

44 MER/PRVLER NOTIFIED 9/17/10
COMMENTS: YES ☒ NO ☒
OVERRULED; ATTACHED
EXCISIONS/FOIA Hrs. :
DO NOT RE-NOTIFY RE-NOTIFY
2010 07 27 11 02 36

Yamazuki Inc
6560 Bandini Blvd
Commerce, CA 90040
Phone: (323) 455-3376
Fax: (323) 375-0298

July 15, 2010

Renee K. Haslett
Trial Attorney
Division of Compliance
Office of the General Counsel
US Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

ATV Action Plan of Yamazuki Inc

Dear Renee,

Yamazuki Inc is fully committed to the goal of reducing ATV-related accidents. Yamazuki Inc. will be a participating member of the ATV Safety Institute's ("ASI's") Safety Program for non-ASI members. If at any time Yamazuki Inc. is no longer a participating member of ASI's Safety Program, Yamazuki Inc. will cease to import ATVs or distribute ATVs in commerce until such time that Yamazuki Inc. is able to meet all requirements of the action plan. This action plan covers all ATVs imported, manufactured, distributed, sold, and/or offered for sale by Yamazuki Inc. and its distributors and retailers regardless of the dates of importation and manufacture of the ATV. We have implemented new policies in compliance 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

Yamazuki Inc will only recommend, market, and sell ATVs for use under the age category/speed guidelines specified at Section 6 of the ANSI/SVIA 1-2007 of the standard for ATVs ("the ATV Standard"). Yamazuki Inc will not recommend, market, advertise, or sell adult-sized ATVs for the use of people less than 16 years of age. Yamazuki Inc will use its best efforts to ensure that its dealers comply with these requirements.

ATV labels

Yamazuki Inc will use all required labels including age recommendation, passenger, general safety, tire and overloading warning labels. These labels will conform to section 4.23 of the ATV Standard.

Owner's Manuals

Yamazuki Inc's owner's manual will comply with section 4.21 of the ATV Standard.

Safety Video

Yamazuki Inc will provide a safety video to all retail purchasers of Yamazuki Inc at the point of purchase. The video shall conform to all requirements in section H.3.b.(4)(b) and paragraphs II.A and II.C of Appendix I of 1988 ATV Consent Decree.

If at any time Yamazuki Inc. is no longer a participating member of ASI's Safety Program, and no longer able to distribute ASI's DVD, Yamazuki Inc. will cease to import ATVs or distribute ATVs in commerce until such time that Yamazuki Inc. is able to supply its dealers with its own safety video that complies with all requirements described at Section H.3.b.(4)(b) and paragraphs II.A and II.C of Appendix I of the 1988 ATV Consent Decree.

Safety Training

Yamazuki Inc. will offer free, hands-on training through ASI to all purchasers of ATVs and members of their immediate families along with an incentive for completing the training. 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.

Yamazuki Inc. will require that its dealers offer ATV purchasers, and members of the ATV purchaser's immediate family, the opportunity to register for free hands-on ATV training through ASI at the time of purchase. Yamazuki Inc. will also require that its dealers explain to purchasers how they can receive the incentive. If at any time Yamazuki Inc. is no longer a participating member of ASI's Safety Program, Yamazuki Inc. will require that all dealers provide the registration information for the ASI training course and information about the incentive to the consumer at the time of purchase and reimburse the incurred registration expenses of the purchaser upon receiving proof of enrollment in the ASI course.

If the purchaser does not register for the training at the time of purchase, within two weeks of the purchase, Yamazuki Inc. will ensure that the purchaser is reminded of the availability of the training and the incentive for taking the training, by means of a telephone call, mail or email.

Hang Tags

Yamazuki Inc will provide a hangtag with each ATV. The hangtags will comply with the requirements of Section 4.24 of the ATV Standard and will contain information about ATV Training availability.

