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 13(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,

Michael A. Brown
General Counsel

Enclosures
Such reports are required by Section 15(c) 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 Safety Identification has not, to date, received any reports on fire extinguishers.

Another instrument to help determine possible action by the Commission is Section 15(d) of the Act which permits any interested person to petition the Commission to issue, amend or revoke a mandatory 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 order a public hearing or other proceedings for investigation before granting or denying the petition if it believes that steps could be appropriate.

Other than the procedure of consumer product safety standards, the Commission has available the following range of remedies to implement the purposes of the Consumer Product Safety Act. For the purposes of Section 16, the Secretary of the Act provides that:

1. The Commission may order the recall of a consumer product, after an action or proceeding, in accordance with rules prescribed by the Commission. Such order shall require the manufacturer to recall the consumer product and to supply any necessary information to consumers concerning the defect or hazard or to otherwise make the consumer product more safe. The order may also be issued in order declaring the defect or hazard to be a substantial product hazard. Such order states the basic information and force effectuate such order. It is not required that the order be filed in an action in a court of the United States if such action was initiated in reliance on the above authority under Section 16(a).

2. The Commission may suspend or revoke an order of a manufacturer, distributor or retailer to recall a consumer product, after an action or proceeding, after a hearing, in accordance with rules prescribed by the Commission. Such order shall require the manufacturer to cease or discontinue the manufacture, sale, and distribution of the consumer product and to supply any necessary information to consumers concerning the defect or hazard or to otherwise make the consumer product more safe. The order may also be issued in order declaring the defect or hazard to be a substantial product hazard. Such order states the basic information and force effectuate such order. It is not required that the order be filed in an action in a court of the United States if such action was initiated in reliance on the above authority under Section 16(a).
It is important, 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.

SIGNED BY
BARBARA A. HUDSON

Ms. Barbara A. Hudson
Director of Congressional Relations
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 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 the purpose of the Act (section 2(a)(1)). The Commission's jurisdiction over fire alarm equipment related to fire extinguishers, although not directly stated in section 2(a)(1), is based on the language in section 2(a)(2) (as amended by P.L. 92-580, November 16, 1974) which states that "fire alarm device or similar malfunction. 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, pedestrians, or other traffic into an intersection into a hazardous area.

Consumer products under the Act are not necessarily manufactured or distributed for a consumer's own use or consumption or enjoyment, in or around a permanent or temporary household of residence, a school, in recreation, or otherwise. (section 3(a)(1)). The legislative history clarifies that "(d) it is not necessary that a product be actually sold to a consumer, but only
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. Dimoff's speech.

Sincerely,

[Signature]

Michael A. Brown
General Counsel
June 10, 1975

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.
9 May, 1975

Mr. Darrell Breider, Gen'l Mgr.
Bombardier Corporation
Moto-Ski Limited
P. O. Box 6106
Luluth, Minnesota 55006

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
3 1974 Grand Sport 440CC
5 1974 Futura 440CC
d 1974 Chimo 440CC

With the exception of the TS400, the other eighteen machines had 440CC 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, 1960 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 #1758 and #1769. 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 and had a total of 6 pair of piston failures and the machine #1250 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 1,000 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 feeding ground, tend 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 snowmobiles and search for Mr. Snow. On these occasions we would find him at various points along the fifteen-mile trail with his machine inoperable and walking back to the ranch. You must realize our snow conditions are three to ten feet deep, temperature 20° to -30°, with a wind 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 snowmobile travel to and from the feeding ground.

Since February, Mr. 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. One machine is still in its shipping crate
2. One was sold to another dealer and we have no history.
3. Four engines have not been in our plant for any major malfunction.
4. Of the other 15 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 overcools causing too much expansion 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 Onimo 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 sportmen who ride snowmachines 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 Chino machine from $1777.00, 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 5524400CC 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 those 19 people their money, or come out here and pick up those 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 warranty 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 29, second paragraph, we are instructed "Do not change the porting with a file or any other tool. Cylinders with filed ports will not be warranted." 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. Holliing
82-TEEN PACK RANCH, Moto-Ski Division
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 means 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.
May 20, 1975

Sseteton Pack Ranch
Box 263
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

[Signature]

Darrell Breider
Moto-Ski Product Manager

DB/mf

cc: Phil Mickelson

P. O. BOX NO. 6766 - 4005 W. SUPERIOR ST. - DULUTH, MINNESOTA 55806 - PHONE 218-721-2481 - TELEX 294422