

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

POLARIS INDUSTRIES, L.P.,)
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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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. Defendant markets and sells 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, defendant has not had the opportunity to respond to these allegations. These

allegations have not been admitted, nor has defendant conceded that the government's legal and factual positions are valid. Defendant denies 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 defendant 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. 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 defendant Polaris Industries, L.P., 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 manufactured by the 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. "Defendant" means Polaris Industries, L.P. This decree shall bind it, its officers, agents, servants and employees and those persons in active concert or participation with it who receive actual notice of this consent decree by personal service or otherwise. The term "defendant" does not include those persons who have a contractual dealer relationship with the defendant. The defendant undertakes and agrees, however, that it will use its 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 its dealers and any authorized agents or representatives. By entering into this consent decree, defendant further warrants and represents that it has the authority to comply with 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 defendant's 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 its dealers and authorized agents or representatives to impose this duty.

C. SCOPE

The terms of this consent decree shall apply to all activities by defendant 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 defendant hereby submits itself to the personal jurisdiction of this Court, waives service of process and agrees that venue is proper in this district. Defendant does 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, defendant agrees 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 if any person is granted permission to intervene as a party, the defendant reserves 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. Defendant shall not market three-wheeled ATVs and shall not distribute or sell three-wheeled ATVs to its retail dealers, agents or representatives who sell ATVs.

2. Defendant 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 such 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. Defendant never has manufactured or distributed ATVs with engine sizes of less than 90 cubic centimeters displacement ("cc"). Defendant agrees that if it should manufacture or distribute ATVs with engine sizes of 70 cc up to and including 90 cc it will represent affirmatively, including in print and electronic media if defendant uses such print and electronic media for advertising or promoting ATVs, that ATVs with engine sizes of 70 ("cc") up to and including 90 cc should be used only by those aged 12 and older. This undertaking includes the commitment to use its best efforts to accomplish this relief through defendant's retail dealers, agents or representatives who sell ATVs.

2. Defendant's practice has been to represent affirmatively that the ATVs which it manufactures, all of which have had engine sizes of over 90 cc, should be used only by those aged 18 and older. Defendant agrees not to lower its age recommendation for such ATVs to less than 16 years of age. Defendant shall represent affirmatively, including in print and electronic media if defendant uses 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 who meet its age recommendation. This undertaking includes the commitment to use best efforts to accomplish this relief through defendant's retail dealers, agents or representatives of defendant's who sell ATVs.

3. Defendant shall use its 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 its best efforts to accomplish this relief through defendant's retail dealers, agents or representatives who sell ATVs.

H. NOTICES AND WARNINGS

1. Labels

a. New labels: Defendant agrees 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., defendant agrees to affix to every ATV distributed or sold by it 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: Defendant agrees to affix to every ATV distributed or sold by it a label stating that persons under age 18 should not operate 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.

The age recommendation warning label shall have the identical language, dimensions, format, type size, and type font as shown in Appendix B. In addition, the age recommendation warning label shall conform to the following criteria to the extent applicable:

(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 feasible, 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., defendant agrees to affix to every ATV distributed or sold by it a label, in the

form attached as Appendix C, 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 C. 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): Defendant agrees to affix to every ATV distributed or sold by it a label warning against use of improper air pressure in the ATV's tires. Defendant also agrees to affix to every ATV distributed or sold by it a label warning against overloading. Defendant may affix one warning label addressing both of these hazards if it so desires. 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, defendant may affix labels in addition to the mandatory labels described above as long as it satisfies 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, 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, defendant agrees to send to all past purchasers for whom defendant has 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). These labels shall be accompanied by written instructions as to where these labels should be placed. At a minimum, defendant agrees to mail an

explanatory letter containing the introductory language set forth in Appendix D.

(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, defendant agrees to distribute the general warning label described at paragraph H.1.a.(1)(a) (Appendix A) and the age recommendation warning label described at paragraph H.1.a.(1)(b) (Appendix B) 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. Defendant agrees to use its best efforts to ensure that its 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 one of the front fenders 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 one of the rear fenders 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 other defendants have agreed 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 that apply to ATVs distributed by the other defendants 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 with respect to the age recommendation warning label provided for at paragraph H.1.(b).

