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August 14, 1998

James W. Whitlow  
Deputy Chief Counsel  
US Department of Transportation, FAA  
800 Independence Avenue, S.W.  
Washington, DC 20591

Dear Mr. Whitlow,

By way of introduction, I am an electronics engineer involved in the design, fabrication and certification of aircraft systems and components for over 30 years. I've also been a consultant to Mr. Bill Bainbridge of B&C Specialty Products for the past 15 years. I have a copy of your letter dated 22 July to Mr. McConwell concerning Notice of Proposed Civil Penalty No. 97CE430010. The letter was published in its entirety on the Internet. I am writing to point out serious errors of logic and fact in your letter.

In your letter you state, **"The part's installation on a TC product suggests that the part may have been produced for sale for installation on a TC product, especially if the producer knew of previous, similar installations at the time the part was produced."** Key words here are "suggest" and "may" . . . I find it interesting that your office is willing to bring so much misery upon a citizen based upon conjecture.

I've worked with B&C in their booth at Oshkosh since 1986. I've also been involved in addressing the needs of B&C customers for factual data concerning B&C products. I've spoken with hundreds of individuals on behalf of B&C. When anyone asks about using a B&C product on a certified airplane, the answer is always the same. We've stated emphatically, "you cannot use this product on your airplane without the blessing of the FAA." To my knowledge, no B&C product has been shipped to the owner of a certified aircraft until B&C has been assured that offices of the FAA in the customer's region have agreed to inspect and **approve or reject** the installation.

Your letter states, **"But there is also other information indicating that B&C supplied the Form 337 copies to potential customers, that B&C was aware of the increasing likelihood that the parts it had produced would be installed on TC products, that B&C contributed to the likelihood by informing potential customers of Form 337 installations, and that a B&C brochure states that the L-40 alternator is 'tailored' to fit certain Lycoming engines, some of which are type certified."**

Did you know sir that completed Form 337's are on file in hundreds of locations in this country maintained by type-clubs and repair stations? These are public documents, generated by citizens in their duty to comply with regulations and maintained in FAA records at taxpayer expense. The manner in which Mr. Bainbridge or any other citizen chooses to utilize these documents should not be an issue here. Executed Form 337s are freely circulated and studied for guidance on producing paperwork that meets the FAA's documentation requirements. B&C made these documents available to interested individuals to illustrate FAA **approved** graphics and wordage.

You suggest that an approved Form 337 was used to enhance B&C sales of a product. I can tell you that Mr. Bainbridge does not solicit business from certified aircraft owners. Certified aircraft owners contact B&C after they've seen or heard of an **approved** installation of a B&C product on another owner's airplane. In light of many **approved** and flying installations of the L-40, production of an exemplar Form 337 was only then useful as guidance to owners and their local FAA offices for wrestling with sometimes obscure and often bewildering task of completing required documentation. Form 337s were not provided to convince an aircraft owner to buy a B&C product rather as a courtesy and assist to FAA staff! The Form 337 supplied by B&C was a teaching tool, no more and no less.

You further state, **"Thus the FAA logically interpreted the evidence as indicating**

**that B&C was producing some parts for sale for installation on TC products, without producing those parts under a PMA. However, I also understand that it is not clear at the time that B&C knew of the likelihood of the installations on TC products at the time B&C produced the parts listed in the Notice."**

Your interpretation is flawed. In 15 years of association with B&C and possessing a working knowledge of their marketing practices I can tell you that B&C's primary market is the only growing segment of general aviation - amateur built aircraft. Where B&C has specifically targeted a segment of the TC aircraft market, B&C holds the requisite PMA/STC approvals. From time to time, owners of certified ships, weary of over-regulated, over-priced, certified junk strive to update their machines the right way. Under B&C's technical guidance and **documented approvals** from the cognizant FAA offices, modern, reliable, and affordable (but non-PMA) components from B&C have been installed on many TC aircraft.

Have you ever approached an intersection showing a red light while a policeman standing in the middle waves you on through? Isn't it reasonable to expect that another policeman will not be waiting on the other side to cite you violation of the red light? If you have a problem with the way your officers are running their intersections, how is it incumbent upon Mr. Bainbridge to shoulder the blame and accept punishment for it?

We are not attorneys. We read the rules, ponder, discuss, call the Local FAA offices and then proceed on their guidance. We cannot be expected to second-guess thinking processes of the FAA's inner sanctums. In light of observations of decades of past practices, FAR 21.305(d) and the actions of your people, Mr. Bainbridge was suckered into believing he and his customers were doing the right thing. I'll suggest that Mr. Bainbridge is entitled to the document he was promised at Sun-n-Fun last spring. At the very least you should:

(1) Stipulate that there is no evidence that Mr. Bainbridge knowingly set out to circumvent FAA regulations when he supplied the L-40 alternator cited in 97CE430010.

(2) Acknowledge the fact that Mr. Bainbridge's current misery was promoted by his good faith acceptance of the advice and actions of dozens of FAA personnel who (in the appearance of good faith) worked with B&C customers to safely and economically upgrade their aging aircraft.

(3) The FAA should apologize to Mr. Bainbridge for the sleepless nights, anguish of being unfairly prosecuted, lost revenues suffered while his thoughts and efforts were diverted from service to his customers, and especially for the FAA's assault on his good name.

In light of threats clearly stated in your letter I'll suggest further . . .

(4) Mr. Bainbridge, his associates and customers should be held harmless from any interpretation of the regulations for the dozens of situations prior to but identical with that cited in 97CE430010.

(5) Mr. Bainbridge and his associates should be held harmless from any interpretation of the regulations for similar situations in the future were there is no clear evidence that Mr. Bainbridge or his associates knew of a customer's intent to install a non-PMA, B&C product on a TC aircraft.

Your letter will be inadequate without addressing all of the above points, especially (2) and (3) for it was your good offices that set Mr. Bainbridge up, carried him along for years and then cut him down. The aviation community has watched this situation in bewilderment since it began; it's time for the FAA to do the right thing.

Sincerely,

(signed)

Robert L. Nuckolls, III

cc: Mr. Bill Bainbridge, B&C  
Ms. Jane Garvey, FAA  
Mr. Dick Gordon, FAA

Mr. Guy Gardner, FAA  
Mr. Tom Poberezny, EAA  
Mr. Earl Lawrence, EAA  
Mr. Ben Owen, EAA  
Mr. Paul Fiduccia, SAMA  
Mr. Mike Busch, AVWEB

Enclosure: Copy of Whitlow to McConwell dated 22 July 1998