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Via email to atvactionplans@cpsc.gov

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East-West Hwy, Ste 820
Bethesda, MD 20814-4408

Subject: ATV Action Plan of ODES UTVS, LLC

This plan is submitted on behalf of ODES UTVS, LLC (“ODES”), which intends to become an importer and distributor of All Terrain Vehicles (“ATVs”) in the United States. Company contact information for ODES UTVS, LLC is as follows:

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ODES UTVS, LLC - President
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ODES is fully committed to the goal of reducing ATV-related accidents. As an importer/distributor, we are implementing policies in accordance with the rules set forth by Section 232 of the Consumer Product Safety Improvement Act of 2008. The actions outlined below are part of our continuing effort to promote safe and responsible use of our ATVs.

AGE RECOMMENDATIONS

ODES is well aware of the concern regarding injuries and fatalities among persons under the age of 16, therefore ODES will use its best efforts to ensure that its dealers comply with these requirements. ODES will only recommend, market, and sell ATVs for use under the age category/speed guidelines specified in Section 6 of the ANSI/SVIA 1-2010 standard for ATVs (“the ATV Standard”). ODES will not recommend, market, advertise, or sell adult-sized ATVs for the use of persons under 16 years of age. Furthermore, ODES will not recommend, market, advertise, or sell Y-6+ youth-sized ATVs for the use of persons under 6 years of age; Y-10+ youth-sized ATVs for the use of persons under 10 years of age; or Y-12+ youth-sized ATVs for the use of persons under 12 years of age.

DEALER EDUCATION AND DEALER MONITORING

➤ SCOPE AND COMPONENTS OF MONITORING PROGRAM

ODES requires that its dealers verify the intended ATV rider's age prior to selling that rider or his/her parent or guardian an ATV. ODES's warranty registration cards require the submission of the intended rider's name and date of birth to ensure that dealers do not sell ODES ATVs to under-aged riders.

Moreover, ODES will use its "best efforts" to ensure that its dealers comply with the User Age recommendation requirements of the ATV Standard; the requirements related to notifying ATV purchasers about the availability and importance of free, hands-on ATV training and the monetary incentive for taking such training; and the requirements relating to providing the ATV Hang Tag, the ATV Owner's Manual, the ATV Safety Video, and the ATV Safety Alert to ATV purchasers at the point of purchase.

ODES will conduct on-site inspections of each of its authorized ATV dealers at least twice a year, with a minimum of 50 on-site inspections per year, by means of independent, undercover investigators (also known as "secret shoppers") to ensure that these dealers comply with the above-listed requirements and other safety-related practices during sales or promotional functions. The dealers who will be subject to undercover monitoring will be randomly selected annually. ODES will also modify the visitation criteria of its field personnel so that inspecting for dealer compliance with the above-listed requirements becomes a normal function of routine dealer visits.

ODES "best efforts" shall include, among other things, but not be limited to, an obligation to require, to the extent permissible under federal and state law, compliance by ODES's dealers, agents, or representatives with the terms of this ATV Action Plan in future contracts entered into with dealers, agents, or representatives, and, when possible and within a reasonable time, modification of existing contracts with dealers, agents, or representatives to impose this duty.

➤ NOTICE AND TRAINING PROGRAM

Within fifteen (15) days of learning of a dealer's non-compliance with the above-listed requirements from the CPSC staff or by one of ODES's independent investigators, ODES will (1) notify the dealer of its non-compliance; (2) inform the dealer of the operative facts reported by the CPSC staff or the independent investigator (such as the name of the salesperson and the model(s) of the ATVs) allegedly recommended during the inspection); and (3) demand a cure of the reported violation(s).

In addition, within thirty (30) days after notifying the dealer of its non-

compliance, ODES will provide on-site training to all dealership personnel who are involved in the sale of ATVs. The training will include, but not be limited to, information concerning the above-listed requirements, the need for compliance with them, and the potential disciplinary measures (including termination and non-renewal of the dealership agreement) that the dealer may incur if non-compliance continues. A record of the training effort will be made by ODES and provided to CPSC staff during bi-annual reporting (as described in the "Reporting" section below).

➤ **FOLLOW-UP MONITORING AND ENFORCEMENT FOR REPEATED NON-COMPLIANCE**

Within sixty (60) days after completing the above-referenced training for a non-compliant dealer, ODES will conduct an undercover, on-site, follow-up inspection of the dealer to determine whether the dealer is complying with the above-listed requirements. If this follow-up inspection reveals evidence of continuing violations, ODES will take remedial action against the dealer, up to and including possible termination or non-renewal of the dealership agreement with ODES. If ODES elects not to terminate the dealer's contract, remedial actions will at a minimum include additional undercover on-site inspections of the dealer. If these additional inspections reveal an additional or continuing violation, ODES will terminate or decline to renew the dealer's contract. In each instance, ODES will inform the CPSC Office of Compliance and Field Operations in advance of any remedial action or disposition, and it will provide the CPSC staff a reasonable opportunity to comment on such action or disposition before it occurs.