(2) Within five days of the parties signing the final consent decree, the other defendants and the CPSC shall each nominate an expert in the area of warning labels; the defendant herein may nominate either an expert in the area of warning labels or a non-participating observer. 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, or, in the case of defendant herein, the costs of any non-participating observer; if the defendant herein nominates an expert, it will participate in the testing program and shall pay its fair share of the direct costs of the testing program.

d. After distribution of the labels that conform to the requirements of paragraph H.1.a., the 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 defendant agrees 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: Defendant agrees to send copies of the manual supplement described herein free of charge to all known past purchasers for whom defendant has addresses at the same time the defendant sends 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 D.

(2) Dealers, agents, or representatives: Within 45 days of the Court's approval of the final consent decree, defendant shall provide to each of its 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. Defendant shall continue to provide the manual supplements for distribution to ATV purchasers until defendant complies with the requirements of paragraph H.2.b. Defendant shall use its best efforts to ensure that its 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 E.

(4) Format: The text shall appear in the form shown in Appendix E. 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 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) Defendant agrees 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 defendant, 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:

 **WARNING** 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 F 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, the defendant 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 G. 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 G. 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) 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 the draft and provide to defendant its written evaluation of whether the 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, 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. If defendant receives proposed substitute or additional language under this subparagraph defendant 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, defendant shall inform the CPSC in writing of what modifications, if any, 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 defendant to seek relief from this Court if the CPSC concludes that the manuals which 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, 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 defendant to rewrite any portion of the manual(s) at issue, the CPSC may seek a court order requiring defendant to send replacement manuals to all ATV purchasers who received the manuals and manual supplements distributed by defendant 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. Defendant reserves the right to oppose any such additional requirement.

(4) After distribution of owner's manuals that conform to the requirements of this decree, defendant may develop owner's manuals for subsequent new ATV models, provided that 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, defendant agrees to submit copies of all such manuals and a written rationale for all changes, to the General Counsel of the CPSC at least 30 days before distributing the manuals.

3. Point-Of-Purchase Communications

a. Point-of-purchase oral communications

(1) Dealer oversight: Defendant shall use its best efforts to ensure that oral communications of retail dealers, agents or representatives of defendant who sell ATVs to actual and prospective purchasers contain information not inconsistent with all safety-related requirements of this decree.

(2) Dealer guidance: Defendant agrees 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 defendant 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 defendant, or through defendant's 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 defendant -- including all materials funded in whole or in part

by defendant cooperatively with its dealers, agents or representatives selling ATVs -- shall conform to the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix H. Defendant further agrees to use its best efforts to ensure that all point-of-purchase safety materials not distributed by defendant but distributed by its dealers, agents or representatives selling ATVs conform to the Guidelines For Point-Of-Purchase Safety Materials attached as Appendix H.

(3) Defendant shall use its best efforts to ensure that its 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, whichever is later, defendant 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 H.

(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, defendant

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 H. Defendant agrees to use its best efforts to require its retail dealers to make the safety video readily available for viewing by all actual and prospective ATV purchasers. This video may be the same video as the video to be used in the training course, referred to in Appendix K.

(c) ATV safety alert: Beginning 20 days after the Court's approval of the final consent decree, defendant 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 I. 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-related fatalities for the preceding five years. Defendant shall use its 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 its supplies are exhausted.

(d) Safety poster: Beginning 90 days after the Court's approval of the final consent decree, defendant shall provide to all retail dealers, or, where ATVs are sold to

consumers by agents or representatives of defendant 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 I 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; defendant shall distribute new, replacement editions of the poster at least every four years. Defendant agrees 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. Defendant further agrees to use its best efforts to ensure that its 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 defendant provides the new poster required by this subparagraph, defendant shall use its 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, defendant 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 H. Within 15 days after its receipt of the draft script, the CPSC shall provide defendant 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, defendant may proceed with taping and production of the safety video.

