

39
FILE -

CPSA Sec. 3(a)(1)

YAZOO (2)



Power Lawn Mowers

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

OFFICE OF THE
GENERAL COUNSEL

September 2, 1982

James F. Rill, Esq.
Collier, Shannon, Rill & Scott
Attorneys-at-Law
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

Dear Mr. Rill:

This is in response to your letter of August 30, 1982, in which you present additional information concerning the request of Yazoo Manufacturing, Inc. ("Yazoo") for a **determination** of whether certain of their mowers are consumer products and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. **Part** 1205. We had advised you previously that the information available to us as of August 16, 1982, indicated that the mowers in question were consumer products. We subsequently met with you and representatives of Yazoo on August 27, and you agreed to submit additional information which is the subject of your most recent letter.

In that letter, you provide additional data concerning each individual mower model and indicate that the **only** models now involved in this request are models S-26, S-24, SP-24, S-22, and SP-22. Part of these new data consist of more refined estimates of the number of mowers sold to consumers by the dealers supplied by your company-owned distributors. Those estimates ranged from "no more than **■**" for the S-26 to "close to **■**" for the 22 inch models. In addition, you obtained estimates of sales to consumers from some of your independent distributors, indicating that such use was **■** percent or less. You also submitted copies of advertisements that Yazoo runs in publications directed to commercial audiences.

ADVISORY OPINION

If the data described above were all that were available, we would find it difficult to conclude that these **mowers** are not **consumer** products. **However**, you indicate additional steps that Yazoo will undertake to ensure that consumer sales of these mowers are further reduced. You indicate that Yazoo will reinforce its policy of selling only to **commercial** users by providing written instructions to that effect to **its dealers** and by placing a decal on the mowers stating that they are intended for commercial applications only and do not comply with the CPSC mandatory safety standard.

[REDACTED]

[REDACTED]

Although we would **expect** that the instructions and [REDACTED] that you outline would substantially reduce consumer sales of these mowers, we do have reservations about the particular wording of the instructions for dealers on page two of your letter. The first sentence of the instruction states that these mowers have "been classified **by** the 'Consumer Product Safety Commission as commercial mowers not subject to the requirements of [Part 1205]". This -language could be interpreted wrongly as an endorsement by **the Commission** of the commercial attributes of the mower'. It could also be erroneously interpreted as implying that such a determination is permanent-and independent of whether the mowers are in fact sold to consumers. These objections to the instructions could be avoided by substituting the following for the first sentence of the instructions:

The Yaioo 22-26" highwheel mowers are not intended for consumer use and do not comply with the mandatory Safety Standard for Walk-Behind Power Lawn Mowers that applies to consumer nowers.

One additional step that we believe Yazoo should take to ensure the reduction of consumer use of these mowers is to revise some of the advertisements that were submitted, which, as presently constituted, appear to contain an unwarranted appeal to consumers. The "[REDACTED]" advertisement seems to be directed more at consumers than at commercial users, [REDACTED]

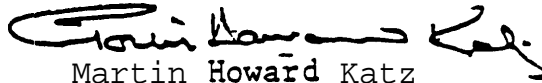
[REDACTED]

[REDACTED]. Also,* the advertisement from Outdoor Power Equipment Magazine indicates that the mower is useful for consumer applications. [See the description of the customer "cutting his lawn" under the "Yazoo Gets Noticed" subtitle.]

Based on the data currently available, we believe that the steps outlined in your proposal, together with the additional steps discussed above, should be sufficient to reduce the sales to, and use by, consumers of these **mowers** to a point where the mowers would not be considered consumer products. This determination is based primarily on the information you **provided and** involves a prediction that the implementation of **Yazoo's** program will result in a substantial reduction of the number of sales of these mowers to consumers¹. **However**, if additional **information becomes** available showing that consumers use **these** mowers more than occasionally, our determination could change.

While the views expressed in this letter are based upon the most current **interpretation** of the law by this office, they could **subsequently** be changed or superseded by the **Commission**. **Please** do not hesitate to contact me if you have further questions regarding these matters.

Sincerely,

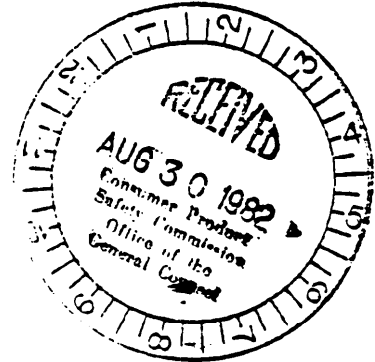

Martin Howard Katz
General Counsel

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Attorneys - at-Law
1055 Thomas Jefferson Street, N. W.
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Telephone: (202) 342-8400
Writer's Direct Dial Number
(202) 342-8445

. August 30, 1982

Martin Katz, Esquire
General Counsel
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207



Dear Mr. Katz:

Pursuant to our August 27, 1982 discussion during a meeting between you, other members of the Office of General Counsel's staff, and representatives of Yazoo Manufacturing, Inc., we present the following information to supplement and revise Yazoo's June 25, July 19 and August 24 letters requesting a determination that designated Yazoo highwheel mowers are not consumer products within the coverage of the Lawn Mower Safety Standard.

1. As per our discussion, Yazoo has now limited its original request so that only the following five models are at issue:

<u>MODEL NO.</u>	<u>HP</u>	<u>WEIGHT</u>	<u>SUGGESTED RETAIL PRICE</u>
S-22-R*/	5	140 Lbs	\$
SP-22-R	5	125 Lbs.	\$
S-24-R	5	152 Lbs.	\$
SP-24-R	5	148 Lbs.	\$
S-26-R	7	186 Lbs.	\$

2. These five models, like all Yazoo products, are advertised and promoted for commercial use only. Yazoo provides an [REDACTED]

*/ The [REDACTED] designates the inclusion of the [REDACTED]: each of these models is also available with the Briggs and Stratton 1/C engine of comparable size, with heavy-duty features designed for commercial applications. Generally, the Briggs & Stratton engine option sells for \$[REDACTED] less at retail. "S" indicates a self-propelled unit; "SP" indicates self-push.

[REDACTED] It is Yazoo's policy not to approve any advertising that is directed toward non-commercial users or to place advertisements in publications other than those directed to commercial audiences. (Advertising slicks and tear sheets from the advertisements, are included as Attachment A.)

3. If the designated mowers are given a "commercial" interpretation, Yazoo will reinforce its policy of selling only to commercial users by the use of special instructions to its dealers and by the use of decals placed on the hood of each 22", 24" and 26" highwheel mower. The instructions sent to every dealer will read as follows:

[REDACTED]

The proposed decal will read:

"NOTICE: This highwheel product is intended for commercial applications only. It does not comply with Consumer Product Safety Commission mandatory safety standards for walk-behind lawn mowers. It does comply with ANSI 71.4 Commercial Turf Care Equipment safety standards."

4. [REDACTED]

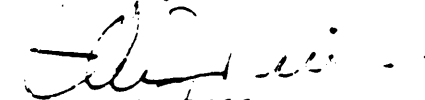
[REDACTED]

5. Finally, in order to refine the estimates of sales of Yazoo's products to commercial users submitted in Yazoo's original request, over the past 6-8 weeks Mr. Kerr has undertaken a review of the current dealer lists for each of his [REDACTED] company-owned distributors. He has also screened sales records and contacted each store manager to whom his own distributors ship the products at issue. Although this review is still in progress, Mr. Kerr's present estimate based on this analysis is as follows: with respect to the P-26" model, no more than [REDACTED] of his sales are to consumers; consumer sales of the two 24" models is estimated to be around [REDACTED] and consumer sales of the two 22" models is close to [REDACTED]. While these figures cannot be precise, they are based on a more detailed examination of available information than Mr. Kerr's original estimate. Mr. Kerr intends to continue to review the records of dealers within his self-distribution system in order to maintain current information.

