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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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CLERK US DISTRICT COURT
RICHMOND, VIRGINIA

Affinia Group Inc.,)
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 and)
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 Brake Parts Inc.,)
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 Plaintiffs,)
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 v.)
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)
 I.A.P., INC.,)
 d/b/a Dura International,)
)
 and)
)
 IAP West, INC.,)
 d/b/a Dura International,)
)
)
 and)
)
 CRW Parts, Inc.)
)
)
 Defendants.)

CIVIL ACTION NO.

3:09cv427

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Affinia Group Inc. and Brake Parts Inc. (collectively "Affinia"), by counsel, respectfully submit this Complaint against Defendants IAP West, Inc. and I.A.P., Inc. (collectively "Dura") and CRW Parts, Inc. ("CRW") for false advertising in the commercial promotion of automotive brake rotors in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and in violation of Virginia state law.

INTRODUCTION

1. Drivers select replacement (or “aftermarket”) brake parts based on performance and price. False advertising regarding these factors undermines the competitive process by diverting sales from companies that play by the rules to those that cut corners at competitors’ and consumers’ expense. Affinia alleges that Dura and CRW (collectively “defendants”) made false or misleading representations that some of Dura’s brake rotors meet or exceed Original Equipment (“OE”) specifications and performance when they do not. Affinia brings this action against defendants to stop the false advertising, require that defendants compete fairly, and provide consumers with truthful information so that they can make fully informed decisions regarding these automotive products which impact safety.

2. Among others, Dura makes the following express claims in its advertising and marketing material regarding its automotive replacement parts, including brake rotors for cars and light duty trucks:

“Every unit produced by Dura International is designed to meet or exceed original equipment specifications and performance.”

Dura “[e]nsures that all drums & rotors meet or exceed OEM specifications.”

3. As a distributor of Dura brake rotors in Virginia, CRW utilizes and repeats such claims in its marketing of Dura’s brake rotors in Virginia.

4. These claims are false because certain of Dura’s brake rotors deviate significantly from OE specifications and do not match the performance of OE rotors.

5. Affinia and Dura are competitors in the aftermarket automotive parts industry.

6. The aftermarket is concerned with the manufacturing, importation, distribution, retailing and installation of automotive parts after the first sale of the automobile by its manufacturer.

7. The original automobile manufacturers, such as Ford, General Motors, Toyota, and Honda, will be referred to as Original Equipment Manufacturers (“OEMs”). Automotive parts that are contained in a vehicle at the time of its first retail sale are generally referred to as Original Equipment or OE.

8. Since one of the key areas of competition for automotive replacement parts is quality, aftermarket manufacturers and importers of aftermarket parts have a tremendous incentive to expressly state or otherwise imply to potential purchasers that their parts are consistent with OE specifications and that their performance and durability are consistent with the performance and durability of OE parts.

9. Reputable aftermarket manufacturers and importers take significant steps to ensure that their parts do indeed satisfy OE specifications and perform as well as OE parts.

10. These steps include (i) the study and reverse engineering of the OE part to identify the OE specifications, which can include an analysis of dimensional control limits, surface finishes, hardness, metallurgy and other attributes of the part in question, (ii) the design, creation, and validation of replacement parts that meet or exceed OE specifications, and (iii) if a part deviates from OE specifications, testing the part to verify that it meets OE performance and durability levels.

11. If potential purchasers are told that aftermarket parts from competing suppliers are of comparable quality, *i.e.*, meet or exceed OE specifications, price differences between competing products become significant.

12. Affinia recently learned that Dura has imported aftermarket brake rotors that purport to be replacement parts for certain specified OE brake rotors but do not satisfy the OE

specifications and do not provide performance and durability that is equivalent to that of OE rotors.

13. As discussed more fully below, recent dimensional analysis and other testing conducted by, or on behalf of, Affinia reveals that certain Dura rotors do not meet OE specifications and performance. These rotors are referred to as “Lightweight Rotors.”

14. “Lightweight Rotors” cost less to produce. They are, however, more likely to suffer fatigue. This fatigue, in turn, creates motor safety risks.

15. Despite the fact that Dura’s “Lightweight Rotors” do not meet or exceed OE specifications, defendants continue to expressly state or otherwise imply that every unit meets or exceeds OE specifications and performance.

16. These false claims give defendants an unfair advantage over Affinia, which does not manufacturer or offer for sale “Lightweight Rotors” because of the safety risks involved. Defendants’ false and misleading advertising violates Section 43(a) of the Lanham Act and Va. Code § 18.2-216 and Va. Code § 59.1-68.3 and must be enjoined.

JURISDICTION

17. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000. This Court has supplemental jurisdiction over Affinia’s state law claims under 28 U.S.C. § 1367 because the state law claims are so related to Affinia’s claims under federal law that they are part of the same case or controversy.

18. Dura regularly and through a persistent course of conduct advertises, markets, and sells brake rotors and other automobile parts in Virginia. I.A.P., Inc., doing business as Dura, is

registered to transact business in Virginia. Dura's marketing and advertising material contain false and misleading statements about its products, causing injury in Virginia. Therefore, this Court has personal jurisdiction over Dura pursuant to: Va. Code § 8.01-328.1(A)(1), because Dura has transacted business in Virginia and the claims are related to that business; Va. Code § 8.01-328.1(A)(3), because Dura has caused tortious injury in Virginia by its acts and omissions in Virginia and the claims are related to those acts and omissions; and Va. Code § 8.01-328.1(A)(4), because Dura has caused tortious injury in Virginia by acts or omissions outside Virginia and the claims are related to those acts and omissions.

19. CRW regularly and through a persistent course of conduct promotes, markets, and sells Dura brake rotors in Virginia by utilizing and repeating Dura's claims that its rotors "meet or exceed OEM specifications." CRW is registered to transact business in Virginia, with three separate locations in Richmond, Norfolk, and Roanoke. CRW's marketing and advertising claims contain false and misleading statements about Dura's Lightweight Rotors, causing injury in Virginia. Therefore, this Court has personal jurisdiction over CRW pursuant to: Va. Code § 8.01-328.1(A)(1), because CRW has transacted business in Virginia and the claims are related to that business; and Va. Code § 8.01-328.1(A)(3), because CRW has caused tortious injury in Virginia by its acts and omissions in Virginia and the claims are related to those acts and omissions.

VENUE

20. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Dura and CRW do business in Virginia, because Dura and CRW are corporations subject to personal jurisdiction in this judicial district, and because Dura's and CRW's wrongful conduct has occurred and continues to occur here.

PARTIES

21. Affinia Group Inc. is a leading aftermarket manufacturer and supplier of automotive parts. Affinia designs, manufactures, imports, markets and distributes brake rotors through its Global Brake & Chassis operating group and wholly-owned subsidiaries such as Brake Parts Inc. Affinia is organized under the laws of Delaware, with its principal place of business in Bingham Farms, Michigan.

22. Brake Parts Inc. is a wholly-owned subsidiary of Affinia Group Intermediate Holdings Inc. Brake Parts Inc. is incorporated under the laws of Delaware, with its principal place of business at 1600 Industrial Drive, McHenry, IL 60050-3855. Brake Parts Inc. is, *inter alia*, the entity through which Affinia markets and sells its Raybestos® brand brake rotors.

23. Dura is an importer of aftermarket automotive parts including brake rotors. Dura distributes brake rotors nationwide. One such distributor of Dura rotors is CRW.

24. Dura sells its products through a number of distributors nationally. In Richmond, Roanoke and Norfolk, Virginia, Dura sells its Lightweight Rotors through, among others, CRW. Dura's website (www.duraintl.com) is similarly directed at purchasers of brake rotors, including purchasers located in Virginia. The website enables purchasers to search for Dura brake rotors based on vehicle manufacturer, model, and year and displays the identifying numbers of those parts. The identifying numbers can then be used to order the parts from Dura or CRW, one of its distributors in Virginia.