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

(d) The CPSC shall have 20 days from the date it receives defendant's response to seek relief from the Court if the CPSC concludes that the safety video which

defendant intends to tape and distribute will not conform to the Guidelines. In the event the CPSC seeks relief from the Court, defendant shall halt production of the video pending the Court's resolution of the disagreement between the parties.

(e) Once defendant proceeds with taping and production, if it makes other than minor, insubstantial changes in the script, it 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 defendant 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, defendant 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) Defendant agrees 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 it disseminates those materials to its dealers.

(i) After distribution of hang tags that conform to the Guidelines For Point-Of-Purchase Safety Materials, defendant may develop hang tags for new ATV models, provided that 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, defendant agrees 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, defendant 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 its retail dealers, agents or representatives who sell ATVs, defendant shall provide a copy to the General Counsel of the CPSC.

(7) Nothing herein shall preclude 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 H.

4. Toll-Free Safety Hotline

a. Defendant agrees 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 defendant, including those contained in warning labels, owner's manuals, advertising and promotional materials and the ATV Safety Alert.

c. The hotline service will, 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-related fatalities for the preceding five years, based upon data provided by the CPSC);
- (3) age recommendations for ATVs;
- (4) the importance and availability of the hands-on training course, and information about the training course;
- (5) 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 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. Defendant further agrees 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. Defendant agrees to send free of charge the manual supplement provided for at paragraph H.2.a. when this item is specifically requested.

e. Defendant further agrees 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 the defendant to consumers shall be inconsistent with the terms of this decree or with the safety information that this decree mandates.

J. MARKETING AND MEDIA

1. Guidelines For Promotional Advertisements

a. All advertisements used or distributed by the defendant shall conform to the Guidelines for Advertising and

Promotional Materials attached as Appendix J. 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 days after the date of the Court's approval of the final consent decree;

(4) All printed point-of-purchase 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 defendant shall, within 20 days of the date of the Court's approval of the final consent decree, insert a copy of the Safety Alert (Appendix I) into each copy of the materials, or provide dealers with sufficient copies of the Safety Alert and use its best efforts to ensure that the Safety Alerts are attached 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 (Defendant shall use its 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 material (including posters and direct mail) used by defendant or distributed to dealers after the date of the Court's approval of the final consent decree (Defendant shall use its 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 in part by the defendant through any cooperative advertising program with its dealers, agents or other representatives who sell ATVs shall conform to the Guidelines within 90 days after the date of the Court's approval of the final consent decree;

c. The defendant shall use its best efforts to ensure that any other advertisements and other promotional materials used or distributed by its dealers conform to these Guidelines.

d. For each promotional advertisement distributed to a dealer or used after the date of the Court's approval of the final consent decree, the 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 radio commercial;

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

2. Public Awareness Campaign

a. The defendant shall conduct a public awareness campaign for the purpose of strengthening the awareness of safety among the current and potential ATV riding public.

b. This campaign shall include:

(1) A public information program wherein defendant will provide to appropriate newspapers and magazines at no charge information regarding ATV safety suitable for publication in consumer columns and similar locations;

(2) Public service radio announcements on ATV safety which defendant will provide at no charge to radio stations in the manner described in paragraph J.2.c;

(3) Safety literature which shall be provided at no charge by defendant (directly or through dealers or distributors) for use by organizations such as ATV user associations, outdoor sporting clubs, agricultural organizations and similar groups, in reasonable amounts for legitimate educational use;

(4) A safety video which shall be loaned or given at no charge by defendant to groups such as those described in paragraph J.2.f. upon the request of such groups when intended for legitimate educational use; and

(5) Public outreach efforts wherein defendant will encourage its dealers (at annual sales meetings and through other written and direct communications) to make public appearances to speak before interested groups on the subject of ATV safety and wherein defendant will equip its dealers with appropriate suggested written remarks and advice on how to make such presentations effectively. Public appearances are to include the use of such aids as a safety video, brochures and other appropriate materials.