Mr. Kerr does not have access to the records of Yazoo's independent distributors who account for the remaining [REDACTED] of Yazoo's sales. Therefore, in order to provide more detailed documentation of his original estimates with respect to these independent channels, Mr. Kerr has requested that each of his independent distributors review its dealer list and send a letter or telegram estimating the level of commercial versus consumer sales indicated by these lists and by their personal dealings with their retailers. The responses by independent distributors are appended hereto as Attachment B.

We appreciate the courtesy you extended during our meeting last Friday. We have attempted to provide all of the information that you and other members of your staff indicated was necessary or helpful to a reevaluation of Yazoo's request. If we have overlooked anything or you have questions concerning the information contained herein, please contact us immediately so that we can expedite the resolution of this matter. As we discussed, a decision before Labor Day is essential to Yazoo's ability to retain its work force and compete in the upcoming season.

Sincerely,



James F. Rill
Attorney for Yazoo
Manufacturing Co.

Withhold - $a_2, b_3 + b_4$

**"Two years ago,
we sold six Yazooos.
Now, we buy 'em by the
trailer truckload"**



"We started selling Yazooos in the summer of '78. By the time our first full-length season came around in '79, the word had gotten around. Now, we sell every one we can get.

"Yazoo wasn't a stranger around here, even before we started selling them. A few ground maintenance people already had Yazooos, and they were traveling quite a way to get them. When I saw the Yazoo rider operate, I knew I wanted to handle them."

Perfect For Big Jobs

"We're in an area where we have water all around us-and where many houses are built on big lots. The Yazoo rider is the best piece of equipment to work here.

"With a lot of waterfront area and bulkheads, the Yazoo rider is the only one that can get right down to the water."

Yazoo Gets Noticed

The time my customers save with a Yazoo is sensational. One of our customers had another brand of mower and spent over seven hours cutting his lawn. I sold him a Yazoo, and he does it now in three and a half.

Source: Outdoor Power Equipment Magazine

Withhold. $a_2, b_3 + b_4$

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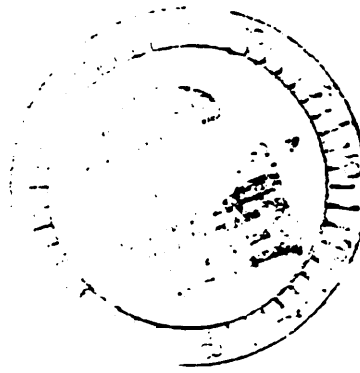
September 1, 1982

ATTENTION: Susan Bir inbaum

This is an additional telegram that should be included with the others in the attachments to Yazoo's August 30th letter to Martin Katz. Please let me know if there are any questions.

Thank you.

JUDITH L. OLDHAM



Withhold - a2, b3 + b4

RESTRICTED

MEETING LOG

CPSC ORGANIZATIONAL UNIT REPORTING: Office of General Counsel

DATE OF MEETING: August 27, 1982

PLACE OF MEETING: Rm. 456, WTB

SUBJECT OF MEETING: Whether the Commission has jurisdiction over certain models of lawn mowers manufactured by Yazoo Manufacturing, Inc.

COMMISSION UNITS REPRESENTED & NAMES OF COMMISSION PARTICIPANTS:

Martin Howard Katz, General Counsel
Margaret A. Freeston, Deputy General-Counsel
Stephen Lemberg, Assistant GC for Regulatory Affairs
Susan Birenbaum, Special Assistant to the General Counsel
Harleigh Ewell, OGC

NON-COMMISSION ORGANIZATIONS OR GROUPS REPRESENTED AND NAMES OF PARTICIPANTS:

Jim Kerr, President Yazoo Manufacturing, Inc.
[REDACTED]
[REDACTED]

James Rill and Judy Oldham, Collier, Shannon, Rill & Scott, attorneys for Yazoo.

ISSUES DISCUSSED, DECISIONS MADE, ACTION TAKEN OR PLANNED:

Mr. Rill stated that he believed that Yazoo was in the same situation as other big wheel mower manufacturers that have received interpretations that their products are not consumer products. He noted that Yazoo has [REDACTED] production employees and that [REDACTED] are laid off until after Labor Day. There are 5 models involved in Yazoo's request in addition to their S-20 model, which they are willing to drop if that would render the rest of their line "commercial."

The models are designated "S" if it is self-propelled and "SP" if it is a push mower. [For next year, "S" will still mean self-propelled, and push mowers will be designated by "P".] The 26" mower comes **only in** a self-propelled version and that uses the 7 HP [REDACTED] engine or a 8 HP Briggs & Stratton IC engine. The other models use a 5 HP [REDACTED] or Briggs & Stratton IC engine. The models and approximate retail prices are as follows:

S-26
S-24
SP-24
s-22
SP-22

\$ [REDACTED]

The mowers will meet the CPSC foot probe requirement. The company, in addition to being willing to drop the S-20, is willing to put a decal on the mowers indicating that they are for commercial use only.

The Yazoo distribution system involves about [REDACTED] of Yazoo's own distributors and about [REDACTED] independent distributors. They do not sell to mass merchandizers or hardware store type outlets.

[REDACTED] stated that his was the largest Yazoo distributor, involving-dealers. Most of these are "Mom and Pop" stores who sell primarily to commercial users.

The General Counsel indicated that Yazoo should supply more information bearing on this determination and that 'if they didn't, the previous determination would stand. He suggested the following:

1. Yazoo should provide detailed information for each model, including data on the extent of consumer use for each mower model.
2. Provide additional data to lend meaning to the use of words such as "primarily" to describe the degree of commercial use for these mowers.
3. The company should specify the steps that are taken to discourage consumer use. For example, they should specify what they tell independent distributors and provide copies of the materials for the in-house distributors.
4. To the extent possible, they could submit copies of the advertisements and records of who ran the ads.

In response to a question from M. Freeston about why consumers might want to buy their mowers, Mr. Kerr stated that they might want to clear out growth next to a lake, mow around a summer home, merely be interested in having something different, etc. The Yazoo representatives also stated that consumers would not be likely to buy the mower due to the cost and because the size and weight of the mowers would make it unmanageable. They pointed out that the engine was good for hours of operation and that this was equivalent to 1 year's commercial use. Average life of the mower was years.

Mr. Katz indicated that if they got the additional information to us we would give it a quick evaluation.

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August 26, 1982



Martin Katz, Esquire
General Counsel
Consumer Products Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Re: Request for Reconsideration of Determination
Regarding Yazoo High-Wheel Lawnmowers

Dear Mr. Katz:

On behalf of Yazoo Manufacturing, Inc. ("Yazoo") we strenuously object to the action taken last week with respect to Yazoo's request for a determination that its high-wheel mowers are commercial products not subject to the Lawnmower Safety Standard for Walk-Behind Lawnmowers. The advisory opinion, reversing the Commission staff's recommendation, is arbitrary, capricious and an abuse of discretion, particularly in light of the fact that Yazoo's high-wheel products are comparable in every significant respect to the products of Yazoo's competitors, i.e. [REDACTED] and [REDACTED], recently categorized as commercial mowers by your office. For the reasons set forth below, we request a reversal of your decision or, at the very least, a decision that the determination should be confined to the smaller high-wheel models with the highest rate of unintended consumer use.

