

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

\_\_\_\_\_) )  
In the Matter of ) )  
ZEN MAGNETS, LLC ) )  
 ) )  
 ) ) CPSC DOCKET NO. 12-2  
 ) )  
Respondent. ) )  
\_\_\_\_\_)

SECOND AMENDED COMPLAINT

Nature of Proceedings

1. This is an administrative enforcement proceeding pursuant to Section 15 of the Consumer Product Safety Act (“CPSA”), as amended, 15 U.S.C. § 2064, for public notification and remedial action to protect the public from the substantial risks of injury presented by aggregated masses of high-powered, small rare earth magnets known as Zen Magnets® Rare Earth Magnetic Balls (“Zen Magnets”) and Neoballs (together, the “Subject Products”), imported and distributed by Zen Magnets, LLC (“Zen” or the “Firm” or “Respondent”).

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (the “Commission”), 16 C.F.R. Part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d) and (f) of the CPSA, 15 U.S.C § 2064 (c), (d) and (f).

## Parties

4. Complaint Counsel is the staff of the Division of Compliance within the Office of the General Counsel of the Commission (“Complaint Counsel”). The Commission is an independent federal regulatory agency established pursuant to Section 4 of the CPSA, 15 U.S.C. § 2053.

5. Respondent is a Colorado limited liability company with its principal place of business located at 4155 E. Jewell Avenue, Suite 908, Denver, CO 80222.

6. Respondent is an importer and distributor of the Subject Products.

7. As an importer and distributor of the Subject Products, Respondent is a “manufacturer” and “distributor” of a “consumer product” that is “distributed in commerce,” as those terms are defined in CPSA Sections 3(a)(5), (7), (8) and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(5), (7), (8) and (11).

## The Consumer Product

8. Respondent imported and distributed the Subject Products in U.S. commerce and offered them for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, and in recreation, or otherwise.

9. Zen Magnets consist of small, individual, spherical-shaped magnets, approximately 5.03mm in diameter with a flux index greater than 50, that are packaged as aggregated masses in different size containers holding 72, 216, or 1,728 small magnets,

10. Neoballs consist of small, individual, spherical-shaped magnets, ranging in size from 4.98mm to 5.11mm in diameter, with a variety of coatings and a flux index greater than 50, that the Firm offers for sale in quantities of aggregated masses, ranging from 18 balls to 216 to 21,600 spheres.

11. Upon information and belief, the flux of the Zen Magnets ranges from approximately 577.1 to 581.4kg<sup>2</sup>mm<sup>2</sup> Surface Flux Index.
12. Upon information and belief, the flux of the Neoballs ranges from approximately 438.8 to 565.0 kg<sup>2</sup>mm<sup>2</sup> Surface Flux Index.
13. Upon information and belief, Respondent introduced Zen Magnets in U.S. commerce in September 2009.
14. Upon information and belief, Respondent continues to sell Zen Magnets in U.S. Commerce through the website: [www.zenmagnets.com](http://www.zenmagnets.com), designed and operated by Respondent.
15. Upon information and belief, Respondent introduced Neoballs into U.S. commerce in September 2011.
16. Upon information and belief, Respondent sold Neoballs in sets of 216 magnets until September 13, 2012.
17. Upon information and belief, Respondent voluntarily agreed to stop sale of Neoballs on September 12, 2012.
18. On October 2, 2012, Respondent advised Commission staff that Respondent intended to begin sales of the individual Neoballs magnets through the website: [www.neoballs.com](http://www.neoballs.com).
19. Upon information and belief, in November 2012, Respondent began selling individual Neoballs magnets through the website: [www.neoballs.com](http://www.neoballs.com), designed and operated by Respondent.
20. Upon information and belief, Respondent began distributing individual

magnets packaged in sets, through the website: [www.neoballs.com](http://www.neoballs.com), designed and operated by Respondent.

21. Upon information and belief, Respondent refused staff's requests that Respondent stop sale of the products and submit a corrective action plan for both Zen Magnets and Neoballs.

