

●● Motorcycle Justice

Q Dear Harry, while attending the festivities during Daytona Bike Week, I saw many displays of so-called “beanie” helmets or “skullcaps”—you know, the tight-fitting mini-helmets that so many riders wear as protests against mandatory helmet laws.

Of course, a plethora of funny stickers were also on sale meant to decorate these helmets. But what really concerned me were the fake DOT approval stickers designed to allow the wearers of these helmets to claim they believed they were legal when purchased.

Is the penalty for counterfeiting official government property so weak that the vendors had nothing to fear?

Terry from Bakersfield

A DEAR TERRY, THERE is probably an obscure Federal Code Section that makes it illegal to aid and abet the evasion of National Highway Traffic Safety Administration (NHTSA) regulations, but I suspect that the US Attorneys who are charged with its enforcement have their focus on more serious offenses.

As for “counterfeiting government property,” the DOT sticker is not likely to be considered government property.

However, from a more practical standpoint, the DOT sticker counterfeiters and helmet vendors are exposed to serious lawsuits if a rider who mistakenly relies on the sticker as proof of the helmet’s protection is seriously injured or killed.

In such cases, the attorney for the victim will invariably seek out all potentially responsible defendants. And if the victim dies, the offending vendor might even be charged with negligent homicide or involuntary manslaughter (negligently or unintentionally causing a death through the commission of an unlawful act).

If the injured rider or his survivors claimed that the rider believed that the helmet was safe (that it would meet the NHTSA DOT standard), a jury trying to decide the extent to which the helmet vendor may share liability for the loss may or may not buy this assertion.

Note that the DOT certification label, Section 85.6.2 prescribes more on the sticker than just the letters “DOT.” In addition to requiring “FMVSS No. 218”

and the word, “Certified” under “DOT,” the helmet’s model designation and manufacturer’s name must be above “DOT.” A counterfeit sticker is not likely to include those details. The same holds true as to the rider claiming that the helmet was legal if the rider is stopped in a state which requires that the helmet meet DOT requirements (not to be confused with incompetently written state laws which require a DOT sticker on the helmet, instead of requiring the rider to “wear a DOT certified helmet”). If the arresting officer knows what is required on a valid DOT sticker, the rider will lose the “I thought it was valid” argument.

—Harry Deitzler

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