

Issues and Challenges The Powersports Industry

September 21, 2018



Panelists

Brandy Ostrom-Schwalbe, Corporate Legal Manager,
Suzuki Motor of America, Inc.

Steve Yatvin, Partner,
Barack Ferrazzano Kirschbaum & Nagelberg

John Paliwoda, Executive Director,
California Motorcycle Dealers Association

Sandy Stroope, Executive Director,
Arkansas Motor Vehicle Commission

First Things First: What is a Powersports Vehicle?

- Powersports includes several different types of vehicles:
 - Motorcycles (on-highway)
 - Motorcycles (off-highway)
 - Scooters
 - All-Terrain Vehicle (ATV)
 - Recreational Off-Highway Vehicle (ROV)
 - a.k.a. side-by-sides or UTVs
 - Snowmobiles
 - Personal Watercraft



First Things First: Powersports Vehicles

Motorcycles

On-Highway



Off-Highway



Scooter



First Things First: Powersports Vehicles

ATV



ROV



First Things First: Powersports Vehicles

- Several manufacturers and distributors (OEMs) offer a range of powersports vehicles.
- Several dealers sell a range of powersports vehicles (multiple brands as well as multiple products).
- Dealer agreements may cover many different powersports vehicles under one contract or may be separate agreements for different vehicle types, depending on line-make or brand.

First Things First: Powersports Vehicles

- Different powersports vehicles may have different regulations.
- OEMs and dealers that sell different kinds of powersports vehicles may face different statutory frameworks.
- Burdens on OEMs, dealers, and regulators alike.

Multiple Statutory Regimes

- Powersports OEMs often sell on-highway and off-highway products. These products may be regulated under different statutes, which makes the administration of the laws more difficult.
 - For example, definition changes in statutes/rules (example – statute changes so that a vehicle that fell within definition of ATV falls into definition of ROV (recreational off-road vehicle))
 - This could have implications for dealer agreements – dealer authorized to sell ROV could claim the right to sell vehicle that was not previously defined as ATV but now falls within ATV definition.

Some Overall Perspective The Powersports Industry



The Powersports Industry

Economic Value of the Industry:

\$24.5
BILLION

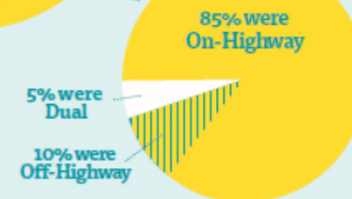
generated in consumer sales and
services, state taxes, and licensing.



29%
are from new
motorcycle sales.

= **\$7**
BILLION

Estimated in new motorcycle
retail sales.
Of those:



Source: Motorcycle Industry Council
(with permission)

The Powersports Industry

- Powersports products are discretionary purchases and powersports product pricing must be competitive so as to not turn off consumers.

The motorcycle industry is impacted by general economic conditions over which motorcycle manufacturers have little control. These factors can weaken the retail environment and lead to weaker demand for discretionary purchases such as motorcycles. (Harley Davison 2017 10-K)

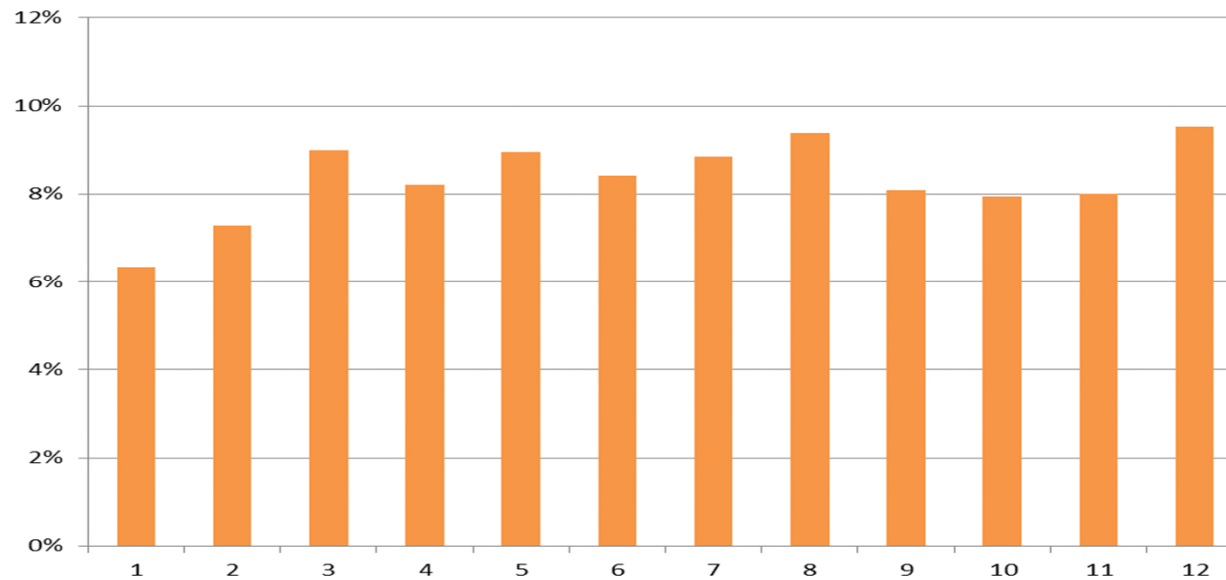
- This means that both wholesale pricing to dealers and retail pricing must also be competitive with other brands offering product in the same segment.