25. The corporate entities behind Dura—IAP West, Inc. and I.A.P., Inc.—conduct business as “DURA International.”

26. IAP West, Inc. is organized under the laws of California with its principal place of business at 20036 Via Baron, Rancho Dominguez, CA 90220. This address is described on the

DURA International website (www.duraintl.com) as the “Corporate Office” of DURA International. The registered agent of IAP West, Inc., John Kelley, also holds himself out as the President of “DURA International.”

27. I.A.P., Inc. is a New Jersey Corporation with its principal place of business at 26 Englehard Avenue, Avenel, NJ 07001. This address is described on the DURA International website as the location of one of DURA International’s “Distribution Centers.” I.A.P., Inc. also owns the trademark for “DURA International.”

28. I.A.P., Inc. is registered to do business in Virginia. Its registered agent therein is Walter T. Nichols, Jr., whose address is 7917 Timberlake Road, Lynchburg, VA 24502.

29. IAP West, Inc. and I.A.P., Inc. are owned by the Berg family. Members of the Berg family serve as officers of both companies.

30. CRW is a Maryland Corporation with its principal place of business at 1211 68th Street, Baltimore, MD 21237. CRW specializes in replacement wheels and brakes for passenger cars and trucks. It makes sales to fleets, exhaust shops, tire dealers and installers, automotive jobbers and miscellaneous industrial accounts in Virginia, Maryland, Delaware, and Pennsylvania.

31. CRW is registered with the Virginia State Corporation Commission to do business within Virginia. Its registered agent for service of process is Reginald J. Graham, who is also an Executive Vice President of CRW. Mr. Graham’s address listed on the Virginia State Corporation Commission’s Clerk’s Information System is 159 Pinewood Lane, Troutville, VA 24175.

32. CRW has nine separate locations, including three in Virginia: 31901 Castlewood Road, Richmond, VA 23234; 5610 East VA Beach Boulevard, Norfolk, VA 23502; and 1775

Seibel Drive, Roanoke, VA 24012. CRW's Richmond and Norfolk locations are within the Eastern District of Virginia.

FACTS

OE and Aftermarket Parts

33. OEMs typically contract a third party, such as Bosch, Continental Teves or Federal Mogul, to manufacture various OE parts for their vehicles. These third parties are sometimes referred to as OEM Suppliers or Tier 1 Suppliers. OEMs generally work with Tier 1 Suppliers to design and develop components and systems that will satisfy the OEMs' performance and durability standards for their vehicles and OE parts.

34. The OEM Supplier is responsible for delivering a part that satisfies the OE requirements. With respect to the vehicle's brake system, this may include requirements applicable to numerous distinct elements, such as the hydraulics, calipers, brake rotors, brake pads, and brake hoses, as well as any antilock braking system.

35. In satisfying these requirements, the Tier 1 Supplier may sub-contract individual components of a system to a Tier 2 Supplier. The Tier 2 Suppliers are then given drawings and specifications with which they must comply in order to satisfy the OEM's requirements. These drawings and specifications are generally considered proprietary and are not made public.

36. Aftermarket parts can be manufactured by the OEM supplier. In addition, they can be imported or manufactured by an aftermarket supplier.

37. If, as is the case with Affinia and Dura, an aftermarket company does not supply to the OEMs but asserts that its parts will satisfy the OEM's specification and performance levels, that company should take additional steps to ensure that its replacements parts meet or exceed the OE specifications and performance levels.

38. To ascertain the OEM's specifications and the performance of the OE part, the aftermarket companies generally must obtain samples of the parts and reverse engineer them.

39. Alternatively, if the aftermarket company decides to offer a new part that differs from the OEM specifications, the aftermarket company may design a new part, using many of the same techniques used by the OEM. Suppliers such as dimensional and material characteristics.

40. This design process is quite elaborate. The design is not simply copying the original. Rather, using design standards that dictate materials, dimensional control limits, surface finishes, hardness, metallurgy and other attributes of the part in question, the design engineer creates a computer prototype, which is then made into an actual prototype.

41. The prototype may then be tested based on various industry or governmental criteria to validate the design and performance. Once all of these requirements are met, a part will then be considered as meeting or exceeding the OE specifications and performance.

42. Parts that have been subject to this type of analysis and testing are referred to as "engineer validated."

43. Engineering validation is particularly important when the aftermarket company's parts intentionally and materially deviate from the OE specifications.

Aftermarket Industry Participants

44. The aftermarket industry consists of several categories of participants: (i) the aftermarket parts manufacturer/importer noted above; (ii) the aftermarket distributor, sometimes referred to as "Distribution Centers" ("DC") or Warehouse Distributors ("WD"); (iii) the individual parts stores, sometimes referred to as "Jobbers" or "Retailers"; and (iv) the end-

customers, which are either retail do-it-yourself consumer or professional technicians who work in vehicle repair shops.

45. In general, the DC receives an order from the Jobber and will deliver directly to that location, usually overnight. The Jobber will, in turn, sell the part to a do-it-yourself customer or repair shop.

46. In determining which part to purchase, most do-it-yourself customer and repair shops lack the technical knowledge to know whether a part actually meets or exceeds the OE specifications and performance.

47. Typically, the only evidence that such part satisfies the OE specifications and performance is the representation made by the aftermarket importer/manufacturer.

National Traffic and Motor Vehicle Safety Act

48. In 1966, Congress passed the National Traffic and Motor Vehicle Safety Act (the Vehicle Safety Act).

49. Pursuant to the Vehicle Safety Act, the National Highway Transportation Safety Administration (“NHTSA”) issues and enforces certain safety guidelines and standards.

50. NHTSA provides guidance to fabricators and importers like Affinia and Dura via its “Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment” (the “Best Practices”). 73 Fed. Reg. 79207.

51. The stated purposes of the Best Practices is to provide “guidance concerning *best practices* to be followed by importers of motor vehicles and motor vehicle equipment *to reduce the likelihood of importing products that contain defects related to motor vehicle safety or do not comply with applicable Federal motor vehicle safety standards.*” *Id.* (emphasis added)

52. In preparing the Best Practices, NHTSA solicited comments from manufacturers and importers. 73 Fed. Reg. 79208.

53. Several of the comments received by NHTSA concerned record maintenance and indicated that good record maintenance is essential to accountability. 73 Fed. Reg. 79210.

54. One commentator stated that “documentation of a product’s design, its testing, and the process used to manufacture the product should be diligently maintained” as such records allow a company readily to produce appropriate records showing compliance with the Vehicle Safety Act or other industry standards. *Id.*

55. Such records are “particularly important in the event of changes to a product—whether the changes be in material components, the manufacturing process, or test procedures.” *Id.*

56. The Best Practices identifies a “duty” of manufacturers and importers to notify the NHTSA of its parts that contain any defect that the manufacturer or importer, in good faith, determines impacts motor vehicle safety. 73 Fed. Reg. 79213.

57. Another best practice relates to the exercise of great care in selecting foreign fabricating manufacturers. 73 Fed. Reg. 79215.

58. The Best Practices recommends that the importer measure the product against established standards, such as OE specifications and performance. 73 Fed. Reg. 79216.

59. The Best Practices states, “. . . the importer may wish to measure the product’s design against a known set of objectives for the product and compare the product’s design to that of similar products produced by other manufacturers.” *Id.*

The Introduction of “Lightweight Rotors” and Affinia’s Dimensional Analysis

60. Upon information and belief, starting in the Summer of 2008, some companies selling foreign-manufactured aftermarket replacement brake rotors, including Dura, began intentionally deviating from the OE specifications regarding brake rotors. In particular, they began changing the overall weight, air gap, vane count, and vane width of the rotors.

61. In the Spring of 2009, Affinia contracted with an independent testing facility to conduct a dimensional analysis comparing the overall weight, air gap, vane count, and vane width of the Dura imported rotors against the OEM. This analysis revealed significant differences.

