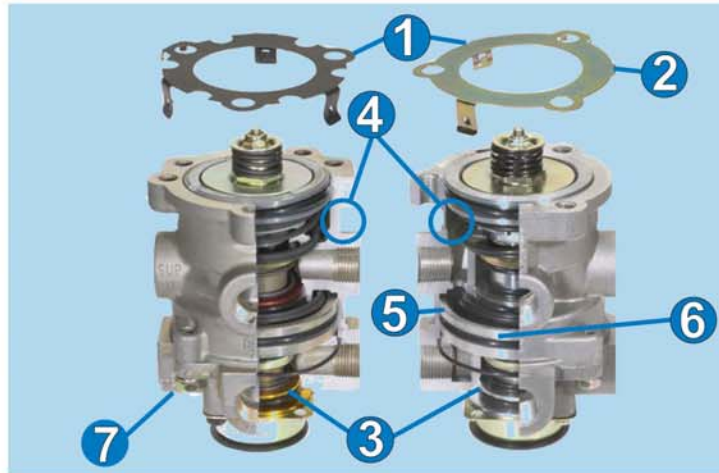
Anthony C. LaPlaca
Bendix Commercial Vehicle Systems LLC

Exhibit A
Valves Side by Side Comparison

Think these two valves look alike? Think again.

"They look the same, so they must work the same." That's just what the manufacturers of knock-off and look-alike valves are counting on when you make your next purchase.

Even the smallest detail in valve manufacturing can, and often does, jeopardize the long-term reliability of your braking system . . . not the place where you'd consider cutting corners. While they may appear identical on the surface, the construction and performance of these valves are drastically different. Take a closer look.



**Non-Genuine
knock-off**

- 1 A rubber coated retention clip on the genuine Bendix valve, compared to the uncoated clip on the knock-off, provides a flexible seal that protects against water ingestion.
- 2 External venting in the primary piston area of the knock-off valve can lead to water ingestion and freeze-up, resulting in brake imbalance and longer stopping distances.
- 3 Untreated and uncoated surfaces mean premature corrosion along with sharply decreased durability. Bendix provides treated and anodized surfaces on the valve piston, primary and secondary IE valve and primary and secondary IE guides for long-lasting, reliable performance no matter the elements.
- 4 The knock-off valve's wall is 56% thinner, making it more susceptible to cracking or even a complete valve rupture.
- 5 Quality engineering that incorporates radiused casting transitions rather than sharp corners in the castings as seen on the knock-off valve, provide greater overall strength and internal spring guiding and more consistent performance year over year.
- 6 Poor casting quality on the machined surfaces on this knock-off valve's secondary piston can cause internal component misalignment, accelerated wear and leakage.
- 7 Genuine Bendix valves use body bolts with lock washers and the proper head size to eliminate the chance of backing out or breakage frequently found on knock-off components.

The only thing consistent about non-genuine components is that they suffer from inconsistent quality materials, manufacturing and performance. Just one faulty valve can mean overheated brakes that result in brake fade, cracked drums, roasted seals . . . even brake failure or a vehicle fire. Protect your vehicle by using only genuine Bendix® parts.

Look for the familiar Bendix name and logo on the box. For the name of the authorized Bendix outlet nearest you, talk to your Bendix Account Manager, call 1-800-AIR-BRAKE (1-800-247-2725) or visit www.bendix.com today.



Genuine vs. Knock-Off Valve Components

TAKE A CLOSER LOOK.



THE GENUINE BENDIX E-6 VALVE COMPONENT

At 2,000,000 durability cycles, equal to roughly one million highway miles:

- good valve alignment still maintained
- uniform wear pattern
- even contact of sealing area for seal durability



THE KNOCKOFF E-6 VALVE COMPONENT

At only 450,000 durability cycles:

- excessive uneven surface wear
 - severe scoring on the sealing surface
- Result: High air leakage. Possible vehicle sidelined.



THE GENUINE BENDIX E-6 RELAY PISTON

At 2,000,000 durability cycles:

- still meets all original OE specifications



THE KNOCKOFF E-6 RELAY PISTON

At only 450,000 durability cycles:

- premature broken and cracked parts
 - heavy surface abrasion on the piston bore
- Result: Unpredictable primary pressure delivery. Significant leakage and system imbalance. Poor vehicle brake performance.



THE GENUINE BENDIX QUICK RELEASE VALVE

At 2,000,000 durability cycles:

- near-new condition
- valve functioning per specification



THE KNOCKOFF QUICK RELEASE VALVE

At only 450,000 durability cycles:

- torn diaphragm
 - leaked supply air to atmosphere
- Result: High air leakage. Possible vehicle sidelined. Poor vehicle brake performance.