22. Upon information and belief, the Subject Products are manufactured by Bestway Magnet Corp., in the Northern Section of Huangcheng Westroad, Ningbo, China.

23. Zen Magnets are sold in sets of 72 and 216 magnets and are packaged in a velvet sack or an MDF hard case. The sets range in retail price from approximately \$12.65 to \$50.00.

24. Zen Magnets are also sold in a set of 1,728 magnets, which are packaged in a velvet-lined, wooden teak box and retail for approximately \$250.00.

25. Upon information and belief, more than 50,000 sets of Zen Magnets have been sold to consumers in the United States.

26. Neoball orders for fewer than 18 individual magnets are packaged together and distributed in a plastic baggie. Neoball magnets are individually priced at 8 to 10 cents per magnet.

27. When a consumer purchases 18 or more Neoball magnets through the Firm's website, Respondent packages all of the magnets together in a square tin with a sliding lid and charge a flat shipping fee, regardless of the number of magnets ordered.

28. Upon information and belief, an order placed on the Neoballs website

automatically defaults to the quantity 18; users must specifically enter a separate figure if they desire to purchase a different number of magnets.

29. Upon information and belief, Respondent has sold more than 908 units of sets of 216 aggregated Neoballs to consumers in the United States.

30. Upon information and belief, Respondent also sold an unknown number of individual Neoball magnets to consumers in the United States.

#### COUNT 1

The Subject Products Are a Substantial Product Hazard Under Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), Because They Contain Product Defects That Create a Substantial Risk of Injury to the Public

#### The Subject Products Are Defective Because Their Instructions, Packaging, and Warnings Are Inadequate

31. Paragraphs 1 through 30 are hereby realleged and incorporated by reference, as though fully set forth herein.

32. A defect can occur in a product's contents, construction, finish, packaging, warnings, and/or instructions. 16 C.F.R. §1115.4.

33. A defect can occur when reasonably foreseeable consumer use or misuse, based in part on the lack of adequate instructions and safety warnings, could result in injury, even where there are no reports of injury. 16 C.F.R. §1115.4.

34. Upon information and belief, from 2009 through mid-2011, Respondent's U.S. direct sales website: [www.zenmagnets.com](http://www.zenmagnets.com), contained the following warning regarding Zen Magnets:

Warnings: Try not to drop them. Ever play with magnets in sand? Ferric dirt particles are hard to get off super-magnets, and will quickly erode the

poles. Zen Magnets can destroy or disrupt magnetically sensitive technology. Be cautious with the open chains. Can cause serious problems if swallowed. Do not give to kids under the age of 12, and keep them away from pets. Call poison control if more than 1 magnet is swallowed.

35. Upon information and belief, in or about October 2011, Respondent began including the following warning on the “buy” page of [www.zenmagnets.com](http://www.zenmagnets.com): “Magnets cause fatal intestinal pinching if swallowed. Keep from animals and children who don’t understand this.”

36. Upon information and belief, in October 2011, Respondent requested that retailers who sold Zen Magnets through the Amazon LLC website include a “14+ age limit.”

37. Upon information and belief, in October 2011, Respondent began including the following warning on the “FAQ” page of [www.zenmagnets.com](http://www.zenmagnets.com):

**Q: How old do you have to be to play with these?**

**A:** According to the Consumer Product Safety Commission, 14 years old in the US for a strong magnetic toy. Unless it’s not a toy, then no age limit. Unless it’s a “Science Kit,” then the age regulation is 8+. Zen Magnets are classified as a science kit, so the minimum age as recommended by the U.S. government is 8. Our common sense recommendation is 12.

38. Upon information and belief, as of January 9, 2013, Respondent’s home page displays, in a faint and nearly undecipherable font size, this warning language:

Try not to drop them. Even drop magnets in sand? Ferric dirt particles are hard to get off super magnets, and will quickly erode the poles. Zen magnets can destroy or disrupt magnetically sensitive technology. Be cautious with the open chains. Can cause serious problems if swallowed. CPSC recommends minimum age of 14, and keep them away from pets. Call poison control if more than 1 magnet is swallowed.