62. The Dura rotors Affinia measured and analyzed are marketed for use on thousands of vehicles on the road today, including the 2005 Chevrolet Silverado and the 2007 Dodge Caravan.

63. Affinia’s analysis confirms that many of Dura’s “Lightweight Rotors” do not meet OE specifications.

64. As the table below illustrates, the weight of certain Dura aftermarket brake rotors differ significantly from the weight of the OE rotors they purport to replace by as much as 18.83 percent:

Applications	OE Weight (KG)	Dura Weight (KG)	Weight Difference
2005 Chevrolet Silverado 1/2 Ton	11.681	9.481	18.83%
2007 Dodge Caravan	7.550	6.410	15.10%

65. As the table below illustrates, the width of the air gap by the rotor plates in certain Dura aftermarket rotors is significantly greater than the width of the air gap in the OE rotors they purport to replace by as much as 68.58 percent:

Applications	OE Air Gap (mm) Total/Inner Cheek/Outer Cheek /(AVG)	Dura Air Gap (mm) Total/Inner Cheek/Outer Cheek /AVG	Air Gap Difference (AVG)
2005 Chevrolet Silverado 1/2 Ton	7.80/7.88/ 7.78/8.70/ (8.04)	13.49/13.49/ 13.56/13.68/ (13.56)	68.58%
2007 Dodge Caravan	8.50/8.16/ 8.21/8.51/ (8.34)	13.10/13.31/ 13.27/13.54/ (13.31)	59.48%

66. As shown in the table below, the thickness of vanes in certain Dura aftermarket rotors differs significantly from the thickness of vanes in the OE rotors they purport to replace by as much as 31.20 percent.

Applications	OE Vane Thickness (mm) (w/AVG)	Dura Vane Thickness (mm) (w/AVG)	Vane Thickness Difference (AVG)
2005 Chevrolet Silverado 1/2 Ton	5.41/5.32/ 5.50/5.72/ (5.49)	5.30/5.84/ 5.61/5.29/ (5.51)	0.41%
2007 Dodge Caravan	8.17/8.05/ 8.27/8.14/ (8.16)	5.52/5.74/ 5.42/5.77/ (5.61)	31.20%

67. The table below shows that the inner cheek thickness in certain Dura aftermarket rotors differs significantly from the inner cheek thickness in the OE rotors they purport to replace by as much as 26.48 percent.

Applications	OE Inner Cheek Thickness (mm) (w/AVG)	Dura Inner Cheek Thickness (mm) (w/AVG)	Inner Cheek Thickness Difference
2005 Chevrolet Silverado 1/2 Ton	11.17/11.19/ 10.96/10.44/ (10.94)	8.10/8.22/ 8.09/8.38/ (8.20)	25.07%
2007 Dodge Caravan	9.2/9.37/ 9.46/9.28/ (9.33)	7.02/6.92/ 6.82/6.67/ (6.86)	26.48%

68. The table below shows that the outer cheek thickness in certain Dura aftermarket rotors differs significantly from the outer cheek thickness in the OE rotors they purport to replace by as much as 26.61 percent.

Applications	OE Outer Cheek Thickness (mm) (w/AVG)	Dura Outer Cheek Thickness (mm) (w/AVG)	Outer Cheek Thickness Difference
2005 Chevrolet Silverado 1/2 Ton	11.16/11.05/ 11.38/10.98/ (11.14)	8.36/8.21/ 8.27/7.87/ (8.18)	26.61%
2007 Dodge Caravan	10.41/10.58/ 10.44/10.32 (10.44)	8.03/7.90/ 8.03/7.92/ (7.97)	23.64%

69. And, finally, as demonstrated in the table below, the overall thickness in certain Dura aftermarket rotors differs from the overall thickness in the OE rotors they purport to replace by as much as 0.64 percent.

Applications	OE Overall Thickness (mm) (w/AVG)	Dura Overall Thickness (mm) (w/AVG)	Overall Thickness Difference
2005 Chevrolet Silverado 1/2 Ton	30.127/30.122/ 30.120/30.123/ (30.123)	29.95/29.92/ 29.92/29.93 (29.93)	0.64%
2007 Dodge Caravan	28.109/28.106/ 28.112/28.105/ (28.108)	28.147/28.131/ 28.124/28.128/ (28.133)	0.09%

70. The “Lightweight Rotors” imported by Dura are marketed for use on hundreds of thousands of vehicles on the road today.

71. Upon information and belief, these dimensional changes were not based upon engineering or performance criteria, but were instead based on some other criteria, such as a desire to reduce mass and control costs.

**Dura’s Decision to Deviate from OEM Specifications
Impacts the Performance of Its Rotors**

72. Dura’s changes to its “Lightweight Rotors” are not merely cosmetic. Rather, these changes have reduced the overall mass of the rotor, which impacts performance. Tests conducted by a third party laboratory at Affinia’s request confirm that these changes have significantly impaired performance.

73. Brake rotors and other components of a vehicle’s braking system can be tested through the use of a test called the Dual Dynamometer Differential Effectiveness Analysis, or D3EA.

74. Used by OEMs, the D3EA recreates and measures braking performance under real world vehicle-specific conditions.

75. While recreating simultaneous front and rear braking under vehicle-specific conditions including vehicle loading and brake cooling, the test comprehends all existing brake system components including rear brake proportioning, electronic brake distribution, and hydraulic displacement limits.

76. As a result, the D3EA is acknowledged and adopted by industry leaders as the only laboratory-based test to properly predict, evaluate and confirm friction balance and true braking performance.

77. D3EA or comparable thermal fatigue tests are used by OEMs to evaluate OE rotors.

78. In applying thermal fatigue tests, the OEM would expect the rotor to survive 100 cycles without cracking that reaches the edge of the surface of the rotors.

79. Rotors that do not meet 100 cycles are usually not accepted by the OEM.

80. In conducting thermal fatigue tests, the industry practice is to test to 150 cycles because this provides sufficient data to assure that the rotor will perform properly.

Analysis and Testing of Dura Brake Rotors

81. In the Spring of 2009, an independent laboratory conducted tests on certain Dura “Lightweight Rotors.”

82. The independent laboratory, using the D3EA structural integrity test, found a reduction in the fatigue life of the Dura Lightweight Rotors, which may impact motor safety via structural failures in the rotors.

83. Of the six Dura Parts Master Rotors tested on the 2007 Dodge Caravan application, five developed cracks, with three failing after 60 cycles and *one failing after only 50 cycles*. Only one rotor lasted the minimum 100 cycles before failing.

84. The six Dura Parts Master rotors tested on the 2005 Chevrolet Silverado application were just as unimpressive. There, five Dura rotors cracked at 75 cycles, while one made it to 150 cycles without cracking.

Interplay between Rotor Fatigue and Motor Safety

85. The consequences of rotor failure will depend upon the failure mode and other factors. The potential consequences include: loss of torque at one wheel, loss of pressure at two

wheels, single wheel lock-up, extended stopping distances, reduced steering response, and unintended steering input, all of which impact motor safety.

86. In response to these concerns, on June 23, 2009, the *Aftermarket News* published an editorial warning that the aftermarket brake industry could either take “proactive” measures “to secure and certify our supply of brake parts” or “simply react to every bad news story or bad supplier until we have no control of the situation.” See Ex. 1, Copy of *Aftermarket News* editorial, June 23, 2009. The editorial concluded that “we can either look both ways and make the right decisions, or plow through hoping no one is hurt and our suppliers (and your shop’s profits) do not receive a long-term handicap.” *Id.*

87. These safety concerns prompted the aftermarket automotive industry publication *Automotive Week* to publish an editorial on June 26, 2009 titled “LIGHTWEIGHT, LOW-QUALITY ROTORS ARE A SERIOUS INDUSTRY ISSUE” that commended Affinia “for speaking out on this matter” and warned that loss of customer trust because of rotor safety-related problems “is the kiss of death for individual shops and our industry as a whole.” See Ex. 2, Copy of *Automotive Week* editorial, June 26, 2009.

