

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN HONDA MOTOR CO., INC.,
YAMAHA MOTOR CORP., U.S.A.,
U.S. SUZUKI MOTOR CORP.,
KAWASAKI MOTORS CORP., U.S.A.,
et al.,

Defendants.

Civil Action No.

87-3525 GAG

FILED

APR 28 1988

JAMES F. DAVEY, Clerk

FINAL CONSENT DECREE

(As amended)

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<u>et al.</u> ,)	
)	
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FINAL CONSENT DECREE

A. THE NATURE OF THE CASE

The complaint in this action was filed by the United States, at the behest of the Consumer Product Safety Commission ("CPSC"), requesting relief under § 12 of the Consumer Product Safety Act, 15 U.S.C. § 2061, as amended (1981). That section authorizes the government to seek, and a court to grant, "such temporary or permanent relief as may be necessary to protect the public" from the risk of "an imminently hazardous consumer product." The subjects of the government's suit are all-terrain vehicles, or ATVs, three- and four-wheeled motorized vehicles intended for off-road use by individual riders on various types of non-paved terrain. Defendants market and sell these vehicles for use by the general public.

The gist of the government's complaint is that ATVs appear relatively benign, but they actually are unique and complex, requiring a high degree of skill and constant attentiveness for safe operation. It is alleged that the peculiar behavioral properties of ATVs, when coupled with their deceptively "safe" outward appearance, result in a high risk of injuries to users,

particularly inexperienced and young users. Hundreds of ATV-related deaths and thousands of severe injuries have occurred since 1982, according to the complaint. The ATV industry, the government claims, has failed adequately to warn potential ATV users about the hazards presented by ATVs. The complaint alleges that television and print advertisements picture ATVs as "family fun vehicles" which pose little danger to their operators, that little safety information is imparted through industry marketing practices and that the current labeling practice is inadequate. Finally, the complaint alleges that the industry's training course has not been properly promoted and, therefore, not utilized by a significant number of ATV purchasers.

Relief of several kinds is sought in this lawsuit. Labels, notices and warnings are sought to advise consumers of the risks which the government claims are associated with ATV use, particularly to children and inexperienced riders. An industry funded training program is requested, as are changes in the marketing of ATVs. A media campaign addressed to correcting the alleged image of ATVs as inherently safe vehicles is also part of the prayer for relief. Finally, a voluntary repurchase program for three-wheeled ATVs and for four-wheeled adult-sized ATVs purchased for those under 16 years of age is also sought.

The preceding paragraphs represent the government's allegations. Because this case is being settled, defendants have not had the opportunity to respond to these allegations. These allegations have not been admitted, nor have defendants conceded that the government's legal and factual positions are valid.

Defendants deny and would contest the validity of the government's allegations in any trial on the merits.

Recognizing that a full adjudication of these claims will involve protracted and extremely costly litigation and may not enhance the common objective of promptly reducing additional deaths and injuries associated with ATV usage, the parties, without agreement with the other side's legal or factual positions, without any admission of fault or liability, and before any testimony has been taken and without trial or adjudication of fact or law, have agreed to enter into this final consent decree. This final consent decree shall supersede the Preliminary Consent Decree which was entered by this Court on December 30, 1987, except that the Preliminary Consent Decree provisions which required defendants to take action during the period of negotiations over this final consent decree remain enforceable to the extent that they were to be executed during that period. In addition, this final consent decree contains the relief which the government believes, if faithfully undertaken as set out below, will obviate the need for a trial on the merits. Accordingly, the plaintiff and defendants American Honda Motor Co., Inc., Yamaha Motor Corp., U.S.A., U.S. Suzuki Motor Corp. and Kawasaki Motors Corp., U.S.A., by their undersigned attorneys, hereby agree and undertake as follows:

B. DEFINITIONS

1. All-terrain vehicles (hereinafter referred to as ATVs) that are the subject of this consent decree are three- and four-wheeled motorized vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the

operator, and handlebars for steering, which are intended for off-road use by an individual rider on various types of non-paved terrain. For the purposes of this decree, a vehicle distributed by a defendant as a three-wheeled ATV will be considered to be a "three-wheeled ATV" regardless of subsequent modifications that add an additional wheel.

2. "Defendants" means the companies signing this consent decree. This decree shall bind them, their officers, agents, servants and employees and those persons in active concert or participation with them who receive actual notice of this consent decree by personal service or otherwise. The term "defendants" does not include those persons who have a contractual dealer relationship with the defendants. The defendants undertake and agree, however, that they will use their best efforts, to the extent permitted under Federal and State law and applicable contracts, to ensure that the terms of this decree are carried out by their dealers and any authorized agents or representatives. By entering into this consent decree, defendants further warrant and represent that they have the authority to comply with the terms of this consent decree and that the exclusion of their parents from this consent decree will not affect defendants' ability to effectuate the terms of this consent decree.

3. "Best efforts" shall include, among other things, an obligation to require, to the extent permissible under Federal and State law, compliance by defendants' dealers, agents, or representatives with the terms of the preliminary consent decree and this final consent decree through the inclusion of a

provision as a term in future contracts entered into with dealers and any authorized agents or representatives, and where possible and within a reasonable time, to modify existing contracts with dealers and authorized agents or representatives to impose this duty.

C. SCOPE

The terms of this consent decree shall apply to all activities by defendants within the "United States," as defined in Section 3 of the Consumer Product Safety Act, 15 U.S.C. § 2052.

D. JURISDICTION AND VENUE

The defendants hereby submit themselves to the personal jurisdiction of this Court, waive service of process and agree that venue is proper in this district. Defendants do not waive any other defenses to the complaint including, but not limited to, the Court's jurisdiction over the subject matter. For the purposes of enforcing this consent decree only, defendants agree that this Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 2061 and 28 U.S.C. §§ 1337 and 1345.

E. TERM OF THE DECREE

1. The provisions of the final consent decree ("decree") shall become effective, and "approval of the final consent decree" (as that phrase is used in the preliminary consent decree) shall be deemed to occur upon issuance of an order approving this decree by a United States District Court which has jurisdiction to review the decree; except that if any person is granted permission to intervene as a party the defendants reserve the right to apply to the Court for a ruling that the decree

shall not become effective unless and until any appeal of an order approving this decree (and any petition for certiorari to the Supreme Court) has been finally resolved and the decree finally judicially approved, or until the expiration of the time for the filing of a notice of appeal pursuant to Rule 4(a)(1), F.R.A.P., whichever is later. The date upon which this decree becomes effective pursuant to the foregoing shall be deemed and referred to herein as the "effective date."

2. This decree shall remain in effect for a period of ten years from the date of the Court's approval of the decree.

F. STOP-SALE AND REPURCHASE

1. Defendants shall not market three-wheeled ATVs and shall not distribute or sell three-wheeled ATVs to their retail dealers, agents or representatives who sell ATVs.

2. Defendants shall offer or continue to offer to repurchase for a commercially reasonable cash amount, or to provide credit or other commercially reasonable adjustment for, all three-wheeled ATVs which are new or have not yet been sold to a consumer, in the possession or control of any retail dealer, agent or representative.

G. AGES FOR OPERATING ATVs

1. Defendants shall represent affirmatively, including in print and electronic media if defendants use such print and electronic media for advertising or promoting ATVs, that ATVs with engine sizes of 70 cubic centimeter displacement ("cc") up to and including 90 cc should be used only by those aged 12 and older. This undertaking includes the commitment to use their

best efforts to accomplish this relief through defendants' retail dealers, agents or representatives of defendants who sell ATVs.

2. Defendants shall represent affirmatively, including in print and electronic media if defendants use such print and electronic media for advertising or promoting ATVs, that ATVs with engine sizes of greater than 90 cc should be used only by those aged 16 and older. This undertaking includes the commitment to use their best efforts to accomplish this relief through defendants' retail dealers, agents or representatives of defendants who sell ATVs.

3. Defendants shall use their best efforts to reasonably assure that ATVs of the engine sizes set forth in subparagraphs G.1 and G.2 are not purchased by or for the use of any person under the minimum ages set forth above. This undertaking includes the commitment to use their best efforts to accomplish this relief through defendants' retail dealers, agents or representatives of defendants who sell ATVs.

H. NOTICES AND WARNINGS

1. Labels

a. New labels: Defendants agree to affix the following labels to all ATVs manufactured for the model years after the model year in production 45 days after either the completion of the testing plan provided for at paragraph H.1.c. or the Court's approval of the final consent decree, whichever is later. ATVs manufactured after the date specified in paragraph H.1.b. but before the date specified in this paragraph for use of new labels shall have affixed to them before sale to

consumers either the labels required by this paragraph or the supplemental labels required by paragraph H.1.b.

(1) Mandatory warning labels

(a) General warning label: Subject to the testing plan provided for at paragraph H.1.c., defendants agree to affix to every ATV distributed or sold by them a general warning label, in the form attached as Appendix A. This label, which was designed to conform with generally accepted labeling principles, shall have the identical language, dimensions, format, type size, and type font as shown in Appendix A. In addition, this label shall conform to the following criteria:

(i) Color scheme: The rectangle enclosing the signal word, "WARNING," shall be orange. The signal word, "WARNING," shall be in black lettering. The safety alert symbol (the Society of Automotive Engineers (SAE) symbol) shall be a black triangle border (point up) enclosing a black exclamation mark. The remainder of the label shall be in black lettering on a white background. The entire label shall be surrounded by a narrow, white border.