39. Upon information and belief, sets of Zen Magnets currently are sold with packaging that contain the following warning on a 2" x 2" slip of paper:

Warning: **DO NOT SWALLOW MAGNETS.** How old do you have to be to play with these? Dunno. 14 years old in the U.S for a strong magnetic toy, unless it's not a toy, then no age limit, but they're fun magnet spheres, aren't they a toy? Unless it's a "science kit" then the government age recommendation is 8+. But really, it's whatever age at which a person stops swallowing non-foods. Strong magnets can cause fatal intestinal pinching. Place swallowing magnets on your don't do list along with breathing water, drinking poison, and running into traffic. Call poison control if more than one is swallowed. And keep these away from kids (and pets) who don't understand these dangers. BTW, this is a "science kit" for sure.

40. Upon information and belief, as of August 2012, the lower portion of the opposite side of the 2" x2" sheet that accompanies the magnets contains the following warning:

“Government Warning”: This product contains small magnets.

Swallowed magnets can stick together across intestines causing serious infections. Seek immediate medical attention if magnets are swallowed or inhaled. Keep away from all bodily orifices. CPSC 14+ Age Recommendation.

41. Upon information and belief, Respondent sells some sets of the Zen Magnets in packaging without this warning.

42. Upon information and belief, the 2" x 2" sheet of paper also refers users to the Respondent’s website, which makes comments that challenge the credibility of the government’s position regarding the safety of the products.

43. Upon information and belief, as of January 9, 2013, Respondent’s home page contains the following statement regarding the Complainant: “Busy Federal CPSC says magnets should not be allowed: guns entrenched to knees. Uncompromising stance, mean sting, and no mind for democracy that disagrees.” The statement is followed by a link to SaveMagnets.com.

44. Upon information and belief, individuals who want to purchase Zen magnets in different colors are directed through the FAQ section of [www.zenmagnets.com](http://www.zenmagnets.com) to a hyperlink that connects the user to: [www.neoballs.com](http://www.neoballs.com).

45. Upon information and belief, [www.neoballs.com](http://www.neoballs.com) is Zen’s U.S. direct sales website for Neoballs.

46. Upon information and belief, beginning in November 2012, [www.neoballs.com](http://www.neoballs.com), contained the following warning regarding Neoballs:



Practice responsible magnet usage! High power magnets may cause fatal intestinal pinching if swallowed. Keep away from all orifices.[sic] RARE EARTH MAGNETS ARE NOT TOYS. Don't leave them around animals, or children who don't understand the dangers. Always communicate these dangers when sharing magnets. If magnets are ingested or aspirated to the lungs, immediate medical attention is required.

47. Upon information and belief, the majority of the warning above is displayed in smaller than 12-point font.

48. Upon information and belief, as of January 9, 2013, no warning about the danger of magnet ingestion appears on the homepage of the website: [www.neoballs.com](http://www.neoballs.com). Rather, the site declares: "Don't let CPSC bypass Democracy. If magnets are outlawed, only outlaws will have magnets."

49. Upon information and belief, users who attempt to purchase Neoballs from the website encounter a pop-up window that contains, in part, the following language: "Warning: Keep Away From Mouth. Practice responsible magnet usage!"

50. Upon information and belief, when a consumer purchases 18 or more Neoballs, the magnets are sold in a box that contains the following warning printed on a 4 ½" x 1 ½" paper insert:

# OMFG

## READ ME

This is serious. The grumpy CPSC is about to BAN magnet spheres in the US because they are an ingestion hazard. They don't trust that you are capable of understanding and following warnings. Prove them wrong, or we all can't have nice magnets. Zen Magnets LLC, the producer of Neoballs, has had no record of ingestion and we'd like to keep it that way. High powered magnets can cause potentially fatal intestinal pinching if swallowed. Keep magnet spheres away from all orifices, especially the mouth and nose. High powered magnets are not a toy. Keep away from anybody who does not understand these dangers. SRSLY.

