



**BMS Motorsports, INC.**

1201 JELICK AVE. City Of Industry, CA 91748  
(Tel) 626-810-8877 (Fax) 626-810-2288 [sales@bmsmotor.com](mailto:sales@bmsmotor.com)

Jul., 01<sup>st</sup>, 2010

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

MFR PRVLBR NOTIFIED 11/14/10  
COMMENTS: YES NO  
\_\_ OVERRULED; \_\_ ATTACHED  
 EXCISIONS/FOLA HZ 846(a)(2)  
 DO NOT RE-NOTIFY \_\_ RE-NOTIFY

**ATV Action Plan of BMS MOTORSPORTS INC.**

Dear Sir/Madam,

BMS Motorsports Inc. is a participating member of the ATV Safety Institute's ("ASI's") Safety Program for non-ASI members. BMS is fully committed to the goal of reducing ATV-related accidents. BMS has implemented new policies in accordance with the rules set forth by Section 232 of the Consumer Product Safety Improvement Act of 2008. This action plan covers all ATVs imported, manufactured, distributed, sold, and/or offered for sale by BMS and its distributors and retailers regardless of the dates of importation and manufacture of the ATV. The actions outlined below are part of our continuing effort to promote safe and responsible use of our ATVs.

**Age Recommendations**

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

**ATV Labels**

BMS MOTORSPORTS INC.'s labels will conform to section 4.23 of the ATV Standard.



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### **Information and Education Program**

BMS will be helping to fund ASI's Information and Education program through its annual fee. BMS will also implement an information and education program directed primarily at providing safety information and at deterring children under age sixteen from operating adult-sized ATVs as below:

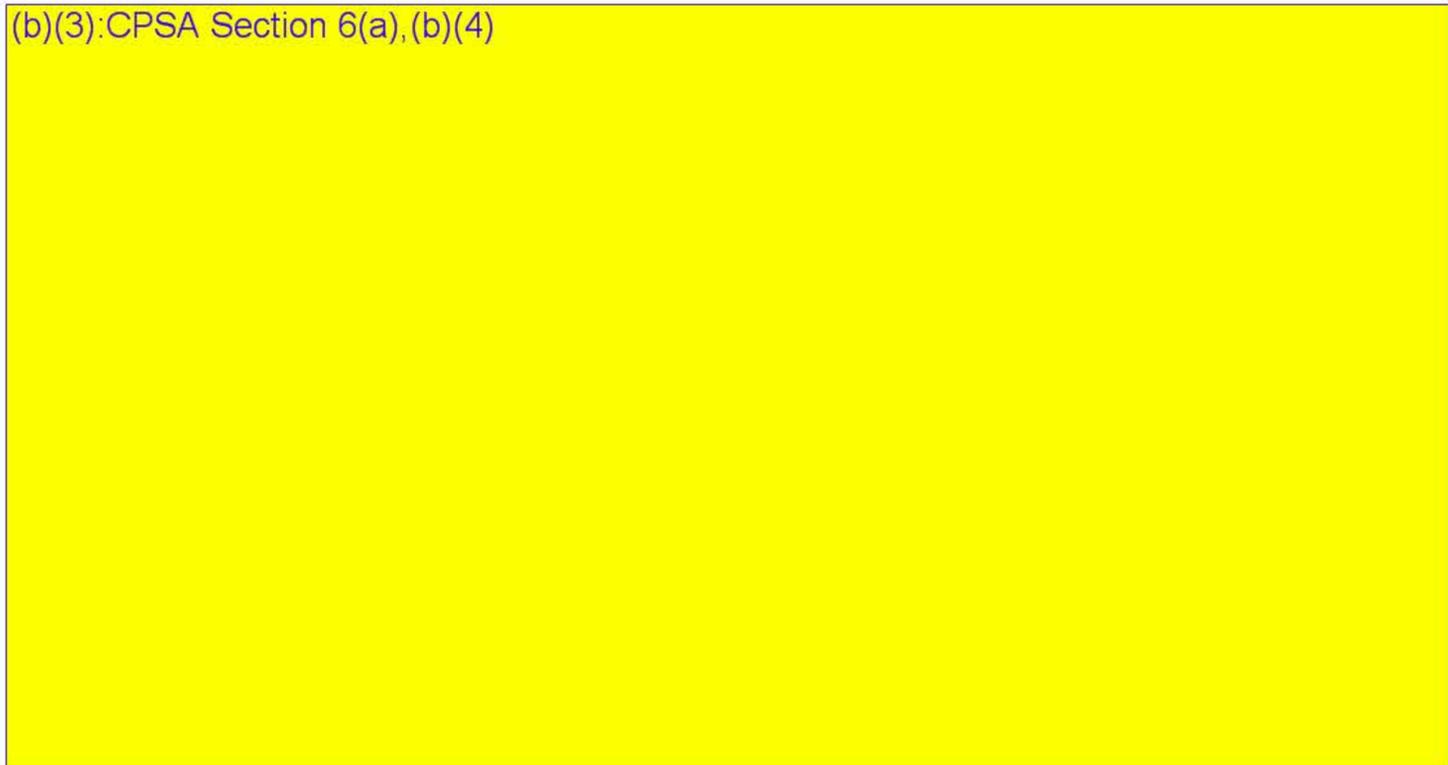
**Video** BMS's video will feature safety themes and messages developed through the focus group research and will be packaged with all new ATVs.