(ii) Durability: This label shall meet DOT/EPA standards for durability (49 C.F.R. § 567.4(b); 40 C.F.R. § 86.087-35(c)(1)).

(iii) Location: This label shall be affixed to the left front fender so as to be easily read by the operator when seated on the vehicle in the proper operating position. If this location is not appropriate for a particular vehicle, the label shall be affixed to the right front fender so

as to be easily read by the operator when seated on the vehicle in the proper operating position.

(b) Age recommendation warning label:

Defendants agree to affix to every ATV distributed or sold by them a label describing the applicable age recommendation for the ATV. For ATVs with engine sizes 70 cc up to and including 90 cc, the label shall be in the form attached as Appendix B, subject to the testing plan provided for at paragraph H.1.c. For ATVs with engine sizes greater than 90 cc, the label shall be in the form attached as Appendix C, subject to the testing plan provided for at paragraph H.1.c. The age recommendation warning label shall have the identical language, dimensions, format, type size, and type font as shown in the applicable Appendix. In addition, the age recommendation warning label shall conform to the following criteria:

(i) Color scheme: The color scheme for the age recommendation warning label shall be the same as that stated in paragraph H.1.a.(1)(a)(i), with the additional requirement that the circle and diagonal slash be red.

(ii) Durability: This label shall meet DOT/EPA standards for durability (49 C.F.R. § 567.4(b); 40 C.F.R. § 86.087-35(c)(1)).

(iii) Location: This label shall be affixed to the fuel tank so as to be easily read by the operator when seated on the vehicle in the proper operating position. If this location is not appropriate for a particular vehicle, or, if affixed at this location, the label will not meet the durability requirement stated above, the age recommendation warning label

shall be placed on the front fender above the label described at paragraph H.1.a.(1)(a). If this location is not appropriate for a particular vehicle, the label shall be placed on the top portion of the headlight or on the vehicle body immediately forward of the seat so as to be easily read by the operator when seated on the vehicle in the proper operating position.

(c) Passenger warning label: Subject to the testing plan provided for at paragraph H.1.c., defendants agree to affix to every ATV distributed or sold by them a label, in the form attached as Appendix D, warning against riding as a passenger on the ATV. This label shall have the identical language, dimensions, format, type size, and type font as shown in Appendix D. In addition, this label shall conform to the following criteria:

(i) Color scheme: The color scheme for this label shall be the same as that stated in paragraph H.1.a.(1)(a)(i).

(ii) Durability: This label shall meet DOT/EPA standards for durability (49 C.F.R. § 567.4(b); 40 C.F.R. § 86.087-35(c)(1)).

(iii) Location: This label shall be affixed either to the body of the vehicle to the rear of the seat, on a flat surface, and toward the center of the vehicle, or to the seat of the vehicle, at the rear of the seat. If neither of these locations is appropriate for a particular vehicle, the label shall be affixed to the left rear fender or left side of the body so as to be easily read by a potential passenger.

(d) Tire pressure and overloading warning

label(s): Defendants agree to affix to every ATV distributed or sold by them a label warning against use of improper air pressure in the ATV's tires. Defendants also agree to affix to every ATV distributed or sold by them a label warning against overloading. Defendants may affix one warning label addressing both of these hazards if they so desire. The label(s) shall conform to the following criteria:

(i) Content: The label(s) shall contain the SAE safety alert symbol and the signal word "WARNING" in capital letters. If a defendant uses separate labels to warn of the above potential hazards, the labels shall contain, at a minimum, the following hazard and consequence statements:

- "Improper tire pressure can cause loss of control.
Loss of control can result in severe injury or death."

- "Overloading can cause loss of control.
Loss of control can result in severe injury or death."

If a defendant uses one label for both warnings, that label shall contain, at a minimum, the following hazard and consequence statements:

- "Improper tire pressure or overloading can cause loss of control.
Loss of control can result in severe injury or death."

Every label warning about improper tire pressure shall contain a statement indicating the recommended tire pressure(s). Tire pressure information may be stated on the label itself or

provided by reference to either the owner's manual, the tires, or both the owner's manual and the tires. Every label warning against overloading shall contain a statement indicating the maximum weight capacity for the ATV model. Maximum weight capacity shall be stated on the label itself. Any other information appearing on either the tire pressure label or the overloading label shall be safety oriented and shall not detract from or contradict the required statements.

(ii) Letter typeface and size: The typeface used in the label shall be Helvetica Bold or New Gothic Bold type font, sans serif. The size of the typeface of the upper case lettering in the text of the warnings shall be at least .10 inches, and the size of the typeface of the signal word "WARNING" and safety alert symbol shall be at least .15 inches.

(iii) Format: The SAE safety alert symbol shall precede the signal word "WARNING" on a single line, which shall be separated from the text by a horizontal line. The hazard statement shall appear first in the text of the warning, followed by the consequence statement, and concluded by the avoidance statement(s). The hazard statement, the consequence statement, and the avoidance statement(s) shall be separated by a line of space. The label shall be completely framed with a margin of white space inside a black line forming a rectangle.

(iv) Color scheme: The color scheme of this label shall be the same as that stated in paragraph H.1.a.(1)(a)(i).

(v) Durability: This label shall meet

DOT/EPA standards for durability (49 C.F.R. § 567.4(b); 40 C.F.R. § 86.087-35(c)(1)).

(vi) Readability level: To the extent feasible, the label shall be written in plain, simple language so as to be readily comprehended by the average seventh grader, as measured by a standard technique for assessing the readability level of written materials.

(vii) Location: The label (or labels) warning about improper tire pressure and overloading shall be affixed to the left rear fender above the axle, facing outward in such a position that it (they) can be read by the operator when mounting the vehicle.

(2) Discretionary labels: To all ATVs manufactured for the model years after the model year in production 45 days after the completion of the testing plan provided for at paragraph H.1.c. or the Court's approval of the final consent decree, whichever is later, defendants may affix labels in addition to the mandatory labels described above as long as they satisfy the following criteria, to the extent applicable:

(a) Content: Where a label describes a potential hazard which could result in a serious injury or death, it shall contain (i) the SAE safety alert symbol and the signal word "WARNING" in capital letters; (ii) a concise, unambiguous narrative statement of the hazard being warned about; (iii) a concise, unambiguous narrative description of the consequence if a hazard is encountered; and (iv) a concise, unambiguous narrative description of what to do to avoid the hazard.

(b) Letter typeface and size: Where a label describes a potential hazard which could result in a serious injury or death, the letter typeface and size shall be the same as that stated in paragraph H.1.a.(1)(d)(ii).

(c) Format: Where a label describes a potential hazard which could result in a serious injury or death, the format shall be the same as that stated in paragraph H.1.a.(1)(d)(iii), except that the three narrative statements may be combined and do not have to be separated by a line of space.

(d) Color scheme: Where a label describes a potential hazard which could result in a serious injury or death, the color scheme shall be the same as that stated in paragraph H.1.a.(1)(a)(i).

(e) Durability: Where a label describes a potential hazard which could result in a serious injury or death, the label shall meet DOT/EPA standards for durability (49 C.F.R. § 567.4(b); 40 C.F.R. § 86.087-35(c)(1)).

(f) Readability level: Where a label describes a potential hazard which could result in a serious injury or death, the label, to the extent feasible, shall be written in plain, simple language so as to be readily comprehended by the average seventh grader, as measured by a standard technique for assessing the readability level of written materials.

(g) Location: Discretionary labels shall be affixed to ATVs in an appropriate location so long as they do not detract from the mandatory labels described in paragraphs H.1.a.(1)(a) through (d). They shall not be placed so close to

any of the mandatory labels so as to compete for the operator's attention.

(h) If requirements (a) through (g) of paragraph H.1.a.(2) effectively preclude placement of any discretionary label in the location which most clearly draws attention to the vehicle component or function to which the warning relates, these requirements shall not apply to such discretionary label; provided, however, that any discretionary label which describes a potential hazard which could result in a serious injury or death shall, at a minimum, bear the SAE safety alert symbol and the signal word "WARNING" on a single line which shall be separated from the text by a horizontal line, and shall conform to the color scheme set forth at paragraph H.1.a.(1)(a)(i).

b. Supplemental labels

(1) Past purchasers: Subject to the testing plan provided for at paragraph H.1.c., and within 45 days of the completion of such testing or the Court's approval of the final consent decree, whichever is later, defendants agree to send to all past purchasers for whom defendants have addresses the general warning label described at paragraph H.1.a.(1)(a) (Appendix A) and the applicable age recommendation warning label described at paragraph H.1.a.(1)(b) (Appendix B or Appendix C). These labels shall be accompanied by written instructions as to where these labels should be placed. At a minimum, defendants agree to mail an explanatory letter containing the introductory language set forth in Appendix E.

(2) Dealers, agents or representatives: Subject to the testing plan provided for at paragraph H.1.c., and within 45 days of the completion of such testing or the Court's approval of the final consent decree, whichever is later, defendants agree to distribute the general warning label described at paragraph H.1.a.(1)(a) (Appendix A) and the applicable age recommendation warning label described at paragraph H.1.a.(1)(b) (Appendix B or Appendix C) to all retail dealers, agents or representatives who sell ATVs to be appropriately placed on all ATVs not yet sold to consumers, including used ATVs. Defendants agree to use their best efforts to ensure that their dealers, agents or representatives affix these labels as instructed.