The Advisory Opinion Should Be Reversed Because It Is Arbitrary
And Capricious Agency Act ion

The decision contained in your August 16, 1982, letter treats Yazoo's products differently from competing products that are identical in every respect relevant to a commercial classification. Past advisory letters issued by the Commission and addressing this subject have identified the factors relevant to a determination of the jurisdictional issue as the channels of distribution, advertising placement, weight, cost and volume. A comparison of the size, weight, construction, price, advertising practices, method of distribution and pro-

Martin Katz, Esquire
August 26, 1982
Page Two

Collier, Shannon, Rill & Scott

motion of these mowers with those of [REDACTED] and other exempt models will reveal that Yazoo's products are at least as commercial, and in some instances more commercial than those excluded from "consumer" categorization in recent months.*/

Although the letter acknowledges that a definition of a consumer product does not extend to products not "customarily" produced or distributed to consumers, it provides no guidance or explanation regarding the reason for its decision or the definition of "occasional" use. Since Yazoo's high-wheel products, as well as its distribution system and advertising placement policies, are identical to products recently exempted, Yazoo suspects that its size and volume, as compared with its smaller competitors, may have been the factor responsible for the unfavorable response from the Commission. If this is so, it is not a sound basis for such a decision. Moreover, even if this factor were taken into account, the numbers involved are not significantly larger than those applicable to several of the manufacturers that have received favorable interpretations.

If The Advisory Opinion Cannot Be Reversed, It Should Be Narrowed

If, notwithstanding the objections just raised, you remain unwilling to reverse your adverse determination with respect to all of Yazoo's high-wheel mowers, Yazoo requests that the "consumer" categorization be confined to models that, in the past, have produced the highest percentage of unintended consumer use, i.e., the 20-inch model with a [REDACTED] H.P. engine.

[REDACTED]

[REDACTED]

As indicated in our July 19, 1982, letter supplementing our original request, Yazoo estimates that unintended consumer use of the S-20 model was as high as [REDACTED]. It was for this reason that Yazoo decided to replace this 20-inch models with a more expensive unit carrying the [REDACTED] engine. These 20-inch models, for which consumer sales were estimated at [REDACTED], were included in Mr. Kerr's estimate that [REDACTED] of his high-wheel mowers are sold to commercial or agricultural users. If

*/ Because much of the relevant information contained in the advisory opinion requests and responses to these other manufacturers is not publicly available, it will not be reiterated here. The General Counsel's office does, however, have these documents and can readily verify the above statement. A close comparison of the facts in these related requests should lead the Commission to conclude that they should receive similar treatment.

Martin Katz, Esquire
August 26, 1982
Page Three

Collier, Shannon, Rill & Scott

the discontinued S-20 model, which accounted for approximately [REDACTED] of Yazoo's total sales, is excluded from Mr. Kerr's [REDACTED] commercial use calculation, however, and no new 20-inch model is produced, the rate of commercial use would obviously be higher than that originally projected. Clearly, the larger, heavier and more expensive the equipment, the more remote the likelihood that such units will be used in non-commercial settings.

Like several other manufacturers for which commercial exemptions have been granted, Yazoo cannot realistically provide numbers or percentages that precisely measure unintended consumer use of commercial products. Other companies have used various means to calculate consumer use, including warranty cards, field surveys, and dealer or distributor statements. Based on Yazoo's predominant pattern of self-distribution and Mr. Kerr's long and intimate familiarity with his sales patterns, he believed his personal statement was an adequate and reliable representation to support his request. Mr. Kerr has stated that he believes that the rate of sales of high-wheel units to commercial users would be significantly higher than originally estimated if the 20-inch units are excluded from that estimate. To verify and reinforce his estimate, he has requested letters from his independent dealers and distributors confirming that the larger 22- to 26-inch models are rarely sold or used by consumers (See Attachment A). Finally, as indicated in the June 25 letter to you, Yazoo never markets its high-wheel units to consumers; rather, like its competitors, it restricts its advertising to publications directed to commercial users, and will instruct its salesmen to direct consumer purchasers to units suitable for home applications.

In conclusion, reconsideration and reversal of the adverse determination [REDACTED] [REDACTED] would be consistent with past decisions of the General Counsel's office with respect to similar products.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. It has also supplemented its request with the statements of its dealers and distributors that such units are not sold more than occasionally to consumer users. Based upon Yazoo's offer to limit its request and the additional assurances contained herein, we request that your letter of August 16 be revised and reissued as soon as possible.

Martin Katz, Esquire
August 26, 1982
Page Four

Collier, Shannon, Rill &

[REDACTED]

[REDACTED] We trust that an extensive
reevaluation of this request will not be necessary and that this
matter can be resolved quickly in fairness to Yazoo.

Sincerely,


JAMES F. RILL

JFR:jab

ATTACHMENT A

The documents comprising this attachment are being assembled and will be supplied in the near future.

Withhold- $a_2, b_3 + b_4$

FILE

- Power Lawn Mowers



~~RESTRICTED~~

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

OFFICE OF THE
GENERAL COUNSEL

AUG 16 1982

James F. Rill, Esquire
Collier, Shannon, Rill & Scott
Attorney-at-Law
1055 Thomas Jefferson Street, N. W.
Washington, D. C. 20007

Dear Mr. Rill:

This letter responds to your letters of June 25, 1982, and July 19, 1982, in which you request a determination of whether the models S-26, S-24, SP-24, S-22, SP-22, and SP-20R Lawn mowers manufactured by Yazoo Manufacturing Company, Inc. ("Yazoo") are consumer products and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205. The data you have submitted indicate that these mowers are consumer products.

As you know, the term "consumer product" is defined in 15 U.S.C. § 2052(a)(1), and the term does not include "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer." The legislative history of this section indicates that products that are not used more than occasionally by consumers are not consumer products. H.R. Rep. No. 1153, 92d Cong., 2d. Sess. 27 (1972).

In general, we have established no specific criteria to determine whether consumers use a product more than occasionally. Instead, we review all available information relevant to a particular determination.

In the case of these Yazoo mowers, you have submitted information and made arguments which suggest that the current and anticipated use and distribution patterns of those mowers are such that these mowers do not fall within the definition of the term "consumer product". The information you have provided and the arguments you have made are as follows:

James F Rill, Esq.

Page 2

1. The rugged construction and large wheels of these mowers make them more suitable for rugged or sandy terrain or for mowing tall grass than a typical consumer mower would be.

2. The mowers utilize a more durable and expensive motor than is usual for consumer mowers.

3. The weight of these mowers exceeds the range normally associated with **typical** consumer mowers.

4. Yazoo manufactures approximately-mowers a year and **of** these mowers are sold to commercial users. Further, you indicate that at least-percent of these **mowers** are sold directly to the dealers, frequently in response to an order for a specific customer.

5. Yazoo has indicated that their promotional strategy will be directed exclusively toward the commercial user.

6. Although there may be **some overlap** for the smaller models, in general the prices of these mowers exceed those for, "**typical**" consumer mowers.

It is our view that if Yazoo is able to control its channels of distribution in such a way as to assure that the mowers in question are not sold to or used by consumers more than **occasionally**, the mowers would not be consumer products. In our view, consumer sales or use in the range of-percent of a product line generally would qualify a mower as a consumer product because that indicates to us that the mower is sold more than occasionally to consumers. We would conclude that this is the case for these Yazoo mowers, especially -when we consider the **estimate** that up to-of these mowers could be sold to consumers. In addition, if a product is customarily available for sale to or use by consumers, it would be a consumer product.


We do not view the degree of risk associated with a product, or the cost of complying with the standard, as relevant to a determination of whether a mower is a "consumer product." Such factors, if sufficiently quantified and supported, could possibly be relevant to a request that a particular mower model be exempted from the standard.