Transport Topics

The Weekly Newspaper of Trucking and Freight Transportation

Week of February 27, 2006

Imitation Parts Pose Safety Risk, Executives Say

DRIVETRAINS, BRAKES AND SUSPENSIONS

By Andrea Fischer
Staff Reporter

Sales of counterfeit and knock-off parts for use on heavy-duty trucks are posing safety risks to fleets, with the largest problem being brake components, manufacturing executives told TRANSPORT TOPICS.

Aftermarket executives said parts that do not meet braking system specifications compromise truck safety because they can cause increased wear to other components, lead to premature part failure and increase stopping distance.

"Any one variance in any one component in the whole system can affect the entire braking system and can lead to serious safety problems," said Dave Schultz, marketing manager for the valve division of Bendix Commercial Vehicle Systems, an Elyria, Ohio, brake manufacturer.

"According to internal testing, [the use of] a look-alike part [in braking systems] can increase stopping distance 15% to 30%," he said.

Bendix said that when it compared one of its brake valves with a knock-off valve, the knock-off's wall was 56% thinner, making it more susceptible to cracking or even a complete valve rupture.

Schultz said look-alike parts such as valves, brake drums and shoes, O-rings, pistons, seals and bolts can contribute to a range of problems.

"There are different standards for each component, so if you use a genuine part, you can be sure it is within those standards. If you are using a non-genuine part, who knows?" Schultz said.

Steve Slesinski, director of product planning for Dana Corp.'s Commercial Vehicle Systems Division, which makes axles, driveshafts, suspensions and other components for trucks, agreed.

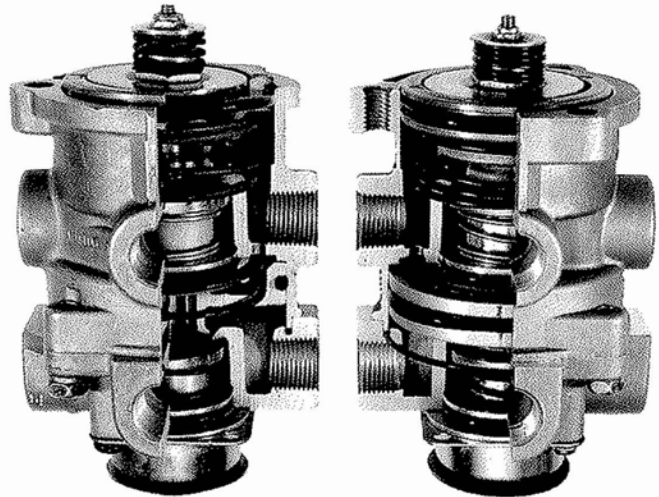
"The biggest cost to the industry [from counterfeit parts] is safety," and the problem is not likely to ease anytime soon, Slesinski said.

"The trucking industry is at an all-time-high build rate," he said. "That means more demand for parts and components and a greater likelihood that this is a problem we will all have to face."

Parts for medium- and heavy-duty trucks accounted for \$66.5 billion, or one-fourth, of domestic aftermarket sales in 2004, according to figures released by the Automotive Aftermarket Industry Association.

Sales of counterfeit parts cost aftermarket parts manufacturers an estimated \$12 billion a year, said the Motor and Equipment Manufacturers Association. But MEMA spokesman Neil Zipser said the figure is likely much higher than that because the Internet and sophisticated manufacturing techniques and shipping practices have made it easier for companies to make, import and sell counterfeit and look-alike products.

The proliferation of information on company Web sites also has helped counterfeit and knock-off parts manufacturers gain access to intellectual property, including the design of the legitimate parts they copy, Zipser said. "Information like photos and design [of products], which wasn't there 10-15 years ago, can be downloaded now."



Bendix Commercial Vehicle Systems

The knock-off brake valve, right, looks similar to the genuine Bendix brake valve, left, but its valve wall is 56% thinner, said Bendix.

According to Tim Kraus, vice president of the Heavy Duty Manufacturers Association, brake parts rank as one of the top five most heavily counterfeited truck parts, with brake shoes the product most likely to be copied.

"Most of the counterfeiting takes place on safety-critical parts, and that's definitely a huge safety issue for heavy-duty trucks," said Kraus. "The biggest problem we see is with brake shoes and brake drums," he said, adding that truck alternators and air brakes are also frequently copied.

Slesinski said the most common counterfeit product that Dana encounters is the axle gearing. "It's a critical part of the axle, and an inferior knock-off would cause a loss of reliability and damage to other truck components," he said.

Zipser said the counterfeit truck parts problem has at least doubled since 1997, primarily because China has become "such a player in this market. For them to build their economy, their citizens need jobs, and unfortunately, a large portion of those jobs are in counterfeit operations," alleged Zipser. He declined to speculate on how many truck-parts counterfeiting operations currently supply products to the United States.

He also said that without government help (see story, p. 9), there is no easy way to stop counterfeit parts manufacturing or stop counterfeit parts from coming into the United States, no matter how vigilant fleets, distributors or aftermarket parts manufacturers are.