Dura’s and CRW’s False Advertising

88. As illustrated above, Dura’s rotors do not meet OE specifications and performance, yet Dura and CRW have disseminated claims and/or advertisements falsely stating that every unit meets OE specifications and performance, thereby making material misrepresentations about the nature, characteristics or qualities of its rotors.

89. On its web site (<http://www.duraintl.com/rotors.html>), Dura makes the express claim that “[e]very unit produced by Dura International is designed to meet or exceed original equipment specifications and performance.” See Ex. 3, Screen captures of Dura’s web site.

90. This is an express claim that every unit, including “Lightweight Rotors,” produced by Dura meets or exceeds OE specifications.

91. It is also an establishment claim because it implies that Dura has data from properly conducted tests to substantiate the claim.

92. This statement is literally false because Dura’s “Lightweight Rotors” do not meet or exceed OE specifications or performance.

93. Dura also claims on its web site that it “[e]nsures that all drums & rotors meet or exceed OEM specifications.” *See* Ex. 3.

94. This is another express claim that all of its rotors meet or exceed OE specifications.

95. It is also an establishment claim because it implies that Dura has data from properly conducted tests to substantiate the claim.

96. This statement is literally false because Dura’s “Lightweight Rotors” do not meet or exceed OE specifications and performance.

97. In addition to claims on its web site, Dura has made literally false statements in a brochure entitled “Drums and Rotors,” (hereinafter “Brochure”) which is available on its website. This brochure is directed and circulated to purchasers of brake rotors. *See* Ex. 4, Copy of Dura Drums and Rotors Brochure.

98. In the Brochure, Dura states: “Every unit produced by Dura International is designed to meet or exceed original equipment specifications and performance.” *See id.*

99. This is an express claim that every unit, including “Lightweight Rotors,” produced by Dura meets or exceeds OE specifications.

100. It is also an establishment claim because it implies that Dura has data from properly conducted tests to substantiate the claim.

101. This statement is literally false because Dura's "Lightweight Rotors" do not meet or exceed OE specifications and performance.

102. Dura's Brochure in connection with its marketing claim about new product offerings also states: "If your customer has a 2008 Dodge Grand Caravan or a 1995 Honda Civic, Dura International has the correlating brake drum or rotor they need in stock." *See* Ex. 4.

103. This statement necessarily implies that all Dura rotors compatible for these automobiles, including 2001-2007 Dodge Caravan rotors, minimally meet OE specifications and performance.

104. The statement is also an establishment claim because it implies that Dura has data from properly conducted tests providing substantiation for the claim.

105. This claim is also literally false because Dura rotors marketed for use in Dodge Caravans do not meet OE specifications and performance.

106. The Brochure also states that "[Dura's] brake drum and rotor program is the professional's choice for quality" *See* Ex. 4. Dura's brochure further states: "Each unit manufactured by Dura International goes through a rigid quality control process that involves ongoing metallurgical tests, systematic dimensional testing and production product sampling. This dedication to high production standards results in brake drums and rotors with the quality, safety and reliability your customers demand." *Id.*

107. These statements necessarily imply that all Dura rotors at a minimum meet OE specifications and performance.

108. These statements are literally false because Dura's "Lightweight Rotors" do not meet OE specifications and performance.

109. On June 18, 2009, Dura released a statement to customers discussing the "industry issue of brake rotor plate thickness." In this release, Dura stated: "Safety and quality are of paramount importance to IAP/Dura International"; and "IAP/Dura International factory engineers are guided by OE fit, form and function to ensure correct interchangeability and functionality of our brake rotors." See Ex. 5, Copy of Dura statement to customers, June 18, 2009.

110. This statement necessarily implies that all Dura rotors at a minimum meet OE specifications and performance.

111. This statement is literally false because Dura's "Lightweight Rotors" do not meet OE specifications and performance specifications.

112. These statements necessarily imply that all Dura rotors at a minimum meet OE specifications.

113. These statements also constitute an establishment claim because they state that Dura has data from properly conducted tests providing substantiation for the claim.

114. This claim is also literally false because, as Affinia's tests confirmed, Dura rotors do not meet OE specifications and standards.

CRW's False Advertising

115. CRW sells Dura "Lightweight Rotors" from its store located at 31901 Castlewood Road, Richmond, VA 23234.

116. On information and belief, CRW sells Dura "Lightweight Rotors" in its two other stores located in Norfolk and Roanoke, Virginia.

117. CRW began distributing Dura parts because of their lower price in comparison to other U.S.-made parts.

118. On information and belief, CRW has consistently represented to consumers that all of the rotors it sells, including the Dura “Lightweight Rotors,” meet OE specifications and performance.

119. On information and belief, CRW does not advise customers or potential customers that Dura’s “Lightweight Rotors” do not meet the OE specifications and performance. Instead, CRW through its actions, express or implied, misleads customers or potential customers into believing that all rotors its sells, including Dura’s “Lightweight Rotors,” meet the OE specifications and performance.

120. As noted above, the analysis and tests conducted on behalf of Affinia demonstrate that Dura “Lightweight Rotors” do not meet OE specifications and performance.

121. CRW’s representations are literally false or are otherwise misleading.

Count I: False Advertising (Lanham Act, 15 U.S.C. § 1125(a))

122. Affinia incorporates by reference the allegations of paragraphs 1 through 121 of this Complaint as though fully set forth herein.

123. Defendants have, in commercial advertising and promotion, misrepresented the nature, characteristics or qualities of the Dura “Lightweight Rotors” in interstate commerce, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

124. Defendants’ violations of 15 U.S.C. § 1125(a) are intentional and willful, and entitle Affinia to recover from defendants damages in an amount to be determined at trial.

125. Defendants’ intentional and willful violations of 15 U.S.C. § 1125(a) entitle Affinia to recover its reasonable attorneys’ fees in an amount to be determined at trial.

126. Defendants' actions are causing Affinia to suffer irreparable harm. Specifically, Defendants' action divert market share from Affinia, for which there is no adequate remedy at law.

127. Additionally, defendants' actions undermine consumer confidence in the safety of the aftermarket rotor industry in general, which will inflict on Affinia (as a market leader) a disproportionate loss of goodwill with customers who abandon the aftermarket altogether and shift their sales to OE manufacturers.

128. Defendants' actions have also caused Affinia to lose sales of its rotors because customers have chosen less expensive Dura "Lightweight Rotors" in place of Affinia's rotors, believing the "Lightweight" Dura rotors "meet or exceed original equipment specifications and performance."

129. Unless and until defendants' actions are enjoined, Affinia will continue to suffer irreparable harm, lost sales and damages.

Count II: Virginia State Law False Advertising Claim

130. Affinia incorporates by reference the allegations of paragraphs 1 through 129 of this Complaint as though fully set forth herein.

131. Defendants have intentionally falsely advertised Dura "Lightweight Rotors" for the purposes of inducing consumers, retailers and the public to purchase more of those products.

132. Defendants' conduct as described herein constitutes false advertising, and making representations or statements of fact in advertising promoting Dura "Lightweight Rotors" that are untrue, deceptive, or misleading, in violation of Va. Code § 18.2-216 and Va. Code § 59.1-68.3.

133. Affinia is entitled to recover from defendants the damages that Affinia has suffered from the false advertising, as well as its reasonable attorneys' fees, pursuant to Va. Code § 59.1-68.3.