Sorry about the lecture. We had to. Hope you understand.

51. Upon information and belief, with the exception of the heading "OMFG" and "READ ME," the majority of the warning is in less than 10-point font.

52. Upon information and belief, if a consumer purchases fewer than 18 Neoballs, no warning accompanies the magnets.

53. Since Zen Magnets were introduced in commerce in 2009, many children under the age of 14 have ingested products ("Ingested Products") that are almost identical in form, substance, and content to the Subject Products.

54. Upon information and belief, the Ingested Products are marketed and used in substantially similar ways to the Subject Products.

55. Upon information and belief, on or about January 28, 2010, a 9-year-old boy used small, high-powered, spherically-shaped magnets, almost identical in form, substance, and content to the Subject Products, to mimic tongue and lip piercings. In doing so, the boy accidentally ingested seven magnets. He was treated at an emergency room.

56. Upon information and belief, on or about September 5, 2010, a 12-year-old girl accidentally swallowed two small, high-powered, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products. She sought medical treatment at a hospital, including x-rays and monitoring for infection and damage to her gastrointestinal tract.

57. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested eight high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products, which she had found on a refrigerator in her home. She required surgery to remove the magnets. The magnets caused intestinal and stomach perforations and had become embedded in the girl's trachea and esophagus.

58. Upon information and belief, on or about January 6, 2011, a 4-year-old boy suffered intestinal perforations after ingesting three high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products that he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

59. By November 2011, the Commission was aware of approximately 22

reports of ingestions of high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products.

60. On November 11, 2011, the Commission issued a public safety alert, warning the public of the dangers of the ingestion of rare earth magnets like the Subject Products.

61. Ingestion incidents, however, continue to occur.

62. Since the safety alert, the Commission has received dozens of reports of children ingesting high-powered, small, spherically-shaped magnets that are almost identical in form, substance, and content to the Subject Products but may be manufactured and/or sold by firms other than the Respondent.

63. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products, after using them to mimic a tongue piercing. The magnets became embedded in her large intestine, and she underwent x-rays, CT scans, endoscopy, and an appendectomy to remove them. The girl's father had purchased the magnets for her at the local mall.

64. All warnings on the Subject Products are inadequate and defective because the warnings do not, and cannot, communicate effectively to consumers, including parents and caregivers, the hazard associated with the Subject Products and magnet ingestions.

65. Because the warnings on the Subject Products and the websites where the Subject Products are, or were, offered for sale, are inadequate and defective, parents will

continue to give children the Subject Products or allow children to have access to the Subject Products.

66. Children cannot, and do not, appreciate the hazard, and it is foreseeable that children will mouth the items, swallow the magnets, or, in the case of adolescents and teens, use the magnets to mimic body piercings. These uses can and do result in injury.

67. All warnings on the packaging of the Subject Products are inadequate and defective because the small size of the paper bearing the warnings, as well as the font size used in the warning, hinders legibility and may discourage consumers from reading the text, making it less likely that consumers will review the warnings on the packaging prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

68. All warnings on the packaging and/or carrying cases of the Subject Products are inadequate and defective because they are undermined by derogatory language contained on the Firm's website that questions the credibility of the source of those warnings and may encourage consumers to disregard the warnings.

69. All warnings on the packaging and/or carrying cases of the Subject Products are inadequate and defective because the placement of the warnings on the underside of the packaging and/or inside the carrying case only, renders the warnings inconspicuous, such that consumers likely will not review the warnings prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

70. All warnings on the packaging of the Subject Products are inadequate and defective because the packaging on which the warnings are written often is discarded,

such that consumers will be unable to review the warnings on the packaging prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

71. All warnings in the instructions included with the Subject Products are inadequate and defective because the instructions are not necessary for the use of the Subject Products and often are discarded. Because the instructions are unnecessary and are often discarded, consumers likely will not review the warnings contained in the instructions prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

72. All warnings on the Subject Products are inadequate and defective because once the Subject Products are removed from the packaging and/or the carrying case prior to foreseeable uses of the Subject Products, the magnets themselves display no warnings, and the small size of the individual magnets precludes the addition of warnings. These uses can and do result in injury.

