



PO BOX 27034, SAN JUAN, PUERTO RICO 00927-0384
787 277-0415 WWW.PSWPR.COM

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

ATV ACTION PLAN FROM POWER SPORTS WAREHOUSE INC

This plan is submitted by **Power Sports Warehouse Inc.**, which intends to become an importer and distributor of All Terrain Vehicles (ATVs) in the United States. Our company contact information is as follow:

POWER SPORTS WAREHOUSE INC
PO BOX 270384
SAN JUAN, PUERTO RICO 00927-0384
P: 787 277-0415 F: 300-5483
www.pswpr.com in USA

Power Sports Warehouse Inc., (here-forth **PSW**), is fully committed to the goal of reducing ATV related accidents. As an importer/distributor, we are implementing policies in accordance with the requirements set forth by Section 42 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2089, and 16 C.F.R. part 1420. The actions outlined below are part of our continuing effort to promote safe and responsible use of our ATV's.

COMPREHENSIVE COMPLIANCE AND QUALITY CONTROL PROGRAM

PSW understand that we are 100% responsible for the level of quality and compliance of the products we distribute. Under no circumstance will we import or distribute substandard or non-compliant ATVs.

- 1) Units that are found to be non-compliant shall be immediately and voluntarily sent back to our manufacturer for corrections, in accordance with all applicable requirements under the CPSA, including but not limited to, 15 U.S.C. § 2067 and 16 C.F.R. Part 1019.

- 2) We have initiated a comprehensive compliance and quality control program at our manufacturer that includes QC audit parts, intensive testing, and an increased level of manufacturing supervision.
- 3) Strict policies and procedures are in place that will ensure 100% compliance.
- 4) We will send a company representative to our manufacturer on a monthly basis to inspect the facility, inspect record keeping, and conduct quality control and compliance training.

AGE RECOMMENDATIONS

PSW 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”). **PSW** will not recommend, market, advertise, or sell adult-size ATVs for the use of persons under 16 years of age. Furthermore, **PSW** 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. **PSW** is aware of the concern regarding injuries and fatalities among persons under the age of 16; therefore, **PSW** will use its best efforts to ensure that its dealers comply with these requirements.

DEALER EDUCATION AND DEALER MONITORING PLAN

PSW dealer education and monitoring program is attached to this action plan as Appendix A.

ATV LABELS

PSW will use all required labels which conform to Section 4.23 of the ATV Standard. Labels will include general age recommendation, passenger, tire pressure, and overloading labels.

HANG TAGS

PSW will provide all authorized dealers with ATV Hang Tags which will be attached to all **PSW** ATVs. The hang tags will comply with the requirements of Section 4.24 of the ATV Standard. **PSW** will use its best efforts to require retailers to display the hang tags on new ATVs, and this will be part of **PSW** unannounced audits of retailers.

OWNER’S MANUALS

PSW’s owner's manuals will conform to Section 4.21 of the ATV Standard. The Firm will update owner's manuals if required by law. Owner’s manuals will contain a strong safety

message consistent with the substantive informational content of the Consent Decree messages, and any revised manuals will be provided to the CPSC. A toll-free information helpline will be included in owner's manuals.

ADVERTISING

PSW will depict the operation of ATVs in a safe and responsible manner which is appropriate to the machine and the situation depicted. Furthermore, **PSW** will use the information content of the General Provisions of Appendix K, Section II.A., paragraphs 1 through 4 as a guideline for advertising and promotional materials.

PSW will also include in print and broadcast advertising the summary safety message presented in Section III of Appendix K. **PSW** will use its best efforts to promote consumers and dealer's safety tips with an oversized poster with "caution tips" when using ATVs. **PSW** will incorporate stickers with the same "caution tips" to use in ATVs and helmets. **PSW** will also sell all the equipment like helmets, boots, pants and shirts for the safety of the users.

All advertisements and promotional materials used or distributed by **PSW** 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. **PSW** will make its best efforts to promote dealer compliance with these advertising requirements and company safety policy. All aspects of **PSW's** future advertising will adhere to specified provisions of the advertising guidelines set forth in the 1988 ATV Consent Decree.

HANDS ON TRAINING PLAN

PSW will offer free hands-on training to all purchasers of ATVs and age appropriate members of their immediate families. Training will be provided by identified **PSW** employees who will be certified by ASI to conduct the training. **PSW** will ensure that the employees providing the training receive and maintain ASI certification and the training will be substantially similar to the training program offered by ASI. **PSW** will comply with all ASI requirements related to such training. **PSW** will ensure that there are sufficient trainers to meet the demand for training. **PSW** will offer a full refund of any training fees associated with attending the training.

After completion of **PSW's** hands-on training, the rider will qualify for an incentive worth \$100. **PSW** will be responsible for providing the \$100 incentive, which 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 **PSW's** web site and in brochures available in the stores. **PSW** will also require warranty information to be completed on-line by **PSW's** retailers at time of purchase.