PRAYER FOR RELIEF

WHEREFORE, Affinia prays for judgment as follows:

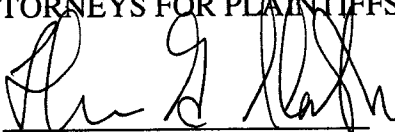
1. Permanently enjoin defendants from publishing, making or disseminating (including over the Internet) false claims on, or in connection with, Dura's "Lightweight Rotors";
2. Permanently enjoin defendants from falsely implying that Dura's "Lightweight Rotors" meet or exceed OE specifications and performance;
3. Affirmatively require defendants to identify Dura's "Lightweight Rotors" that deviate from OE specifications and performance as in fact not meeting OE specifications and performance;
4. Affirmatively require defendants to disclose that Dura's "Lightweight Rotors" which deviate from OE specifications and performance have not been tested to determine if they meet or exceed OE specifications and performance;
5. Affirmatively require Dura to publish corrective advertising in a medium likely to reach consumers disclosing that its "Lightweight Rotors" deviate from OE specifications, have not been tested to meet or exceed OE specifications and performance, and have not been subjected to independent engineering validation.
6. Award Affinia actual compensatory damages as a judgment against defendants in an amount to be determined at trial for their violations of the Lanham Act, 15 U.S.C. § 1125, and Va. Code § 18.2-216 and Va. Code § 59.1-68.3;

7. Award Affinia treble damages as a judgment against defendants for their willful violations of the Lanham Act;
8. Award Affinia its costs and reasonable attorneys' fees from defendants pursuant to the Lanham Act and Va. Code § 59.1-68.3; and
9. Enter such other relief as may be just and proper.

Dated: July 8, 2009

Respectfully submitted,

HUNTON & WILLIAMS LLP
ATTORNEYS FOR PLAINTIFFS

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*Pro Hac Application to be filed

EXHIBIT 1

The Automotive Aftermarket's
Premier Resource for
News and Analysis

Babco

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Standards and Certifications: Can We Regulate Replacement Brake Parts?

You have probably heard the stories about brake rotor manufacturers taking metal out of the castings to save money, or brake pad manufacturers using a single formulation across an entire line of pads. It starts to get even scarier when you realize there are no enforceable government or industry accepted regulations for replacement brake parts.

By Andrew Markel

Tuesday, June 23, 2009

We have come to a critical intersection in the aftermarket brake business. We can be proactive by taking measures to secure and certify our supply of brake parts, or we can just simply react to every bad news story or bad supplier until we have no control of the situation.

Don't look to the government for solutions. The National Highway Traffic Safety Administration's and the Department of Transportation's main focus is not on testing the quality or performance of replacement brake parts, they just want to be able to track and recall brake parts after enough people are killed.

The first serious accidents where a group of drivers (or their grieving families) can claim "brake failure" due a substandard part could mean increased regulation for not only the brake part manufacturers, but also for your shop. Our only tool to prevent this disruption is voluntary test standards and certifications.

One example of an effort to create an independent certification is the Motor Equipment Manufacturers Association's (MEMA) Brake Manufacturers Council (BMC) development of the Brake Effective Evaluation Procedure (BEEP) testing and certification program.

BEEP testing is performed in a laboratory on a machine called a brake dynamometer. The machine measures the performance characteristics of a friction material and compares it to specific parameters taken from a specific production vehicle that has undergone FMVSS135 testing.

BEEP goes even further to ensure manufacturers are producing quality products in a consistent manner. First, the friction material must be produced at a facility that meets and maintains specific QS and ISO certifications. Second, manufacturers must conduct and pass BEEP tests on a select 12 different part numbers that include full-size trucks, SUVs and compact cars. Last, the manufacturer must pass annual off the shelf audits.

MEMA's BMC recently released an enhanced BEEP Certification Program. The improved BEEP certification is based on the SAE J2784 testing standard. SAE J2784 is designed to replicate the government's FMVSS135 on-vehicle testing using a single-ended brake dynamometer. By updating BEEP to the J2784 standard, it is now able to better test vehicles with ABS and electronic brake force distribution.

Since BEEP's introduction in 2001, it has been a success on the technology and standardization front. It is a transparent standard open for review by the aftermarket brake industry. On the marketing and communications front, BEEP has had an uphill struggle. It has been often said to me off the record, that many friction companies use the BEEP testing and data on dynamometers as a quality check for their brake pads, even if they are not certified under BEEP. Even if a manufacturer is BEEP certified or potentially could be BEEP certified, they do not reveal this information in fear that technicians and buyers might associate their brand with what they feel is a lesser or "value" brand promoting BEEP certification. It is a confusing conundrum where marketing and branding takes over from common sense.

We are at a crossroads in the brake service industry. We have been forced here on a road paved with profits and good intentions. At this intersection we can either look both ways and make the right decisions, or plow through hoping no one is hurt and our suppliers (and your shop's profits) do not receive a long-term handicap.

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EXHIBIT 2

PERSPECTIVE . . .

LIGHTWEIGHT, LOW-QUALITY ROTORS ARE SERIOUS INDUSTRY ISSUE

For someone as cynical as I am, it's easy to look at Affinia Global Brake & Chassis's press release of June 15 concerning lightweight brake rotors as simply a matter of responding to competitive forces in the marketplace. And, like anybody in business, they have to think in terms of competing for continuing sales.

Affinia sent out a warning noting that thin plate rotors — primarily showing up from off-shore sources — create a serious potential for brake performance issues, including brake system failures. "These replacement rotors deviate widely in thickness, air gaps, vane configurations and overall have a significant reduction in the effective thermal mass or weight," the release noted. "These changes to the rotor makeup and design do not conform to the OE specifications and adversely affect the product performance, leading to the possibility of rotor failure and braking system problems. Brake rotors are a safety-related component and should never be compromised from OE design without engineering validation."

The warning called for service dealers to report early brake rotor failure, such as cracked or separated disc brake rotors, to the National Highway Traffic Safety Administration (NHTSA) Office of Defect Investigation at 1-888-327-4236 or online at <http://www-odi.nhtsa.dot.gov/ivoq/index.cfm>.

Yet, even the skeptics have to admit that this is a serious issue and one that requires of our industry the type of professional diligence with which we should always adhere — a level of concern for the safety of consumers, as well as the credibility of repairs made in independent aftermarket shops.

Right now, there are no significant baseline standards in regard to the design of these critical replacement components, or most aftermarket replacement parts. There are regulations, however, in regard to the safety of imported products — following on the heels of pet food and other product safety issues that arose a couple of years back. In any case, for the most part, the quality of replacement automotive parts has been market-driven, and this industry has always taken significant pride in not just matching but surpassing the quality of the original equipment parts — parts that are almost always properly and professionally engineered in the first place by the carmakers.

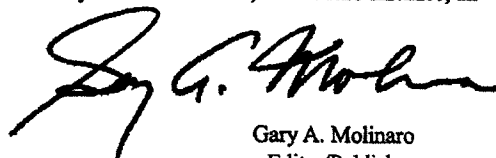
Except in the face of a rash of tragic accidents, there will be little done by NHTSA or other government agencies concerning this rotor issue. It is up to the parts makers and parts distributors to deal with the potential problem. So Affinia, whose family of brands includes Raybestos, deserves credit for speaking out on this matter.

One would even hope an organization like the Brake Manufacturers Council might take action on this issue, but that might be politically ticklish if any of its members are importing and marketing these seemingly-substandard products.

The key to dealing with this issue is in the hands of the marketers of these products, the suppliers and distributors who are driven to the cheaper product in a highly-competitive arena that is always demanding a better price and improved profit margins. But, all of us know that we are an industry built on repeat business and customer trust, and warranty returns, especially on safety-related areas, is the kiss of death for individual shops and our industry as a whole.