c. For dissemination of information in the public awareness campaign, defendant shall engage a competent, professional public relations firm for assistance and shall distribute information to not fewer than 1,000 newspapers, 250 radio stations, and 25 magazines. The selection of newspapers and radio stations shall be coordinated with defendant's geographic market. The selection of magazines shall be calculated to reach readers with an interest or potential interest in ATV use.

d. Upon selection of the public relations firm chosen pursuant to paragraph J.2.c., defendant shall report to the CPSC the name and qualifications of the firm.

e. By October 1, 1988, defendant shall report to the CPSC the names and locations of the newspapers, radio stations, and magazines to whom defendant proposes to send information, and copies of the materials which defendant proposes to disseminate. (For radio advertisements, defendant shall submit the radio

script.) The CPSC shall provide the defendant with its comments on the defendant's submission, in writing, within 15 days of its receipt of the report. Defendant shall begin dissemination of safety materials within 15 days after the deadline for CPSC to provide its written comments, except that, if defendant alters its materials in response to CPSC comments, it may delay dissemination for a reasonable period of time.

f. Organizations to which safety literature, videos and speakers can be dispatched include Ducks Unlimited chapters, rod and gun clubs, American Legion and Veterans of Foreign Wars posts, agricultural groups and other organizations identified in local communities by individual dealers.

g. Defendant shall directly provide safety information at no charge to:

- (1) the Green Mountain State 3-Wheeler Club in Vermont;
- (2) the North Dakota Motorcycle Dealer Association;
- (3) the Maine 3-Wheeler Association;
- (4) the Oregon ATV Association;
- (5) the Polar ATV Alaska Association;
- (6) the Pennsylvania ATV Association;
- (7) the Southern New England ATV Association;
- (8) the ATV Association of Minnesota; and,
- (9) to the extent practicable, other ATV user organizations.

h. For the first two years from the effective date of this decree, defendant shall submit to the CPSC quarterly reports of its activities pursuant to this section. The reports shall:

(1) identify the organizations to which defendant has directly provided safety information and the materials provided;

(2) describe defendant's efforts to have its dealers provide safety information to groups;

(3) identify the radio stations to which defendant has provided public service announcements; and

(4) identify the magazines and newspapers to which defendant has provided safety information.

K. TRAINING

The defendant agrees and undertakes to offer, in a manner not contrary to applicable State law, a hands-on training program, at no charge to the consumer, for all future Polaris ATV purchasers and their immediate families, and to all known persons and their immediate families who purchased Polaris ATVs after December 30, 1986. Defendant further agrees to notify, within 90 days of the date of the Court's approval of the final consent decree, all known purchasers who purchased a Polaris ATV after December 30, 1986 of the availability of free hands-on training.

1. Training Course

a. Course content: The training curriculum will consist of a hands-on course which is based on the course outline

attached as Appendix K. Important elements of the training course are:

(1) All participants in the training program must be at least 18 years of age.

(2) The initial lesson shall include a discussion of the CPSC accident and injury data.

(3) The course shall include a training video which will include important safety and operating information.

(4) The instructor shall demonstrate each operating maneuver, followed by the performance of the maneuver by the person being trained.

(5) The training course shall include an end of course evaluation of the trainee's riding skills.

Additional agreed upon content is included in the course outline, attached as Appendix K.

b. Length of course: The length of the training course may be adjusted according to the experience level of the trainee and the number of trainees being trained at the same time. In all cases involving first-time users, however, the course shall thoroughly cover all the material in the course curriculum until there is a satisfactory completion of all maneuvers required on the ATV Scoring Chart which is attached to Appendix K. Similarly, in training previous purchasers who wish to take the training course, the defendant may train additional students at the same time provided the length of the course is

also adjusted in order to provide ample opportunity for each student to learn the operating skills contained in the course outline. In no case shall defendant teach classes in excess of eight students. For all classes with six or more students, defendant shall ensure that an additional training assistant is present.

c. Curriculum development: Defendant agrees to utilize the services of a qualified curriculum specialist in developing the training course curriculum. The defendant agrees to provide the CPSC, within 30 days of the date of the Court's approval of this final consent decree, with the following materials:

- (1) the proposed training curriculum for the training course,
- (2) a script for the video presentation; and
- (3) copies of all visual aids and other training materials to be used.