While the views **expressed** in this letter are based upon the most current interpretation of the Law by this office, they could subsequently be changed or superseded by the Commission.

James F. Rill, Esq.
Page 3

Please do not hesitate to contact me if you have further questions regarding these matters.

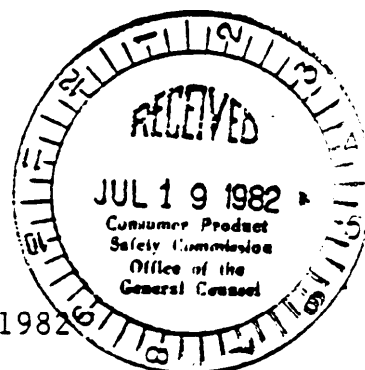
Sincerely,

A handwritten signature in black ink, appearing to read "Martin Howard Katz", followed by a stylized flourish or mark.

Martin Howard Katz
General Counsel

Collier, Shannon, Rill & Scott
Attorneys-at-Law
1055 Thomas Jefferson Street, N. W.
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July 19, 1982

Martin Katz, Esq.
General Counsel
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Dear Mr. Katz:

The following information is intended to supplement Yazoo's letter of June 25, 1982 requesting an advisory opinion from the Consumer Product Safety Commission concerning the commercial status of Yazoo's high-wheel lawnmowers. On July 16, 1982, Mr. Greg Rodgers of the CPSC staff raised several questions about the physical characteristics, production figures and promotional patterns for Yazoo's 20" cut mowers. Before responding to the specific questions raised, we should clarify the status of two distinct products referred to in Yazoo's request: (1) the 20"-cut high-wheel lawnmower with a [REDACTED] engine (S-20); and (2) the 20" cut [REDACTED] high-wheel with a [REDACTED] engine (S-20R and SP-20R).

The S-20 mower, which has been discontinued by Yazoo, was sold at retail for approximately [REDACTED] and weighed approximately 100 lbs. It was the only mower in Yazoo's high-wheel line that carried the less expensive non-commercial Briggs and Stratton engine. Yazoo has never promoted the S-20 model to non-commercial users. Yazoo is aware, however, that some consumers purchased the mower for non-commercial applications, and that the rate of such consumer purchases has been somewhat higher than for Yazoo's larger, heavier high-wheel products. Yazoo's president, Mr. Kerr, has estimated that as many as [REDACTED] of the S-20 mowers were purchased for consumer use. This higher level of unintended consumer use was one of the factors that led Yazoo to discontinue the S-20 model in favor of a heavier model with a more sturdy [REDACTED] commercial engine, the SP-20R.

[REDACTED]

[REDACTED]. Yazoo currently anticipates that it will produce no more than [REDACTED] of these mowers in 1982-83. This number was included in the [REDACTED] annual production estimate in Yazoo's June 25 letter. The SP-20R weighs 125 lbs. (approximately [REDACTED] more than the S-20) and will retail for approximately [REDACTED] (approximately [REDACTED] higher than the S-20). Mr. Kerr believes that the added weight and cost of the SP-20R will make it less attractive and less practical for the non-commercial user and will, therefore, eliminate a substantial portion of the unintended consumer use that attended the S-20.

In response to the staff's question regarding the percentage of government contract sales handled by independent Yazoo distributors, we are informed that Yazoo's largest independent distributor, [REDACTED], handles Yazoo's G S A contract which accounts for approximately [REDACTED] of Yazoo's total sales. These sales clearly represent a known commercial use.


Finally, in connection with the question CPSC staff raised regarding the distinction between the terms "commercial" and "agricultural," Mr. Kerr has confirmed that agricultural uses do not include consumer applications by farmers. The term "agricultural use" refers to one type of commercial application.

We hope these answers are fully responsive to the staff's questions. [REDACTED]

[REDACTED] We therefore urge that the General Counsel's office act on this matter as soon as possible.

Please let us know if we can be of further assistance.

Sincerely,



JUDITH L. OLDHAM

JLO:jab
cc: Greg Rodgers

RESTRICTED

Carl W. Blechschmidt, EX-P -

Walter R. Hobby, AED, Economics *mt*

Gregory B. Rodgers, ECCP *GR*

Commercial Exemptions to the **Mower Standard** for the
Yazoo Manufacturing Company.

Yazoo requested **the exemption of seven** mower models in **their** letter of June 2% five existing **models**, and two new models which **have** not yet been marketed. Since that request was made Yazoo has decided not to market one of the new models, the S-20 R, and is **consequently** no longer requesting an exemption for that mower from the mower **standard**. **Yazoo's attorney** told us of this change when we contacted **her for darification of the original** request of June 25. The existing **models** have a cutting-width that ranges from 22 to 26 inches, and engines that range from 5 to 8 horsepower. The new **model** will be a 20 inch,- mower.

Based **upon the information** provided in the **exemption request**, and the follow-up darification we received from **Yazoo's attorney**, it is our opinion that the six **remaining models** are not, or will not be, normally used by consumers and therefore, should be **exempted from the mower standard**.

Yazoo manufactures walk-behind lawn mowers for commercial use. All of its mowers are high-wheeled, for use **on** rugged terrain, and are of heavy **duty** construction.

The manufacturer has estimated that-percent of the five existing mowers listed in the **petition are sold to commerical** users. This estimate is based **on** conversations and correspondence with distributors and dealers. Since Yazoo distributes **about** percent of its mowers directly to dealers, through its own distributors, it is in good **position** to know who the ultimate purchasers are. We have no reason to doubt **Yazoo's** estimates.

Yazoo's new **commercial** model, the SP- 20R, has not **yet** been marketed, but Yatoo **believes** that **consumer** use **will** be minimal. This model is generally a replacement for the model S-20,, which **Yazoo recently** discontinued. It was discontinued in part because of consumer purchases, which **were** estimated to have been **as high as-percent** of sales. **Consumer** purchases were attributed to its lightness and its generally inexpensive **and** non-commercial Briggs and Stratton **engine**. The SP-20R, in contrast, will have a **new** horsepower commercial engine, and will consequently be heavier and more expensive than the S-20. **The** manufacturer believes that the added weight and cost of the SP-20R will eliminate a substantial portion of the unintended sales to consumers.

Yazoo has indicated that its promotional strategy has been and will continue to be directed exclusively toward **commercial users**. **Yatoo** does not advertise nationally, but instead [REDACTED]

This policy **effectively** permits **Yazoo** to control most, if not all, of the advertising for its mowers. **Yazoo's** attorney indicated that advertising is currently **listed** only in trade publications; examples of publications include Outdoor Power Equipment, and the trade journals of the New York State Turf Grass Association and the New England Cemetery Association. **Yazoo's** president has **indicated** that all of the company's distributors and **dealers** will **be** regularly reminded that the Yazoo mowers do not comply with the mower standard and that they are intended for commercial use only.

RESTRICTED

TELEPHONE LOG

Date: July 16 and 20, 1982

Caller: Gregory B. Rodgers

Phone Contact: Judith L. Oldham, Attorney for the law firm of Collier, Shannon, Rill, and Scott.

Subject: For Clarification of the Yazoo Manufacturing Company's request for an exemption to the mower standard.

I initially called Ms. Oldham's law firm on July 13. She returned my call on July 16, and responded to my questions in a letter to Martin Katz, of the Office of General Counsel, on July 19. The major points of our conversation, which were not described in the July 19 letter, were as follows.

- All the Yazoo walk-behind power mowers are high-wheeled.
- There are only independent Yazoo distributors.
- Yazoo dealers advertise only in trade journals.