73. All warnings on the Subject Products are inadequate and defective because the magnets are shared and used among various consumers, including children, after the packaging and instructions are discarded; thus, many consumers of the Subject Products will have no exposure to any warnings prior to using the Subject Products. These uses can and do result in injury.

74. All warnings displayed on the carrying cases, if any, are inadequate and defective because consumers are unlikely after each use to disassemble configurations made with the Subject Products, many of which are elaborate and time-consuming to create, to return the Subject Products to the carrying case, or to put the Subject Products

out of the reach of children.

75. Upon information and belief, some sets of Zen Magnets come with a “laser etched stainless steel building platform.” The use of this platform makes it unlikely that a consumer will return the Zen Magnets to the carrying case and put the magnets out of reach of children, but it is more likely that he or she will display the creation.

76. The effectiveness of the warnings on the Subject Products is diminished further by the advertising and marketing of the Subject Products.

77. Upon information and belief, as late as October 2011, Respondent was aware that Zen Magnets were displayed with other toys on the Amazon LLC website.

78. Upon information and belief, Respondent only recently changed Zen Magnet’s marketing to comply with ASTM Standard F963. Zen’s website now states: “CPSC recommends minimum age of 14” and “U.S. Government age recommendation is 14 years.”

79. Respondent has advertised Zen Magnets as, *inter alia*, “fun to play with” and as items that “look good on cute people.” The advertising suggests that the product “may have health benefits” and encourages consumers to use the product to “relieve boredom.”

80. Upon information and belief, despite making no significant design or other physical changes to Zen Magnets since their introduction in 2009, Respondent has attempted subsequently to rebrand Zen Magnets as, *inter alia*, an educational “science kit,” suitable for 8 year olds, although the Firm has provided no educational material with

the Subject Product.

81. Upon information and belief, Neoballs are color-coated magnet balls, making the product even more appealing to children.

82. Upon information and belief, Neoballs are sold at a price point of between eight to 10 cents per magnet. This low price point makes it more likely that caregivers will purchase the product for children as a starter set or novelty item.

83. Upon information and belief, Respondent markets Neoballs for the product's ability to make simple constructions, including action figures, soccer balls with a goalie, and simple jewelry.

84. The advertising and marketing of the Zen Magnets conflict with the claimed 14+ age label on Zen Magnets.

85. Because the advertising and marketing of the Zen Magnets conflict with the age label, the effectiveness of the age label is diminished.

86. The advertising and marketing of the Subject Products conflict with the stated warnings on the Subject Products.

87. Although the websites and some of the products bear a warning that purports to be a "Government" warning regarding magnet ingestion, other text, *e.g.*, "the grumpy . . . CPSC . . . [t]hey don't trust . . . you" on the websites undermines the credibility and effectiveness of those warnings, which, in turn, may cause consumers to disregard the warnings.

88. Because the advertising and marketing conflict with the stated warnings, the effectiveness of the warnings is diminished.



89. No warnings or instructions could be devised that would effectively communicate the hazard so that the warnings and instructions could be understood and heeded by consumers and reduce the number of magnet ingestion incidents.

90. Because of the lack of adequate instructions and safety warnings, a substantial risk of injury presents as a result of the foreseeable use and misuse of the Subject Products.

The Subject Products Are Defective Because a Substantial Risk of Injury Arises as a Result of The Magnets' Operation and Use and the Failure of the Subject Products to Operate as Intended

91. A design defect can be present if the risk of injury occurs as a result of the operation or use of the product or due to a failure of the product to operate as intended.

16 C.F.R. § 1115.4.

92. The Subject Products contain a design defect because they present a risk of injury as a result of their operation and/or use.

93. Upon information and belief, the Subject Products have been advertised and marketed by the Respondent to both children and adults. As a direct result of such marketing and promotion, the Subject Products have been, and currently are, used by both children and adults.

