

COMMENTS OF SALLY GREENBERG,
CONSUMERS UNION
to the
CONSUMER PRODUCT SAFETY COMMISSION
on
All-Terrain Vehicles
June 5, 2003

I. Introduction

Consumers Union, publisher of *Consumer Reports*, understands that there are many ATV users and enthusiasts who are very attached to the ATVs and perceive any effort to regulate them to be a potential threat to their use and enjoyment of these vehicles. At the same time, CU believes that the steady increase in the number of injuries and deaths to users of ATVs over the past two decades is alarming, presents a hazard to these very ATV users and especially their children under age 16, and that Consumer Product Safety Commission should be applauded for delving deeper into the causes of the alarming rise in ATV casualties. We need to arrive at a balanced approach that allows safe use of ATVs by riders with the training, maturity and strength to handle them while protecting young people and inexperienced operators from injury or death using ATVs.

The latest statistics are not promising:

Between 1993 and 2001, the number of injuries caused by ATV-related accidents more than doubled, with 111,700 ATV accidents occurring in 2001.

- Between 1993 and 2001, the number of ATV-related injuries suffered by children under sixteen increased 94% to 34,800 in 2001.

1. Product Design

While automobiles have become increasingly safer, with safer designs, mandatory safety standards, new safety equipment and rigorous testing by the National Highway Traffic Safety Administration (NHTSA)—the inverse is true for ATVs: the more ATVs in the marketplace, with greater speed and size than ever before, the higher the numbers of injuries and deaths. Our first recommendation is that CPSC look into setting safety standards for actual ATV design. NHTSA's role in setting safety standards for cars might provide a good guide for CPSC. CPSC engineers might review braking, suspension, and handling systems of ATVs to determine how these machines could be engineered to provide greater margins of safety.

2. Licensing/Training Required by State law:

Secondly, every state in America requires automobile drivers to pass written and performance-based driving tests to receive a driver's license. 43 states and the District of Columbia require drivers to be at least 16 years old to obtain a license. Those rules are in sharp contrast to the dearth of safety rules and regulations covering the competence and ability of users of ATVs:

- 24 states have no minimum age limit for operating an ATV
- 42 states do not require a license to drive an ATV
- 35 states do not require any special training to drive an ATV

3. The CPSC-ATV Industry Consent Decree

In 1988, CPSC entered into a consent decree with ATV manufacturers in lieu of continuing a lawsuit against them. CU said at that time that the decree was:

. . . It is patently naïve—indeed irresponsible—to believe such a strategy can substantially reduce the continuing rate of death and injury. Sadly, the same population that has already suffered hundreds of deaths and thousands of injuries remains at risk and can't help piling up more gruesome statistics.

We hate to say it, but CU was right. There's been a 159% increase in the ATV injury rate.

In the early 1990s, CFA and U.S. PIRG challenged this weakness of the consent decree. In 1993, The DC Circuit in a decision written by Judge Ruth Bader Ginsburg denied the consumer group petition, citing the Commission's ongoing efforts to check ATV safety **and CPSC's indication that it would reconsider the rulemaking route if responses to ATV hazards proved inadequate,**"¹ (emphasis added).

In reaching its findings, however, the court emphasized the importance of the Commission's stated willingness to resume consideration of a youth ban **"if subsequent information indicates that the actions taken under the consent decree are insufficient."**² The court went on to say that the Commission's "repeated acknowledgement indicates that CPSC sees the partial product ban **as a potential supplement to, and not a displacement of the consent decree provisions.**" The court also stated, **"Nothing in this opinion allows the Commission ultimately to avoid deciding whether, notwithstanding improvements attributable to the consent decree or other causes, adult-size ATVs present an "unreasonable risk" to children."**³(emphasis added).

¹ Five ATV distributors, American Honda Motor Co., Inc, American Suzuki Motor Corp., Polaris Industries, Yamaha Motor Corp., USA, and Kawasaki Motors Corp, intervened in this case in support of the CPSC's decision to terminate the rulemaking. Seventeen state attorneys general, on the other hand, appearing as amici curiae, urged the court to grant the consumer groups' petition.

² Id. at 1306. The court here quoted from the Commission's findings at 56 Fed.Reg.at 47,167.