**Poster and brochure** BMS will create a poster and brochure which will convey ATV safety themes and messages. These materials will be disseminated by BMS 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** BMS 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.

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

(b)(3):CPSA Section 6(a),(b)(4)

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### **Owner's Manuals**

BMS's owner's manuals will conform to section 4.21 of the ATV Standard.

### **Advertising**

BMS's ATV advertising and promotional materials will include the substance of the safety messages described in Section J.1 and Appendix K of the 1988 ATV Consent Decree and



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will depict ATVs in a manner consistent with safe and responsible use of the product. All riders shown in such advertisements will wear helmets and full protective gear. BMS will use its best efforts to promote dealer compliance with the advertising requirements.

### **Hang Tags**

BMS MOTORSPORTS INC.'s hang tags will conform to section 4.24 of the ATV Standard and will contain information about free, hands-on ATV training availability.

### **Safety Alerts**

BMS MOTORSPORTS INC. will supply the dealers with Safety Alert documentation to be provided at the point of purchase to all retail purchasers of BMS ATVs. The document 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. Information will include injury and death statistics for ATVs, safety rules, availability of safety training, and age recommendations.

### **Rider Training**

BMS Motorsports, Inc. will provide free hands-on training to purchasers and members of their immediate family along with an incentive. BMS 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. If at any time BMS is no longer a participating member of ASI's Safety Program, BMS will require all dealers to provide the registration information for the training course to the consumer at the time of purchase and will 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, BMS 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.

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.

### **Safety Video**



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

### **Toll-Free Hotline**

BMS MOTORSPORTS INC. will provide a toll-free, 24 hour ATV hotline that meets the requirements of Section H.4 of the 1988 ATV Consent Decree. The hotline will also provide safety and training information, including age recommendations. If at any time BMS is no longer a participating member of ASI's Safety Program, BMS will cease to import ATVs or distribute ATVs in commerce until such time that BMS 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.

### **Three Wheel ATVs**

BMS will not manufacture, market, or sell three-wheel ATVs.

### **Dealer Monitoring**

BMS's dealer monitoring program is attached to this action plan as Appendix A.

### **NOTICE**

BMS will give the CPSC at least 60 days advance notice of its intention to terminate or materially change any commitment under the action plan. BMS will provide information about these activities upon reasonable requests from CPSC.

If BMS stops participating in ASI's Safety Program that will constitute a material change in this action plan. BMS 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 BMS's fully executed agreement with ASI is attached to this action plan as Appendix B.



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Thank you in advance for your attention to this important matter. We stand by ready to comply with all requirements.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Kim'.

Patrick Kim  
President  
BMS MOTORSPORTS INC.

## APPENDIX A

### Dealer Monitoring

#### 1. Scope and Components of Monitoring Program

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

BMS will use its "best efforts"<sup>1</sup> 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.

(b)(3):CPSA Section 6(a),(b)(4)

#### 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 BMS's independent investigators,<sup>2</sup> BMS will:

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<sup>1</sup> "Best Efforts" shall include, among other things, an obligation to require, to the extent permissible under federal and state law, compliance by BMS'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.

<sup>2</sup> 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), BMS 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 BMS discovers a violation during this inspection, BMS 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, BMS 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 BMS 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, BMS 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, BMS will take remedial action against the dealer, up to and including possible termination or non-renewal of the dealership agreement with BMS.<sup>3</sup> If BMS 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, BMS will terminate or decline to renew the dealer's contract. In each instance, BMS 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

BMS 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 BMS, along with dates of all follow up activities and remedial actions. BMS should 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

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<sup>3</sup> The nature of the enforcement action will be determined on a case-by-case basis, and BMS 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.

applicable laws. The CPSC staff also reserves the right to request additional information from BMS regarding the results of BMS's dealer monitoring program.

#### 5. Notice to Dealers

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

**APPENDIX B**

**ASI SAFETY PROGRAM PARTICIPATION AGREEMENT**

## 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 BMS MOTORSPORTS, 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.

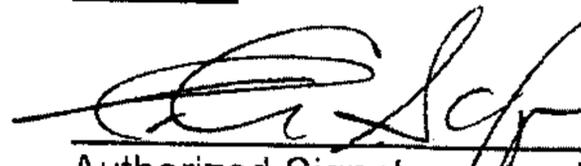
V. GENERAL

- 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

 4-12-2010  
Authorized Signature      Date  
PATRICK KIM  
Print Name  
President  
Title

For Specialty Vehicle Institute of America

 5/1/10  
Authorized Signature      Date  
THOMAS S. YAGER  
Print Name  
VICE PRESIDENT  
Title