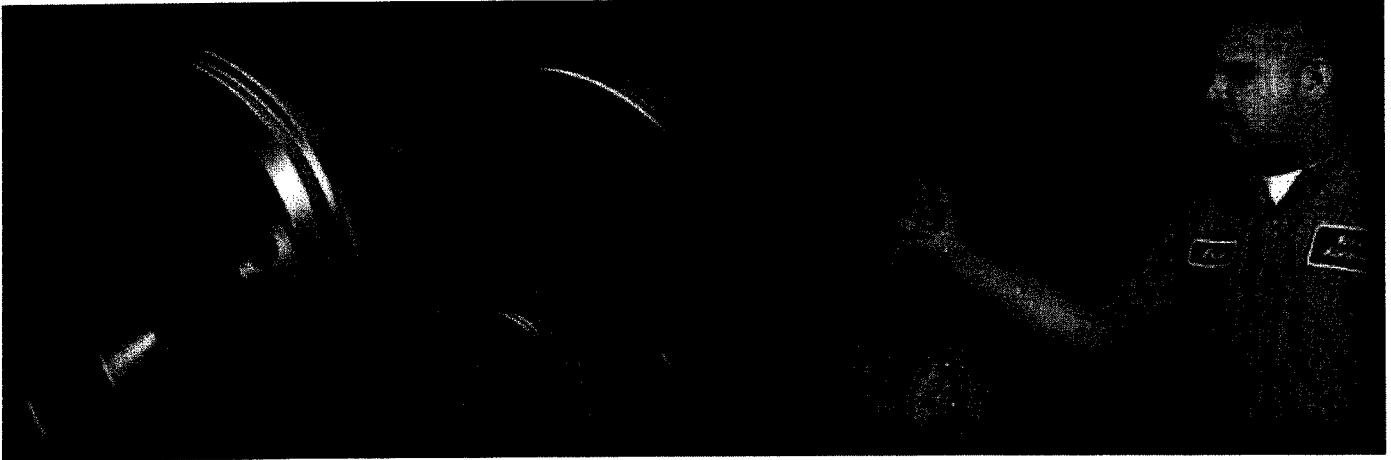
Most problems in our industry require complex analysis and detailed plans to remedy the concern. But, in this rare instance, all that is required of us is to just say no to lesser quality that may, in any way, lead to returns or possible safety issues.

Quality products from quality suppliers have been the foundations of this industry, and that is the simple solution to this potential problem.



Gary A. Molinaro
Editor/Publisher

EXHIBIT 3



Home Company Products Literature Part Lookup Contact Us

Drums & Rotors



Dura International has a rich history in manufacturing, importation and distribution of aftermarket automotive products. The company began over 40 years ago as an importer, primarily supplying the air-cooled Volkswagen market. Through the years we have developed a diverse product offering. Our brake drum and rotor program is the professional's choice for quality, cataloging, profitability and first to market applications.



We take pride in our attention to detail and our reputation for outstanding quality. Each Dura International brake drum and rotor is designed and engineered in conjunction with globally sourced manufacturing partners. Every unit produced by Dura International is designed to meet or exceed original equipment specifications and performance.

Features

- Over 1300 S.K.U.'s available
- Meets OEM G3000 Metallurgy Standards
- Precision balanced
- Ongoing Testing of: Thickness Variation, Run Out, Parallelism and Dimensional Verification
- Non-directional swirl finish
- Multiple Vein Configurations
- OE detailed castings with extractor and set screw holes where require

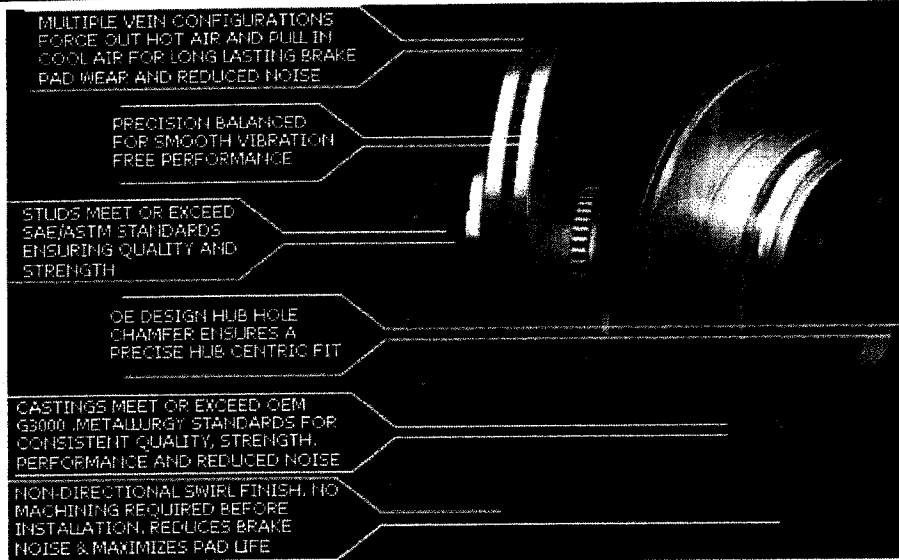
Benefits

- 98% coverage for cars and light trucks
- Consistent quality, strength, performance and reduced noise
- Guarantees smooth, vibration-free performance
- Ensures that all drums & rotors meet or exceed OEM specifications
- No machining required before installation
- Reduces brake noise & maximizes pad life
- Forces out hot air and pulls in cool air for long lasting brake pad wear and reduced noise
- Ensures an easy installation

OE design Hub Hole Chamfer

Ensures a precise hub centric fit

The Brake Down

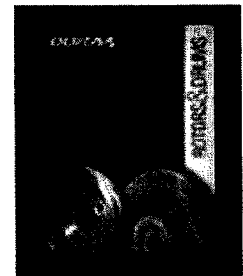


Product Lookup

[Click here for product lookup.](#)

Brochure

Click the image below to download our "Drums and Rotors Brochure"



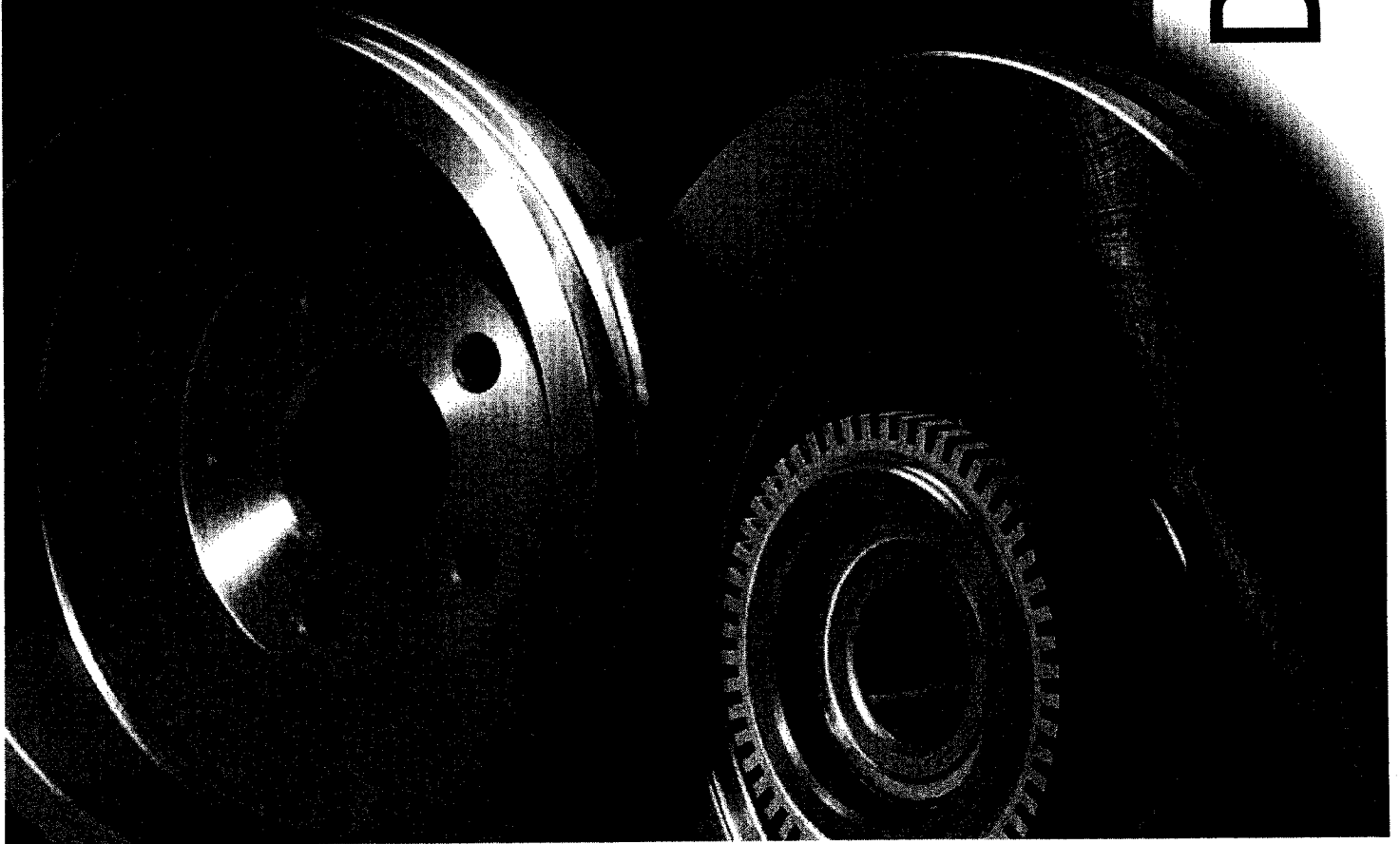
[Home](#) - [Company](#) - [Literature](#) - [Contact Us](#)

