



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

EVIDENCE DOCUMENT 5

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

June 22, 2000

Mr. William Gannon, II
P.O. Box 690044
Quincy, MA 02269

Dear Mr. Gannon:

This responds to your letter seeking information about the labeling requirements in Federal motor vehicle safety standard No.218, Motorcycle Helmets (49 CFR 571.218). You ask if the D.O.T. label must remain on the helmet after a consumer purchased it. Next, you ask if you are liable for prosecution if you paint your helmet or apply a decal over the D.O.T. label.

As you are aware, Standard No.218 establishes performance requirements for motorcycle helmets intended for use on public highways. S5.6.1 of Standard No.218 requires that: "Each helmet shall be permanently and legibly labeled..." with the DOT certification mark.

In regard to individual consumers and their own helmets, Federal law does not prohibit the helmet's owner or any other person that is not a manufacturer, distributor, dealer, or repair business from removing or covering the label from a motorcycle helmet. Thus, the owner of a motorcycle helmet is permitted to remove or cover the label from his or her helmet for any reason without violating any provision of Federal law or Standard No.218.

I hope this information is helpful. If you have any further questions or need some more information on this subject, please do not hesitate to contact Mr. Otto Matheke of my staff at this address, or by telephone at (202) 366-2992.

Sincerely,

Frank Seales, Jr.
Chief Counsel



[EVIDENCE DOCUMENT 5]

TYPE: INTERPRETATION-NHTSA

DATE: 12/08/88 EST

FROM: ERIKA Z. JONES -- CHIEF COUNSEL, NHTSA

**TO: WAYNE IVIE -- MANAGER, VEHICLE SUPPORT SERVICE SECTION,
OREGON DEPARTMENT OF TRANSPORTATION**

**ATTACHMENT: LETTER DATED JULY 12, 1988 FROM WAYNE IVIE, MGR., VEHICLE
SUPPORT SERVICE SECTION, OREGON DEPT. OF TRANSPORTATION TO NHTSA;
OCC2420**

TEXT: This responds to your letter seeking information about the labeling requirements in Standard No. 218, Motorcycle Helmets (49 CFR @ 571.218). You noted that Oregon recently enacted a mandatory helmet use law which adopted Standard No. 218 as the minimum standard for helmets. You correctly noted that section S5.6.1 of Standard No. 218 requires subject motorcycle helmets to be permanently and legibly labeled with specified information, including the symbol "DOT" as a certification that the helmet complies with Standard No. 218. However, you stated that you have received reports that the labeling required by Standard No. 218 is not present on many helmets, either because it has fallen off or been removed by someone. You said that there is often no other identification of the manufacturer or brand name on the helmet. Accordingly, it is not possible for the owner of a helmet without the Standard 218 label present to contact a dealer or manufacturer for information about the helmet. You then asked several questions about the labeling requirements set forth in Standard No. 218.

Before answering your specific questions, I would like to provide some general background information on Standard No. 218. Prior to October 3, 1988, Standard No. 218 applied only to helmets that could be placed on the size C headform. The helmet manufacturers estimated that approximately 90 percent of all motorcycle helmets were subject to Standard No. 218, because they could be placed on the size C headform. However, helmets manufactured before October 3, 1988 that could not be placed on the size C headform (these were typically smaller sizes of helmets) were not subject to Standard No. 218. Hence, manufacturers of helmets that could not be placed on the size C headform were not required by Standard No. 218 or any of our other regulations to label any information on these helmets. In fact, manufacturers could not label the DOT certification symbol on those helmets that were not subject to Standard No. 218. See the enclosed December 4, 1987 letter to Mr. Hoppe for more information on this subject.

We published a final rule on April 6, 1988 that extended the requirements of Standard No. 218 to all motorcycle helmet sizes (53 FR 11280). This rule became effective on October 3, 1988. Accordingly, all motorcycle No. 218 and must be labeled in accordance with the requirements of S5.6 of that standard.