Seasonality



Seasonality - Car and Light Truck Retail Sales

Car and Light Truck Seasonality - 2011-2016

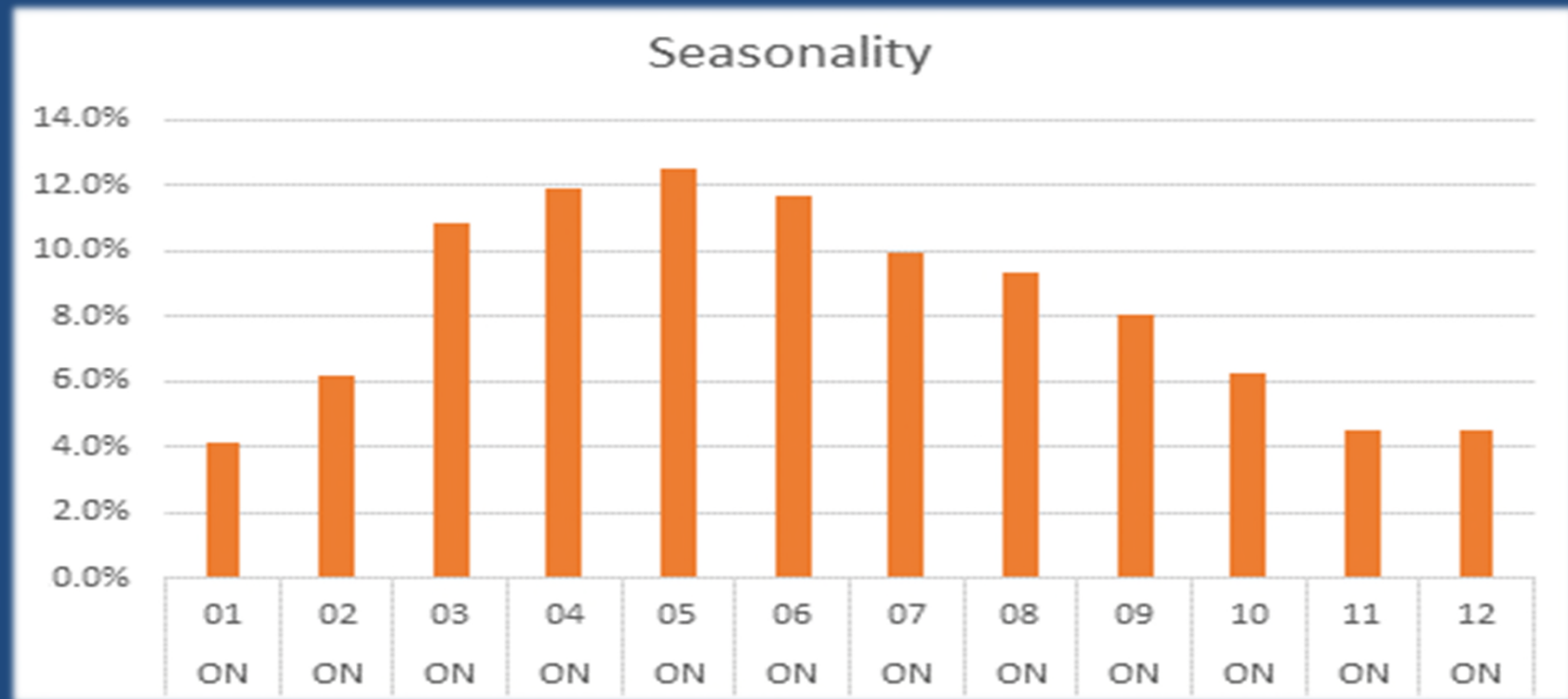


Source: Automotive News

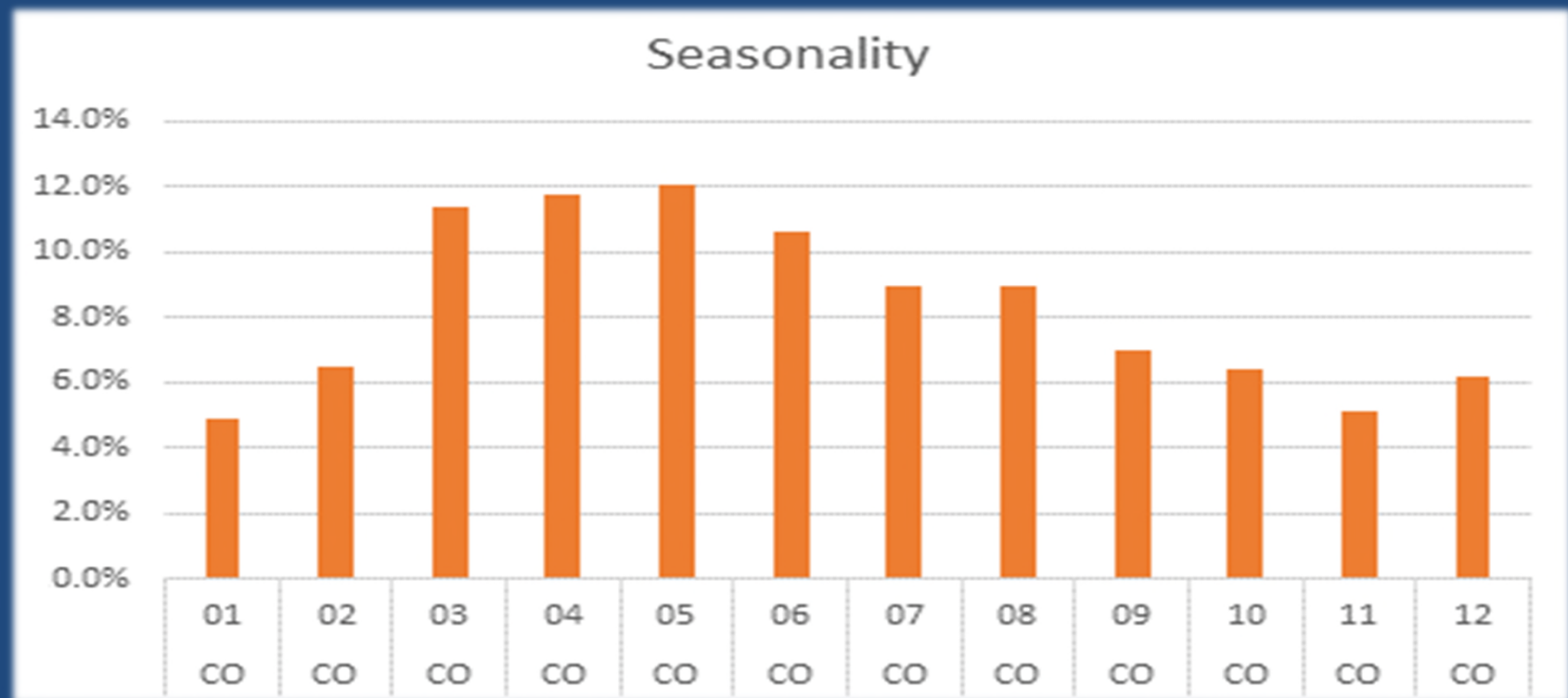
Seasonality - On-Highway Powersports Vehicles