(3) Supplemental labels shall satisfy all criteria stated in paragraphs H.1.a.(1)(a) and (b), except that the dimensions and letter size of the general warning label may be altered to accommodate the design of an ATV; in no event, however, shall the general warning label have typeface with the size of the upper case lettering in the text less than .08 inches, and the size of the signal word "WARNING" and safety alert symbol less than .12 inches.

(4) All recipients of supplemental labels for four-wheeled ATVs shall be instructed to place the general warning label either on the left front fender of the ATV or at another specified location on the body of the vehicle where the label will be conspicuous and legible to an operator seated in the proper operating position. All recipients of supplemental labels for three-wheeled ATVs shall be instructed to place the general warning label either on the left rear fender of the ATV

or at another specified location on the body of the vehicle where the label will be conspicuous and legible to an operator seated in the proper operating position. All recipients of supplemental labels shall be instructed to place the age recommendation label either on the fuel tank or at another specified location on the body of the vehicle where the label will be conspicuous and legible to an operator seated in the proper operating position.

c. Testing program

(1) The defendants agree to undertake a testing program jointly with the CPSC to evaluate whether each of the mandatory labels described at paragraphs H.1.a.(1)(a) through (c) is reasonably understood by a test group, which shall be a representative sample of potential ATV users or buyers. Both age recommendation warning labels (Appendices B and C) shall be tested with and without the diagonal slash configuration; if the diagonal slash configuration is reasonably understood by the test group under the agreed upon standard, this configuration shall be used.

(2) Within 5 days of the parties signing the final consent decree, the defendants and the CPSC shall each nominate an expert in the area of warning labels. The experts shall then immediately confer and decide, within 30 days, upon a testing standard and method. The experts shall also decide upon a method for revision and re-testing in the event testing indicates that a label does not meet the standard upon which the experts have agreed. Should the experts not be able to reach agreement within the designated time period, the parties shall

jointly decide, within 15 days, which methodology and/or standard shall be used.

(3) The initial testing shall be started as soon as practicable, but not later than 15 days after the experts have agreed upon the appropriate methodology and standard, or, if this date falls before the Court's approval of the final consent decree, within 15 days of the Court's approval. Testing is to proceed expeditiously. Within 15 days of completion of the initial testing, the experts shall confer and decide whether any label needs to be revised and retested. Should the experts not reach agreement within this period, the parties shall jointly decide, within 15 days, which advice to follow. If necessary, revision and re-testing of any label shall be completed as soon as practicable. Testing of the labels shall continue until the labels are validated as satisfying the agreed upon standard, or until the parties agree otherwise.

(4) The CPSC and the defendants shall pay the fees of their respective experts, and shall share equally the direct costs of the testing program.

d. After distribution of the labels that conform to the requirements of paragraph H.1.a., any defendant may develop new labels for new ATV models, provided that the defendant concludes in good faith that such new labels meet the applicable requirements of this decree and that the new labels provide the required safety information in as effective a manner as the labels agreed upon by the parties pursuant to paragraphs H.1.a.(1)(a) through (d). The defendants agree to submit copies of such labels, and a written rationale for the labels, to the

General Counsel of the CPSC at least 30 days before distributing ATVs with the new labels.

2. Owner's Manuals

a. Manual supplements

(1) Past purchasers: Defendants agree to send copies of the manual supplement described herein free of charge to all known past purchasers for whom defendants have addresses at the same time the defendants send the supplemental labels to all known past purchasers pursuant to paragraph H.1.b. The letter to past purchasers shall include, at a minimum, the introductory language set forth in Appendix E.

(2) Dealers, agents, or representatives: Within 45 days of the Court's approval of the final consent decree, defendants shall provide to each of their retail dealers, agents or representatives who sell ATVs copies of the manual supplement described herein for distribution with every ATV then in the possession of such dealer, agent, or representative. Defendants shall continue to provide the manual supplements for distribution to ATV purchasers until defendants comply with the requirements of paragraph H.2.b. Defendants shall use their best efforts to ensure that their dealers, agents, or representatives distribute the manual supplements to ATV purchasers.

(3) Contents: The manual supplement shall contain the specific text set forth in Appendix F.

(4) Format: The text shall appear in the form shown in Appendix F. The warning statements and accompanying

illustrations shall be framed inside a black line forming a rectangle.

(5) Color scheme

(a) The SAE safety alert symbol and signal word shall be on a black background; the signal word "WARNING" shall be in white lettering; the SAE safety alert symbol shall be in a white triangle (point up) with a black exclamation mark.

(b) The text of the warnings shall be printed in black ink on white paper.

(6) Letter typeface and size

(a) The typeface of the text of the warning statements shall in no event be script, but shall be either Helvetica Bold or New Gothic Bold type font, or a substantially similar font;

(b) The typeface shall be bold face sans serif;

(c) The size of the typeface of the text of the warnings shall be at least .10 inches, and the size of the typeface of the signal word "WARNING" and safety alert symbol shall be at least .15 inches.

(7) Placement: Each warning shall be placed such that it appears entirely on a single page. No warning shall be split between two pages.

(8) Illustrations of hazards

(a) Where a person is depicted operating an ATV, the person shall be shown wearing an approved motorcycle helmet, eye protection, gloves, boots, long trousers and a long-sleeved shirt or jacket.

(b) Any photograph, sketch or pictograph that illustrates an inappropriate practice or potentially hazardous condition shall clearly indicate, with a diagonal slash or otherwise, that the practice or condition is inappropriate or potentially hazardous.

b. Owner's manuals for future ATV models

(1) Defendants agree to provide with every ATV manufactured 90 days or more after completion of the review procedures set forth in paragraph H.2.b.(3) owner's manuals that meet the requirements set forth herein.

(2) Contents

(a) Each owner's manual prepared pursuant to this final consent decree shall be written and designed in a manner reasonably calculated to convey information regarding safe operation and maintenance of the vehicle by persons who read such manual.

(b) To the extent feasible, the manuals shall be written in plain, simple language so as to be readily comprehended by the average seventh grader, as measured by a standard technique for assessing the readability of written materials.

(c) Information in the manuals shall be presented in a meaningful sequence designed to permit readers to understand the information presented and appreciate its significance.

(d) Every owner's manual shall be consistent with other safety messages disseminated by defendants, including those contained in the manual supplement, warning labels,

advertising and promotional materials, and point-of-purchase safety materials.

(e) At a minimum, and subject to the CPSC's review pursuant to paragraph H.2.b.(3), each owner's manual shall contain the following:

(i) A statement on the outside front cover which, at a minimum, alerts the reader that the manual contains important safety information which should be read carefully;

(ii) A statement on the outside front cover stating the age recommendation for the particular ATV model in question;

(iii) Definitions for "Warning" and "Caution" which are consistent with, or in any event not weaker than, the definitions for those terms contained in the current standards proposed by the American National Standards Institute (ANSI), along with an introductory statement alerting the reader to the significance of the SAE safety alert symbol and the signal words. If a defendant uses a definition which is stronger than that contained in the current standards proposed by ANSI, the statements described at (iv) and (v) shall be consistent with the stronger definition.

(iv) The following reminder shall be repeated immediately preceding the table of contents, at the beginning and end of the section describing proper operating procedures, on the last page before the outside back cover (or on the inside back cover), and a total of at least 5 more

times, appropriately spaced, within sections containing warnings:



Indicates a potential hazard that could result in serious injury or death.

The reminder shall be prominently displayed, segregated from other text on the page, in typeface at least .10 inches, with the signal word in typeface at least .15 inches.

(v) An introductory safety message emphasizing the importance of reading and understanding the manual prior to operation, the importance of and availability of the training course described at paragraph K, and the importance of the age recommendation for the particular model. This introductory message shall contain, at a minimum, the following statement:

"Failure to follow the warnings contained in this manual can result in SERIOUS INJURY or DEATH."

(vi) For ATVs with engine sizes 90 cc and less, an introductory notice to parents emphasizing that an ATV is not a "toy," the importance of children completing the training course described at paragraph K, and the importance of children understanding and following the instructions and warnings contained in the manual. This introductory notice shall also contain, at a minimum, the following statement:

"Children differ in skills, physical abilities, and judgment. Some children may not be able to operate an ATV safely. Parents should supervise their child's use of the ATV at all times. Parents should permit continued use only if they determine that the child has the ability to operate the ATV safely."

(vii) An introductory safety section which, at a minimum, contains the safety messages set forth in Appendix G in the form shown.

(viii) An appropriate table of contents identifying the major portions of the manual.

(ix) Descriptions of the location of warning labels on the ATV and an introductory statement emphasizing the importance of understanding and following the labels, and the importance of keeping the labels on the ATV. The introductory statement shall also contain instructions on how to obtain a replacement label in the event any label becomes difficult to read or comes off.

(x) A description of pre-operating inspection procedures and a statement emphasizing the importance of these procedures.

(xi) A description of proper operating procedures and of potential hazards associated with improper operation of the vehicle. In the section of each manual devoted to describing proper operating procedures, defendants shall include material addressing, in narrative text form and in appropriate detail, all of the topics addressed in the warning statements contained in the manual supplements described at paragraph H.2.a. Such narrative text shall identify particular potential hazards associated with the types of operation or behavior in question, the possible consequences of such operation or behavior, and shall describe the manner in which the vehicle should be properly operated to avoid or reduce the risk associated with such hazards. Such narrative text shall include warning statements and corresponding illustrations in conformance with the Guidelines For Warning and Caution Statements in Owner's Manuals attached as Appendix H. The language of the narrative

sections accompanying each warning shall not contradict any information contained in the warning section and shall be written to draw attention to the warning.