94. The risk of injury occurs as a result of the use of the Subject Products by adults, who give the Subject Products to children or allow children to have access to the Subject Products.

95. The risk of injury occurs as a result of the foreseeable use and/or misuse of the Subject Products by children.

96. The Subject Products contain a design defect because they fail to operate as intended and present a substantial risk of injury to the public.

97. Upon information and belief, Respondent contend that the Subject Products are a manipulative that provides stress relief and/or other benefits to adults only.

98. The Subject Products are intensely appealing to children due to the Subject Products' tactile features, small size, and highly reflective, shiny, and colorful metallic coatings.

99. Neoballs can be purchased in bright color combinations that are likely to add to the perception that the magnets are intended to appeal to children because they offer creative value as puzzles, models, or art, by combining magnetism with color.

100. The Subject Products are also appealing to children because they are smooth, unique, and make a soft snapping sound as they are manipulated.

101. The Subject Products also move in unexpected, incongruous ways as the poles on the magnets move to align properly, which can evoke a degree of awe and amusement among children, enticing them to play with the Subject Products.

102. Despite the current age label suggested by Respondent on Zen Magnets and irrespective of Respondent's assertions regarding the proper uses for Zen Magnets, Zen Magnets do not operate as intended because they are intensely appealing to, and often are played with, by children.

103. This defective design of the Subject Products poses a risk of injury because parents and caregivers buy the Subject Products for children and/or allow children to play with the Subject Products.

The Type of Risk of Injury Renders the Subject Products Defective

104. The risk of injury associated with a product may render the product defective. 16 C.F.R. § 1115.4.
105. Upon information and belief, the Subject Products have low utility to consumers.
106. Upon information and belief, the Subject Products are not necessary to consumers.
107. The nature of the risk of injury includes serious, life-threatening, and long-term health conditions that can result when magnets attract to each other through intestinal walls, causing harmful tissue compression that can lead to perforations, fistulas, and other gastrointestinal injuries.
108. Children, a vulnerable population protected by the CPSA, are exposed to the risk of injury associated with the Subject Products.
109. The risk of injury associated with the ingestion of the Subject Products is neither obvious, nor intuitive.
110. Warnings and instructions cannot adequately mitigate the risk of injury associated with ingesting the Subject Products.
111. Children mouthing and ingesting the Subject Products is foreseeable.
112. Respondent promoted the use of the Subject Products for body art, including mimicking tongue piercings. Such use by children is foreseeable.
113. The type of risk of injury renders the Subject Products defective.

The Subject Products Create a Substantial Risk of Injury to the Public

114. The Subject Products pose a risk of magnet ingestion by children below

the age of 14, who may, consistent with developmentally appropriate behavior, place a single magnet or numerous magnets in their mouth.

115. The risk of ingestion also exists when adolescents and teens use the product to mimic piercings of the mouth, tongue, and cheek and accidentally swallow the magnets.

116. If two or more of the magnets are ingested, and the magnetic forces of the magnets pull them together, the magnets can pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences. Magnets that attract through the walls of the intestines result in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation, or fistula formation. Such conditions can lead to infection, sepsis, and death.

117. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures.

118. Because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals easily may mistake these nonspecific symptoms for other common gastrointestinal upsets and believe erroneously that medical treatment is not required immediately, thereby delaying potentially critical treatment.

119. Medical professionals may not be aware of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring. A delay of surgical intervention or other medical treatment due to the patient's presentation with nonspecific symptoms and/or a lack of awareness by medical

personnel of the dangers posed by multiple magnet ingestion can exacerbate life-threatening internal injuries.

120. Magnets that become affixed to each other through the gastrointestinal walls and are not removed surgically may result in intestinal perforations, which can lead to necrosis, the formation of fistulas, or ultimately, perforation of the bowel and the leakage of toxic bowel contents into the abdominal cavity. These conditions can lead to serious injury and possibly even death.