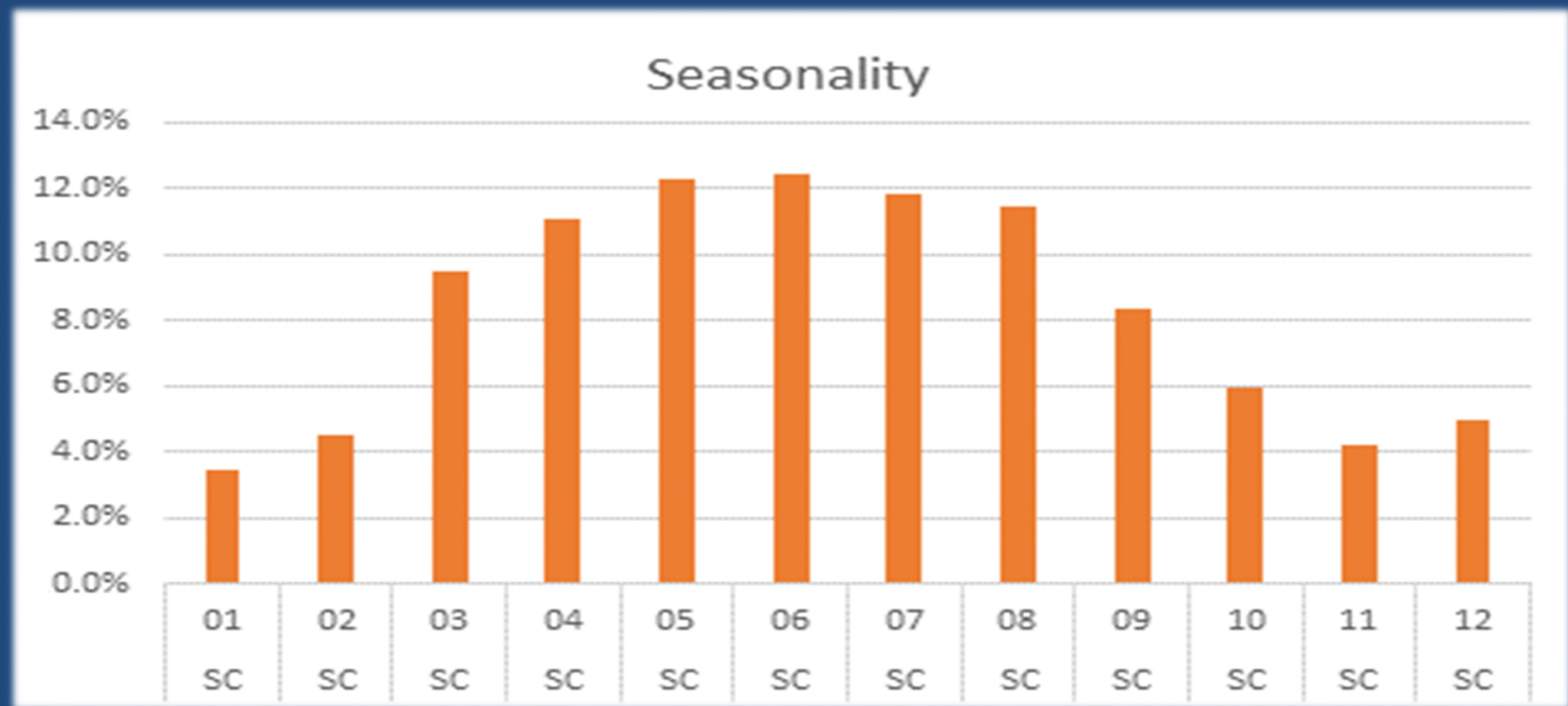
Seasonality - On-Highway Motorcycle Sales