Ms. Oldham's July 19 letter also required some clarification which she provided in our conversation of July 20. The major points were as follows:

- Contrary to a statement in the July 19 letter, the SP-20R model will contain a [REDACTED] engine rather than a [REDACTED] engine.
- Yazoo has decided not to produce the S-20R model and consequently is not requesting an exemption for that model.
- Contrary to implications of June 25 letter written by Yazoo's attorneys, Yazoo has never manufactured a mower for consumer use. Rather, their model S-20 (with a [REDACTED] engine), which was **intended** for commercial use, was, nevertheless, purchased by a large number of consumers. Consumer purchases were estimated to be as-high as [REDACTED] percent. The July 19 letter indicates that the S-20 model was discontinued by Yazoo, in part in response to the unintended consumer use. The SP-20R model, with a [REDACTED] engine is not expected to be purchased by consumers, as the S-20 mowers were, because of the greater weight and price of the SP-20R.

Handwritten: Newby (b)(7)(D) pm

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT
SAFETY COMMISSION

Memorandum

TO : Carl, Blechschmidt, OPM
Through : Martin Howard Katz, General Counsel
 Stephen Lemberg, Assistant General Counsel
FROM : Harleigh Ewell, OGC *HE*

DATE

2 JUL 1982

SUBJECT: Request for Jurisdictional Determination Over Certain Yazoo Lawn Mowers

Attached is a request from Yazoo Manufacturing Company for a determination that seven of their models are not "consumer products" and thus not subject to the lawn mower standard. Please ask the staff to provide us with any comments that they may have concerning the extent to which these mowers may be sold to or used by consumers.

RESTRICTION REMOVED. Available for public release.
Initial *pm* Date *11/1/82*
Portions

**23*

Collier, Shannon, Rill & Scott
Attorneys-at-Law
1055 Thomas Jefferson Street, N. W.
Washington, D. C. 20007

Telephone: (202) 342-8400
Writer's Direct Dial Number

(202) 342-8432

RESTRICTED

June 25, 1982

Martin Katz, Esquire
General Counsel
Consumer Product Safety Commission
5401 Yesward Avenue
Bethesda, MD 20207

Dear Mr. Katz:

This letter is a request on behalf of Yazoo Manufacturing Company, Inc. ("Yatoo") for an interpretation, pursuant to 16 C.F.R. § 10007, of the Consumer Product Safety Act as it applies to the Commission's Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205 ("Standard"). Specifically, Yatoo requests a determination that certain of its high-wheel mowers are "commercial" rather than "consumer" products and are therefore not covered by the Consumer Product Safety Act, 15 U.S.C. § 2501, et seq. and of such Standard.

Yazoo Manufacturing Company, located in Jackson, Mississippi, manufactures heavy-duty turf care equipment for specialized industrial and agricultural applications. Most of Yazoo's line consists of riding mowers or large commercial equipment not subject to the Standard. The [redacted] models for which Yazoo seeks an interpretation are S-24, S-24, SP-24, S-22, SP-22, a new model. [redacted] As described more fully in the specification sheets appended hereto as Attachment A, these models include both hand-push and self-propelled walk-behind models, with 5 to 3 H.P. engines and cutting widths of 22-26 inches. The new S-20R and SP-202 models will have a 20" cutting width and a [redacted] engine. The annual production volume for Yazoo's high-wheel mowers is estimated to be around [redacted] units. Yazoo also manufactures a lighter weight mower with a 20" blade and [redacted] H.P. standard engine more suitable for consumer use. The present request does not pertain to these smaller mowers.

Although the Yazoo high-wheel mowers at issue do not satisfy any of the express exclusionary criteria set forth at 16 C.F.R. § 1205.1(c), the factors discussed below indicate that they are

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not consumer products within the terms or objectives of the Consumer Product Safety Act or the Standard. To construe them to be consumer products covered by the Act would impose a substantial compliance burden on Yazoo without reducing any actual risk of injury to consumers.

1. The Physical Characteristics of the High-Wheel Mowers At Issue Distinguish Them from Products Sold For Consumer Use.

The cost and physical characteristics of the high-wheel mowers for which Yazoo seeks an interpretation, when compared with the typical consumer mower, make it unlikely that a reasonable consumer would purchase such mowers for non-commercial use. The commercial mowers do not have the aesthetic qualities and easy adjustability of mowers designed for home use. Rather, they are designed for rugged and continuous use by experienced operators.

[REDACTED]

The engines of the high-wheel mowers are also designed for long-term and continuous industrial applications. The [REDACTED] industrial engine, used on some high-wheel models has an estimated life of over-hours, as compared with an estimated life of [REDACTED] for the standard aluminum Briggs and Stratton engines typically used on consumer products. Additionally, the [REDACTED]

[REDACTED] Commercial high-wheel models with the Briggs and Stratton I/C (industrial/commercial) engine have similar heavy-duty features not necessary for consumer use. The cost of these industrial engines is as much as twice that of a comparably-powered consumer engine.

The heavy-duty engines and other industrial features used in Yazoo's commercial equipment make these mowers substantially heavier than mowers sold for home use. For example, Yazoo's 22"-26" high-wheelers range from 140 to 200 lbs., as compared with an average weight of 100 lbs. for the typical 22" consumer mower.

The larger engine and commercial features of the mowers at issue have a significant impact on their cost. The mowers identified in this request are sold at retail prices ranging from \$565 to \$780 per unit. These prices are [REDACTED] higher than those of Yazoo's 20" consumer-model mowers. The same price dif-

ferential exists between the identified mowers and typical consumer mowers of comparable blade and engine size. Such price differences have been a factor in prior Commission determinations that certain products are not within the definition of a "consumer" product. See Bachtold Bros., Inc., CPSC Advisory Opinion No. 278 (August 14, 1980); The Toro Company, CPSC Advisory Opinion No. 287 (December 1, 1981).

2. Yazoo's High-Wheel Mowers Are Sold Primarily To Commercial Users Through A One-Step Distribution System

As indicated in the statement of James A. Kerr (appended hereto as Attachment B), the President of Yazoo Manufacturing, the high-wheel models for which Yazoo seeks an interpretation are designed for and marketed to commercial users. Mr. Kerr estimates that [REDACTED] of the models for which Yazoo seeks clarification are sold to commercial users. Of this number at least [REDACTED]

[REDACTED] Typical situations in which the high-wheel mowers purchased under these contracts are used include military installations, parks and battlegrounds, federal prisons, national forest property, highway departments, cemeteries and hospitals.

Although no manufacturer can say with certainty that every product will be put to its intended use, Yazoo's information, based on conversations and correspondence with the distributors and dealers who handle Yazoo mowers, indicates that its 20-26" high-wheel mowers are purchased primarily for commercial applications. [REDACTED]

[REDACTED] Because of the close relationship between Yazoo and its dealers, once the Consumer Product Safety Standard goes into effect, Yazoo will be in a position to instruct and remind its dealers that high-wheel units are intended for commercial use only.

To reinforce the sales policies of Yazoo's distributors Yazoo's promotional strategy for the high-wheel mowers at issue has been and will continue to be directed exclusively toward the commercial user. Yazoo does not advertise nationally. It does have [REDACTED]

X 36

[REDACTED]

In its advisory opinions to **Bachtold** and **Toro Company**, the Commission indicated that a manufacturer's promotion and marketing patterns are a significant factor in assessing whether a product is a commercial or consumer item. The United States Court of Appeals for the District of Columbia has also emphasized this point, stating that "there must be a significant marketing of that product as a distinct article of commerce for sale to consumers before the product may be considered as 'customarily' produced or distributed in that manner." ASG Industries, Inc. v. CPSC, 593 F.2d 1323, 1328 (D.C. Cir.), cert. denied, 444 U.S. 804 (1979). Applying the reasoning of these prior decisions to the present request, the Commission should conclude that the mowers at issue are not consumer products within the meaning of the Act.