(xii) Descriptions of proper maintenance, storage, and transportation procedures.

(xiii) On the outside back cover, the contents of the general warning label described at paragraph H.1.a.(1)(a).

(f) Every owner's manual shall conform to the Guidelines for Warning and Caution Statements in Owner's Manual attached as Appendix H. Where a manual describes a potential hazard that is not addressed in the manual supplement but which nevertheless meets the definition of a potential hazard for which a "warning" or "caution," as these terms are defined by the American National Standards Institute, is appropriate, the discussion of that potential hazard shall be accompanied by a "warning" or "caution" statement which conforms to these Guidelines.

(3) CPSC review of owner's manuals:

(a) Each defendant agrees to submit to the General Counsel of the CPSC as soon as possible, but no later than 90 days after the Court's approval of the final consent decree, a draft (including sketches of illustrations if feasible) of a representative owner's manual for the models it expects to manufacture 90 days or more after completion of the review procedures set forth herein. Each draft shall conform to the provisions of this decree.

(b) Within 30 days after submission of a draft representative owner's manual, the CPSC shall evaluate each draft and provide to each defendant its written evaluation of whether the respective defendant's draft conforms to the requirements of this decree. If the CPSC determines that the draft satisfies the requirements, or the CPSC fails to respond within 30 days, the defendant shall proceed with publication and distribution of the owner's manuals. If the CPSC determines that the draft does not conform to the requirements, it shall include specific language that it proposes be substituted for or included in any particular, identified portion of the submitted draft, with an explanation of the reasons for the proposed substitution or addition. Any defendant receiving proposed substitute or additional language under this subparagraph shall review such language and shall confer informally with the CPSC, if it deems such consultation appropriate or if the CPSC so requests.

(c) Within 30 days of receipt of the CPSC's written evaluation, each defendant shall inform the CPSC in writing of what modifications, if any, the defendant intends to make to its draft manual, and the reasons for its conclusion that the final draft, with whatever modifications it has adopted, conforms with the requirements of this decree. The CPSC shall have 15 days from the date it receives a final draft from a defendant to seek relief from this Court if the CPSC concludes that the manuals which the defendant intends to publish and distribute will not conform to the requirements of this decree. In the event the CPSC seeks relief from the Court, the defendant may distribute the owner's manuals which it believes satisfy the

requirements of this decree so long as the manuals are accompanied by the manual supplements described at paragraph H.2.a.; notwithstanding this provision, if the Court resolves the dispute between the parties in favor of the CPSC, by requiring the defendants to rewrite any portion of the manual(s) at issue, the CPSC may seek a court order requiring the defendants to send replacement manuals to all ATV purchasers who received the manuals and manual supplements distributed by defendants pursuant to this provision and to issue replacement manuals for all ATVs manufactured 90 days or more after submission of the dispute to the Court that are sold thereafter by dealers, agents, or representatives. Defendants reserve the right to oppose any such additional requirement.

(4) After distribution of owner's manuals that conform to the requirements of this decree, each defendant may develop owner's manuals for subsequent new ATV models, provided that the defendant concludes in good faith that such manuals conform to the requirements of this decree. In the event that safety-related information or materials in such manuals are different from the previous manuals that conformed with the requirements of this decree, the defendants agree to submit copies of all such manuals and a written rationale for all changes to the General Counsel for the Consumer Product Safety Commission at least 30 days before distributing the manuals.

3. Point-Of-Purchase Communications

a. Point-of-purchase oral communications

(1) Dealer oversight: Defendants shall use their best efforts to ensure that oral communications of retail

dealers, agents or representatives of defendants who sell ATVs to actual and prospective purchasers contain information not inconsistent with all safety-related requirements of this decree.

(2) Dealer guidance: Defendants agree to emphasize safety information consistent with this decree in written, oral, and video materials that relate to promotion and sale of ATVs by dealers, agents or representatives of defendants who sell ATVs.

b. Point-of-purchase safety materials

(1) For the purposes of this final consent decree, "point-of-purchase safety materials" shall mean materials specifically designed to describe proper and safe ATV operation that are disseminated by defendants, or through defendants' retail dealers, agents and representatives, at ATV sales locations.

(2) All point-of-purchase safety materials which are produced, distributed or funded in whole or in part by any defendant -- including all materials funded in whole or in part by a defendant cooperatively with its dealers, agents or representatives selling ATVs -- shall conform to the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix I. Defendants further agree to use their best efforts to ensure that all point-of-purchase safety materials not distributed by that defendant but distributed by its dealers, agents or representatives selling ATVs conform to the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix I.

(3) Defendants shall use their best efforts to ensure that their retail dealers, agents or representatives who

sell ATVs, or display ATVs for sale, make available to actual and prospective ATV purchasers point-of-purchase safety materials of the type described in paragraph H.3.b.(4) below.

(4) Mandatory point-of-purchase safety materials

(a) Hang tags: Within 45 days of the completion of the testing plan described in paragraph H.1.c. or of the Court's approval of the final consent decree, which ever is later, defendants shall provide to dealers, agents, or representatives who sell ATVs hang tags for display on each vehicle offered for sale that conform to paragraphs II.A and II.B of the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix I.

(b) Safety video: Within 180 days of the Court's approval of the final consent decree, or within 180 days of completion of the procedures specified in paragraph H.3.b.(5) with respect to a final script, whichever is later, defendants shall provide to dealers, agents, or representatives who sell ATVs a safety video that conforms to paragraphs II.A and II.C of the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix I. Defendants agree to use their best efforts to require their retail dealers to make the safety video readily available for viewing by all actual and prospective ATV purchasers. Until the safety video described in this subparagraph is distributed, such dealers, agents or representatives may continue to use the safety video in use on the effective date of this decree, provided that a copy of the ATV Safety Alert described in paragraph H.3.b.(4)(c) is made available to all persons who view such video.

(c) ATV safety alert: Beginning 20 days after the Court's approval of the final consent decree, defendants shall provide to dealers, agents, or representatives who sell ATVs, for dissemination to all purchasers, the ATV Safety Alert in the form attached as Appendix J. The death statistic shall be updated to reflect the CPSC's latest quarterly report data as of the date of the Court's approval of the final consent decree, as provided by the CPSC, and shall thereafter be updated every 12 months to indicate the total number of ATV-associated fatalities for the preceding five years. Defendants shall use their best efforts to ensure that such dealers, agents, or representatives deliver a copy of the ATV Safety Alert to each purchaser. Such dealers, agents, or representatives may continue to disseminate prior versions of the ATV Safety Alert until their supplies are exhausted.

(d) Safety poster: Beginning 90 days after the Court's approval of the final consent decree, defendants shall provide to all retail dealers, or, where ATVs are sold to consumers by agents or representatives of defendants who are not retail dealers, to all such agents or representatives, signs measuring approximately four feet by four feet containing the text which is set forth in Appendix J and meeting with the approval of the CPSC. The death statistic shall be updated prior to publication to reflect the CPSC's most current quarterly report data at that time, as provided by the CPSC. Thereafter, the death statistic will be updated every 12 months to indicate the total number of ATV-associated fatalities for the preceding five years, based on data provided by the CPSC; defendants shall

distribute new, replacement editions of the poster at least every four years. Defendants agree to use high quality, durable printing materials and to use the color scheme, lettering (size and type) and spacing to best ensure that the message is easily read and understood. Defendants further agree to use their best efforts to ensure that their retail dealers, agents, or representatives who sell ATVs to consumers immediately post the safety posters upon receipt in prominent places where ATVs are displayed, sold or offered sale; update the posters as instructed; and keep such posters on display until further notified pursuant to this provision. (From the effective date of this decree until defendants provide the new poster required by this subparagraph, defendants shall use their best efforts to ensure that the posters provided for by subparagraph E.1.b. of the preliminary consent decree are or remain posted.)

(5) CPSC review of safety video script

(a) Within 90 days of the Court's approval of the final consent decree, defendants shall submit to the General Counsel of the CPSC a draft of a safety video script including camera and stage directions.

(b) The CPSC shall evaluate the draft script for conformance with paragraphs II.A and II.C. of the Guidelines for Point-Of-Purchase Safety Materials attached as Appendix I. Within 15 days after its receipt of the draft script, the CPSC shall provide the defendants with a written statement whether the CPSC has determined that the draft script conforms to the Guidelines. If the CPSC determines that the draft script does not conform to the Guidelines, its written

comments shall include, where appropriate, proposed deletions or additions. If the CPSC determines that the draft script does conform to the Guidelines, or if the CPSC does not respond within the time period, the defendants may proceed with filming and production of the safety video.

(c) If the CPSC determines that the draft script does not conform to the Guidelines, the defendants shall respond to the CPSC's comments in writing within 20 days after their receipt of the written comments from the CPSC, and shall indicate what steps, if any, they will take in response to the CPSC's comments.

(d) The CPSC shall have 20 days from the date it receives the defendants' response to seek relief from the Court if the CPSC concludes that the safety video which defendants intend to film and distribute will not conform to the Guidelines. In the event the CPSC seeks relief from the Court, defendants shall halt production of the video pending the Court's resolution of the disagreement among the parties.