Seasonality - DualSport Sales



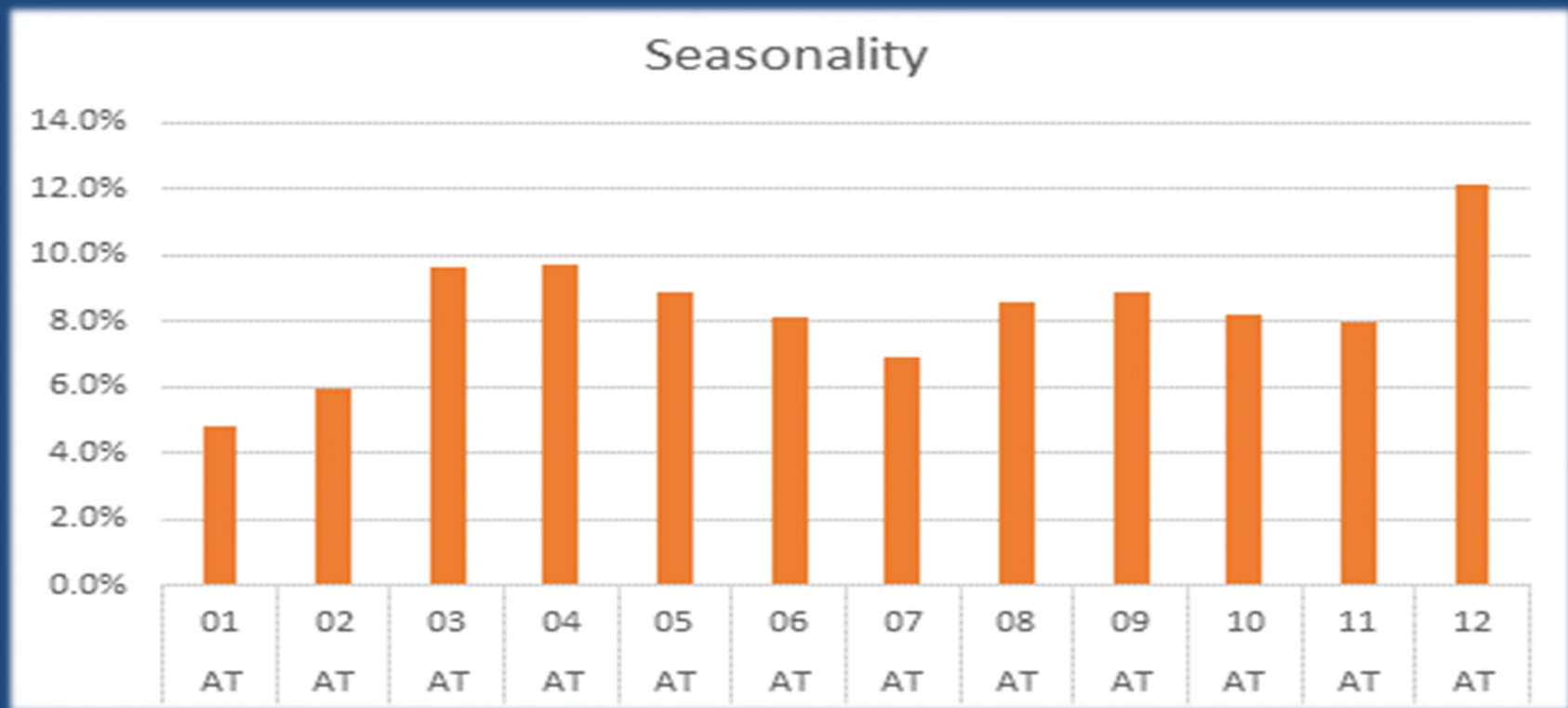
Seasonality - Scooter Sales



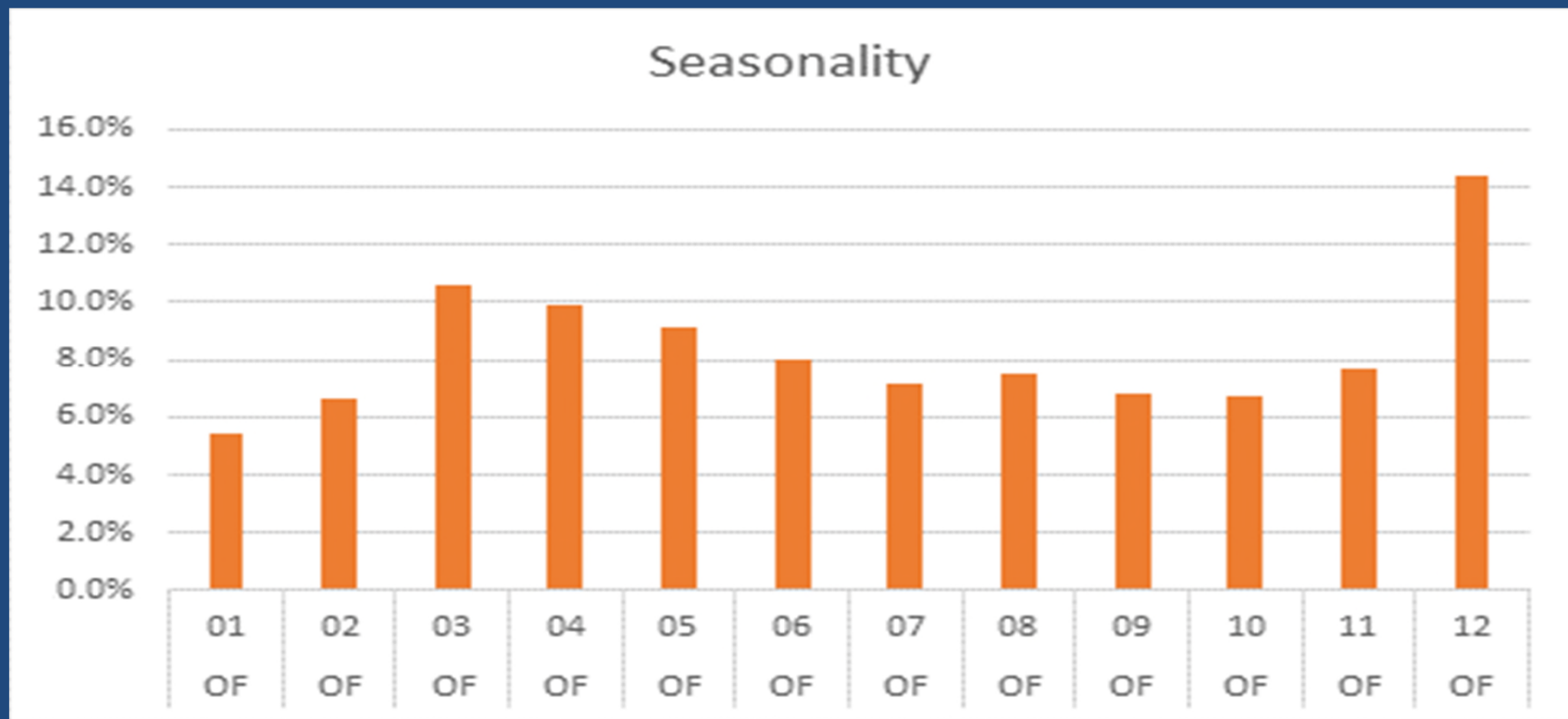
Seasonality - Off-Highway Powersports Vehicles



Seasonality - ATV Sales



Seasonality – Off-Highway Motorcycles

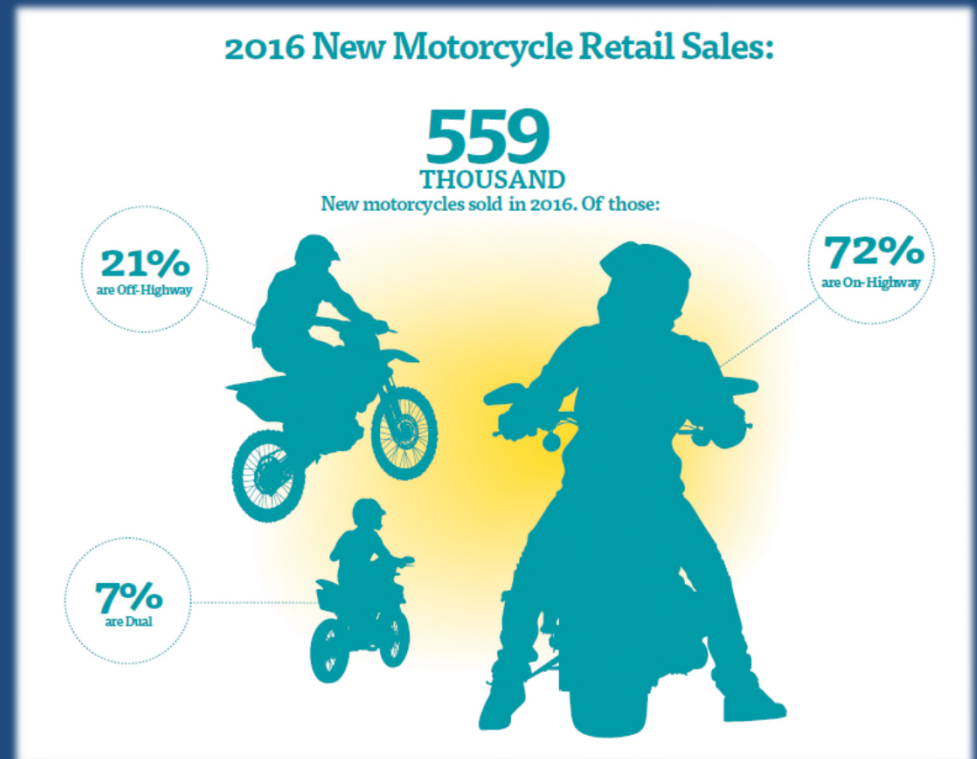


Powersports Sales Volumes vs. Passenger Car and Light Truck Sales Volumes

In 2016, there were:

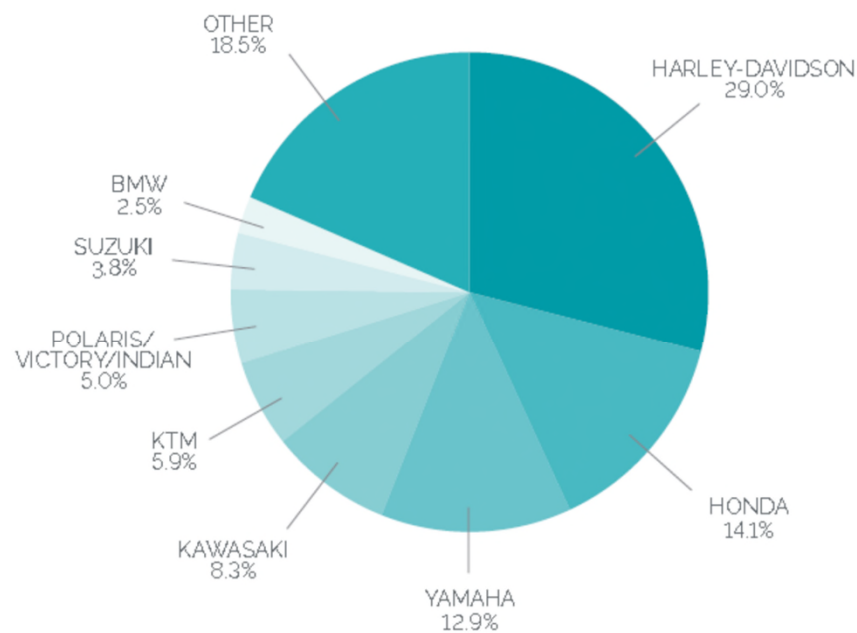
- 559,000 Motorcycles sold at retail in the United States
- 217,000 ATVs
- 26,500 Scooters

