

**VIA FEDERAL EXPRESS AND E-MAIL**

May 30, 2019

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Cynthia Johnson Walden**  
Principal  
walden@fr.com  
617 956 5928 direct

**Re: Infringement of General Motors Company's Intellectual Property**

Dear [REDACTED],

Our firm represents General Motors Company ("GM") in intellectual property matters. I am writing to follow up on the October 16, 2018 letter from Ms. Angela Caligiuri to your client [REDACTED] regarding his infringement of GM's copyrights in its Authentic Technical Information Services bulletins ("ATIS bulletins"), and the infringement and dilution of the famous GENERAL MOTORS and GM trademarks ("the GM Marks") in connection with the gm.oemdtc.com website. See **Exhibit A**.

Despite receiving notice from GM of this infringement, your client has continued to willfully infringe GM's valuable intellectual property rights. We are writing to repeat the demand that your client cease its infringement of GM's copyrights and trademarks.

GM's bulletins are works of authorship within the meaning of the Copyright Act. As the owner of copyrights, GM enjoys the exclusive right to authorize the reproduction, distribution, and public display (including online) of the original work. From your correspondence with GM's in-house attorneys, we understand that your position with respect to this issue is that no copyright infringement has occurred in light of the National Highway Traffic Safety Administration's ("NHTSA") Statement of Ownership and Restriction of Liability. Such reliance is misplaced and does not protect your client from liability for recopying work clearly not owned by NHTSA.

First, your position is untenable because there is no general exception in the copyright law for federal government uses of protected works. Second, your position is founded on an incomplete reading of the NHTSA's Statement of Ownership and Restriction of Liability.

NHTSA's statements on "Restriction of Liability" and "Ownership" provide:

**RESTRICTION OF LIABILITY:** The NHTSA/DOT makes no claims, promises or guarantees about the accuracy, completeness, or adequacy of the contents of this web site and expressly disclaims liability for errors and omissions in the contents of this web site.

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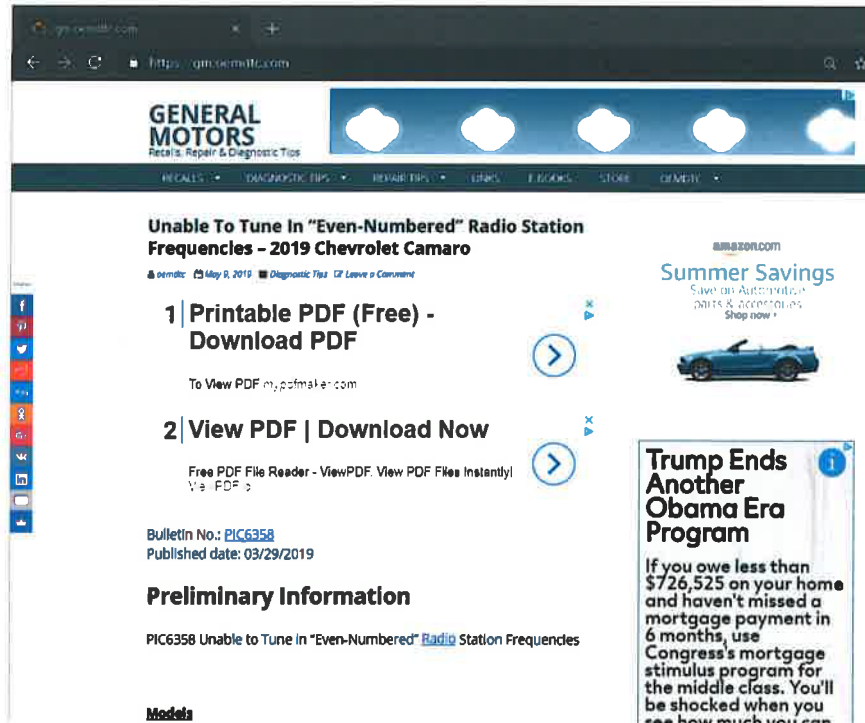
**OWNERSHIP:** Information presented on this web site is considered public information and may be distributed or copied. However, all information submitted to NHTSA/DOT via this site shall be deemed and remain the property of NHTSA/DOT, except those submissions made under separate legal contract. NHTSA/DOT shall be free to use, for any purpose, any ideas, concepts, or techniques contained in information provided to NHTSA/DOT through this site.

*See:* <https://one.nhtsa.gov/About-NHTSA/Statement-of-Ownership-and-Restriction-of-Liability>.

While NHTSA does note that “[i]nformation presented on this web site is considered public information and may be distributed or copied,” such applies only to those aspects of the website which are owned by NHTSA. NHTSA clearly does not intend to allow others to redistribute work that is not owned by NHTSA. For this reason, NHTSA includes in its “Restriction of Liability” that “[n]o warranty of any kind, implied, expressed or statutory, including but not limited to *the warranties of non-infringement of third party rights*...is given with respect to the contents of this web site or its links to other Internet resources” (emphasis added). There can be no doubt that NHTSA’s own terms do not entitle your client to violate GM’s rights, nor do NHTSA’s terms protect your client from liability rising therefrom.