Advertising

Yamazuki Inc's ATV advertising and promotional materials will include the substance of the safety message that is described at 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 products. Yamazuki Inc's print and web advertising will include information about ASI training course availability and safety alerts. All riders shown in the advertisements will wear helmets and full protective gears. Yamazuki, Inc will use its best efforts to promote dealer compliance with advertising requirements.

Safety Alerts

Yamazuki, Inc. will supply its dealers "safety alert" documentation to be provided at the point of purchase to all retail purchasers of Yamazuki, Inc ATVs.

The document will contain the same substantive safety information as the safety alerts described at Section H.3.b.(4)(c) and Appendix J of the 1988 ATV consent decrees. This information includes: Death and Injury Statistics for ATVs, safety rules, age recommendations, and the availability of Safety Training.

Toll-free hotline

Yamazuki Inc. will provide through participation in the ASI Safety Program a toll-free telephone hotline administered by ASI, which will be available to consumers 24 hours a day and will conform to Section H.4 of the 1988 ATV Consent Decree. The hotline will inform consumers about safety and training information, including age recommendations. If at any time Yamazuki Inc. is no longer a participating member of ASI's Safety Program, Yamazuki Inc. will cease to import ATVs or distribute ATVs in commerce until such time that Yamazuki Inc. is able to provide a toll-free 24-hour consumer hotline which meets all of the requirements of Section H.4 of the 1988 ATV Consent Decree.

Information and Education Program

Yamazuki Inc. through a portion of the fees paid to ASI, will directly help fund ASI's Information and Education program. Additionally, Yamazuki Inc. will enact its own Information and Education Program directed primarily at providing safety information and at deterring children under sixteen from operating adult-sized ATVs. Elements of the program include the following:

- ✦ **DVD Videos** Yamazuki Inc will provide DVD Videos with every ATV sold. These DVDs will feature the safety themes and messages in compliance with the 1988 ATV Consent Decree. The DVD Videos will also promote participation in the hands-on training course offered through ASI.
- ✦ **Safety Reminders** Yamazuki Inc will distribute safety reminders by direct mail or email within a few weeks of retail purchases. Safety reminders will include safety messages and the information about the free ATV training and the incentives offered after completion of the training. Safety reminders will be mailed to all purchasers of new Yamazuki ATVs and will be directed at parents. Yamazuki Inc will also find dealer's customer data to reach new buyers by telephone with the safety reminders.
- ✦ **Poster** Yamazuki Inc will create and disseminate a poster with safety messages for Yamazuki dealers to display.
- ✦ **Safety Ad Campaign** Yamazuki Inc will sponsor a Safety Ad Campaign through web advertising and print advertising in major off-road publications for at least 10 years. Yamazuki Inc. will advertise its safety messages on ATV Websites such as atvsports.com, atvrideronline.com and atvmagonline.com. Yamazuki inc. will run print advertising of its safety messages in magazines such as ATV Rider, ATV Sport Magazine and ATV World Magazine. The print advertising will run continuously with an increase in the number of placed advertisements during peak seasons.
- ✦ **Program Budget Estimate** Yamazuki Inc will spend at least \$25,000 per year for the next ten years on its Information and Education Program.
- ✦ The Information and Education Program, including the advertising will be in effect for at least ten years.

If at any time Yamazuki Inc. is no longer a participating member of ASI's Safety Program, Yamazuki Inc. will cease to import ATVs or distribute ATVs in commerce until such time that Yamazuki Inc. is able to enact its own Information and Education program that complies with Appendix N of the 1988 ATV Consent Decree and is

approved by the Office of the General Counsel of the CPSC.

Dealer Monitoring

Yamazuki Inc.'s dealer monitoring program is attached to this action plan as Appendix A."