That same year, car and light truck retail sales were about 14,800,000



Source: Motorcycle Industry Council
(with permission)

Powersports OEMs



**559
THOUSAND**

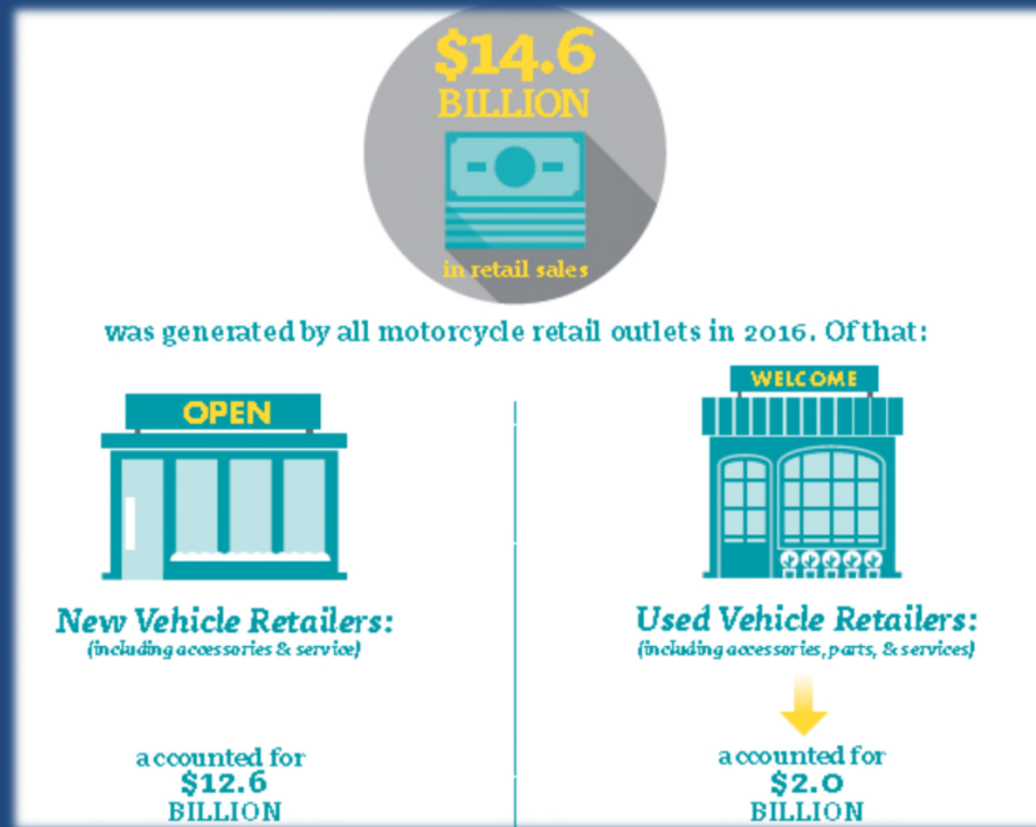
Estimated number of new
motorcycles sold in the
United States in 2016.

8 Companies

represent 82% of all new U.S.
motorcycle sales in 2016.

Source: Motorcycle Industry Council
(with permission)

Powersports Dealerships



Source: Motorcycle Industry Council
(with permission)

Powersports Dealerships

Multi-Brand Locations. The majority of powersports dealers carry multiple brands of motorcycles and ATVs at a single location.

- Many car and light truck dealerships are exclusive; even when dualled, have dedicated floor space/service drives that are fully-branded and not easily shared with other brands.
- Impact on Business? Significant competition within stores for floor space, share of mind. Concern with dealers moving products to favor other brands.

Powersports Dealerships

Multi-Brand Locations. The majority of powersports dealers carry multiple brands of motorcycles and ATVs at a single location.

- This effects competition on a broader level. For example, there could be two Yamaha dealers that also sell Kawasaki– if Yamaha is favored in both stores, that means cross-shopping consumers see that brand first before they get to Kawasaki, or there are more experienced salespeople for that product.
- OEMs must be fair to dealers and powersports products must competitively priced in order to compete for a dealer's business.

Powersports Dealerships

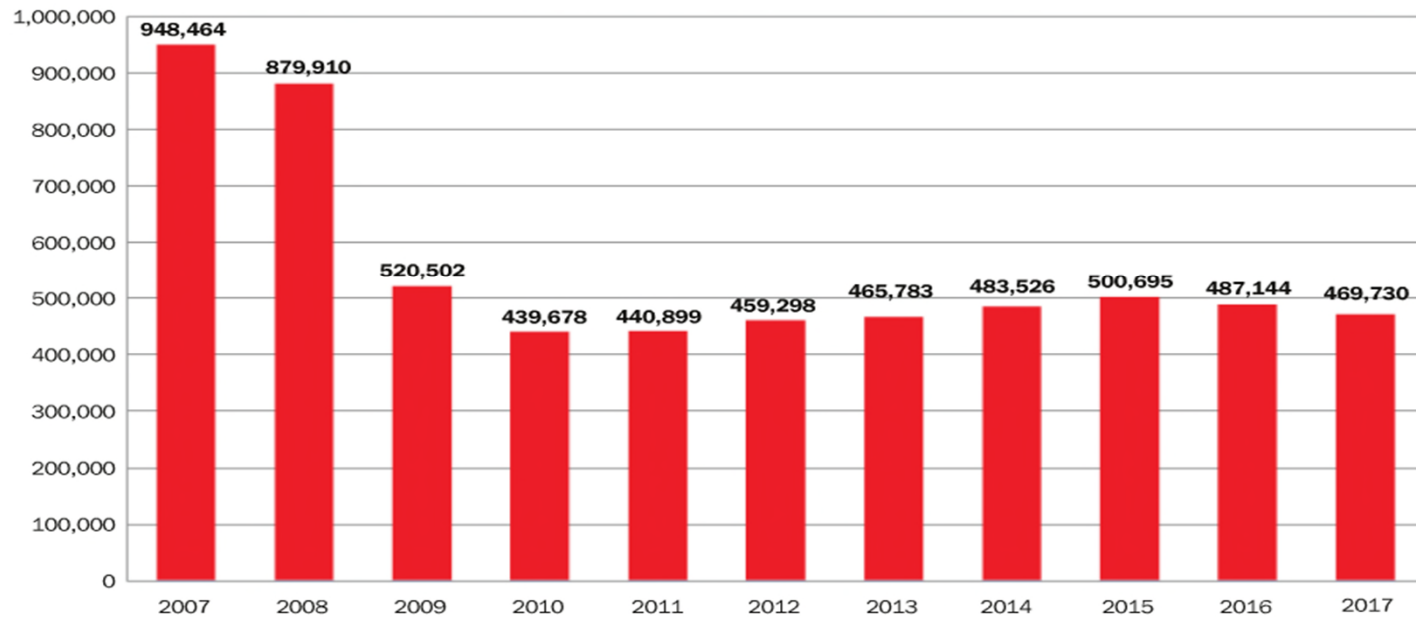
Multi-Brand Locations. The majority of powersports dealers carry multiple brands of motorcycles and ATVs at a single location.