(e) Once the defendants proceed with filming and production, if they make other than minor, insubstantial changes in the script, they shall submit the revised script to the CPSC with a written rationale for the changes. The CPSC shall evaluate the revisions for conformance with the Guidelines and respond to defendants within 20 days of receipt of the revised script. If agreement on the revisions cannot be reached within 10 days, the CPSC shall have 20 additional days to seek relief from the Court. In the event the CPSC seeks relief from

the Court, defendants shall halt production of the video pending the Court's resolution of the disagreement among the parties.

(6) Submission of hang tags, safety video and other point-of-purchase safety materials to the CPSC

(a) The defendants agree to submit to the General Counsel of the CPSC copies of the hang tags required by paragraph H.3.b.(4)(a) and a copy of the final safety video at least ten days before they disseminate those materials to their dealers.

(i) After distribution of hang tags that conform to the Guidelines For Point-Of-Purchase Safety Materials, a defendant may develop hang tags for new ATV models, provided that the defendant concludes in good faith that such hang tags conform to the Guidelines. In the event that the information on a hang tag is different in substance from the information specified in the Guidelines, the defendants agree to submit copies of all such hang tags and a written rationale for all changes to the General Counsel of the CPSC at least 30 days before distributing the hang tags.

(ii) After distribution of a safety video that conforms to the Guidelines For Point-Of-Purchase Safety Materials, the defendants may not develop a new safety video without first complying with the procedures set forth at paragraph H.3.b.(5).

(b) At approximately the same time as distribution of any other point-of-purchase safety materials for dissemination by their retail dealers, agents or representatives

who sell ATVs, the defendants shall provide a copy to the General Counsel of the CPSC.

(7) Nothing herein shall preclude any defendant from disseminating materials which address model-specific or use-specific safety concerns, provided that such materials are not inconsistent with paragraph II.A. of the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix I.

4. Toll-Free Safety Hotline

a. Defendants agree to maintain a toll-free ATV "hotline" service to respond to consumer inquiries.

b. Information provided by the hotline service shall be consistent with all other safety-related messages disseminated by defendants, including those contained in warning labels, owner's manuals, advertising and promotional materials, and the ATV Safety Alert.

c. The hotline service shall, at a minimum, provide information, as appropriate, in response to consumer inquiries regarding the following:

- (1) the principal terms of the final consent decree;
- (2) CPSC fatality and injury statistics concerning accidents associated with ATV operation (updated every 12 months to indicate the total number of ATV-associated fatalities for the preceding five years, based upon data provided by the CPSC);
- (3) age recommendations for ATVs;
- (4) the importance of adult supervision of operation of ATVs by children under 16;
- (5) the importance and availability of the hands-on training course, and information about the training course;

- (6) potential risks and potential hazards associated with:
- (i) operating without carefully reading the owner's manual;
 - (ii) carrying a passenger or riding as a passenger;
 - (iii) operating on paved surfaces;
 - (iv) operating on public roads because of the risk of collision with other motorized vehicles (ATVs are for off-road use only);
 - (v) operating after or while consuming alcohol or drugs;
 - (vi) operating without an approved motorcycle helmet, eye protection, and protective clothing;
 - (vii) performing wheelies and other stunts;
 - (viii) lending an ATV to inexperienced or unskilled operators;
 - (ix) operating at excessive speeds;
 - (x) operating on unfamiliar, or excessively rough, slippery, or loose terrain;
 - (xi) operating on steep hills.

d. Defendants further agree that the hotline service shall offer to send, free of charge, to every person who calls copies of appropriate materials regarding ATV safety developed pursuant to the final consent decree, such as a copy of the ATV Safety Alert. Defendants agree to send free of charge the manual supplement provided for at paragraph H.2.a. when this item is specifically requested.

e. Defendants further agree to include the hotline service number and/or the number of the CPSC in certain ATV

safety-related communications in accordance with the other provisions of this final consent decree.

I. SAFETY-RELATED COMMUNICATIONS TO CONSUMERS

No safety-related communication generally distributed by any defendant to consumers shall be inconsistent with the terms of this decree or with the safety information that this decree mandates.

J. MEDIA AND MARKETING

1. Guidelines For Promotional Advertisements

a. All advertisements used or distributed by any defendant shall conform to the Guidelines for Advertising and Promotional Materials attached as Appendix K. These Guidelines shall apply to:

(1) All advertisements in newspapers whose closing date for materials is 14 days or more after the date of the Court's approval of the final consent decree;

(2) All advertisements in magazines whose closing date for materials falls on or after (a) 45 days after the date of the Court's approval of the final consent decree, or (b) June 15, 1988, whichever is earlier;

(3) All television, radio and cable commercials scheduled in network, in a spot market, or in programming distributed through syndication 14 days or more after the date of the Court's approval of the final consent decree;

(4) All printed point-of-purchase promotional materials first distributed to dealers, agents or other representatives who sell ATVs after the date of the Court's approval of the final consent decree (For materials already

distributed, the defendants shall, within 20 days of the Court's approval of this decree, insert a copy of the Safety Alert (Appendix J) into each copy of the materials, or provide dealers with sufficient copies of the Safety Alert and use their best efforts to ensure that the Safety Alerts are attached to or inserted in such materials.);

(5) All promotional videos distributed to dealers after the date of the Court's approval of the final consent decree (Defendants shall use their best efforts to ensure that promotional videos not (a) in conformance with the Guidelines, or (b) approved by the General Counsel of the CPSC, are not exhibited 45 days or more after the date of the Court's approval of the final consent decree.); and

(6) All other promotional materials (including posters and direct mail) used by defendants or distributed to dealers after the date of the Court's approval of the final consent decree (Defendants shall use their best efforts to ensure that promotional materials not in conformance with the Guidelines are not used or exhibited 30 days or more after the date of the Court's approval of the final consent decree.).

b. All advertisements funded in whole or part by any defendant through any cooperative advertising program with its dealers, agents or other representatives selling ATVs shall conform to the guidelines within 90 days after the date of the Court's approval of the final consent decree.

c. The defendants shall use their best efforts to ensure that any other advertisements or other promotional

materials used or distributed by their dealers conform to these Guidelines.

2. Public Awareness Media Campaign: Defendants shall engage in a substantial public awareness media campaign that consists of print and television advertisements in accordance with the provisions set forth in this section.

a. Copy strategy: All advertisements used in the campaign shall be executed in accordance with the copy strategy attached as Appendix L.

b. Pre-testing requirements:

(1) Defendants shall develop two alternative campaigns for the public awareness media campaign. Each proposed campaign shall consist of one television commercial and one or more print advertisements.

(2) Within 60 days after the date of the Court's approval of the final consent decree, defendants shall submit the commercial and one mutually agreed-upon print ad from each proposed campaign in test execution form to Diagnostic Research, Inc. ("D/R"), for pre-testing in accordance with the Description of Pre-Testing set forth in Appendix M. At the same time, defendants shall also submit copies of the test executions to the CPSC.

(3) As a term of their contract with D/R to provide the testing services contemplated by this decree, the defendants shall specify: (a) that D/R is to play an independent role in undertaking this task, evaluating the advertisements based solely upon whether they effectively communicate the primary and secondary copy points set forth in the Copy Strategy,

Appendix L to this decree, (b) that the CPSC or its expert be free to consult with D/R on the same basis as defendants, and (c) that the CPSC shall have the right to have access to all completed questionnaires used in the testing. Defendants shall provide the CPSC a copy of their contract with D/R.

(4) Before testing begins, the CPSC and the defendants shall be given the opportunity to review the questionnaire. Based upon expert advice, the CPSC and the defendants may provide written comments suggesting deletions and additions to the questionnaire. If any differences between the parties regarding the questionnaire cannot be resolved within seven days through good faith negotiation, the parties agree to proceed in accord with the advice of an independent expert, not previously affiliated with any of the parties, in the field of advertising pre-testing chosen by the parties.

(5) The CPSC and the defendants shall have the opportunity to review the codebook to be used by D/R for coding responses to the questionnaire. Based upon expert advice, the CPSC and the defendants may provide written comments on the coding provisions. If differences between the parties regarding the codebook cannot be resolved within seven days through good faith negotiation, the parties agree to proceed in accord with the advice of an independent expert, not previously affiliated with any of the parties, in the field of advertising pre-testing chosen by the parties. The CPSC and the defendants shall also have the opportunity to monitor the coder reliability by reviewing coded questionnaires on a random, as requested, basis.

(6) Defendants shall obtain a full report of D/R's evaluation of the two campaigns and shall ensure that D/R delivers the full report to the CPSC at the same time it delivers the report to the defendants. The evaluation shall determine whether the campaigns meet or exceed the norms set forth in the Description of Pre-Testing and whether the campaigns contain elements that materially diminish the overall effectiveness of the advertisements tested. The full report shall set forth D/R's conclusions, a summary and analysis of the test results, and detailed tabulation of the research data.

(7) Between seven and 14 days after the CPSC's receipt of the report and proposed advertisements, the parties shall confer jointly with D/R on the results of the pre-testing. If neither campaign meets or exceeds the norms set forth in the Description of Pre-Testing, or if D/R determines that the campaigns contain elements that materially diminish the overall effectiveness of the advertisements tested, then alternative campaign(s) will be developed and tested, if necessary, to meet these requirements.