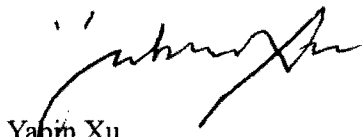
Advance Notice of Changes

Yamazuki Inc will give the CPSC at least 60 days advance notice of its intention to terminate or materially change any commitment under this plan. Yamazuki Inc. will provide information about these activities upon reasonable requests from CPSC. If Yamazuki Inc. stops participating in ASI's Safety Program, that will constitute a material change to this action plan. Yamazuki Inc. will alert the CPSC and cease to import ATVs or distribute ATVs in commerce until such time that it is able to meet all requirements of the action plan on its own and has received approval of a revised action plan from the Office of the General Counsel at the CPSC.

A copy of Yamazuki Inc.'s fully executed agreement with ASI is attached to this action plan as Appendix B.

Thank you for your attention to this important matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Yabin Xu', is written over the printed name.

Yabin Xu
President
Yamazuki Inc

APPENDIX A

Dealer Monitoring

1. Scope and Components of Monitoring Program

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

Yamazuki, Inc. will use its "best efforts"¹ 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.

Yamazuki, Inc. 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. Yamazuki, Inc. 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.

2. 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 Yamazuki, Inc.'s independent investigators,² Yamazuki, Inc. will:

¹ "Best Efforts" shall include, among other things, an obligation to require, to the extent permissible under federal and state law, compliance by Yamazuki, Inc.'s dealers, agents, or representatives with the terms of this ATV Action Plan in future contracts entered into with dealers, agents, or representatives, and, where possible and within a reasonable time, modification of existing contracts with dealers, agents, or representatives to impose this duty.

² Within fifteen (15) days of learning of a dealer's non-compliance with the above-listed requirements from a third party (such as another dealer or distributor), Yamazuki, Inc. will notify the dealer of the reported non-compliance and arrange an undercover, on-site inspection of the dealer to determine whether the dealer is complying with the above-listed requirements. If Yamazuki, Inc. discovers a violation during this inspection, Yamazuki, Inc. will initiate the notice and training procedures outlined in this section.

- notify the dealer of its non-compliance;
- 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 ATV(s) allegedly recommended during the inspection); and
- demand a cure of the reported violation(s).

In addition, within thirty (30) days after notifying the dealer of its non-compliance, Yamazuki, Inc. 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 enforcement actions (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 Yamazuki, Inc. and provided to CPSC staff during bi-annual reporting (as described in the "Reporting" section below).

3. Follow-up Monitoring and Enforcement for Repeated Non-Compliance

Within sixty (60) days after completing the above-referenced training for a non-compliant dealer, Yamazuki, Inc. 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, Yamazuki, Inc. will take remedial action against the dealer, up to and including possible termination or non-renewal of the dealership agreement with Yamazuki, Inc.³ If Yamazuki, Inc. 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 violation, Yamazuki, Inc. will terminate or decline to renew the dealer's contract. In each instance, Yamazuki, Inc. 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.

4. Reporting

Yamazuki, Inc. will report the results of its dealer monitoring program to the CPSC staff on a bi-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 should include a list of non-complying dealerships, the date of inspection, and all training or enforcement actions taken by Yamazuki, Inc., along with dates of all follow up activities and remedial actions. Yamazuki, Inc. should maintain a list of all dealerships inspected each year in spreadsheet format, and this spreadsheet shall be provided promptly to the CPSC staff

³ The nature of the enforcement action will be determined on a case-by-case basis, and Yamazuki, Inc. will consider factors such as the applicable state and local laws, the circumstances of the reported violations, the length of time between reported violations, any intervening inspections in which the dealer was reported to be in compliance with the above-listed requirements, and the strength of the evidence supporting termination.

upon its request. The CPSC staff will maintain the confidentiality of these reports in accordance with applicable laws. The CPSC staff also reserves the right to request additional information from Yamazuki, Inc. regarding the results of Yamazuki, Inc.'s dealer monitoring program.

