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#213

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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

15 JUL 1975

Honorable Teno Roncalio
House of Representatives
Washington, D.C. 20515

Dear Mr. Roncalio:

This is in response to your June 10, 1975 letter which enclosed a copy of a May 9, 1975 letter from SeTeton Park Ranch of Pinedale, Wyoming. This office is responding, rather than the Commission's Office of Congressional Relations, because the SeTeton letter raises an issue that requires a legal advisory opinion.

SeTeton, a dealer for snow machine products made by Moto-Ski Limited, provides information on poor performance by certain snow machines. Our understanding of the potential safety hazard involved is that malfunction of these machines can leave persons stranded in freezing weather and blizzard conditions with no means to reach shelter except walking.

This office believes that snow machines are "consumer products" and therefore within the jurisdiction of the Commission. If "an unreasonable risk of injury [is] associated with" snow machines or if a snow machine defect "creates a substantial risk of injury to the public" (see sections 7(a) and 15(a), respectively, of the Consumer Product Safety Act, copy enclosed), the Commission can undertake regulatory or enforcement action to eliminate or reduce the risk of injury.

In two previous advisory opinions, the Commission staff has considered the question of how closely a risk of injury must relate to a consumer product before the Commission can undertake regulatory action. A November 14, 1974 advisory opinion (copy enclosed) stated that the poor functioning of a fire extinguisher "may be closely related to the injury from fire which [the extinguisher is] supposed to prevent." The conclusion of that advisory opinion was that the Commission does have "jurisdiction to regulate the effectiveness of safety-related products such as fire extinguishers." In a February 12, 1975 advisory opinion (copy enclosed) this office made a similar finding

for malfunctioning fire alarm equipment and for traffic control devices which "can cause injuries by directing cars or pedestrians to enter an intersection into oncoming traffic."

This office believes that snow machines, when used in the severe weather conditions described in the SeTeton letter, might present an unreasonable risk of injury or might create a substantial risk of injury to the public. Before the Commission takes any regulatory or enforcement action, its staff will make an investigation into the potential problem. Accordingly, we are referring your constituent's letter to the Commission's Office of Product Defect Identification for its consideration.

While the views expressed in this letter are based on the most current interpretation of the law by the Commission staff, they could subsequently be changed or superseded by the staff or by the Commission.

Sincerely,

for David Schnautzer

Michael A. Brown
General Counsel

Enclosures

#154

NOV 14 1974

Honorable Jack Kemp
House of Representatives
Washington, DC 20515

Dear Mr. Kemp:

This is in response to your letter of October 10, 1974, to Michael A. Brown, General Counsel of the Consumer Product Safety Commission. In that letter you ask whether the Consumer Product Safety Act covers fire extinguishers and what safety standards have been established for these products.

In the view of the General Counsel, fire extinguishers are [illegible] products. Section 3(a)(1) of the Act (copy enclosed) defines a consumer product to include [illegible] any article or component [illegible] thereof, produced or distributed (1) for sale to a consumer [illegible] or [illegible] temporary household or residence, [illegible] safety standards [illegible] the Commission [illegible]

[illegible] copy of the product [illegible] 1974 which indicates that of 369 products [illegible] fire extinguishers [illegible] in frequency and severity of [illegible] the product [illegible] for fiscal year 1974 (not yet [illegible] publication) indicates that they are number [illegible] and that [illegible] associated with fire [illegible] information is [illegible] Commission [illegible]

[illegible] would not determine [illegible] the priority [illegible] to product evaluation undertaken [illegible] to promulgating mandatory safety standards or bans. Also helpful [illegible] priority would be the volume of consumer complaints and defect notification reports referred to the Commission.

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ADVISORY OPINION

Such reports are required by Section 15(b) of the Act from manufacturers, distributors and retailers who have information on product defects which could create substantial product hazards. The Commission's Division of Product Defect Identification has not, to date, received any reports on fire extinguishers.

Another instrument to help determine possible action by the Commission is provided by section 10 of the Act which permits any interested person or group to petition the Commission to issue, amend or revoke a consumer product safety rule. A petition may be filed by any individual or organization citing relevant information concerning a particular product hazard, and asking the Commission to take action concerning the hazard. The Commission may hold a public hearing or other proceeding or investigation before granting or denying the petition if it believes these steps would be appropriate.