The CPSC shall provide its comments on the above materials within 30 days and, thereafter, the parties shall use good faith efforts to arrive at a suitable resolution of any problems.

d. Future modifications to course content: The defendant agrees that no changes shall be made to the course outline contained in Appendix K without the consent of the CPSC. The defendant may modify the course curriculum, which is based upon the course outline contained in Appendix K, upon the considered judgment of appropriate personnel so long as the

defendant concludes in good faith that the revisions are at least as effective as the curriculum agreed upon in accordance with this decree. The defendant shall notify the CPSC at least 30 days prior to 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. 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-related fatalities for the preceding five years, based upon data provided by the CPSC.

2. Instructor Training: The training course will be taught by employees of defendant's distributors or dealers or other appropriate personnel who have been certified to teach the course described in this consent decree. Defendant agrees to utilize the services of a qualified curriculum specialist in developing the instructor training course. Defendant agrees to develop, within 30 days of the date of the Court's approval of this final consent decree, a hands-on instructor's training course which shall be successfully completed by all instructors as a pre-requisite to certification. The defendant agrees to provide the CPSC with its proposed instructor training curriculum for the training course and other materials to be used in the instructor training course, including the criteria for certification, within 30 days of the date of the Court's approval of this final consent decree. The CPSC shall provide its

comments within 30 days and thereafter, the parties shall use good faith efforts to arrive at a suitable resolution of any problems.

3. Training Sites: Training sites shall be reasonably accessible to purchasers. Defendant agrees to include a provision in its dealer agreements that dealers shall insure against liability claims with respect to the training course described herein. Customers shall not be charged for insurance.

4. Fees For Training Courses: Training courses shall be offered at no charge to all persons and members of their immediate families who purchase a new Polaris ATV after the date of the Court's approval of this final consent decree and to all known persons and members of their immediate families who purchased a new Polaris ATV after December 30, 1986. Defendant agrees to provide training to all other past Polaris ATV purchasers and may charge such other persons who request training a reasonable fee.

5. Incentives: The defendant agrees to impose a requirement that each new purchaser complete a training session as a prerequisite to the registration of the purchaser's warranty.

6. Implementation: The defendant agrees that each of its dealerships shall have a certified instructor available to teach the training course at the time of purchase. The training of instructors shall begin upon the Court's approval of the final consent decree or upon the completion of the development of the

curriculum, as set forth in paragraph K.1. The defendant agrees to complete the training and certification of appropriate personnel as instructors and have the course in operation at 75% of its dealerships within 90 days of the date the course curriculum for instructor training becomes available. The defendant further agrees to use its best efforts to ensure that the training and certification of instructors and commencement of the course at the remaining dealerships will be completed within 150 days of the date the course curriculum for instructor training becomes available.

7. Coordination With State Laws: The parties agree that defendant's 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 defendant may modify the training program within that state so as to be in accordance with state law. The defendant shall immediately notify the General Counsel of the CPSC if the 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 defendant 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 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 defendant may request the approval of the General Counsel of the CPSC to modify its 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.

8. Participation In The Other Defendants' Training Program:
The defendant shall have the option, in lieu of the training program as described above, to participate in a training program established by other defendants as part of the settlement of this action.

9. Reporting Requirements:

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

b. Defendant further agrees to report the information listed below to the Commission on a quarterly basis commencing with the fourth quarter of 1988. The defendant agrees 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) With respect to 1989 and subsequent models, the number of new ATVs sold to first time purchasers who identify themselves as first time purchasers and the percentage of those purchasers (or members of their immediate families) who take the training course outlined in this final consent decree; and

(3) The number of instructors trained and certified to teach the training course outlined in this final consent decree.

c. Defendant further agrees to provide the CPSC access to the necessary records in order for the Commission to verify that training is being conducted in accordance with this consent decree.

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 defendant agrees to attempt in good faith to reach agreement with the other defendants who are party to a settlement of this action on voluntary standards satisfactory to the Commission within four months of the Court's approval of the 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 section F above.