(8) In the event that the CPSC and the defendants disagree as to which campaign shall be used, then the CPSC shall submit a written statement of its views within seven days of the joint meeting with D/R. The defendants shall consider the statement in good faith and notify the CPSC of its decision as to the campaign chosen within seven days of receiving the statement. If the parties continue to disagree, then the parties shall solicit the views of an independent expert with substantial expertise in the advertising field. Such expert shall be chosen

jointly by the parties and shall not have any prior affiliation with either the CPSC or the defendants. Defendants shall consider the advice of such expert in good faith. If the defendants elect to go forward with a campaign to which the CPSC objects, the defendants shall notify the CPSC within seven days of receiving the advice of the expert and the CPSC may apply to the Court for appropriate relief.

c. Execution of the campaign: The defendants shall fully execute the Public Awareness Media Plan attached as Appendix N, which consists of both print and television advertisements. As described in the media plan, the campaign shall include television and print advertisements during October, November and December 1988 and print advertisements during March, April, and May 1989. As the media plan provides, the television activity shall consist of network, cable and spot television. The print activity shall consist of ATV and motorcycle enthusiast magazines, general outdoor magazines and farm publications as set forth in the plan.

3. Outreach Program: The defendants agree to undertake an outreach program to disseminate safety materials to consumer groups.

a. Within 30 days of the effective date, defendants shall mail a letter offering copies of the safety video required under paragraph H.3.b.(4)(b) of this decree and the safety brochure described below in paragraph J.3.c. to the following organizations:

- (1) The National Coalition for Children's Safety;
- (2) The American All-Terrain Vehicle Association;

- (3) The National Headquarters of the Future Farmers of America;
- (4) National Safety Council; and
- (5) County Cooperative Extension Services.

b. Defendants agree to enclose with such letter:

(1) An appropriate form for ordering the safety materials, with an explanation of the terms under which such materials will be provided; and

(2) A copy of the ATV Safety Alert, attached as Appendix J.

c. The safety brochure provided under the outreach program may be either:

(1) The Specialty Vehicle Institute of America's ("SVIA's") "Tips & Practice Guide for the ATV Rider," with a copy of the Safety Alert inserted therein; or

(2) A new safety brochure created by defendants after the effective date of this decree.

d. Upon request by any of the organizations listed above, defendants shall provide copies of the safety materials under the following terms:

(1) To each of the organizations identified in paragraph J.3.a.(1) through (4), defendants shall offer to provide, free of charge, up to 1,000 copies of the safety brochure and twenty-five (25) copies of the safety video. If the safety video is not yet available, defendants shall so notify the organization and provide the video when it becomes available.

(2) To the organization identified in paragraph J.3.a.(5), defendants shall offer to provide, free of charge, up

to 50 copies of the safety brochure to the first 1,000 individual County Cooperative Extension Services that submit orders for the brochure and offer to loan a copy of the safety video to each County Cooperative Extension Service.

(3) Additional copies of the safety video and safety brochure will be provided to each organization or individual, upon request, for a reasonable fee covering production, printing, shipping and handling costs.

e. Defendants shall provide copies of the safety video and safety brochure to all other persons and organizations, upon request, for a reasonable fee covering production, printing and handling costs.

f. Defendants agree to respond promptly to all requests for safety materials provided under the outreach program.

4. Reporting Requirements

a. Promotional advertisements: For each promotional advertisement distributed to a dealer or used after the date of the Court's approval of the final consent decree, each defendant shall submit the following within 14 days of the defendant's first post-approval use or distribution:

(1) in the case of a printed advertisement, a copy of the advertisement as it will be published;

(2) in the case of a radio advertisement, a tape or script of the commercial;

(3) in the case of a television advertisement or a promotional video, a videotape of the advertisement.

b. Public awareness media campaign: The defendants shall submit to the CPSC the following reports and materials describing and documenting their compliance with the public awareness media plan set forth in Appendix N.

(1) Within ten days following any month of print activity, the defendants shall submit the name of each publication in which a print advertisement appeared together with the date, the page at which the advertisement is located and a copy of the advertisement.

(2) At least seven days prior to the start of a television flight, or as soon thereafter as possible, the defendants shall submit to the CPSC a copy of "brand time sheets" (or data which supplies projected rating, number of impressions and cost, including cost per spot, target audience cost per point, and target audience cost per thousand).

(3) Within 90 days after the end of each flight of television activity, defendants shall submit a report detailing their execution of the media plan for the campaign along with a notarized affidavit (or invoice) of commercial placement for each broadcast of the television commercial by a network or local station. The affidavit (or invoice) shall identify the name of the network or station, the location by city and state of the local television station, the air date of the commercial, the time of airing and, if available, the name of the program during which the commercial appeared.

c. Reporting of distribution of safety awareness materials to consumer groups: For the first 24 months following the effective date of this decree, the defendants shall maintain

a record of the name and address of each consumer group identified in paragraph J.3. that requested the safety awareness materials, the date of the request, and the date the defendants shipped safety awareness materials in response to the request. The defendants shall provide such record to the CPSC every four months.

K. TRAINING

The defendants agree and undertake to offer to all interested persons a nationwide hands-on training program consistent with the provisions set forth within this section.

1. Administrative Structure And Staffing: The defendants agree to provide sufficient staff and facilities to operate the training program on a nationwide basis. It is anticipated that the training program will be administered and staffed in the following manner:

a. A national headquarters will contain four full-time directors (Education Program, Instructor Training, Rider Training, Communications) and five full-time assistant positions (State Programs Specialist, Curriculum Specialist, Instructor Training Manager, Rider Training Manager, Publications Manager), in addition to the usual support personnel. The anticipated duties of these personnel are as follows:

(1) Education Program Director: Coordinates training programs with state government programs, independent programs, and military programs.

(2) Instructor Training Director: Coordinates the training of Chief Instructors and Instructors and integrates

their activities with the Regional and Area Administrators, described below.

(3) Rider Training Director: Coordinates the implementation of the training programs nationwide and supervises the Regional Administrators, described below.

(4) Communications Director: Coordinates the advertising of the training program and all communications to distributors, dealers, instructors, and Regional and Area Administrators.

(5) State Programs Specialist: Assists the Education Program Director by providing technical assistance to state training program officials.

(6) Curriculum Specialist: Assists the Education Program Director by developing, evaluating, and publishing training curricula.

(7) Instructor Training Manager: Assists the Instructor Training Director.

(8) Rider Training Manager: Assists the Rider Training Director.

(9) Publications Manager: Assists the Communications Director in the production and inventory control of printed publications.

b. The country will be divided into six regions, each with a full-time Regional Administrator and support personnel. It is anticipated that the Regional Administrators will set up the regional office, select and supervise the Area Administrators within the region, work with the chief instructors in the region, and work towards increasing the number of training sites and

students taking the course. The Regional Administrators will receive a salary plus a commission for each student trained as an incentive to motivate the personnel in their region.

c. The regions will be divided into areas, each with a part-time Area Administrator. It is anticipated that there will be approximately 350 Area Administrators. It is anticipated that the Area Administrators will contact dealers within their area and the Specialty Vehicle Institute of America (SVIA) referral number to obtain names and addresses of potential students, contact students for classes, assist in the scheduling of classes, and monitor classes through periodic on-site visits. The Area Administrators will receive a contract fee plus a commission for each student trained as an incentive to motivate the dealers and instructors in their area.

d. Each area will have an appropriate number of qualified instructors trained by qualified chief instructors. Chief instructors will be paid a contract fee for conducting instructor preparation courses plus a commission for each rider trained as an incentive for training good instructors and motivating their performance. The instructors will be paid for each rider actually trained as an incentive to train as many students as is reasonable. Classes for riders age 16 years and over will be limited to an enrollment of eight students, with a recommended number of six students per class. Classes with riders under 16 will be limited to an enrollment of six students, with a recommended number of four students per class. The instructors will be urged to use an assistant where possible for

all classes to demonstrate the maneuvers and generally assist the instructor.

e. Within selected states, an Area Administrator or other appropriate personnel within the state will also be designated a State Coordinator. It is anticipated that as a State Coordinator, the individual will assist existing state programs by providing updated ATV safety information, maintaining contact with state personnel to provide input on use of state funds and coordination of state programs, and providing technical assistance. A State Coordinator will be appointed for the following states: California, Illinois, Michigan, New York, Oregon, Pennsylvania, Texas, New Jersey, Connecticut and Ohio. The defendants may add states as the need arises and may delete states in which a State Coordinator has not proved effective. The defendants shall notify the CPSC of any such additions or deletions.

f. The administrative structure and duties set forth above may be modified so long as the defendants conclude in good faith that such modifications are needed to ensure that the training program functions efficiently. Changes in the administrative structure and staffing described above shall be reported to the CPSC with an accompanying explanation at least thirty days before the implementation of such changes.

g. Defendants further agree to provide the names, business addresses, and phone numbers of all directors, assistants or regional administrators referred to in this decree upon the request of the CPSC to the national headquarters and to

provide the CPSC with information about the length of any vacancies in these positions, upon the CPSC's request.

h. The defendants agree to begin implementation of the training program structure within 60 days of the date of the Court's approval of the final consent decree.