5. Notice to Dealers

Yamazuki, Inc. will notify its dealers in writing of its dealer monitoring program within fifteen (15) days of the effective date of this Action Plan. The notice will remind dealers of their ongoing obligations to comply with the above-listed requirements and the consequences of non-compliance, including, but not limited to, the assessment of administrative costs for Yamazuki, Inc.'s monitoring of the dealer and possible termination or non-renewal of the dealership agreement. Yamazuki, Inc. will provide the CPSC's Office of Compliance and Field Operations an advance copy of the notice.

APPENDIX B

YAZ 2010-001

Agreement # [R] Id | 2010 - 00X

ASI SAFETY PROGRAM PARTICIPATION AGREEMENT

This Agreement is entered into between the Specialty Vehicle Institute of America by and through its division, the All-Terrain Vehicle Safety Institute (ASI) and Yamaha Inc. (Participating Company). This Agreement becomes effective on the date when executed by ASI and expires on December 31, 2010 unless renewed upon mutual written consent of the parties, specifying the renewal terms.

I. ASI shall:

- A. Provide Participating Company with products and services, pursuant to the terms and conditions of this Agreement, to assist Participating Company to comply with the following elements of its ATV Action Plan.
 - 1. Age Recommendations
 - 2. Hands-On Training
 - 3. ATV Safety Video
 - 4. Safety Alert
 - 5. Toll-Free Telephone Hotline
 - 6. Information & Education Program
- B. Provide ATV training, upon request, to the retail purchaser of a Participating Company's ATV who provide a valid Vehicle Identification Number (VIN) or Product Identification Number (PIN) that has been previously reported to ASI by the Participating Company in the form of ASI's *ATV RiderCourse* or other ASI training program(s) approved by the U.S. Consumer Product Safety Commission (CPSC).
- C. Provide Participating Company and CPSC with quarterly reports of training activity in substantially the form set forth in Exhibit A, Sample Quarterly ATV Rider Training Summary Report.
- D. Identify Participating Company in select ASI publications as set forth in Exhibit B, ASI Deliverables and Costs, which is incorporated herein by reference.

II. Participating Company shall:

- A. Complete, submit and update as necessary, the ASI Participating Company Training Profile (see Exhibit C), which when completed and submitted is incorporated herein by reference.
- B. Deposit with ASI one-half of the projected annual per unit fees or \$2,500.00, whichever greater, at the time this Agreement is executed and one-half of the projected annual per unit fees or \$2,500.00, whichever greater, on or before July 1 of each year. Projected annual per unit fees shall be determined based on the prior calendar year's retail sales volume.

C. Report to ASI all units imported into, or manufactured in, the United States on or before the date they arrive in, or are completed in, the United States in the manner set forth in Exhibit D, ASI OEM Rider Training Participation Overview, which is incorporated herein by reference

D. Pay ASI the following per unit fees for each unit imported into the United States.

- \$15.00 – if not offering an incentive payable through ASI
- \$16.25 – if offering a \$50.00 incentive payable through ASI
- \$18.00 – if offering a \$100.00 incentive payable through ASI

Provided, however, that Participating Company shall pay ASI a minimum of \$5,000.00 in fees per year regardless of the number of units imported

1. In the event the cumulative fees owed by Participating Company (pursuant to Section I.D.) in connection with a report submitted pursuant to Section I.C. have not yet exceeded Participating Company's deposit, ASI will credit fees against the deposit.
2. In the event the cumulative fees owed by Participating Company (pursuant to Section I.D.) in connection with a report submitted pursuant to Section I.C. exceed Participating Company's deposit, ASI shall send Participating Company an invoice for fees owed, which shall be paid within 30 days.

E. Pay ASI, as applicable, for products and services set forth in Exhibit B, ASI Deliverables and Costs, which is incorporated herein by reference

1. Note, ASI shall provide training to all persons described in Section I.B. above. Participating Company shall pay the per student tuition set forth in Exhibit B, ASI Deliverables & Costs, for any students trained pursuant to a VIN or PIN not previously reported by Participating Company to ASI pursuant to Section II.C.