121. Endoscopic and surgical procedures may also be complicated in cases of multiple magnet ingestion, due to the attraction of the magnets to the metal equipment used to retrieve the magnets.

122. Children who undergo surgery to remove multiple magnets from their gastrointestinal tract are also at risk for long-term health consequences, including intestinal scarring, nutritional deficiencies due to loss of portions of the bowel, and, in the case of girls, fertility problems.

123. The Subject Products contain defects in packaging, warnings, and instructions, which can create a substantial risk of injury to the public.

124. The Subject Products contain defects in design that pose a substantial risk of injury.

125. The type of risk of injury posed by the Subject Products creates a substantial risk of injury.

126. Therefore, because the Subject Products are defective and create a substantial risk of injury, the Subject Products present a substantial product hazard within

the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. §2064(a)(2).

Count 2

The Subject Products Are a Substantial Product Hazard Under  
Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1)

127. Paragraphs 1 through 126 are hereby realleged and incorporated by reference, as though fully set forth herein.

128. Upon information and belief, each of the Subject Products is an object designed, manufactured, and/or marketed as a plaything for children under 14 years of age, and therefore, each of the Subject Products that was imported and/or otherwise distributed in commerce after August 16, 2009, is a “toy,” as that term is defined in ASTM International Standard F963-08, *Standard Consumer Safety Specification for Toy Safety*, section 3.1.72 and its most recent version, ASTM 963-11 section 3.1.81 (the “Toy Standard”).

129. As toys, and as toys intended for use by children under 14 years of age, as addressed in the Toy Standard, the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, were and are covered by the Toy Standard.

130. Pursuant to the Toy Standard, a magnet that has a flux index greater than 50, and that is a small object, as determined by the Toy Standard, is a “hazardous magnet.”

131. The Toy Standard prohibits toys from containing a loose-as-received hazardous magnet.

132. The Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, consist of and contain loose-as-received hazardous magnets. As a result, the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, fail to comply with the Toy Standard.

133. The Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, create a substantial risk of injury to the public.

134. Because the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, fail to comply with the Toy Standard and create a substantial risk of injury to the public, they are a substantial product hazard as the term “substantial product hazard” is defined in Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1).

#### Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that the Subject Products present a “substantial product hazard” within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), and/or present a “substantial product hazard” within the meaning of Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to adequately protect children from the substantial product hazard presented by the Subject Products, and order Respondent under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c) to:

(1) Cease importation and distribution of the Subject Products;

(2) Notify all persons that transport, store, distribute, or otherwise handle the Subject Products, or to whom such product has been transported, sold, distributed, or otherwise handled, to cease distribution of the products immediately;

(3) Notify appropriate state and local public health officials;

(4) Give prompt public notice of the defects in the Subject Products, including the incidents and injuries associated with ingestion, including posting clear and conspicuous notice on Respondent's website, and providing notice to any third party website on which Respondent has placed the Subject Products for sale, and provide further announcements in languages other than English, and on radio and television;

(5) Mail notice to each distributor or retailer of the Subject Products;  
and

(6) Mail notice to every person to whom the Subject Products were delivered or sold;

C. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. § 2064(d), is in the public interest, and additionally, order Respondent to:

(1) Refund consumers the purchase price of the Subject Products;

(2) Make no charge to consumers and to reimburse consumers for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter, as provided by Section 15 U.S.C. § 2064(e)(1);



(3) Reimburse retailers for expenses in connection with carrying out any Commission Order issued in this matter, including the costs of returns, refunds, and/or replacements, as provided by Section 15(e)(2) of the CPSA, 15 U.S.C. § 2064(e)(2);

(4) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (6) and C(1) through (3) above be taken in a timely manner;

(5) To submit monthly reports, in a format satisfactory to the Commission, documenting the progress of the corrective action program;

(6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (6) and C(1) through (5) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;

(7) For a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter; and

D. Order that Respondent shall take other and further actions as the

Commission deems necessary to protect the public health and safety and to  
comply with the CPSA.

ISSUED BY ORDER OF THE COMMISSION:

Dated this 11 day of February, 2013



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