In addition to copyright infringement, your client’s unauthorized use of the GM Marks constitutes trademark infringement and dilution. GM has been providing information and advice about cars for many years under the famous GM Marks to the same customers and through the same channels of trade as those of your client. The use of the mark GENERAL MOTORS RECALLS, REPAIRS, & DIAGNOSTIC TIPS – particularly where “GENERAL MOTORS” is in larger and bolder letters, and the mark is located on the website in the position normally associated with trademarks – appears designed to cause, and indeed is highly likely to cause, confusion, and/or that GM has approved or endorsed your client’s website. A screenshot of your client’s current website reveals the obvious infringing use of the famous GENERAL MOTORS trademark:

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Of course, exacerbating the likelihood of confusion and contributing to the misleading impression that your client is affiliated with GM is that your client is using GM's copyrighted ATIS bulletins on its website.

All of Mr. [REDACTED] unlawful and unauthorized actions described above are an obvious misuse, violation, and infringement of our client's intellectual property rights in violation of federal and state laws. Accordingly, we are writing to demand that your client:

1. Immediately cease all use of GM's copyrighted material, including removing this material from any website under Mr. [REDACTED] control or influence and removing any links to bulletins posted on NHTSA's website;
2. Undertake never to distribute GM's copyrighted material in the future;
3. Immediately and permanently cease all use of the GM Marks, including in domain names;
4. Refrain from any infringement of GM's intellectual property in the future.

[REDACTED]  
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Given the seriousness of this matter, we look forward to receiving your written confirmation to the terms above by no later than **June 10, 2019**.

This letter is without prejudice to the assertion of any and all rights and remedies of GM, all of which are hereby expressly reserved.

Please give this matter your immediate attention.

Sincerely,



Cynthia Johnson Walden

# **Exhibit A**



Angela Caligiuri  
Counsel

General Motors Legal Staff  
300 Renaissance Center  
Mail Code: 482-C22-B24  
Detroit, MI 48265-3000  
Tel : (313) 665-5774  
angela.caligiuri@gm.com

*Via Certified Mail  
and Email: [oemdtc@gmail.com](mailto:oemdtc@gmail.com)*

October 16, 2018

**Re: *Unauthorized Use of General Motors' ("GM's") Intellectual Property***

Dear Mr. [REDACTED]

I have been advised that you are making unauthorized use of GM's intellectual property in connection with your company website. Attached, as evidence of your use, is an image obtained from your website located at [www.gm.oemdtc.com](http://www.gm.oemdtc.com) (Exhibit A).

GM is the owner of the world-famous GM trademark in connection with motor vehicles, among other things. In recognition of GM's rights in the GM trademark and the goodwill associated therewith, GM owns the following representative U.S. Registrations: 861,602; 4,596,433; and 1,476,220; among others.

Notably, you are using the domain name [www.gm.oemdtc.com](http://www.gm.oemdtc.com) to promote your business, which is a name that consists solely of the famous GM trademark and the descriptive terms "OEM DTC". Hyperlinks on your website use the famous GM logo to link to unauthorized copies of copyrighted Service Information and/or Service Software (e.g., Service Bulletins, Safety Recalls), including copyrighted photos included with those bulletins. Additionally, the Service Information and Software are available from the ACDelco TDS Website and are governed by an End User License Agreement ("EULA") and Terms of Use ("ToU"), which must be adhered to in order to gain access to the documentation.

To GM's knowledge, [REDACTED] OEMDTC, or you, individually, have not been authorized to use any of GM's trademarks, copyrights, or variations thereof. Furthermore, to GM's knowledge, there has been no waiver granted to you with regard to the TDS Website's EULA or ToU. Your use of our trademark is likely to cause confusion, mistake and deception among consumers, who may mistakenly assume that you are authorized by or affiliated with GM. Even in the absence of confusion, your use is likely to dilute the distinctive nature of the GM

trademarks and thus constitutes trademark dilution. Furthermore, your unauthorized use of our copyrights infringes upon the exclusive rights we hold as the copyright owner.

Your website and its content infringes upon GM's intellectual property rights.

GM has been, and will continue to be, irreparably damaged should your infringement and dilution continue.

For the reasons above, GM requests that you provide us with written assurances that you will immediately:

- (1) Discontinue all use of the GM trademark(s), including, but not limited to, use in domain name and in hyperlinks;
- (2) Remove all GM copyrighted information, including, but not limited to, Service Information and/or Service Software (e.g., Service Bulletins, Safety Recalls);
- (3) Provide the location and name under which you have obtained access to the GM copyrighted information; and
- (4) Refrain from any further infringements of GM's intellectual property.

We wish to resolve this amicably, but require your prompt reply and cooperation. In this regard, please provide a written response to me (e-mail is acceptable) within fourteen (14) days from the date of this letter agreeing to discontinue the unauthorized use of GM's intellectual property and comply with these requests. Nothing in this letter is intended to waive any rights, remedies, claims, causes of action or defenses of GM, all of which are expressly reserved. Thank you for your cooperation.

Sincerely,



Angela Caligiuri  
Counsel

Enclosure

# EXHIBIT A

(more...)

## NEWSLETTER

Email Address

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