Within two weeks of purchase, **PSW** 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

PSW will provide a Safety Video to all retail purchasers of ATVs at the point of sale. The video will comply with all requirements described in Section H.3.b.(4)(b) and paragraphs II.A and II.C of Appendix I of the 1988 ATV Consent Decrees and also be displayed in the store. The video will contain safety messages in accordance with safety messages found on the general ATV warning label. **PSW** will also place a link on the **PSW** 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

PSW will provide Safety Alerts to each retail location for dissemination to prospective purchasers or others. **PSW's** Safety Alerts will be available 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.

TOLL FREE HOTLINE

PSW 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. **PSW** 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. PSW's toll-free number will be printed in all owner manuals, PSW ATV web-sites, and other promotional materials.

INFORMATION/EDUCATION PROGRAM

PSW 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.

Video: PSW's video will feature safety themes and messages as provided through ASI and will be packaged with all new ATVs.

Poster and brochure: PSW will create a poster and brochure which will convey ATV safety themes and messages. These materials will be disseminated by PSW dealers in their retail locations to warn children against the use of adult-sized ATVs and to teach them about other risks associated with ATV use.

Website: PSW will feature the safety video and safety information on its website and will request that its dealers also provide access to the safety video and safety information on their websites. PSW's company website will provide on-line access and the ability for consumers to communicate with PSW 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.

Safety Reminder: PSW will send direct email or mail containing safety messages to new ATV purchasers.

Print advertisement 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 PSW ATV retailers.

Customer safety materials: PSW will provide a DVD with every ATV sold. These DVDs will feature safety themes and messages consistent with the 1988 ATV Consent Decrees. PSW will distribute safety reminders by direct mail and email, if provided, 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: PSW will also supply an ATV Safety in store poster for participating PSW retailers to display. 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 PSW ATV Safety web-site. The displays and pamphlets stress personal and family responsibility in the proper use of ATVs.

Program Budget: PSW will set aside a fund of \$10,000 per year for the next 10 years on its Information and Education Program.

THREE WHEEL ATVS

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

PARTICIPATION IN ATV SAFETY ORGANIZATION'S SAFETY PROGRAM

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

VOLUNTARY STANDARDS

PSW 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

PSW 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. PSW will provide information about these activities upon request from CPSC.

AMENDMENT AND TERMINATION PROCEDURES.

If Commission staff determines that PSW's approved ATV Action Plan is no longer effective or adequate, Commission staff may take certain action, including but not limited to notifying PSW that its ATV Action Plan must be amended to address the effectiveness or adequacy of the plan. With that notification, Commission staff shall provide **PSW** with the text of any proposed amendment. **PSW** 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 **PSW** and Commission staff fail to reach an agreement within the designated timeframe, then Commission staff may recommend termination of the PSW Action Plan. Additionally, if **PSW** fails to comply with the obligations of this ATV Action Plan, or if Commission staff determines that **PSW** can no longer comply with the obligations of this ATV Action Plan, or if PSW fails to adopt a requested amendment within the timeframe specified by staff, Commission staff, after providing PSW with notice and an opportunity to respond, may recommend termination of the ATV Action Plan. **PSW** 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).

PSW 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.

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

Power Sports Warehouse Inc., stands ready to cooperate with the CPSC by providing information and assisting the Commission in evaluating the Plan in this letter. We believe that once you evaluate our plan you will agree that we care for the safety of our consumers.

Respectfully,



Enrique González / President
POWER SPORT WAREHOUSE.



**POWER
SPORTS**
WAREHOUSE

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APPENDIX A

Dealer Monitoring

1. Scope and Components of Monitoring Program

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

PSW 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.

PSW 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

¹ "Best Efforts" shall include, among other things, an obligation to require, to the extent permissible under federal and state law, compliance by Power Sports Warehouse 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, agent, or representatives to impose this duty.

will be subject to undercover monitoring will be randomly selected annually. PSW 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 PSW's independent investigators² PSW will:

- 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, PSW 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 PSW 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, PSW 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, PSW will take remedial action against the dealer, up to and including possible termination or non-renewal of the dealership agreement with PSW. If PSW chooses 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, PSW will terminate or decline to renew the dealer's contract. In each instance, PSW will inform the CPSC Office of Compliance

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), PSW 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 PSW discovers a violation during this inspection, PSW will initiate the notice and training procedures outlined in this section.

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

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

5. Notice to Dealers

PSW 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 PSW's monitoring of the dealer and possible termination or non-renewal of the dealership agreement. PSW will provide the CPSC's Office of Compliance and Field Operations an advanced copy of the notice.

Respectfully,



Enrique González / President
POWER SPORT WAREHOUSE.