Other than the promulgation of consumer product safety standards, the Commission has available the following wide range of remedies to implement the purposes of the Consumer Product Safety Act. For the purposes of public health and safety, section 16 of the Act provides that Commission employees or agents may inspect establishments such as factories and distribution centers which handle consumer products, and provides also that records at such establishments pertaining to consumer products may be inspected. Section 15 of the Act provides that if the Commission determines after a hearing that a consumer product presents a substantial product hazard as that term is defined in section 15, the Commission may order that the product be repaired or replaced, or that its purchase price be refunded. If a consumer product presents an unreasonable risk of injury and no feasible standard appears to exist which can protect the public, section 8 of the Act provides that the Commission may, after following specified procedures, issue an order declaring the product to be a banned hazardous product. Section 12 of the Act provides the Commission with authority to have an imminently hazardous consumer product removed from the market by seizure, upon filing an action in a U.S. District Court.

To return to the matter of jurisdiction, the question you raise appears to have two parts. First, as we stated, it is the view of our General Counsel that a fire extinguisher is a consumer product. Thus, if a fault in design, for example, resulted in a product with sharp points or sharp edges which could cause injuries such as lacerations or contusions, the Commission could take action to develop a standard to reduce or eliminate such injuries. Second, the Office of the General Counsel believes the Commission would have jurisdiction to regulate products such as fire extinguishers that may not perform as they are

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intended, since the quality of such performance may be closely related to the injury from fire which the products are supposed to prevent.

Accordingly, Counsel advises that the Commission has jurisdiction to regulate the effectiveness of safety-related products such as fire extinguishers.

Sincerely,

ORIGINAL SIGNED BY
BARBARA A. LUDDEN

Mrs. Barbara A. Ludden
Director of Congressional Relations

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CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

FEB 12 1975

[redacted], Inc.
[redacted] Street
[redacted] Iowa [redacted]

Dear Mr. [redacted]

This is in response to your October 17, 1974 letter concerning the application of the Consumer Product Safety Act (copy enclosed) to the traffic control signals and fire alarm equipment which your company manufactures and sells. The Commission's view is that these products are subject to the jurisdiction of the Act.

Protecting the public against "unreasonable risks of injury associated with consumer products" is one of the purposes of the Act (section 2(b)(1)). The Commission's jurisdiction over fire alarm equipment is related to jurisdiction over fire extinguishers which has already been addressed in a November 14, 1974 advisory opinion (copy enclosed). If a fire alarm device does not function properly, injuries from a fire are more likely to occur than with an available well-functioning device. Similarly, a malfunctioning traffic control device can cause injuries by directing cars or pedestrians to enter an intersection into oncoming traffic. Such injuries are associated with these products.

Consumer products under the Act are not necessarily sold directly to consumers. The definition requires that a product be produced or distributed for a consumer's "use, consumption, or enjoyment in or around a permanent or temporary household or residence, a school, in recreation, or otherwise..." (section 3(a)(1)). The legislative history clarifies that "[i]t is not necessary that a product be actually sold to a consumer, but only

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ADVISORY OPINION

that it be produced or distributed for his use" (House Interstate and Foreign Commerce Committee Report No. 92-1153(1972)). Although your sales are to municipalities, fire alarm equipment and traffic control devices are used by consumers and for their benefit. Both are consumer products and are subject to the Consumer Product Safety Act.

Thank you for writing and for your appreciative comments about Mr. Dimcoff's speech.

Sincerely,

Michael A. Brown
General Counsel

Enclosures

OGC

TENO RONCALIO
THE STATE OF WYOMING

(202) 225-2311

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
PUBLIC WORKS AND TRANSPORTATION
CHAIRMAN
SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

JOINT COMMITTEE ON ATOMIC ENERGY
CHAIRMAN
SUBCOMMITTEE ON AGREEMENTS FOR COOPERATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 10, 1975

RECEIVED
JUN 13 1975
Consumer Product Safety Commission
Office of Congressional Relations

Ms. Barbara A. Ludden, Director
Office of Congressional Relations
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, D.C. 20207

Dear Ms. Ludden:

Enclosed, please find a copy of correspondence I have received from SeTeton Pack Ranch of Pinedale, Wyoming, explaining thoroughly the problems they have had from their purchase and sale of several snowmachines from Bombardier Corporation.

Is there anyway that your Commission can help SeTeton get some relief in this matter? Won't you please let me know?

Respectfully yours

Teno Roncalio
Congressman for Wyoming

TR/mmc

Encl.