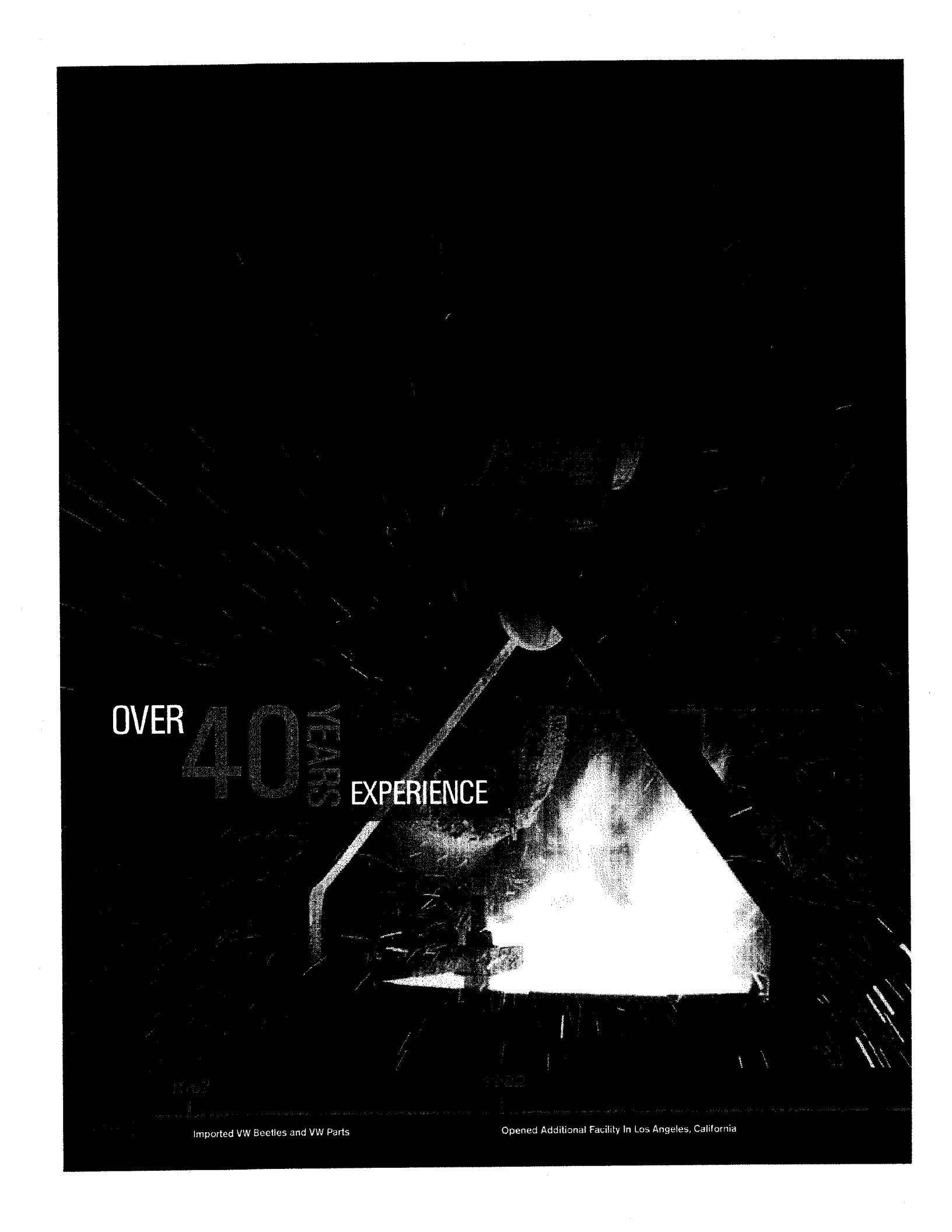
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EXHIBIT 4

DURA 
INTERNATIONAL

DRUMS & ROTORS





OVER 40 YEARS EXPERIENCE

1967

1982

Imported VW Beetles and VW Parts

Opened Additional Facility In Los Angeles, California

MANUFACTURING

Dura International has a rich history in manufacturing, importation and distribution of aftermarket automotive products. The company began over 40 years ago as an importer, primarily supplying the air-cooled Volkswagen market. Through the years we have developed a diverse product offering. Our brake drum and rotor program is the professional's choice for quality, cataloging, profitability and first to market applications.

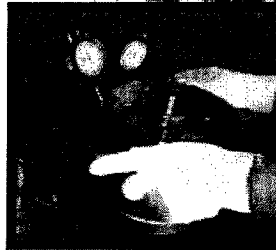
We take pride in our attention to detail and our reputation for outstanding quality. Each Dura International brake drum and rotor is designed and engineered in conjunction with globally sourced manufacturing partners. Every unit produced by Dura International is designed to meet or exceed original-equipment specifications and performance.

Over 98% of passenger cars and light trucks on the road today can be fitted with brake drums & rotors manufactured by Dura International, making them the perfect product to be stocked on your shelves. Dura International's excellent products, combined with a lean business model and multiple distribution centers, ensures expedient delivery and an enhanced bottom line.

Each unit manufactured by Dura International goes through a rigid quality control process that involves ongoing metallurgical tests, systematic dimensional testing and production product sampling. This dedication to high production standards results in brake drums and rotors with the quality, safety and reliability your customers demand. Dura International has an impressive reputation in the automotive industry for its commitment to quality and service at affordable prices.