2. Training Course Curriculum

a. Course content: The training curriculum will consist of the existing SVIA six-hour hands-on course, with the modifications and additions reflected in the revised course outline attached as Appendix O. At the beginning of each lesson, the instructor will emphasize the safety implications relating to that lesson. Each student will be given a copy of the student handbook to take home.

b. Field-testing of course content: The revised course outline represents a considered judgment as to the likely order, timing, and content of each lesson. The defendants may subject the modifications and additions reflected in the revised outline to field testing and modify the proposed outline according to the results of the field testing. The field testing will consist of (1) development of the revised lesson contents and instructor techniques; (2) review by selected chief instructors; (3) field application tests; and (4) revision as needed based on field evaluations. The defendants shall notify the CPSC of any additions or deletions to the curriculum based upon the field testing and provide a detailed explanation. The CPSC shall provide its comments within 30 days and the parties shall use good faith efforts to arrive at a suitable resolution of any problems identified through the field testing process.

c. Future modifications to course curriculum: The defendants may modify the course curriculum, which is based upon the course outline contained in Appendix O, upon the considered judgment of appropriate personnel so long as the defendants conclude in good faith that the revisions are at least as effective as the curriculum agreed upon in this decree. The defendants shall notify the CPSC of any additions or deletions to the curriculum and provide a detailed explanation. The CPSC shall provide its comments within 30 days and the parties shall use good faith efforts to arrive at a suitable resolution of any problems identified through the field testing process. The CPSC death and injury statistics to be included in the curriculum shall be updated every 12 months to indicate the total number of ATV-associated fatalities for the preceding five years, based upon data provided by the CPSC.

d. Modifications for operators under 16: Classes attended by children under age 16 shall be modified as follows:

- (1) Maximum class size shall be six with a recommended number of four students.
- (2) A parent, guardian, or other responsible adult should attend the training program with the child.
- (3) A parent or guardian must sign a consent form that includes the CPSC injury and accident statistics and the appropriate age recommendations for ATVs consistent with the age recommendations contained in this consent decree.
- (4) The ATV must be the recommended size for the individual in accordance with the age recommendations contained in this consent decree.

(5) All riding exercises should be at an appropriately slower, more controlled speed.

(6) All instructions should be appropriately geared toward the younger students in terms of vocabulary and behavioral modeling, and seeking acknowledgement of understanding.

(7) Lesson one will include the sessions on safe and unsafe riding practices.

(8) The "drag-around" U-turn maneuver will be eliminated.

(9) Throttles should be equipped with a speed limiter.

3. Training Sites: Defendants agree to provide a sufficient number of training sites that are reasonably accessible to ATV purchasers desiring to take the training course. Area Administrators will be responsible for locating and providing a sufficient number of training sites within their areas to accommodate the training courses. Defendant's further agree to provide adequate liability insurance for the training courses (or to self-insure) at no charge to the consumer.

4. Fees for Training Course: Training courses shall be offered at no charge to all persons and members of their immediate families who purchase a new ATV (distributed by one of the defendants) after the date of the Court's approval of this final consent decree and who meet the age recommendations contained in this decree for the vehicle purchased. Training courses shall be offered at no charge to all persons and members of their immediate families who purchased a new ATV (distributed

by one of the defendants) after December 30, 1987 and who meet the age recommendations contained in this decree for the vehicle purchased.

a. Notification procedures: Defendants shall notify future purchasers of the availability of free training and the incentive offer required by paragraph K.5 of the decree at the time of purchase beginning within 90 days of the Court's approval of the final consent decree. All other eligible purchasers for whom defendants have addresses shall be notified of the availability of free training within 90 days of the Court's approval of the final consent decree.

b. Training of others: Defendants agree to provide training to all other interested persons and may charge such other persons who request training a reasonable fee.

5. Incentives

a. The defendants agree to provide a mechanism whereby each person who purchases a new ATV (distributed by one of the defendants) after the date of the Court's approval of this decree, upon the successful completion by the purchaser or a member of the purchaser's immediate family of the training course contained in this decree, will receive a United States Savings Bond valued at one-hundred dollars (\$100.00) upon maturity or fifty dollars (\$50.00) in cash, or (at each defendant's option) a merchandise certificate in an amount no less than fifty dollars (\$50.00) that can be applied towards the purchase of ATV accessories. The choice of a cash rebate, Savings Bond, or merchandise certificate (where offered) will be made by the person taking the training course.

b. Upon completion of the training course, the purchaser must provide the appropriate documentation in order to receive the cash, Savings Bond, or merchandise certificate (where offered).

c. The incentive offer shall be limited to one incentive per purchase of an ATV.

6. Implementation: The training of instructors shall begin upon the Court's approval of the final consent decree or upon the completion of any field testing, as set forth in paragraph K.2.b. Defendants also agree to begin training riders as soon as instructors qualified to teach the new curriculum based on the outline set forth in Appendix O become available. Defendants further agree to make every effort to establish a pool of 1,000 trained instructors within six months of the Court's approval of this final consent decree.

7. Participation By Other Manufacturers Or Distributors: The defendants agree to permit other manufacturers and distributors of ATVs to utilize this training structure, through appropriate arrangements and upon the payment of a reasonable fee, for the training of their purchasers.

8. Coordination With State Laws: The parties agree that defendants' obligations under this section may be modified in light of existing or future state laws pertaining to the training of ATV operators as follows:

a. To the extent that any requirement of this training section is contrary to state law, the defendants may modify the training program within that state so as to be in accordance with state law. The defendants shall immediately

notify the General Counsel of the CPSC if any defendant concludes in good faith that any provision of this training program is contrary to any law of any state.

b. To the extent that state law requires the completion of a training course substantially similar in content to the course described in this consent decree, the defendants may request the approval of the General Counsel of the CPSC to be relieved of any obligation to offer the incentive program described in paragraph K.5 in that state and to modify other aspects of the program as appropriate.

c. To the extent that a state provides or requires any other form of ATV training course, the defendants may request the approval of the General Counsel of the CPSC to modify their current training obligations within that state.

d. The CPSC agrees to consider in good faith all such requests made pursuant to this section and to respond within 30 days to such requests.

9. Dealer-Loan Program: Defendants agree to implement a program in which their dealers may obtain vehicles to loan to training courses authorized under this program for use by students. The defendants agree to offer their dealers the following dealer-loan terms:

a. The models selected by the defendants for participation in this program will be billed to the dealer at 75% of dealer invoice.

b. In order to provide a selection of available machines, each defendant agrees to offer at least two models each year for participation in this dealer-loan program.

c. Billing of the dealer for an ATV used in this program will be delayed for twelve months from the date the vehicle loan is processed.

d. Defendants further agree to notify all dealers by letter of this loan program within 60 days of the Court's approval of this final consent decree and to provide the CPSC with a copy of the letter at the same time as the mailing to dealers. Defendants shall encourage their dealers, authorized agents, or representatives to provide loan vehicles to training programs.

10. Reporting Requirements

a. Defendants agree that, prior to implementation of the training course, they will provide the CPSC with copies of all training materials which will be used in the training course, including instructor guides, visual aids, and student handouts.

b. Defendants further agree to report the information listed below to the Commission on a quarterly basis commencing with the fourth quarter of 1988. The defendants agree to furnish such information on a state-by-state basis. Reports shall be submitted to the CPSC within 30 days following the end of each quarter. The information shall consist of:

- (1) the number of new ATVs sold;
- (2) the number of new ATVs sold to first time purchasers without riding experience and the percentage of those purchasers (or members of their immediate families) who take the training course outlined in this final consent decree;
- (3) the number of instructors trained and

certified to teach the training course outlined in this final consent decree;

(4) the number of such instructors who are actively training ATV riders;

(5) the number of training classes held and the number of persons trained; and

(6) the number and dollar value of incentives provided to ATV purchasers.

c. Defendants further agree to provide the CPSC, upon reasonable notice, access to relevant ATV training records in order for the Commission to verify that training is being conducted in accordance with this consent decree. Upon request by the CPSC, the national headquarters will provide the name, address, and telephone number of the Area Administrator(s) in any location or locations specified by the CPSC for purposes of obtaining information about the time and location of training classes held in that area.

L. STANDARDS

1. The Consumer Product Safety Commission has commenced administrative proceedings under Sections 7 and 9 of the Consumer Product Safety Act and Section 3 of the Federal Hazardous Substances Act for purposes of developing, through regulations or other authorized mechanisms, standards for ATVs.

2. The defendants agree to attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission within four months of the Court's approval of this final consent decree.

3. To the extent that three-wheeled ATVs meet mandatory standards promulgated by the Commission or voluntary standards satisfactory to the Commission developed pursuant to subparagraph L.2, the marketing and sale of such vehicles shall be permitted, notwithstanding paragraph F above.

4. To the extent that either a mandatory standard promulgated by the CPSC or a voluntary standard satisfactory to the CPSC developed pursuant to paragraph L.2. permits the marketing and sale of ATVs with engine sizes greater than 90 cc for use by children 14 years old and over, the marketing and sale of such vehicles shall be permitted notwithstanding paragraph G.

M. FINAL CONSENT DECREE

The Court's approval of this final consent decree shall constitute a full settlement of the government's complaint against the defendants which have signed this decree. Upon the Court's approval of this final consent decree, the government shall dismiss its complaint without prejudice against defendants Honda Motor Co., Ltd., Honda Research & Development Co., Ltd., Yamaha Motor Co., Ltd., Suzuki Motors Co., Ltd., and Kawasaki Heavy Industries, Ltd.