³ Id. at 1306.

Finally, the court stated that “the Consent Decree regime should be tried out for a reasonable time before further measures are added to the regulatory agenda.” It added, “In view of the Commission’s representations that it will ‘**continue to monitor the effectiveness of the Consent Decree program**’ and ‘**consider whether a ban of ATVs for use by children is warranted if the distributors [efforts under the Consent Decree] prove ineffective,**’ we deny the instant petition for review.”⁴ (emphasis added).

We think the latest statistics showing substantial increases for both deaths and injuries a fairly consistent trend over the past nine years demonstrates its time for the CPSC to do what it should have done in 1988 - get back into the business of regulating ATVs to press for safer design, work toward designing an ATV licensing system which will require the at least same level of driver experience and testing required in all 50 states for obtaining a driver's license, with a ban on the use of ATVs by young people under 16 years of age.

Without the CPSC's intervention, we believe we can only look forward to consistent increase in injuries and deaths from ATV use will continue unabated. It is abundantly clear that industry voluntary programs have simply not worked.

C. Regulatory and Other Options for CPSC Consideration

We think now is the time for CPSC to reconsider the youth ban or find another means to effectively bring about a youth ban. We recognize the difficulty of implementing and enforcing such a ban, but we urge the Commission to consider appealing to its congressional oversight committees for broad support. We also urge the Commission to enlist the cooperation and support of state attorneys general to enforce such a ban in their states.

Notwithstanding the Commission’s decision on the petition, we believe there are other actions the Commission should take:

- The Chairman of the CPSC should take the lead in asking Congress to hold hearings on ATV safety based on its own injury data, and the report from the CFA, Bluewater Network, and Natural Trails and Waters Coalition, All-Terrain Vehicle ATV Safety Crisis: America’s Children At Risk and the petition, whose data come almost entirely from the Commission’s own records. CPSC should press upon members of Congress the need for stronger laws in the states, using the American Academy of Pediatrics Model Statute (see description, page 7 as a good example of a comprehensive law), and urge Congress to provide incentives to states to adopt the model law.

There is precedent for this approach. In 2000, Congress passed and President Clinton signed a law requiring that states enact a 0.08% BAC (blood alcohol content level) law by October 1, 2003 or lose a portion of highway funding. Federal law

⁴ Id. at 1308.

currently offers financial incentives to the states to adopt a 0.08% permissible blood alcohol level for drivers and has been successful in persuading states to adopt this provision. Prior to this law, 18 states and the District of Columbia had passed 0.08% BAC laws. In the two years since, the total number of states with 0.08% BAC laws has increased to 33 and the District of Columbia.

- CPSC should enlist the expertise of automotive engineers and other technical experts to review the design of ATVs. There is no question about the hazardous nature of even ordinary use of these machines. The Justice Department described ATVs as an “imminent hazard” in its 1987 case, arguing that they give “the illusion of safe, stable easy-to-operate vehicle,” and give “no hint of the crippling or fatal accidents that can suddenly occur, even while attempting to execute unexceptional, simple riding maneuvers.” DOJ recommend mandatory safety standards in its 1987 complaint.

Conclusion

We urge the Commission to move decisively to implement the youth ban, as requested by the petitioners, as its first step. Banning ATVs for use by the young would prevent untold tragedies and ruined lives.

We understand the Commission has extended the deadline for submission of comments for an additional 90 days until completion of a CPSC study that will include exposure data for ATV usage. While we are filing these comments today, we respectfully reserve the right to submit an addendum to them after reviewing any new data from the Commission’s report that we believe is relevant to this petition.

Whatever actions the Commission chooses to take, we believe it is imperative that it take definitive steps to reverse the tragic trend that has emerged with regard to injuries and deaths from ATV use. Indeed, there is no other product under CPSC’s jurisdiction that has as many deaths each year to children as ATVs—and these deaths are preventable.

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Respectfully submitted,

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CU Calls for Congressional Crackdown on All-Terrain-Vehicles

WASHINGTON – Today marks the expiration of a ten year old federal consent decree with all six all-terrain vehicle (ATV) manufacturers, Consumers Union said new government data shows the decree has not worked well enough and called on Congress to provide incentives for states to ban ATVs for use by children under 16.