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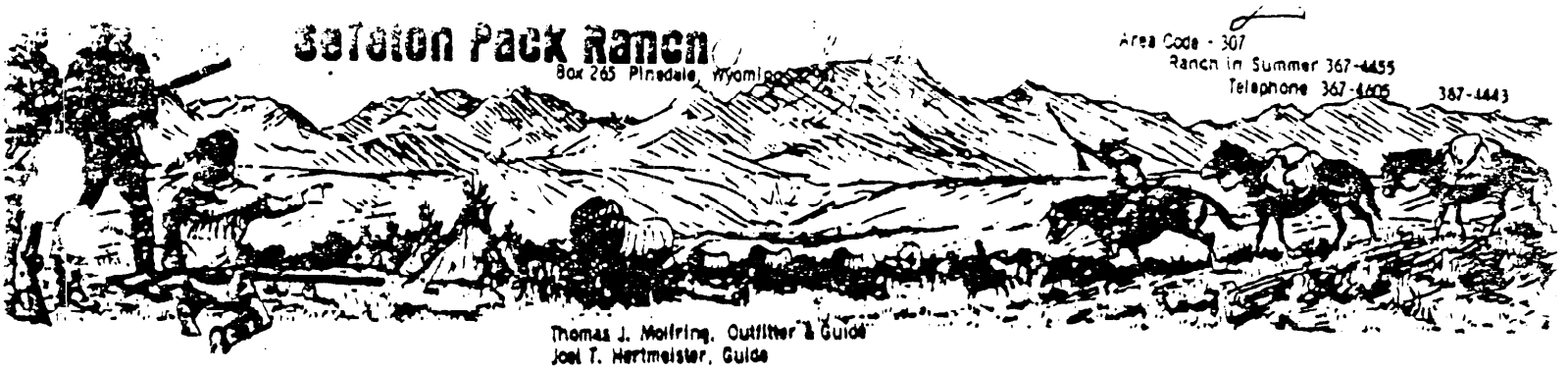

9 May, 1975

Mr. Darrell Breider, Gen'l Mgr.
Bombardier Corporation
Moto-Ski Limited
P. O. Box 6106
Duluth, Minnesota 55806

Attention: Consumer Product Safety Commission
5401 W. Bard Ave.
Washington, D.C. 20207

Attention: National Highway Traffic Safety Administration
Department of Transportation
Washington, D.C. 20207

Dear Mr. Breider:

We are taking this opportunity of addressing ourselves to you and the two Agencies of the United States Government regarding Moto-Ski snow machine products, for which we have been your dealer during the past two years. During 1973-74 we purchased eleven of your snowmachine units, and the Fall of 1974 an additional eight units, for a total of nineteen units.

We purchased: 1 1974 Free-air TS400
5 1974 Grand Sport 440CC
5 1974 Futura 440CC
8 1974 Chimo 440CC

With the exception of the TS400, the other eighteen machines had BSE440CC engines. This engine is manufactured in Japan and the snow machine is designed and built in Canada around this power plant. Our service-dealer a year ago was Boyd-Martin Company, 1260 West North Temple, Salt Lake City, Utah. This year we ordered directly from the factory whose operation is located at the above address.

Mr. Hank Snow, on January 2, 1974, purchased two 1974 Chimo snowmachines from us. He feeds elk, some 15 miles from his ranch, up in the Bridger Forest, for the Wyoming Game and Fish Department during the winter months. He bought a machine for himself and one for his wife, the serial numbers being #1258 and #1269. The first malfunction on Mr. Snow's machine was when the weld on the steering column broke, and the machine could not be steered. This was the week after he purchased the machine!

Subsequent to that, the machine #1269 at various times has had a total of 6 pair of piston failures and the machine #1[illegible] has had two total engine failures. The Boyd-Martin Company in Salt Lake made repairs on this engine in addition to the times we repaired it. The snow machine has been in service to the purchaser less than 30% of the total time and has less than 1,600 miles on it.

On five occasions, we received phone calls from his wife that Mr. Snow had not returned from the usual four to five hours it takes to travel to the feed ground, feed the elk and return. We would immediately organize a search attempt. We would drive to his ranch, which is at a lower elevation, with a four-wheel drive vehicle and proceed up the mountain on our snowmachines and search for Mr. Snow. On these occasions we would find him at various points along the fifteen-mile trail with his machine inoperative and walking back to the ranch. You must realize our snow conditions are three to ten feet deep, temperature 20° to -30°F, with a chill factor of -65° somedays. During severe weather and blizzard conditions, while proceeding on foot, one can easily be lost from the trail. Mr. Snow feeds from six to seven hundred elk daily and is dependent on this snowmachine travel to and from the feed ground.

Since February, Mrs. Snow's machine, #1269, has been in our shop, inoperative due to piston ring failure. Since our placing orders with the Moto-Ski Inc. last November to this date, we have not received one 1974 or 1975 piston or piston ring to repair these engines.

We were informed by Parts Bulletin #153, dated 29 April, 1975, that all back orders were cancelled and must be reordered. Needless to say, we have waited over six months for parts. (Copy of Bulletin #153 enclosed.)