N. DISCLAIMER OF LIABILITY

The parties have entered into this final consent decree for the purpose of resolving the controversy over the safety of ATVs without protracted, complex, and extremely costly litigation, the outcome of which is uncertain. In entering into this decree, defendants do not admit that ATVs are or have been unsafe or defective nor do they admit any liability for any accidents, injuries or deaths involving such vehicles. In addition,

defendants do not admit any fault, wrongdoing, or unlawful conduct with respect to any product or actions taken or any actions alleged in the complaint, including but not limited to the alleged making of false and deceptive representations and failing to provide adequate warnings and instructions.

O. STATE LEGISLATIVE INITIATIVES

There are pending in certain state legislatures proposals for the licensing and certification of ATV operators. In entering into this final consent decree, defendants agree and undertake not to oppose such pending or future state legislation to the extent that it provides for age limits for ATV operators consistent with the age recommendations specified in this decree or for the requirement of hands-on training before a certificate or license is issued.

P. CHILD-SIZED ATVS

In addition to the understandings and agreements contained in this final consent decree, the United States, through the Consumer Product Safety Commission, reserves the right to proceed separately under the Federal Hazardous Substances Act against ATVs which are, or have been, marketed for children under the age of 12, and defendants reserve the right to challenge any such proceeding.

Q. ADDITIONAL RESERVATION OF RIGHTS

The United States, through the Consumer Product Safety Commission, reserves the right to proceed administratively under Section 15 of the Consumer Product Safety Act, Section 15 of the Federal Hazardous Substances Act, or both, with respect to ATVs manufactured or distributed by defendants, if it determines,

after December 31, 1990, that a further and more extensive remedy, including recall or repurchase, is warranted.

The United States, through the Consumer Product Safety Commission, further reserves the right to initiate rulemaking proceedings under the Consumer Product Safety Act and the Federal Hazardous Substances Act with respect to possible hazards alleged to be presented by ATVs in general. It also reserves the right to initiate proceedings under the Consumer Product Safety Act, 15 U.S.C. §§ 2051, et seq., and the Federal Hazardous Substances Act, 15 U.S.C. §§ 1261, et seq., with respect to possible hazards, other than those included in the government's complaint, alleged to be presented by specific defects in individual models of ATVs.

R. MISCELLANEOUS PROVISIONS

1. Submission Of Reports: Any reports or other materials required to be submitted to the CPSC pursuant to this consent decree shall be submitted to the General Counsel. Any reports or other materials required to be submitted to the CPSC pursuant to this consent decree shall, after CPSC review and completion by the parties of any necessary final action on the matters to which the report or other material relates, be publicly available in the CPSC Public Reading Room, with copies in the CPSC regional centers, to the extent permitted by the trade secret and confidentiality provisions of Section 6(a) of the Consumer Product Safety Act, 15 U.S.C. § 2055(a), 18 U.S.C. § 1905, and 5 U.S.C. § 552(b)(4).

2. Extensions Of Time: Any defendant may request the approval of the General Counsel of the CPSC for a reasonable

extension of time to comply with any of the obligations set forth in this consent decree where, despite defendant's exercise of due diligence, unavoidable circumstances clearly warrant such an extension. The General Counsel of the CPSC shall respond promptly to any such request. Upon agreement to an extension, the Court shall be notified and the decree shall be deemed so amended without further action of the Court. After granting any extension of time that, alone or in combination with other extensions, enlarges the period of time for complying with an obligation set forth in this decree by more than six weeks, the General Counsel of the CPSC shall file a written statement of the reasons for the extension in the repository of materials described below in paragraph R.5.

3. Withdrawal From The ATV Market

a. Any defendant who withdraws from the ATV market shall be released from the provisions and requirements of this decree six months after said defendant has withdrawn all unsold ATVs from the market and said defendant's dealers, agents, or representatives have ceased all sales of new ATVs from that defendant. If, following a withdrawal from the market, a defendant commences the sale or distribution of new ATVs during the term of this decree, said defendant shall again become immediately bound by the provisions of this consent decree.

b. In the event that any defendant withdraws from the ATV market, the remaining defendants may apply to the Court for a determination as to what, if any, adjustments are appropriate with regard to the training program required by this decree and their obligations with respect to that program.

4. Confidentiality Of Materials: In connection with negotiation of this decree, the defendants have provided statements, information, and documents that contain competitively sensitive confidential commercial information. In addition, the parties have exchanged settlement materials and proposals. These documents were provided in confidence solely to facilitate said settlement negotiations. To the extent permitted by law, the United States shall invoke the protections of 5 U.S.C. § 552 (b) (4) and 15 U.S.C. § 2055, as they may apply to the aforesaid information, statements, and documents. Materials made, provided, or exchanged in confidence in the course of negotiation of the preliminary and final consent decrees are subject to all applicable rules of evidence limiting their admissibility in evidence in any other litigation, and do not constitute an admission by either party with respect to any of the issues in this case.

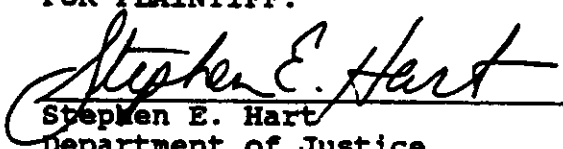
5. Repository Of Materials: Subject to subparagraph I of this paragraph, the CPSC shall maintain in the CPSC Public Reading Room, with copies in the CPSC regional centers, a public file of all materials submitted to it pursuant to the consent decree and all materials submitted to it by the public which relate to this final consent decree, to the extent permitted by the trade secret and confidentiality provisions of Section 6(a) of the Consumer Product Safety Act, 15 U.S.C. § 2055(a), 18 U.S.C. § 1905, and 5 U.S.C. § 552(b) (4). Each defendant shall be provided with a copy of any material related to that defendant or its products, or to ATVs in general, and provided an opportunity to comment, at least 20 days before that material is

to be made publicly available. Any comments by defendants shall be included with that material in the public file, provided, however, that any such comments that raise issues of confidentiality or trade secrets shall be treated in accordance with the CPSC's normal procedures. Without waiving any substantive rights otherwise provided by law, the provisions of this subparagraph shall apply in lieu of any otherwise applicable procedures required by Section 6(b)(6) of the Consumer Product Safety Act, 15 U.S.C. § 2055(b)(6).

S. RETENTION OF JURISDICTION

The parties agree that the District Court for the District of Columbia shall retain jurisdiction of this cause for the purpose of enabling any of the parties to this final consent decree to apply at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this final consent decree, for the modification or vacating of any provisions, for the enforcement of compliance, and for the punishment of any violation.

FOR PLAINTIFF:


Stephen E. Hart
Department of Justice
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10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 633-3313

4-28-88
Dated

FOR DEFENDANTS:

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4/28/88
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Dated

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4/28/88
Dated

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4/28/88
Dated

SO ORDERED:

Matthew R. Schneider
UNITED STATES DISTRICT JUDGE

DATED: 4/28/88

Appendix A

[General Warning Label]

▲ WARNING

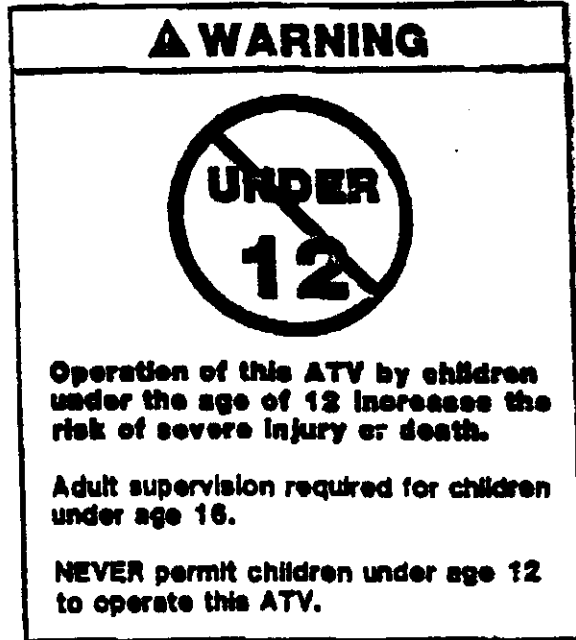
THIS VEHICLE CAN BE HAZARDOUS TO OPERATE. A collision or rollover can occur quickly, even during routine maneuvers such as turning and driving on hills or over obstacles, if you fail to take proper precautions.

SEVERE INJURY OR DEATH can result if you do not follow these instructions:

- **BEFORE YOU OPERATE THIS ATV, READ THE OWNER'S MANUAL AND ALL LABELS.**
- **NEVER OPERATE THIS ATV WITHOUT PROPER INSTRUCTION.** Beginners should complete a certified training course.
- **NEVER CARRY A PASSENGER.** You increase your risk of losing control if you carry a passenger.
- **NEVER OPERATE THIS ATV ON PAVED SURFACES.** You increase your risk of losing control if you operate this ATV on pavement.
- **NEVER OPERATE THIS ATV ON PUBLIC ROADS.** You can collide with another vehicle if you operate this ATV on a public road.
- **ALWAYS WEAR AN APPROVED MOTORCYCLE HELMET, eye protection, and protective clothing.**
- **NEVER CONSUME ALCOHOL OR DRUGS** before or while operating this ATV.
- **NEVER OPERATE THIS ATV AT EXCESSIVE SPEEDS.** You increase your risk of losing control if you operate this ATV at speeds too fast for the terrain, visibility conditions, or your experience.
- **NEVER ATTEMPT WHEELIES, JUMPS, OR OTHER STUNTS.**

Appendix B

[Age Recommendation Warning Label (#1)]



Appendix C

[Age Recommendation Warning Label (#2)]