M. FINAL CONSENT DECREE

The Court's approval of this final consent decree shall constitute a full settlement of the government's complaint against defendant.

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 decrees, defendant does not admit that ATVs are or have been unsafe or defective, nor does it admit any liability for any accidents, injuries or deaths involving such vehicles. In addition, defendant does 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, defendant agrees and undertakes 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, or in the future might be, marketed for children under the age of 12, and defendant reserves the right to challenge any such proceeding. The defendant reiterates that it has never manufactured or distributed ATVs for children.

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 defendant, if it determines, after December 31, 1990, that a further and more extensive ATV recall and repurchase remedy 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, and the Federal Hazardous Substances Act 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: The 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. Confidentiality Of Materials: In connection with negotiation of this decree, the defendant has 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.

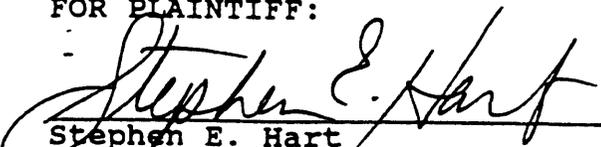
4. Repository of Materials: Subject to subparagraph 1 of this paragraph, the CPSC shall maintain in the CPSC Public Reading Room, with copies in the CPSC regional centers, a public file of all materials submitted to it pursuant to the consent decree and all materials submitted to it by the public which 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). Defendant shall be provided with a copy of any material related to it 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 defendant 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
Civil Division, Room 3744
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 633-3313

4-28-88
Dated

FOR DEFENDANT POLARIS INDUSTRIES, L.P.:

David A. Biegung

David A. Biegung
Robins, Zelle, Larson & Kaplan
Army & Navy Club Building
Suite 610
1627 Eye Street, N.W.
Washington, D.C. 20006
(202) 861-6800

4 - 28 - 88

Dated

SO ORDERED:

Richard A. Ferrell

UNITED STATES DISTRICT JUDGE

DATED:

4/28/88

Appendix A

[General Warning Label]

▲ WARNING

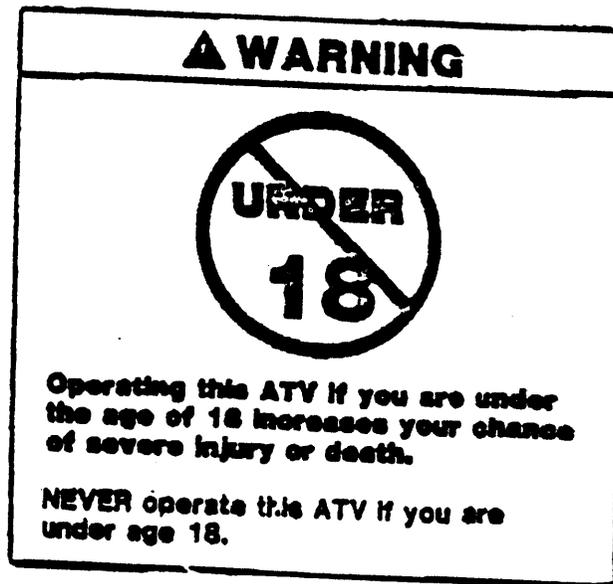
THIS VEHICLE CAN BE HAZARDOUS TO OPERATE. A collision or rollover can occur quickly, even during routine maneuvers such as turning and driving on hills or over obstacles, if you fail to take proper precautions.

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 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]



Appendix C

[Passenger Warning Label]

▲ WARNING

Riding as a passenger can cause the ATV to go out of control.

Loss of control can cause a collision or rollover, which can result in severe injury or death.

NEVER ride as a passenger.

Appendix D

[Envelope shall state: IMPORTANT ATV SAFETY MESSAGE]

[Polaris Letterhead]

IMPORTANT ATV SAFETY MESSAGE

Dear Polaris ATV Owner:

As part of an agreement with the United States Government, Polaris has prepared two new warning labels for use on your ATV. These labels, which are enclosed with this letter, contain very important safety information about your ATV. One of the labels warns about some of the possible hazards of operating an ATV, and provides some important safety instructions to follow when operating your vehicle. The other label gives the age recommendation for your model.