"Counterfeits look very real these days, and the people installing and selling them would have no idea what they really have on their hands

unless they took the part apart or were experts on that specific product," said Zipser.

Schultz agreed: "With the increase of products being manufactured at a lower cost in other countries in the past five to seven years, it's easier to be confused about whether a part is genuine or not."

As a result, the presence of a counterfeit part often is not detected until after a manufacturer investigates a warranty claim and discovers the faulty component was not theirs, Zipser said.

Slesinski agreed with Zipser and added that it is a growing problem for original equipment manufacturers as well as for aftermarket parts makers.

"We are impacted when the original equipment has a warranty and the warranty repair is unknowingly made [by a third party] with inferior parts," he said.

Jim Sharkey, director of sales for the commercial vehicle aftermarket of ArvinMeritor, a Troy, Mich., aftermarket and original equipment parts manufacturer, said the company is very quick to respond when it hears reports of possible counterfeit parts from its customers.

If a part shows up at a distributor and the part "clearly is not ArvinMeritor's or the cost is lower [than normal], that sends up a red flag" to investigate, Sharkey said.

Fleets "dealing with legitimate sales representatives from companies they know are hopefully not experiencing a big problem," Zipser said. But he cautioned that because smaller companies trying to compete are often lured by the promise of lower prices for the replacement parts they need, "legitimate dealers, distributors and fleets are duped into thinking they are dealing with a genuine parts seller."

"As a distributor, you just have to know who you do business with," agreed Dick Bell, president of Bell Frame and Brake Service in Dothan, Ala., adding that his company has received offers to "buy branded products at a ridiculously low price. The last thing you want to do is give illegal parts to a customer."

MEMA's Zipser and Bendix's Schultz agreed the Internet has spurred counterfeit and knock-off growth.

"Web sites are breeding grounds for counterfeit parts makers," Zipser said, adding that in many cases the customers of legitimate manufacturers expect them to post detailed information about the parts they sell — such as technical diagrams and other sensitive material — on their Web sites to aid distributors who are looking for specific parts.

"The distributors just want to know if a part is available and if it meets the needs of their customer," Zipser said. "But that demand for efficiency makes it easy for other businesses to steal or copy information. The Web has helped out counterfeiters by getting them the information they need faster and easier."

For Bendix's Schultz, the buying and selling of non-genuine parts is a much bigger problem than counterfeiting because many times a common part or part number of a component, such as a brake pad, cannot be trademarked.

"Look-alikes are a much more significant threat because people who compete with our distributors want to sell the same product to the same customer," he said.

Look-alike parts are made and sold in a number of ways that may not be considered outright counterfeiting but nevertheless pose the same problems, Zipser said.

A contracted overseas manufacturer may copy a part using inferior materials, or may simply produce more of the product than they are licensed to make, and then sell the surplus to whatever market is available, he said.

The most common practice is to "reverse engineer" a product to determine how it was made and then find a way to make it with "inferior components,"



Motor and Equipment Manufacturers Association

Chinese authorities take inventory of goods seized after a raid on a manufacturer of counterfeit brake parts earlier this year.

Zipser said.

Schultz told TT the proliferation of counterfeit parts has manufacturers using a variety of techniques to keep their products distinct in the marketplace.

Legitimate manufacturers can distinguish themselves from counterfeit or knock-off parts, Schultz said, if they "stay ahead of the counterfeiters" by changing the company logo or employing technology like RFID tags to track products "back through the supply chain."



Bendix Commercial Vehicle Systems LLC • 901 Cleveland Street • Elyria, Ohio 44035
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Exhibit B



Proposal for Industrial Design Protection

Bendix Would Benefit from Legislation that Protects Safety-Related Products

Bendix Commercial Vehicle Systems LLC recommends that critical air brake system components would benefit from additional legal protection for industrial designs. Protecting the original designs of useful articles that are used in the braking systems of heavy trucks would reduce the potential for consumer confusion and benefit highway safety.

Similar measures have been enacted for both architectural works as embodied in actual buildings under the Architectural Works Copyright Protection Act and for boat hulls and decks under the Vessel Hull Design Protection Act, which is part of the Digital Millennium Copyright Act.

Both of these copyright enhancements address the inadequacies of existing intellectual property laws protecting the designs of useful articles. While some protection for industrial design is available under existing patent, trademark and copyright laws, certain industrial designs are not entitled to intellectual property protection if any design element is a result of the utilitarian function of the article.

There are numerous instances where look-alike valves and air brake system components are sold to an aftermarket consumer who believes the look-alike is genuine product. Additional protection could be made available for industrial designs to avoid confusion in the purchase of these important safety-related components. Given the significant safety-related nature of our products and the importance of assuring that the highest quality possible be provided to the heavy vehicle industry, we believe that additional protection, at least similar to that afforded to the design of boat hulls and buildings, would be beneficial to assure customers receive the parts they expect when they make a purchase.

July 26, 2006