“The Consumer Product Safety Commission’s limited resources constrain its ability regulate ATVs effectively,” said Dr. David Pittle, Technical Director and Vice President of Consumers Union, publisher of Consumer Reports magazine. “The only effective response would be a Congressional inquiry into the many dangers these vehicles pose, with an eye toward banning their sale and use by children under 16. Children under 16 have no more business driving an ATV than they have driving an automobile.”

A Consumer Product Safety Commission (CPSC) review of the impact of the ten year consent decree released yesterday shows a startling number of deaths and injuries linked to ATV use, many involving children. The study, *“ATV Exposure, Injury, Death and Risk Studies,”* includes a special injury survey which suggests that injuries to children under sixteen may be as high as 47 percent of all injuries. This rate is comparable to the percent of injury reported in 1985, prior to the consent decree being implemented. The new study also shows that 95 percent of the children injured were driving vehicles larger than those recommended for their age.

Because of several unique design characteristics, ATVs can veer out of control without warning, hurling rider and machines up to 50 mph helter-skelter into unforgiving terrain, full of rocks, bumps and tree stumps.

“Since the 1988 consent decree on ATVs was signed, an estimated 2,040 users have died and an estimated 637,000 people were injured seriously enough using these machines to require emergency room treatment. At least one third of those children under 16,” said Dr. Pittle. “These products were designed for fun, but the price for many has been too high, especially for young children.”

MORE-MORE-MORE

The 1988 decree, which substituted for formal agency rule-making by the Consumer Product Safety Commission, required that large warning labels be placed on ATVs by manufacturers cautioning consumers about the hazards of sharp turns and advising against use by children under 16 years. Dealers were also required to offer training incentives for first time buyers and manufacturers were required to monitor and prevent sale of larger ATVs for use by children under 16. In addition, the manufacturers of ATVs voluntarily agreed to stop production of the more dangerous 3-wheel vehicle. The CPSC is expected to extend many of the provisions in the current consent decree.

"There is no question that without the consent decree we would be much worse off," said Pittle. The overall number of ATVs in use has doubled from 1985, when they numbered 1,942,000 to 1997, with 3,660,000 in use. Over that time, the number of injuries has dropped by 50 percent. According to Pittle, "The consent decree was most effective in its early years, bringing injuries and deaths down significantly. Unfortunately, in the past four years, the consent decree hasn't made a further dent in the numbers of injuries and deaths, which have remained constant each year over that period."

The effectiveness of certain aspects of the consent decree are called into the question by the report. For example, though manufacturers agreed under the consent decree not to sell the larger ATVs to consumers for use by children under 16, the CPSC report shows that 95 percent of the injuries to children take place when they are riding the larger vehicles. The report also indicates that only 11 percent of ATV drivers have ever participated in a training program, despite the ATV driver training incentives required under the decree.

Furthermore, the new CPSC review shows at least 20 percent of ATVs in use today are the most dangerous kind: three-wheelers, whose manufacture was banned under the consent decree of 1988. At that time, manufacturers predicted that the vehicles would have only a seven year life. Instead, ten years later, one-fifth of all ATVs in use today are three wheelers.

"Amid all of the claims of fun, these machines have caused paraplegia, permanent brain injuries and other untold tragedies. With injuries in 1997 numbering 54,500, a new strategy is needed to reduce the dangers of ATVs to consumers," said Sally Greenberg, Senior Product Safety Counsel for CU's Washington office.

Among the manufacturers of ATVs are Yamaha, Suzuki, Kawasaki, Honda, and Polaris.

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NOTE: State by state data on deaths associated with ATV use is available upon request

Consumers Union, Publisher of Consumer Reports magazine, is an independent nonprofit testing, educational and information organization serving only the consumers. We are a comprehensive source of unbiased advice about products and services, personal finance, health, nutrition and other consumer concerns. Since 1936, our mission has been to test products, inform the public and protect consumers.

Protect

Union in action

All-terrain vehicles put children at risk

In May, on the eve of her eighth birthday, Julie Johnson took a ride on an all-terrain vehicle that a 14-year-old friend was driving near the Ocala National Forest in Florida. "I turned around and it had already happened," says her cousin Edward Clay Haerter, who rode ahead of them. After hitting a pothole, Julie's ATV flipped over, landing on her. She died en route to the hospital.