- Required Investments. Unlike many automobile dealerships, where many aspects of the facility are specified, powersports distributors are very flexible in working with prospective dealers about setting up their facilities. These are often multi-use facilities and not multi-million dollar operations designated as an automotive dealership.
- Issue for OEMs. Enforcing facility use agreements (square footage requirements) is important for brands to be able to compete. Struggle is that laws are crafted for car dealerships for which there is usually greater investment. Greater sensitivity to land use restrictions/requirements because of level investment for a car dealership.

Motorcycle Sales Since The Recession

ANNUAL U.S. MOTORCYCLE NEW UNIT SALES

Sales of new motorcycles decreased 4 percent in 2017 compared to 2016.



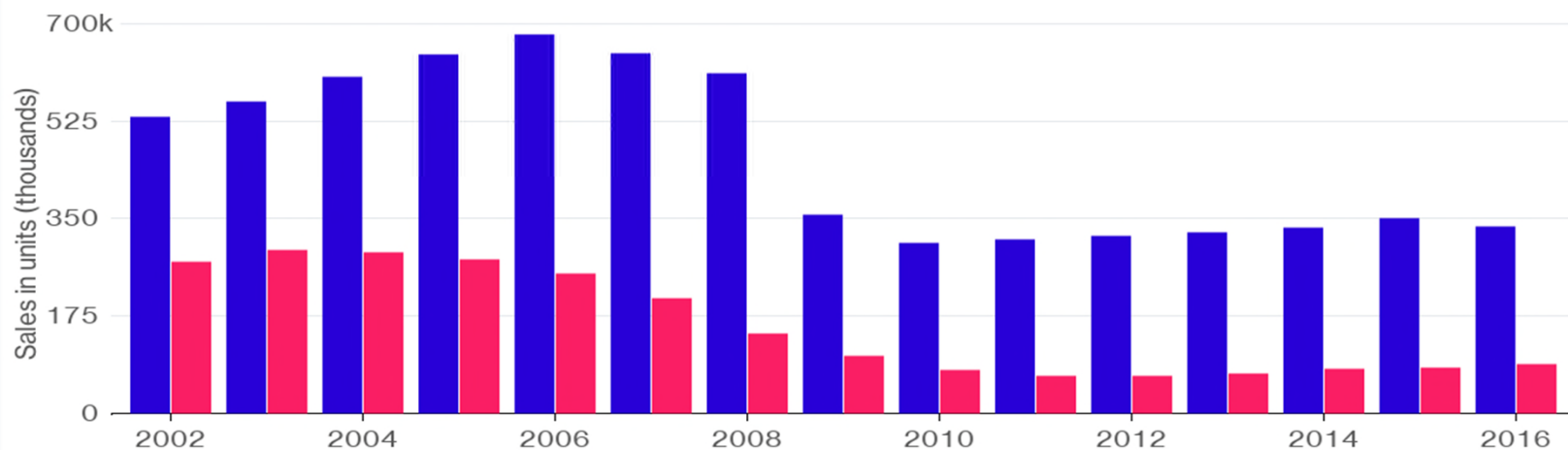
Source: Powersports Business, Motorcycle Industry Council

Motorcycle Sales Since The Recession On-Highway & Off-Highway

Not So Easy rider

Motorcycle sales have been largely stagnant since the Recession.