In reviewing the performance of the 19 machines with these BSE440CC engines we purchased from Moto-Ski, Inc., the following is a breakdown of their malfunctions:
1 machine is still in its shipping crate
1 Chimo was sold to another dealer and we have no history.
4 machines have not been in our plant for any major malfunction.
Of the other 13 machines, 7 at present are in our shop with major engine malfunctions. 9 engines have had pistons and rings replaced from one to six times - 2 with broken crank cases, and 2 crank shaft failures.

It is our opinion that the Moto-Ski Company, while designing this product, did not permit enough cool outside air to circulate around this air-cooled engine while it is running, and the engine unit overheats, causing too much crankcase heat and the carburetor to vapor lock. The engine will not start after it has run for a short period of time.

We have two local Game Wardens with the Wyoming Game and Fish Department using two of these units. We have three 1974 Chimo machines used in the elk feeding program by individuals. As these people leave from

their ranches, they are extremely dependent on the reliable performance of these snow machines in getting to and from work. The other machines are used by weekend sportsmen who ride snow-machines for pleasure. On four occasions we have had to go into the high country after a weekend and tow a defective unit back to our shop for an engine overhaul.

The Company has cut price in 14 months on the Chimo machine from $1177.00, dealer cost, to $795.00, dealer cost, to rid themselves of this inventory. Unfortunately, when a person's life may depend on the reliability of a product, we feel the manufacturer, in having selected a Japanese manufactured BSE440CC engine, owes it to the unwary user of a product such as this to either replace this inferior engine with a unit that will function properly, or refund these 19 people their monies, or come out here and pick up these mechanical failures from the purchasers, or send their crew out here and install engines that will work, or recall this product from the market!

We have lost thousands of dollars in customer relations, labor and parts costs the company does not want to warrant after 90 days, our time and cost in retrieving broken down units, to say nothing of the constant hazard to the unsuspecting user of this inferior engine. We have made many phone calls, at our cost, calling attention to these matters with the Company and are regularly assured that new pistons and cylinders will be supplied us (this was five weeks ago and absolutely nothing has happened).

We receive contradictory instructions from Moto-Ski Inc. In Technical Bulletin T73-16A, dated 9 January, 1974 (Photo copies enclosed), we are instructed to smooth out the edges of the exhaust port and the upper transfer port. Smoothing out the parts can be done manually with a fine file or else with a small, fine grinding wheel. Subsequently we receive Technical Information Bulletin T-117, undated. Under Section 2B, second paragraph, we are instructed "Do not change the porting with a file or any other tool. Cylinders with filed ports will not be warranteed." These instructions in no way solve the problems of overheating and piston ring and piston failure, causing the entire motor to become inoperative.

Our customers have paid out good American dollars for a product that sits in our shop useless to them month after month due to lack of repair parts. We have in our shop at present 7 machines that have not operated during the past five months due to no parts! This is a serious product failure and it presents a hazard to the life and well being of our customers.

We trust this matter will be promptly investigated and expedited.

Sincerely,

Joel T. Hartmeister and Thomas J. Mollring
SE-TETON PACK RANCH, Moto-Ski Division

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P.S.

We have been made aware by the Moto-Ski Corporation that this BSE440CC engine will not be used in future in 1976 and subsequent models. This would indicate to us the knowledge the company has regarding this defective engine. The BSE engine used in 1971 and 1972 models run year after year with no problems, as we have experienced in the '74 and '75 models.

In our part of the country, these snowmachines are not just toys for a Sunday afternoon's pleasure, but primary methods of getting to and from their various ranches for cattle feeding, game management, and other chores in the out-of-doors. Other than the engine, clutch, and carburation, the rest of the machine performs exceptionally well and has been highly regarded by users in our part of the country.

In summation, it is our opinion and conclusion that the repeated engine failures of the 1974 and 1975 BSE440CC engines and the company being amply aware of this condition, constitutes a hazard to the life and well being of our customers beyond the normal risks involved and willingly taken by operators of snowmobiles.

DE

BOMBARDIER CORPORATION

May 20, 1975

Received
JUN 6 1975
OFFICE OF
TENO RONCALIO

Seteton Pack Ranch
Box 265
Pinedale, Wyoming 82941

Dear Sirs:

We are in receipt of your correspondence dated May 9, 1975.

Seeing that your comments cover a period of two separate distributors and concern service and warranty, I am passing it on to Mr. Phil Mickelson our Service Manager for handling so that he may comment on your letter and pass on any things that should be handled by the factory.

Sincerely,

BOMBARDIER CORPORATION

Darrell Breider
Moto-Ski Product Manager

DB/mf

cc: Phil Mickelson

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P. O. BOX NO. 6106 · 4505 W. SUPERIOR ST. · DULUTH, MINNESOTA 55806 · PHONE 218-628-2881 · TELEX 294422