Dura drums and rotors are manufactured to supply reliability and performance



1973

Evolved Into a Major Aftermarket Importer

1979

Pioneered Economy Drum and Rotor Program



FITS **98%** CARS AND
LIGHT-TRUCKS

Introduced Premium Clutch Kit Program

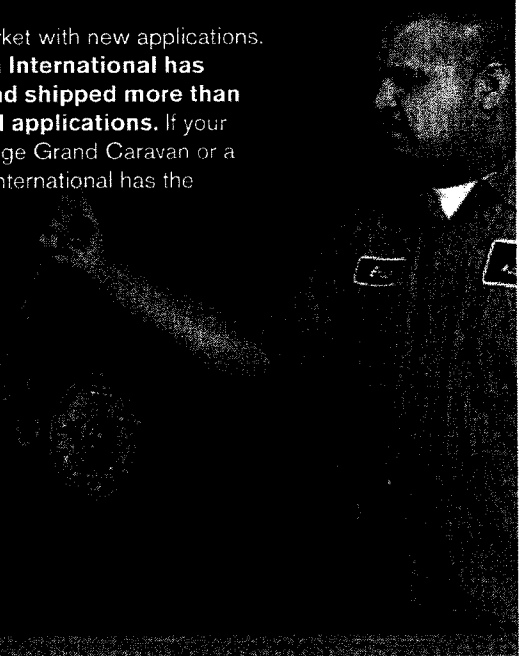
Expanded Brake Drum and Rotor Program To Offer 98% Coverage

PRODUCT

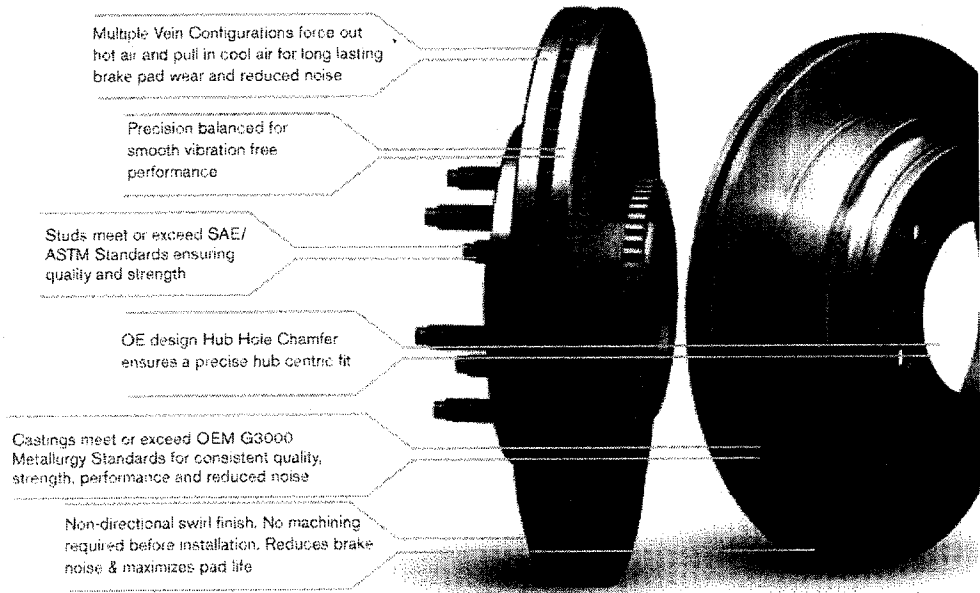
Dura International brake drums and rotors were developed with the features and benefits that professional installers demand. Brake rotors ship ready to install with a double disk ground finish that promotes safe, quick break-in and consistent quiet stopping performance.

Engineered for superior performance, our brake drums and rotors are produced to G3000 metallurgy standards ensuring strong and solid braking. The OEM detailed castings provide easy installation and a precise hub centric fit. Our vented brake rotors have multiple vein configurations for optimum cooling and inspired confidence. Dura International's commitment to exacting tolerances, parallelism and lateral run-out ensures that the products you receive will provide quiet and confident braking.

We strive to be first to market with new applications. **Over the past year Dura International has designed, developed and shipped more than 150 new and late model applications.** If your customer has a 2008 Dodge Grand Caravan or a 1995 Honda Civic, Dura International has the correlating brake drum or rotor they need in stock.



BRAKE ROTOR ANATOMY



2006

Launched Comprehensive Brake Friction Program

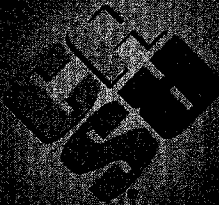
2005

Launch New Water Pump Program

OVER **1300** PARTS
UPDATED DAILY



www.duraintl.com



2005



ACTIVANT

2007



Opened Distribution Center in Memphis Tennessee

Launched Premium Hub Assembly Program

ELECTRONIC CATALOGING

Dura International has one of the most accurate and up-to-date brake drum and rotor catalogs in the automotive aftermarket. Dura International has made a significant investment into an electronic cataloging system and licensed an OEM vehicle database. We employ an in-house professional cataloging staff to support our aftermarket programs. Every Dura International part number is cataloged with photos detailing the front and rear of the brake drum or rotor to visually ensure the proper application.

To support our new part number development, Dura International has developed a proprietary part numbering system. **This system allows you to increase sales by offering your customers the latest new numbers months before your competition.** In addition, by licensing OEM data, we keep our catalog updated and quickly recognize superseded OE numbers, resulting in reduced customer inventory and increased profits.

Our catalogs are updated with the industry electronic catalog leaders (Activant[®] and WHI Solutions[™]) on a regular basis.

Trying to find a part for a customer's VW Beetle? Not sure which brake & rotor drum best fits a Ford F250? Dura International can help your customers find the exact part they're looking for with Dura International online-cataloging. This comprehensive cataloging system offers accurate and up-to-date product application information that you or customers can access over the internet. You'll never need to worry about out of date information since Dura International updates the information every 30 days.



With our up-to-date online cataloging, you always have what your customer needs.

1007

1008

Implemented Full Line E-Catalog with Activant & Wrenthead

Launched On-Line Web-Catalog with Year, Make, Model lookup



3 DISTRIBUTION CENTERS

DISTRIBUTION

Distribution is a vital component of our satisfied customer base and over-all success. We have three distribution centers located in California, Tennessee, and New Jersey. **Our national distribution system gives us a distinct advantage, which enables us to consistently expedite prompt, cost-effective delivery of more than 1,300 drum and rotor part numbers.**

Dura International offers award-winning customer support with a personal touch. The dedication put into customer service allows Dura International to offer you same day order confirmation, prompt order turn around, and a consistently high rate of order fulfillment. If you have a question or concern, contact us at 800-388-4442 or 24/7 online at www.duraintl.com. We know what it's like running a business; therefore we strive to take the hassle out of running yours by making sure you get the parts you need when you need them.



INTERNATIONAL

20036 South Via Baron, Rancho Dominguez, California 90220
26 Englehard Ave, Avenel, New Jersey 07001
3920 Delp Street, Memphis, Tennessee 38118

Customer Service Lines

Phone: 800-388-4442 or 310-667-9720, ext 2
Fax: 310-884-9119

www.duraintl.com

EXHIBIT 5

DURA **INTERNATIONAL**

June 18, 2009

To our valued customers:

Safety and quality are of paramount importance to IAP/Dura International. We are proud of our proven track record of supplying quality drums and rotors to the US aftermarket for over 15 years. Year in and year out IAP/Dura maintains one of the lowest return rates in the drum and rotor aftermarket. This is why we are very concerned by the latest industry issue of brake rotor plate thickness. IAP/Dura International factory engineers are guided by OE fit, form and function to ensure correct interchangeability and functionality of our brake rotors.

We recognize the challenge faced by all aftermarket brake rotor manufacturers in adhering to a set of standards for the production of brake rotors. Contrary to the inference others have made, today no government standard exist specifically for rotors. Each and every manufacturer is independently responsible for producing quality product meeting acceptable standards in fit, form and function.

We have quality control policies and procedures in place both at our ISO/TS16949:2002 certified manufacturing facilities and at each of our three distribution centers. Metallurgical analysis of the iron used in our rotors is preformed during and after the production process. Additionally, we send our products to independent North American testing laboratories for G3000 metallurgical conformity tests. The goal of our quality control procedures is to ensure our customers get the quality product they expect from IAP/Dura International.

In some cases you will find an aftermarket brake rotor is not identical to the unit on the car due to OE and/or aftermarket consolidations and supercessions. This does not make the replacement unit unsafe. Other industry participants would make you believe that there is a book that calls out the proper brake rotor plate thickness. This is not true. In fact the OEM's are continually changing and superseding brake rotor designs for the same application.

Ultimately it comes down to safety. We agree with other industry participants that brake safety is of utmost concern to our industry. If for any reason you have any questions regarding the safety or quality of any part manufactured by IAP/Dura International, please call us directly at (800) 388-4442, ext. 736. We are 100% committed to supplying safe quality parts at affordable prices.

Sincerely,

John R. Kelley

John Kelley
President