3. Compliance With the Blade-Brake Requirement of the CPSC Standard Would Impose an Unreasonable Burden on Yazoo.

According to prior Commission decisions, the degree of risk and the cost of compliance are additional factors relevant to determination of whether a product is a consumer or commercial item. In connection with the exclusion of reel-type mowers from the lawnmower standard, for example, the Commission observed that since reel mowers represented less than 1% of the walk-behind mower market, the low risk of injury from such mowers did not justify coverage within the Standard. 44 Fed. Reg. 9997. Similarly, the high-wheel mowers of the type here at issue comprise only 1.1% of the total walk-behind power mower market.*/ Moreover, because these mowers are customarily operated by knowledgeable and experienced commercial users, the risk of injury is significantly reduced. This fact is demonstrated by the extremely low rate of injury associated with the use of Yazoo's high-wheel mowers. Since 1945 only four accidents have been reported that have resulted from the use of a Yazoo high-wheel mower. Three of these four injuries resulted from thrown objects -- a type of injury not addressed by the Standard.

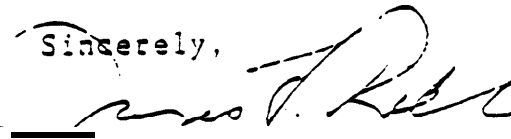
*/ Figure reported in September-August 1981 Monthly Report of Shipments and Inventory released by Outdoor Power Equipment Institute.

37

Where the risk of injury associated with a product is low, the Commission and the courts have recognized that the cost of compliance may determine the proper scope of a standard's coverage. See 44 Fed. Reg. 9998; ASG Industries, Inc. v. CPSC, 593 F.2d 1323 (D.C. Cir. 1979) & quoting Stia v. CPSC, 559 F.2d 831 (5th Cir. 1978). . . the Commission's decision to exclude certain large mowers from the Walk-Behind Mower Standard's coverage was based, in part, on the fact that commercial or specialty mowers are typically manufactured by smaller firms that would be subjected to an unreasonable economic burden if forced to redesign their products to comply with consumer safety features. 44 Fed. Reg. 9998. the Commission observed with respect to such companies, "[t]he economic burden for these manufacturers could be greater than that for the manufacturers of the smaller mowers usually used by consumers since they must spread the cost of compliance over fewer production units." id. The Commission's reasoning is equally applicable to the high-wheel mowers manufactured by Yazoo. [REDACTED]

To summarize, the [REDACTED] is a manufacturer of specialized industrial and agricultural equipment, as well as the similarities in physical characteristics and promotional approach between Yazoo high-wheel mowers and other mowers recently categorized as commercial, support an interpretation from the Commission that Yazoo's high-wheel mowers are not consumer products within the meaning of the Consumer Product Safety Act, 15 U.S.C. § 2501 et seq. and the Safety Standard for Walk-Behind Power Lawn Mowers, 15 C.F.R. Part 1205.

Sincerely,

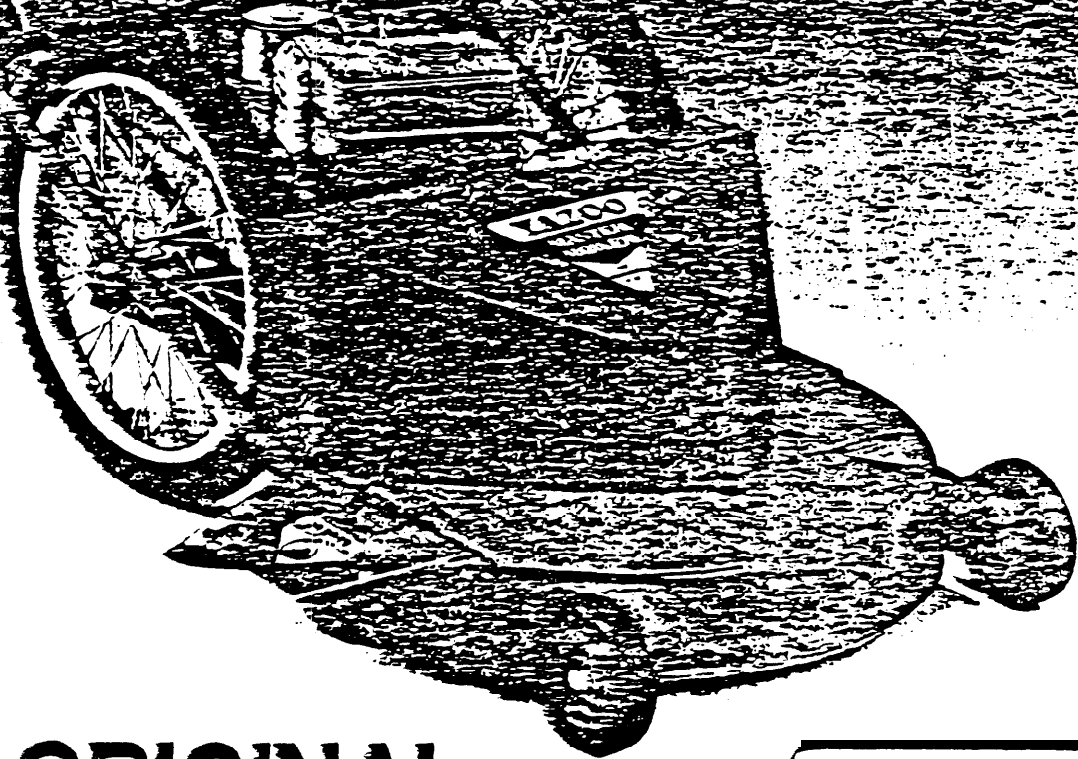

JAMES F. RILL

Attorney for Yazoo
Manufacturing Company

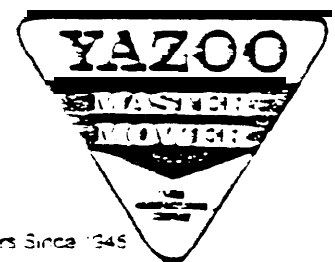
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Attachments-

Attachment A

YAZOO



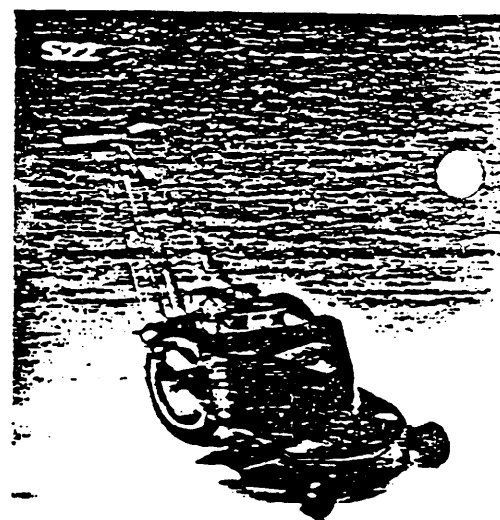
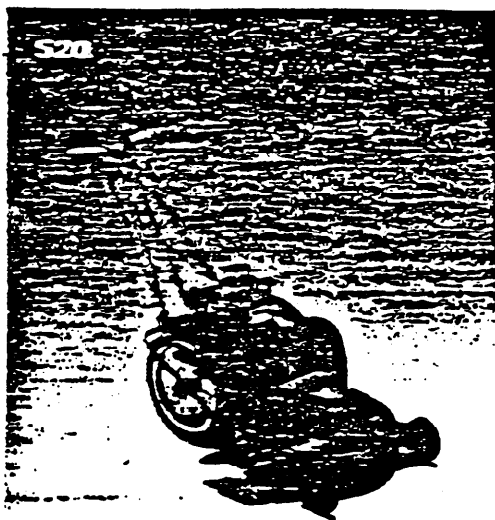
**THE ORIGINAL
BIG WHEEL MOWER.**



Big Wheel Mowers Since 1945

31

SPECIFICATIONS



ENGINE: 5 HP Briggs & Stratton Industrial/Commercial engine. Kool-bore aluminum design. Pilsa-Jet Carburetor. Cast iron cylinder sleeves. Dual element air cleaner. Stellite® exhaust valves and valve seats. Easy-Scin® start. Heavy duty, cast iron flywheel with long safety rope. One year limited warranty by the engine manufacturer. S20 also available with 3.5 HP Briggs & Stratton engine.