With their oversized tires and handlebars, ATVs look like fun, and roughly 4 million are in use. Young people like them because they don't require a driver's license. But 1,100 children under 16 have been killed and some 372,000 injured on ATVs in the last 15 years. They account for roughly 40 percent of all deaths and injuries on ATVs, despite the fact that large ATVs (97 percent of those sold) carry warnings that children under 16 shouldn't be riding them.

Even for adults, all-terrain vehicles are inherently tricky. Make a wrong turn, and an ATV can veer out of control. The gas engine can easily do 40 mph, and they're used on terrain that includes the unexpected and the unforgiving—like tree roots and rocks.

For 10 years, a federal consent decree with ATV manufacturers required,

among other things, that ATVs with an engine of 90 cc (cubic centimeters) or larger carry a label warning that they were not to be used by children under 16. The decree expired in April, although manufacturers have continued to use the label anyway.

But stronger protections are needed, Consumers Union urges. "We believe Congress needs to come up with incentives to get states to make it illegal for children to be on large ATVs," says Technical Director R. David Pittle. States should consider mandatory licensing, safety classes, and helmet use.

In the meantime, all ATV riders should:

- Avoid riding three-wheeled ATVs—they're too unstable. The industry doesn't make them anymore, but old ones are still out there.
- Never allow a child under 16 to ride a vehicle with an engine of 90 cc or larger.
- Never carry passengers; ATVs aren't designed for them.
- Always wear a motorcycle helmet.
- Take the free training that manufacturers offer owners and their families. Call 800 887-2887 to find a course near you.

Adults only Large ATVs, which account for 97 percent of the market, aren't safe for children under 16. Warning labels are used, but they aren't required.



Those ATVs Should Have Been Recalled (Cont'd.)

At the height of the Christmas clearance sales, the Consumer Product Safety Commission announced a deal that was no bargain for consumers: instead of filing its lawsuit seeking the recall of ATVs ("all-terrain vehicles") as imminent hazards, it entered into a preliminary settlement with the manufacturers (final consideration by CPSC is scheduled for mid-February). Unfortunately, the deal the commission made was as poorly designed and dangerous for consumers as the ATVs themselves. And Terrence Scanlon's defense of the agreement [Free for All, Jan. 16] offered little justification for such a weak settlement.

We've all seen one of these colorful three- or four-wheeled vehicles racing down a dirt path alongside the highway as we headed to the beach, or watched commercials featuring smiling kids tearing around in the rugged outdoors. Large, puffy balloon tires, fresh air, no traffic—what safer fun could a kid have? Already 2.3 million of these vehicles have found their way into American homes, most with youngsters under 16.

The commission's staff examined the vehicles and found them far less friendly than they look. Because of several unique design characteristics, ATVs can veer out of control without warning, hurting rider and machine at speeds up to 50 mph better-skilled into an unforgiving environment full of bumps, potholes, rocks and tree stumps. Too often, the 300-pound vehicle lands on top of the rider. Amid all the claims of fun, the down side has been devastating: 900 deaths and 330,000 injuries (requiring emergency room care) alone since 1982, almost half to kids younger than 16.

The commission studied the problem so long it came dangerously close to suffering paralysis by analysis. Finally, in December 1986, it voted (Scanlon dissenting) to curb the carnage by asking the Justice Department to seek, among other things, a recall of all three-wheeled models

and four-wheelers sold for use by kids under 16. But no legal action has taken place since the vote.

Now, one year later, a settlement has been reached. Scanlon boasts that CPSC "sought—and, thankfully, got—a halt to [the] sale of the three-wheeled models." Actually, manufacturers simply agreed to encourage retailers to not sell last year's three-wheelers left in stock. The industry had already stopped manufacturing these products. The commission can hardly call this a concession.

Unfortunately, the agreement does not include recall, even though one manufacturer made such an offer. Instead of offering to design less hazardous new products or recalling the known hazard, the industry promises to set up a nationwide program to teach new and recent owners how to survive the risks of using an ATV. Even though the classes are free, they are voluntary.