F. Provide ASI with the total number of annual retail sales of Participating Company's units, through the Motorcycle Industry Council's Retail Sales Reporting System (see Exhibit E, Powersports Retail Sales Reporting System Agreement) or a certified annual accounting, no later than seven days following the end of the year.

III. Use of ASI PROPERTY

ASI shall utilize ASI curriculum materials, including, without limitation, Instructor Guides, Range Cards, Rider Handbooks, and other printed and audio/visual training aids, and all revisions thereto, to educate and train Participating Company's customers and make other materials set forth in Exhibit B available for purchase by Participating Company (collectively, ASI PROPERTY).

- A. Participating Company shall not use or promote ASI PROPERTY in a manner which, in ASI's reasonable judgment, affects in a negative and detrimental manner ASI's business or goodwill, or tends to deceive or mislead the public, or which creates a likelihood of confusing the public. Participating Company shall discontinue any use or promotion that ASI reasonably finds to be negative or injurious to ASI.
- B. For the term of this Agreement, and thereafter, Participating Company agrees not to use ASI PROPERTY without permission of ASI or names trademarks, or images identical with, or substantially or confusingly similar to, ASI PROPERTY.
- C. Participating Company shall not modify or adapt ASI PROPERTY in any manner without prior written permission of ASI.
- D. In the event that ASI supersedes or ceases to recommend any ASI PROPERTY in possession of Participating Company, Participating Company agrees to cease all use of such ASI PROPERTY. Participating Company may return up to a one-year supply of ASI PROPERTY in its possession (based on prior 12-month ordering history) to ASI, and ASI agrees to repurchase such ASI PROPERTY (or any successor publication) at the price paid by Participating Company.
- E. Upon termination of this Agreement, or upon non-renewal or non-replacement of this Agreement, Participating Company agrees to cease all use of ASI PROPERTY. Participating Company may return up to a one-year supply of ASI PROPERTY (or any successor publication) in its possession (based on prior 12-month ordering history) to ASI, and ASI agrees to repurchase such ASI PROPERTY (or any successor publication) at the price paid by Participating Company.
- F. The terms of this Section III shall survive termination of this Agreement.

IV. TERMINATION

This Agreement shall remain in full force and effect until the expiration date or until such time as the terminating party shall deliver to the other written notice of their intent to terminate this Agreement.

- A. Participating Company may terminate this Agreement, without cause, upon ninety (90) days written notice to ASI
- B. ASI may terminate or suspend this Agreement if Participating Company materially breaches this Agreement and such breach is not cured by Participating Company within thirty (30) days after Participating Company is notified in writing or, if the matter cannot reasonably be cured within such thirty (30) day period, Participating Company does not initiate a cure within thirty (30) days and complete the cure within such longer period which is reasonably required to cure

- C. ASI may terminate this Agreement, without cause, upon ninety (90) days written notice to Participating Company.

V. GENERAL

- A. Participating Company's status does not imply any endorsement by ASI of Participating Company or any manufacturers, distributors, retailers, equipment, ATVs or other materials.
- B. All legal action arising out of, or in any way related to, this Agreement shall be brought in either the Superior Court of the State of California for the County of Orange or the United States District Court for the Central District of California. Each party submits and consents to the jurisdiction of those courts.
- C. This Agreement shall be interpreted and governed by the substantive law of the State of California.
- D. Participating Company acknowledges that ASI has no adequate remedy under this Agreement or at law in the event Participating Company breaches the terms of this Agreement, and that ASI would, in such circumstances, be entitled to injunctive or other equitable relief, including interlocutory and preliminary injunctive relief. Participating Company also acknowledges that ASI's rights and remedies under this Agreement at law or in equity are intended to be cumulative, and not mutually exclusive.

For Participating Company

Yabin Xu 12/16/09
Authorized Signature Date
Yabin Xu
Print Name
President
Title

For Specialty Vehicle Institute of America

Thomas S. Yager 5/6/10
Authorized Signature Date
Thomas S. Yager
Print Name
Vice President
Title