5 HP Briggs & Stratton Industrial/Commercial engine. Full float carburetor. Cast iron cylinder sleeves. Dual element air cleaner. Stellite® exhaust valves and valve seats. Ball bearings on both ends of the crankshaft. One year limited warranty by the engine manufacturer.

BLADE DRIVE: Special twin oil-and-heat resistant V-belts from engine to hub assembly. Machined steel sheaves computer matched to belts.

Special oil-and-heat resistant matched V-belts from engine to hub assembly. Machined steel sheaves computer matched to belts.

SELF-PROPELLING UNIT: Belt-and-chain drive. Steel spline friction drivers run on knobby pneumatic rear tires. Self-cleaning. Reduces clogging in wet grass or mud. Control lever on handle.

Belt-and-chain driven. Spline drivers running on knobby pneumatic rear tires. Self-cleaning. Reduces clogging in wet grass or mud. Lever control on handle.

BLADE AND HUB ASSEMBLY: Special steel housing with 1" shaft running in sealed ball bearings top and bottom. Lower bearing protected by shielding brace adaptor. 20" x 1/4" one-piece tempered alloy steel offset blade. High-lift design for strong vacuum.

Steel hub housing has armor-guard sealed, replaceable ball bearings top and bottom. 1" alloy steel shaft. Lower bearing protected by shielding brace adaptor. 22" x 1/4" one-piece tempered alloy steel offset blade. High-lift design for strong vacuum.

FRAME: 11 ga. steel deck. 3 ga. steel engine mount and 1" x 3/4" strap steel. All-welded construction. Handle is 3/4" 14 ga. steel tubing for solid handling. Height adjustable. Molded grips.

11 ga. steel deck. 3/4" steel engine mount and 1" x 3/4" strap steel. All-welded construction. Tripod handle of 3/4" 14 ga. steel tubing gives solid handling. Height adjustable. Molded grips.

WHEELS: Rear: heavy duty 16" bicycle type tires with 28 105 ga. steel spokes. Muds have replaceable ball bearings. Tires are pneumatic, with heavy duty knobby tread. Front: heavy duty 6 x 1.66, semi-pneumatic, zero-pressure tires with ball bearings.

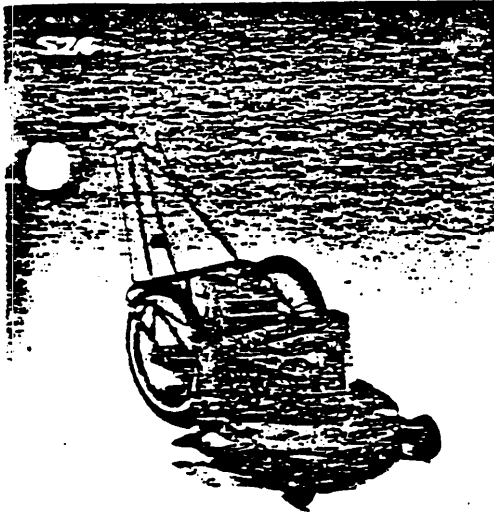
Rear: 16" heavy duty bicycle type tire with 28 105 ga. steel spokes. Replaceable ball bearings. Tires are 16" pneumatic, with knobby tread. Solid tires optional. Front: heavy duty 6 x 1.66 semi-pneumatic zero-pressure tires with ball bearings.

CUTTING HEIGHT: 1/4" to 2 3/4" in five settings.

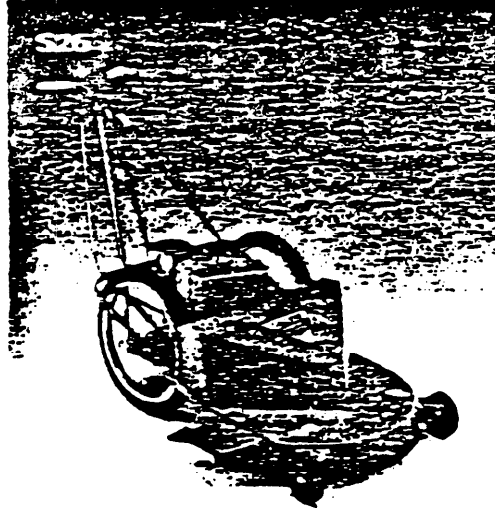
1/4" to 2 3/4" in five settings

SHIPMENT: 38 1/4" x 25 3/4" x 21 1/4" Weight 116 lbs.

42 3/4" x 28" x 20" Weight 140 lbs.



5 HP Briggs & Stratton Industrial/Commercial engine. Full float carburetor. Cast iron cylinder sleeves. Dual element air cleaner. Stellite[®] exhaust valves and valve seats. Ball bearings on each end of the crankshaft. One year limited warranty by engine manufacturer.



8 HP Briggs & Stratton Industrial/Commercial engine. Full float carburetor. Cast iron cylinder sleeves. Dual element air cleaner. Stellite[®] exhaust valves and valve seats. Ball bearing on each end of the crankshaft. One year limited warranty by engine manufacturer.

Special twin oil-and-heat-resistant matched belts from engine to hub assembly. Machined steel sneaves computer matched to belts.

Special oil-and-heat-resistant matched V-belts from engine to Rub assembly. Machined steel sneaves computer matched to belts.

Self-and-chain driven. Spline drivers running on knobby pneumatic tires on rear wheels. Self-cleaning. Reduces clogging in wet grass or mud. Lever control on handle.

Self-and-chain driven with ratchet type spline drivers running on knobby pneumatic rear tires. Self-cleaning. Reduces clogging in wet grass or mud. Lever control on handle.

Steel hub housing has armor-guard sealed, replaceable ball bearings top and bottom. 1" alloy steel shaft. Lower bearing protected by shielding plate adaptor. 24" x 1/4" one-piece tempered alloy steel offset plate. High-lift design for strong vacuum.

Steel hub housing has armor-guard sealed, replaceable ball bearings top and bottom. Lower bearing protected by shielding plate adaptor. 1" alloy steel shaft. 26" x 1/4" one-piece tempered alloy steel offset plate. High-lift design for strong vacuum.

11 ga. steel deck. 3/4" steel engine mount and 1" x 3/4" strap steel. All-welded construction. Tripped handle of 1" 14 ga. steel tubing gives solid handling. Height adjustable. Molded grips.

11 ga. steel deck. 3/4" steel engine mount and 1" x 3/4" steel strap. All-welded construction. Tripped handle of 1" 14 ga. steel tubing gives solid handling. Height adjustable. Molded grips.

Rear 20" heavy-duty bicycle type tires with 36" 20 ga. steel spokes. Replaceable ball bearings. Tires are pneumatic with knobby tread. Solid tires optional. Front heavy-duty 6 x 16 zero-pressure tires with ball bearings.

Rear heavy-duty 20" bicycle type with 36" 20 ga. steel spokes. Replaceable ball bearings. Tires are pneumatic with heavy-duty knobby tread. Front heavy-duty 6 x 16 semi-pneumatic zero-pressure tires with ball bearings.