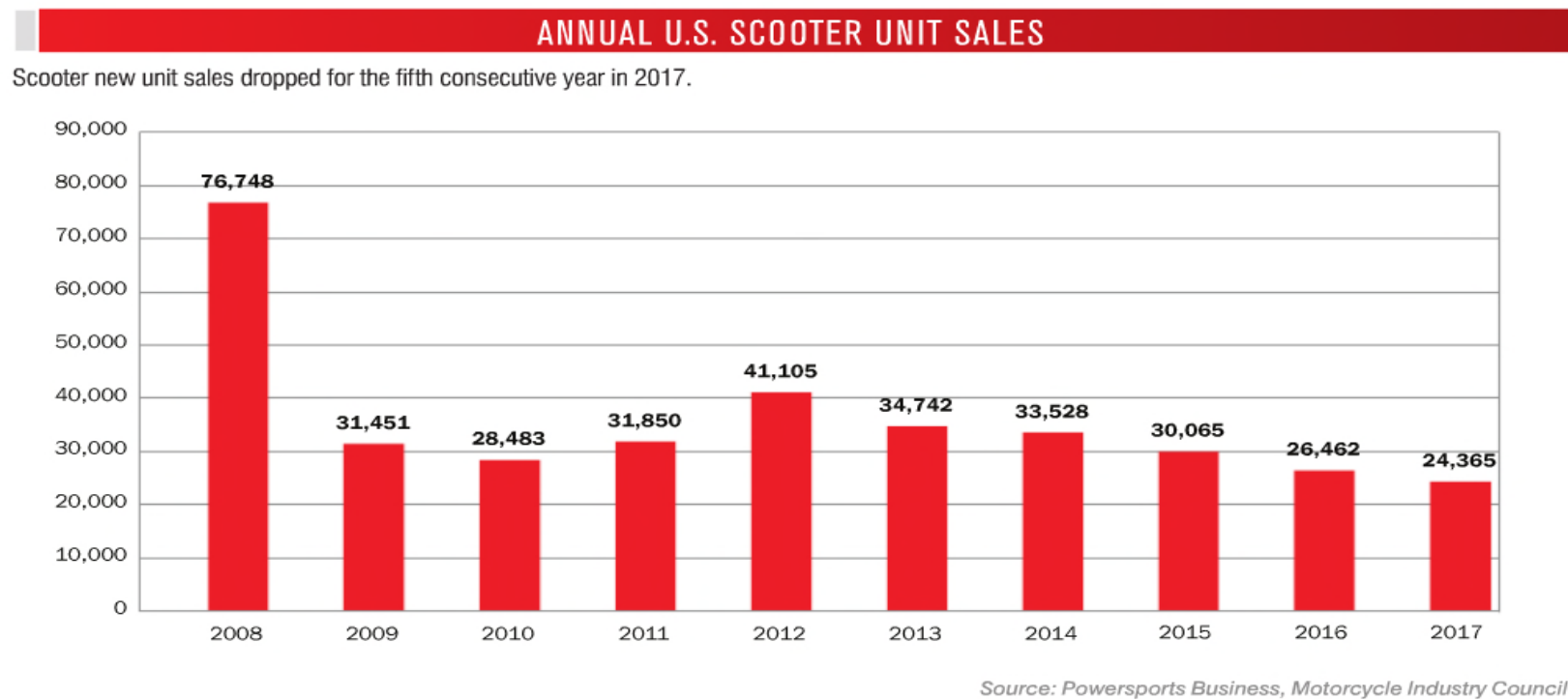
■ Road bikes ■ Offroad bikes



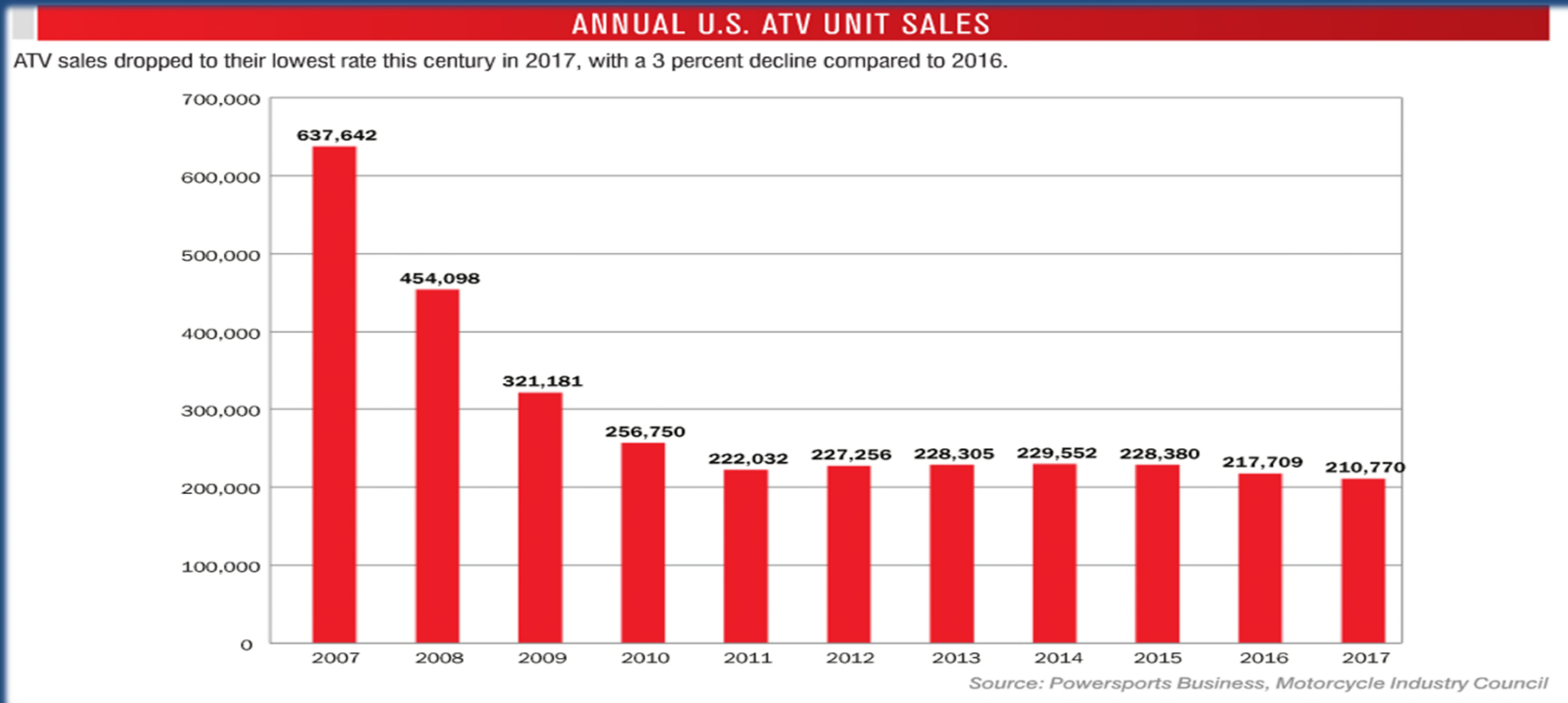
Source: Motorcycle Industry Council

Bloomberg 

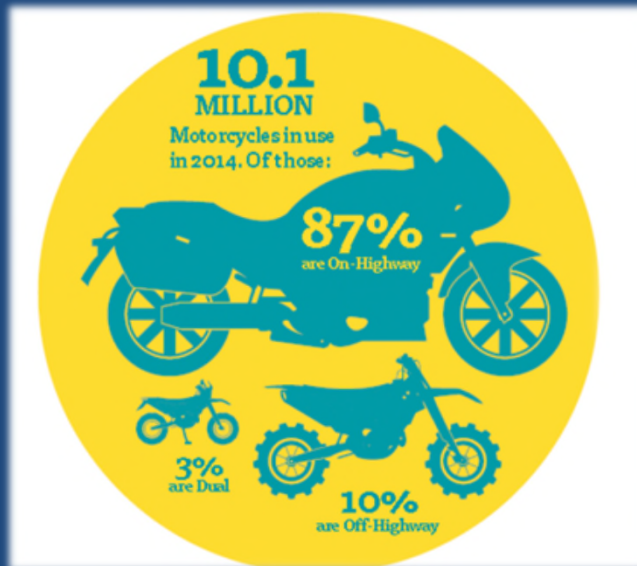
Motorcycle Sales Since The Recession Scooters



ATV Sales Since The Recession



Who Rides?



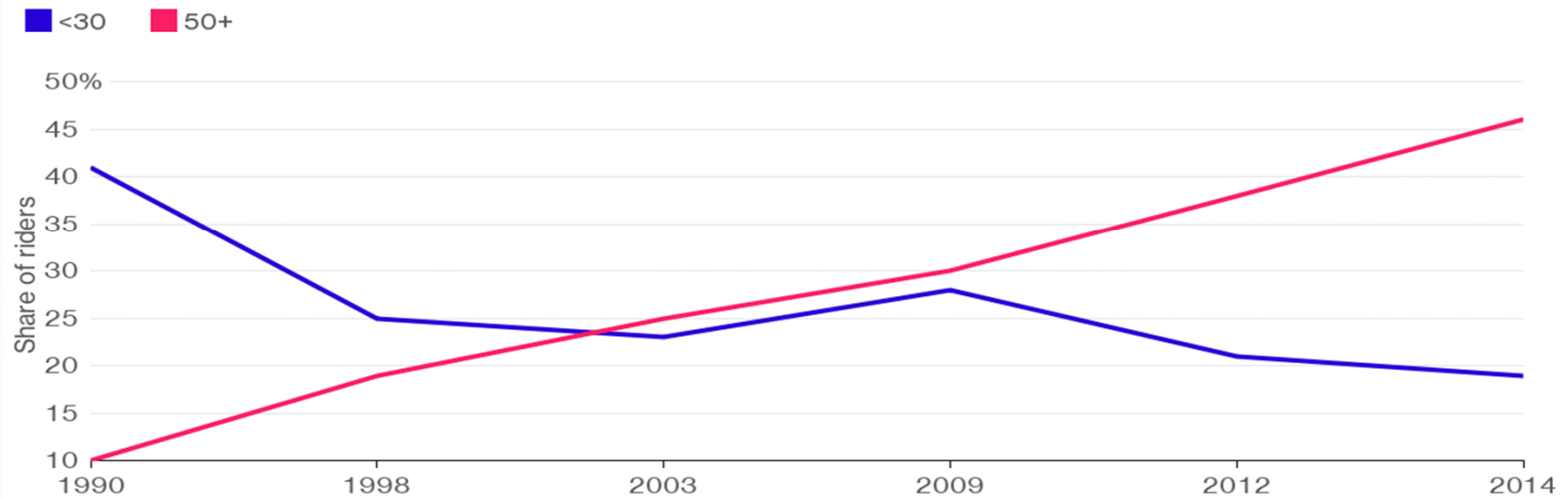

**owned by approximately
9.2 million owners.**



Source: Motorcycle Industry Council
(with permission)

Who Rides?