➤ **REPORTING**

ODES will report the results of its dealer monitoring program to the CPSC staff on a semi-annual basis, with reports due to the CPSC's Office of Compliance and Field Operations on February 1 and August 1 of each year. These reports will include a list of non-complying dealerships, the date of inspection, and all training or enforcement actions taken by ODES, along with dates of all follow up activities and remedial actions. ODES shall maintain a list of all dealerships inspected each year in spreadsheet format, and this spreadsheet will be provided promptly to the CPSC staff upon its request. The CPSC staff shall maintain the confidentiality of these reports in accordance with applicable laws. The CPSC staff also reserves the right to request additional information from ODES regarding the results of ODES's dealer monitoring program.

➤ **NOTICE TO DEALERS**

ODES shall notify its dealers in writing of its dealer monitoring program within fifteen (15) days of the effective date of this Action Plan. This notice will remind dealers of their ongoing obligations to comply with the above-listed requirements

and the consequences of their non-compliance, including, but not limited to, the assessment of administrative costs for ODES's monitoring of the dealer and possible termination or non-renewal of the dealership agreement. ODES will provide to the CPSC's Office of Compliance and Field Operations an advance copy of this notice.

ODES OWNER'S MANUAL WILL CONFORM TO SECTION 4.21 OF THE ATV STANDARD

ODES's Owner's Manuals will comply with the requirements of Section 4.21 of the ATV Standard.

ATV WARNING LABELS

ODES will use Warning Labels as required by Section 4.23 of the ATV Standard - which includes general age recommendation, passenger, tire pressure, and overloading labels.

HANG TAGS

ODES will use ATV Hang Tags as required by Section 4.24 of the ATV Standard - which includes age recommendations, vehicle category, training availability, and safety messages. ODES will use its best efforts to require retailers to display the hang tags on new ATVs, and this will be part of ODES's unannounced audits of retailers.

TRAINING

- ODES will offer free hands on training through the existing ATV Safety Institute ("ASI") safety program to all purchasers of ATVs and age appropriate members of their immediate families.
- ODES will offer a full refund of any training fees associated with attending an ASI Program. After completion of the ASI course, the rider will qualify for an incentive worth \$100. The \$100 incentive for training will include at least \$50 in cash, with the balance offered (at the consumer's choice) as a rebate for already purchased safety equipment or a credit toward the purchase of new safety equipment.
- The purchaser will be informed of the free training offer several different ways. Inside the package containing the instruction manual will be a Free Training Certificate. To help ensure that the customer not only has the certificate but also is aware of the free training offer, the sales person and the customer will be required to fill out an online Warranty Registration form before the ATV leaves the store. One of the items which must be checked off by the customer is an acknowledgement that they have received the offer of free training. In addition,

the free training offer will be set out on ODES's web site and in brochures available in the stores.

- ODES will also require warranty information to be completed on-line by ODES's retailers at time of purchase. Within two weeks of purchase, ODES will send by electronic (if available) and regular mail a reminder card of the training offer and incentives to the purchaser.
- The hands-on training offer will be in addition to training information provided to the consumer in the form of owner manuals, hang tags, warning labels, safety alerts, DVD safety video, and other media.

ATV SAFETY VIDEO

ODES will provide to each purchaser of a ODES ATV a DVD safety video as described in Section H.3.b.(4)(b) and paragraphs II.A and II.C of Appendix I of the 1988 ATV Consent Decrees. The video will be included in the shipping carton when the unit is packaged during production. The video will contain safety messages in accordance with safety messages found on the general ATV warning label. The video will be given to the consumer by the retailer during the sales process. ODES will also place a link on the ODES web-site to this safety video. This will allow users, and subsequent owners, who may not have the DVD to watch the video presentation.

SAFETY ALERTS

ODES's Safety Alerts will be packaged with each ATV during production and given to each consumer at the time of purchase. Each "Safety Alert" will contain the same substantive safety information as the Safety Alert described at Section H.3.b. (4) (c) and Appendix J of the 1988 ATV Consent Decrees, including: (1) Death and injury statistics for ATVs; (2) Safety rules; (3) Age recommendations; and (4) Availability of safety training. ODES will provide additional copies of the Safety Alert to each retail location for dissemination to prospective purchasers or others.

TOLL FREE HOTLINE

ODES will provide a toll-free, 24-hour hotline to respond to consumer inquires as described at Section H.4 of the 1988 ATV Consent Decrees. Agents will be trained to provide safety and training information including age recommendations. ODES further agrees the hotline service will offer to send, free of charge, to every person who calls and requests copies of the ATV Safety Guide produced for the in-store distribution. ODES's toll-free number will be printed in all owner manuals, ODES ATV web-sites, and other promotional materials.