[Alternative for ATV purchasers whose warranties were registered after the mailing of the Safety Alert:

As part of an agreement with the United States Government, Polaris is sending you an ATV Safety Alert which warns about some of the possible hazards of operating an ATV, and provides some important safety instructions to follow when operating your vehicle.

Also as part of the agreement with the Government, Polaris has prepared two new warning labels for use on your ATV. These labels, which are enclosed with this letter, contain very important safety information about your ATV. One of the labels contains operating warnings, and the other label gives the age recommendation for your model.]

Please take a moment to read each label carefully. Always follow the important safety warnings and instructions on these labels [and on the Safety Alert] when operating your ATV.

After reading the new labels, **YOU SHOULD IMMEDIATELY ATTACH THEM TO YOUR ATV** where they will serve as important safety reminders for you and anyone else who ever uses your ATV. The instructions for attaching the labels are enclosed.

Polaris has also enclosed a Manual Supplement as part of the agreement with the Government. This supplement contains important information about operating your ATV. You should review the Manual Supplement along with your existing Owner's Manual, and keep the two manuals with your ATV.

If you have sold your ATV, please mail this letter with the labels and Manual Supplement on to the buyer, if you know his or her address.

For more safety information, call the Consumer Product Safety Commission at 1-800-638-7272 or Polaris at 1-XXX-XXX-XXXX.

Appendix E

MANUAL SUPPLEMENT

A. Cover Statement

The following, at a minimum, will appear on the outside front cover of each manual supplement:

"Read this manual supplement carefully. It contains important safety information."

B. Introduction

The following will appear on the first page of each manual supplement:

"YOUR ATV 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.

For your safety, understand and follow all the warnings contained in this Manual Supplement as well as those contained in the Owner's Manual and the labels on your vehicle. Failure to follow these warnings can result in SEVERE INJURY OR DEATH.

Keep the Manual Supplement and the Owner's Manual with your vehicle at all times."

C. Warning Statements

The warning statements attached shall appear in each manual supplement in the order shown.

Attachment to Appendix E

No. 1

! WARNING

POTENTIAL HAZARD

Operating this ATV without proper instruction.

WHAT CAN HAPPEN

The risk of an accident is greatly increased if the operator does not know how to operate the ATV properly in different situations and on different types of terrain.

HOW TO AVOID THE HAZARD

Beginning and inexperienced operators should complete the certified training course offered by (ATV Company). They should then regularly practice the skills learned in the course and the operating techniques described in the Owner's Manual.

For more information about the training course, contact an authorized ATV dealer or call Polaris at 1-XXX-XXX-XXXX.

No. 2

! WARNING

POTENTIAL HAZARD

Failure to follow the age recommendations for this ATV.

WHAT CAN HAPPEN

Use by children of ATVs that are not recommended for their age can lead to severe injury or death of the child.

Even though a child may be within the age group for which some ATVs are recommended, he or she may not have the skills, abilities, or judgment needed to operate the ATV safely and may be involved in a serious accident.

HOW TO AVOID THE HAZARD

No one under 18 should operate a Polaris ATV.

No. 3

! WARNING

[illustration]

POTENTIAL HAZARD

Carrying a passenger on this ATV.

WHAT CAN HAPPEN

Greatly reduces your ability to balance and control this ATV.

Could cause an accident, resulting in harm to you and/or your passenger.

HOW TO AVOID THE HAZARD

Never carry a passenger. The long seat is to allow the operator to shift position as needed during operation. It is not for carrying passengers.

No. 4

! WARNING

[illustration]

POTENTIAL HAZARD

Operating this ATV on paved surfaces.

WHAT CAN HAPPEN

The ATV's tires are designed for off-road use only, not for use on pavement. Paved surfaces may seriously affect handling and control of the ATV, and may cause the vehicle to go out of control.

HOW TO AVOID THE HAZARD

Never operate the ATV on any paved surfaces, including sidewalks, driveways, parking lots and streets.