Despite a rash of small bikes, motorcycle brands are increasingly reliant on old customers.



Source: Motorcycle Industry Council

Bloomberg 

Who Rides?



Millennials in the Marketplace

Quick Facts

30% own a motorcycle that is less than 2 years old.

72% own a motorcycle 20 years or older.

♀
17.6% of Millennial motorcycle owners are female.

Company Websites (51%) and YouTube (42.9%) are the most used sources for information on Motorcycles.

12.5% of Millennial motorcycle owners are Asian, 9.6% are Latino.

U.S. Millennial household income was \$49,513. The median Millennial motorcyclists' income was \$55,620.

79.5% started riding motorcycles between the ages of 15 and 29.

Source: Motorcycle Industry Council
(with permission)



A Millennial is defined as a person born between 1981 and 1997.

Recalls

- Consumer compliance is generally difficult, no matter which industry. It is more difficult in the powersports industry.
- Motorcyclist tend to repair their vehicles themselves.
- Difficult to get consumers in to get recalls performed in the “off-season,” depending on geography.
- “Loaner” vehicles for recall? Motorcycles and the skill needed to ride motorcycles is very different from the skill needed to drive a car. For example, a rider of a cruiser may not be familiar with riding a sports bike. Dealers may not have enough inventory to loan, making loaner vehicles further impractical.



Franchise Laws

- In many states, the relationship between motorcycle dealers and OEMs are governed under “new motor vehicle dealer” regulatory schemes. These laws are designed with automotive dealers in mind.
- A few have laws specifically addressing powersports dealers and OEMs. More are being added.
- Notably, however, the relationship between powersports dealers and OEM may also be governed by multiple laws within a single state.

Franchise Laws

“States with powersports-specific laws may vary with regard to what types of vehicle markets are covered. Colorado’s powersports Dealer law, for example, covers most on- and off-road vehicles. A few states include just motorcycles and ATVs. Many states segment personal watercraft (PWC) sellers into the marine Dealer category. The more specialized the vehicle – PWC or snowmobile, for example – the more likely it will be regulated separately from motorcycles. (This may get even more complicated, attorneys note, as jurisdictions increasingly permit ATV riding on public paved roads – a practice that vehicle manufacturers still discourage.)”

- STATUTES AND OTHER RULES FROM ALL 50 STATES CREATE A COMPLICATED QUILT OF DEALER PROTECTIONS

By Holly J. Wagner, Senior Editor

Dealernews

November 30, 2016



Franchise Laws



RMA Laws, Add-Points, Relocations.

- In some states, the same distance requirements govern cars and powersports, even though there are different business models.
- Difficulty arises from need to for dealers to have multiple brands.
 - Not practical to find an entirely new location for a single brand. Must identify existing dealers of other brands.

Franchise Laws



Facilities.

- Laws that restrain facility requirements may prevent modest facility and signage requirements.
- State laws that require rental assistance, upon termination, for example, become complicated when there are multiple lines in one location. How can the facility be fairly pro-rated to account for the portion of the facility that is dedicated to the terminating brand?

Hypothetical: Termination of Powersports Dealer Under Illinois Motor Vehicle Franchise Act

- Hypothetical Facts:
 - An Illinois dealer sells Fun Time brand on-road motorcycles, off-road motorcycles, and ATVs.
 - Fun Time terminates the dealer agreement.
 - Does Fun Time, pursuant to 815 ILCS 710/9 or 9.5 have to pay the dealer “An amount equal to the current, fair rental value of the portion of the motor vehicle dealer’s established place of business that is used for” Fun Time vehicles?

Hypothetical: Termination of Powersports Dealer Under Illinois Motor Vehicle Franchise Act

- 815 ILCS 710/3 – Motor Vehicle Franchise Act applicable to “motor vehicle” companies
- 815 ILCS 710/2(a) defines Motor Vehicle as “any motor driven vehicle required to be registered under ‘The Illinois Vehicle Code’”

So, we have to look at the Illinois Vehicle Code, which provides:

- 625 ILCS 5/3-402: “Every motor vehicle. . . when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this Chapter ”

That doesn't apply to off-highway motorcycles and ATV's, right?

Hypothetical: Termination of Powersports Dealer Under Illinois Motor Vehicle Franchise Act

- 625 ILCS 5/11-1426.1(b) “Except as otherwise provided in this Section, it is unlawful for any person to drive or operate a non-highway vehicle upon any street, highway, or roadway in this State.”
- 625 ILCS 5/11-1426.1(a) defines a non-highway vehicle as including ATVs and off-highway motorcycles.

So, following this maze, it appears that the Illinois Motor Vehicle Franchise Act applies to on-highway motorcycles, but not off-highway motorcycles or ATV's.

Hypothetical: Termination of Powersports Dealer Under Illinois Motor Vehicle Franchise Act

- So what must Fun Times pay the terminated dealer for rent if 815 ILCS 710/9 and 9.5 only apply to on-highway motorcycles, but not off-highway motorcycles or ATVs?
- Does Fun Times only have to pay rent for the portion of the facility used for on-highway motorcycles?
- What if the dealer carries other brands? The dealership continues, just without the Fun Times line of vehicles.

Litigation

The amount at stake in powersports cases may be far less than automobile cases.



Is it appropriate for attorneys on all sides to approach litigation and other dealer-OEM disputes with a sense of proportionality?

For the states that have not adopted early mediation programs, should they consider it for powersports case, even if as a pilot program? (Lower dollars involved may be all the more reason to encourage early resolution.)

Other Issues

- Push to allow on-highway use in local communities of ATVs and ROVs, designed for off-highway use. Does the public appreciate the risks?
- Children riding adult-sized ATVs. Are adults putting kids in control of vehicles that are too large for them?

Other Issues

- Is current autonomous car technology well designed to interact with motorcycles? Safety concerns could negatively impact motorcycle industry sales.
- Zero-emissions mandates. What is the future of the internal combustion engine?

Other Issues

- California emissions regulation. Are the days for two stroke engines numbered?
- Subscription programs. Scooter subscription programs are developing, including My City Rides in Memphis. Possible solution to attract millennial riders?

What's next? Autonomous Scooters?



Questions?