With this background, your question can be answered as follows. For the approximately 10 percent of helmets manufactured before October 3, 1988 that could not be placed on the size C headform, Standard No. 218 did not apply to them, so there was no requirement for any information to be labeled on these helmets. Any such helmets would not display a "DOT sticker" because they were not required or permitted to display such a sticker when they were new, not because the sticker "fell off" or was removed.

However, Standard No. 218 applied to approximately 90 percent of all helmets manufactured before October 3, 1988 and applies to every motorcycle helmet manufactured on or after that date. For those helmets, S5.6.1 of Standard No. 218 requires that: "Each helmet shall be permanently and legibly labeled . . ." with the manufacturers name or identification, the precise model designation, the size, the month and year of manufacture, the DOT certification mark, and warning instructions. (emphasis added) In an October 16, 1973 letter to the Cycraft Co., NHTSA stated that the requirement that helmets be permanently labeled prohibits the use of labels that can be removed easily by hand without tools or chemicals.

You stated that you have heard of two reasons why helmets that originally had a DOT certification label would no longer have such a label. One of the reasons was that the affixed label was a "sticker" and it "fell off." Standard No. 218 permits manufacturers to label the required information on the helmet by means of a "sticker," provided that the label is permanent and legible and contains all the information required by S5.6. A "sticker" that falls off the helmet would not appear to be permanent within the meaning of Standard No. 218, so this would be an apparent noncompliance with the standard. If you have any evidence that "stickers" are falling off helmets, please forward that information to our Office of Vehicle Safety Compliance at this address, and we will take appropriate actions.

The second reason that you have heard for helmets no longer having the labeling required by Standard No. 218 is that someone removed the label to paint the helmet and failed to put the label back on the helmet. Section 108(a)(2)(A) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C 1397(a)(2)(A)) prohibits any manufacturer, distributor, dealer, or repair business from "knowingly render[ing] inoperative any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard." In this case, the label on motorcycle helmets is a device or element of design installed on the helmet in compliance with Standard No. 218. If a manufacturer, distributor, dealer, or repair business removed that label and failed to put it back on the helmet, then those entities would be rendering the label inoperative, in violation of Federal law. Again, if you have any evidence that violations of Federal law have occurred in your State, please forward that evidence to our Office of Vehicle Safety Compliance and we will take appropriate actions.

Please note that Federal law does not prohibit the helmet's owner or any other person that is not a manufacturer, distributor, dealer, or repair business from removing the label from motorcycle helmets. Thus, the owner of a motorcycle helmet is permitted to remove the label from his or her helmet for any reason without violating any provision of Federal law. The individual States are free to establish requirements for motorcycle helmets used in their State, and could prohibit an owner from removing the label.

You suggested that the problem of missing labels could be solved if this agency were to require that the DOT symbol be embossed on or in the helmet. NHTSA considered and rejected this suggestion 15 years ago when it established Standard No. 218. In the August 20, 1973 preamble to the final rule that established FMVSS 218, we said: *With respect to providing important safety information in the form of labeling, one comment recommended that, due to possible label deterioration, both the manufacturer's identification and the helmet model designation should be permanently marked by etching, branding, stamping, embossing, or molding on the exterior of the helmet shell or on a permanently attached component so as to be visible when the helmet is in use. The NHTSA has determined that the practical effect of this recommendation is accomplished by requiring each helmet to be permanently and legibly labeled. The method to be used to permanently and legibly affix a label for each helmet is therefore left to the discretion of the manufacturer. (38 FR 22391)*

You finally asked if other jurisdictions have informed NHTSA of similar problems and sought suggestions on methods to resolve the situation where an apparently undamaged helmet would be in compliance with the standard except that it is not properly labeled. As noted above, approximately 10 percent of the motorcycle helmets manufactured before October 3, 1988 were not subject to Standard No. 218 and were not required to be labeled. To my knowledge, no other jurisdictions have informed this agency of problems akin to those raised in your letter aside from more general questions about labeling.

I hope this information is helpful. If you have any further questions or need some more information on this subject, please do not hesitate to contact Mr. Marvin Shaw of my staff at this address, or by telephone at (202) 366-2992.

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