It's hard to imagine hundreds of thousands of riders, many between 10 and 16 years old, herding into classes across the country. It is patently naive—indeed, irresponsible—to believe such a strategy can substantially reduce the continuing rate of death and injury.

So what happens to the 1 million or so consumers who bought an ATV thinking it was a great toy for their youngsters? Without a substantial incentive to return the product, few consumers are likely to park their \$1,500 to \$2,000 investment in the garage until junior gets old enough to ride it properly. Sadly, the same population that has already suffered hundreds of deaths and thousands of injuries remains at risk and can't help piling up more gruesome statistics.

Perhaps the most troubling part of the agreement is the provision that new buyers sign a declaration that they fully understand the dangers and will abide by 12 safety precautions. It's reasonable enough to advise consumers never to drive at "excessive speeds"; never do "wheelies,"

jumps or other stunts"; never drive an ATV without proper instruction; and always be "extremely careful when approaching hills, turns and obstacles." But having the parent sign a promise to comply with each and every warning as well as a statement acknowledging "that failure to obey these warnings could result in death or severe bodily injury" will do little to affect how a 12-year-old will actually use the machine. Worse, instead of protecting the consumer, the signed declaration will help protect the manufacturer from liability when injury does occur. Federal endorsement of such a scheme will only make it more damaging.

This agreement has no teeth—no required measures of performance and no sanctions for noncompliance by retailers—and only vague promises by manufacturers to use "best efforts" in carrying out its terms. Industry's offer was, however, entirely predictable. After all, the program doesn't cost much, and the manufacturers blame the kids' behavior to begin with.

But for a majority of the commissioners to accept such a pathetic remedy is deeply disturbing. As leaders of the principal agency responsible for product safety, they have both the authority and the resources to carry out their mandate vigorously—what they lack is the will to act. Scanlon's hand-wringing over the threat of a prolonged battle to protect consumers is no excuse for the agency to shrink from its responsibility. Given the serious and widespread nature of the hazard, the preliminary settlement is unacceptable. Should it become final, the public will be poorly served.

—R. David Pille
The writer, a former Consumer Product Safety commissioner, is technical director of Consumers Union, publisher of *Consumer Reports*.

The Washington Post
Saturday, Jan. 23, 1988

All-terrain vehicles: Still a danger

Between 1982 and 1988, 456 children were killed riding all-terrain vehicles, three- and four-wheeled motorized carts that can tip or flip over all too easily. Some highly publicized lawsuits gave ATVs considerable notoriety and forced the U.S. Consumer Product Safety Commission to take action.

The agency worked out a consent agreement with manufacturers, who agreed to stop selling three-wheeled ATVs and to label four-wheeled models with a warning that only ATVs with an engine of 90cc or less be used by children under 16.

But in the six years since the CPSC acted, deaths of children under 16 have dropped only 9 percent, to 416. ATVs injure some 24,000 children under 16 each year, according to CPSC data. And if our experience is any indication, some dealers wink at the safety warnings.

The salesperson at one Connecticut dealership tried to sell our reporter a 195cc, 320-pound ATV for his 10-year-old child. "Doesn't this seem kind of big for a kid?" our reporter asked. "He'll grow into it," the salesperson replied. A large sticker on the machine said: "Never operate this vehicle if you are under 16."

Consumer organizations, including the U.S. Public Interest Research Group, are urging the CPSC to enforce an outright ban on the sale of ATVs for use by

children under 16.

A CPSC attorney downplayed the need for tougher remedies. He said the agency will continue to enforce the consent agreement through random undercover investigations and punish dealers who knowingly sell too-powerful ATVs for use by youngsters. Since 1990, he said, 20 to 25 dealers have lost their franchise agreements for violating the agreement. The agency estimates that 80 to 85 percent of dealers are now in compliance, up from 56 percent in 1989. The attorney added that the agency will probably be looking at the ATV problem once again because of the ongoing deaths and injuries.

The American Academy of Pediatrics and several consumer groups went to Federal court in 1992 seeking to force the CPSC to modify and enforce its 1988 consent agreement. A judge turned back that effort, but stated that the commission's refusal to implement more stringent regulations "represents an unwillingness or inability to recognize what appears to be an obvious need of its expertise." Well put.