ADVERTISING

All advertisements and promotional materials used or distributed by ODES will

include the substance of the safety messages as described in Section J.1 and Appendix K of the 1988 ATV Consent Decree and will depict ATVs in a manner consistent with safe and responsible use of the product. All riders shown in such advertisements shall wear full safety gear and helmets. ODES will make its best efforts to promote dealer compliance with these advertising requirements and company safety policy. All aspects of ODES's future advertising will adhere to specified provisions of the advertising guidelines set forth in the 1988 ATV Consent Decree.

INFORMATION/EDUCATION PROGRAM

- **Information/Education Efforts:** ODES will require its dealers implement an information/education effort to communicate appropriate age recommendations, the importance of wearing safety gear, and other safety-related information to consumers. The materials and information will be based on all publications produced by the Specialty Vehicle Institute of America ("SVIA") and the ATV Safety Institute ("ASI"). The materials will provide safety information and warn children under the age of sixteen of the risks and dangers of operating adult-sized ATVs.
- **Website:** ODES's company website will provide on-line access and the ability for consumers to communicate with ODES and others as well as download safety and education information. The website will provide appropriate warnings against the improper use of ATVs and explain the risks associated with ATV use. Users will be able to print the valuable safety and education information for personal use or to share with others.
- **Print Ad Campaign:** The delivery of the message will also be promoted through the inclusion of the web-site address on all Owner's manuals and printed safety messages. The web-site address and safety message will be included in Retail Print Circulars published by ODES ATV retailers.
- **Customer Safety Materials:** ODES will provide DVDs with every ATV sold. These DVDs will feature safety themes and messages consistent with the 1988 ATV Consent Decrees. ODES will distribute safety reminders by direct mail within a few weeks of retail purchases. The reminders will include the safety messages and information about the free ATV training and incentives for completing that training.
- **Store Display and Pamphlets:** ODES will also supply a ODES ATV Safety in-store poster for participating ODES retailers. The standalone in-store poster will deliver a message consistent with the general warning label and age restriction warning label. The in-store poster will contain a small pamphlet containing safety information and directions to the ODES ATV Safety web-site. The displays and pamphlets stress personal and family responsibility in the proper use of ATVs. ODES will require authorized dealers to display SVIA and ASI posters and educational materials in their retail locations.

- Program Budget Estimate: ODES will set aside a fund of \$20,000 per year for the next ten years on its Information and Education Program.

3-WHEEL ATVS

ODES will not manufacture, market, or sell 3-wheel ATVs.

PARTICIPATION IN ASI'S SAFETY PROGRAM

If at any time ODES is no longer a participating member of ASI's Safety Program, and therefore no longer able to access ASI's training and safety materials and services, ODES will cease to distribute ATVs into U.S. commerce until such time that ODES is able to provide equal or greater materials and services as described herein.

VOLUNTARY STANDARDS

ODES will participate in the ongoing efforts to update and revise the ATV voluntary standard. Potential technical issues identified by CPSC staff will be discussed and considered in good faith as part of those efforts.

NOTICE OF CHANGE

ODES will inform the CPSC with at least 60 days advance written notice if it has any intention to terminate or materially change any commitment under this action plan. ODES will provide information about these activities upon request from CPSC.

AMENDMENT AND TERMINATION PROCEDURES

If Commission staff determines that ODES's approved ATV Action Plan is no longer effective or adequate, Commission staff may take certain action, including but not limited to notifying ODES that its ATV Action Plan must be amended to address the effectiveness or adequacy of the plan. With that notification, Commission staff shall provide ODES with the text of any proposed amendment. ODES and Commission staff must reach agreement on the proposed amendment within 30 calendar days of the notification, unless Commission staff grants an extension for good cause. If ODES and Commission staff fail to reach an agreement within the designated timeframe, then Commission staff may recommend termination of the ODES Action Plan. Additionally, (i) if ODES fails to comply with the obligations of this ATV Action Plan, or (ii) if Commission staff determines that ODES can no longer comply with the obligations of this ATV Action Plan, or (iii) if ODES fails to adopt a requested amendment within the timeframe specified by staff, Commission staff, after providing ODES with notice and an opportunity to respond, may recommend termination of the ATV Action Plan. ODES may not manufacture, import, or distribute any ATV in the United States under this Action Plan after receiving written notice of such termination. Failure to cease manufacture, importation, or distribution in United States commerce of any ATV under


this ATV Action Plan after receipt of notice of termination is a prohibited act under section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1).

ODES is proud of our insistence on selling only quality and safe ATVs, and looks forward to working with and maintaining a good standing relationship with the CPSC in the future.

ODES hereby agrees to take all of the actions to promote ATV safety set forth in this ODES ATV Action Plan, and further agrees to fulfill each of the undertakings set forth in this Plan. ODES understands that any failure to perform the actions, or fulfill the commitments set forth in the Plan may result in termination of the Plan.

Very truly yours,

LAW OFFICE OF RICK GUZMAN, P.C.



Rick Guzman
Counsel for ODES UTVS, LLC