24" drive settings.

3/4" x 23/4" drive settings.

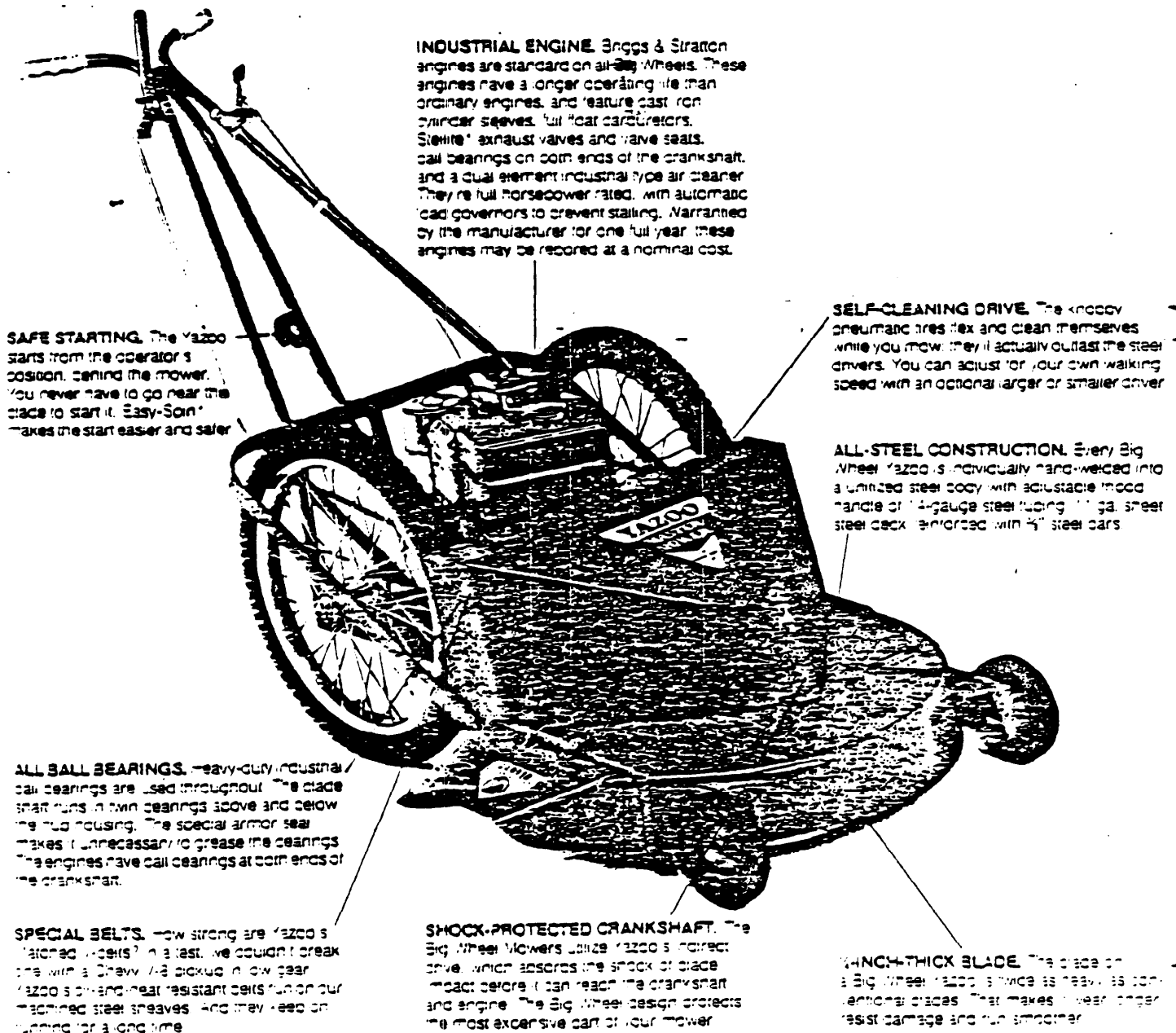
43 1/2" x 29" x 20 1/2" Weight: 152 lbs

48" x 30 1/4" x 22" Weight: 166 lbs

41

ENGINEERING

Every Yazoo is built tough for a long life of hard work. Each component is industrial grade. Industry figures indicate the average Big Wheel Yazoo lasts three times as long as a conventional mower — and those figures include commercial Yazoos that work eight hours a day, throughout the mowing season.



INDUSTRIAL ENGINE. Briggs & Stratton engines are standard on all Big Wheels. These engines have a longer operating life than ordinary engines, and feature cast iron cylinder sleeves, full float carburetors, Stellite® exhaust valves and valve seats, ball bearings on both ends of the crankshaft, and a dual element industrial type air cleaner. They're full horsepower rated, with automatic load governors to prevent stalling. Warranted by the manufacturer for one full year, these engines may be repaired at a nominal cost.

SAFE STARTING. The Yazoo starts from the operator's position, behind the mower. You never have to go near the blade to start it. Easy-Start® makes the start easier and safer.

SELF-CLEANING DRIVE. The knobby pneumatic tires flex and clean themselves while you mow; they'll actually outlast the steel drivers. You can adjust for your own walking speed with an optional larger or smaller driver.

ALL-STEEL CONSTRUCTION. Every Big Wheel Yazoo is individually hand-welded into a unitized steel body with adjustable mood handle of 1 1/2 gauge steel tubing. 11 ga. steel steel deck, reinforced with 1/2" steel bars.

ALL BALL BEARINGS. Heavy-duty industrial ball bearings are used throughout. The blade shaft runs in twin bearings above and below the mud housing. The special armor seal makes it unnecessary to grease the bearings. The engines have ball bearings at both ends of the crankshaft.

SPECIAL BELTS. How strong are Yazoo's "stitched" belts? In a test, we couldn't break one with a Chevy 1/2 pickup in low gear. Yazoo's own and rear resistant belts run on our machined steel sheaves, and they keep on running for a long time.

SHOCK-PROTECTED CRANKSHAFT. The Big Wheel Mowers utilize Yazoo's indirect drive, which absorbs the shock of blade impact before it can reach the crankshaft and engine. The Big Wheel design protects the most expensive part of your mower.

1/4-INCH-THICK BLADE. The blade on a Big Wheel Yazoo is twice as heavy as conventional blades. That makes it wear longer, resist damage and run smoother.

42

Attachment 3

STATEMENT OF JAMES A. KERR

1. My name is James A. Kerr. I have been the President of Yazoo Manufacturing Co., Inc. since December, 1981. Prior to that time I was Vice-President of Yazoo Manufacturing Co., Inc., for over ten years.
2. Among its various Lines of outdoor power equipment, Yazoo manufactures heavy-duty walk-behind high-wheel mowers for agricultural and industrial uses.
3. [REDACTED]
4. Because of the sales pattern just described, and because I am in regular and close contact with all of Yazoo's self-owned distributorships as well as its independent distributors, I have access to accurate information regarding the type of purchasers who buy Yazoo's high-wheel mowers.
5. Although Yazoo does not maintain extensive warranty card records, my personal familiarity of Yazoo's sales and distribution patterns over a ten year period enables me to state with confidence that [REDACTED] of Yazoo's high-wheel mowers are sold to commercial or agricultural users.
6. Once the CPSC safety standard for walk-behind lawnmowers goes into effect on June 30, 1982, all of Yazoo's distributors and dealers will be regularly instructed and reminded that Yazoo's high-wheel models do not comply with the federal standard and are intended for commercial use only. Yazoo's dealers will be instructed to pass this information on to their customers.