



This document is scheduled to be published in the Federal Register on 08/10/2012 and available online at <http://federalregister.gov/a/2012-19693>, and on FDsys.gov

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12-2]

Zen Magnets, LLC; Complaint

AGENCY: Consumer Product Safety Commission

ACTION: Publication of a Complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint: In the Matter of Zen Magnets, LLC.¹

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: August 7, 2012.

Todd A. Stevenson,

Secretary.

¹ The Commission voted 3-1 to authorize issuance of this Complaint. Chairman Inez M. Tenenbaum, Commissioner Anne M. Northup and Commissioner Robert S. Adler voted to authorize issuance of the Complaint. Commissioner Nancy A. Nord voted to not authorize issuance of the Complaint.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

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, imported and distributed by Zen Magnets, LLC (“Zen” or “Respondent”).

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (“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. Upon information and belief, Zen is a Colorado corporation with its principal place of business located at 4155 E. Jewell Avenue, Suite 908, Denver, Colorado, 80222.

6. Respondent is an importer and distributor of the Subject Products known as Zen Magnets™.

7. As 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. The Subject Products are imported and distributed in U.S. commerce and offered 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. The Subject Products consist of small, individual magnets that are packaged as aggregated masses in containers of varying size. These containers hold anywhere from 72 to 1,728 small magnets. Each magnet ranges in size from approximately 5.03 mm, with a chrome coating, and a flux index of over 50.

9. Upon information and belief, the flux index of the Subject Products ranges from 577.1 to 581.4kg²mm.²

10. Upon information and belief, Respondent introduced the Subject Products into U.S. commerce in July 2009.

11. Upon information and belief, the Subject Products are currently manufactured by Bestway Magnet Corp. No. 225, Northern Section of Huancheng Westroad, Ningbo, China.

12. Upon information and belief, Respondent advertised and marketed the product in 2009 and 2010 as “fun to play with” strong rare-earth magnets that “look good on cute people” and can act as stress relief and a way to relieve boredom.

13. Upon information and belief, in 2011 Respondent began advertising and marketing the product as a “magnetic science kit” in addition to the uses listed above.

14. Upon information and belief, the Subject Products are sold in a velvet sack, or an MDF hard case for the sets of 72 and 216 magnets. The larger set of 1,728 magnets is packaged in a velvet-lined wooden teak box. The sets range in retail price from approximately \$12.65 to over \$250.00 for the largest set.

15. Upon information and belief, more than 57,000 of the Subject Products have been sold to consumers in the United States.

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

16. The Subject Products pose a risk of magnet ingestion by children under the age of 14, who, consistent with developmentally appropriate behavior, may place single or numerous magnet balls in their mouths. The risk of ingestion also exists when adolescents use the product to mimic piercings of the lip, tongue, and cheek and accidentally swallow the balls.

17. If two or more of the magnets are ingested and their magnetic forces 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. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures. However, because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals may easily mistake these nonspecific symptoms for other common gastrointestinal upsets, and erroneously believe that medical treatment is not immediately required.

18. 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 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.

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

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

21. Children who undergo surgery to remove multiple magnets from their gastrointestinal tract face long-term health consequences, including intestinal scarring, nutritional deficiencies due to loss of portions of the bowel, and possible fertility issues for women.

COUNT I

The Subject Products' Warnings and Labeling Are Defective as they Do Not Effectively Communicate the Hazards Associated with the Ingestion of the Subject Product

22. Paragraphs 1 through 21 are hereby realleged and incorporated by reference as though fully set forth herein.

23. Upon information and belief, many children have ingested products (the "Ingested Products") that are almost identical in form, substance, and content to Zen Magnet™ products.

24. Upon information and belief, the Ingested Products are marketed in substantially similar ways as Zen Magnet™ products.

25. Upon information and belief, the Ingested Products are used in substantially similar ways to Zen Magnet™ products.

26. Upon information and belief, some models of the Subject Products are sold in packaging that contain the following warning on a small 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 magnets 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.*

27. The packaging also states:

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.

28. On October 11, 2011, staff notified Respondent that Zen Magnets™ failed to comply with ASTM Standard F963-08, which required that such products be marketed to children 14+.

29. On November 10, 2011, the Commission issued a public safety alert warning the public of the dangers of the ingestion of rare earth magnets.

30. Upon information and belief, Respondent only recently changed its product's marketing to comply with ASTM Standard F963-08. Its website now states that "CPSC recommends minimum age of 14" and "US Government age recommendation is 14 years."

31. Despite the Commission safety alert and enhanced warnings on the Subject Products and the Ingested Products, ingestions of Ingested Products continue to occur.

32. Warnings are ineffective for the Subject Products because parents and caregivers do not realize the hazards associated with the Subject Products of magnet ingestion, and as a result, they will continue to allow children to have access to the Subject Products. Children cannot, and do not, recognize the hazard either, and as a result, they will continue to mouth the items, swallow them, or in the case of young adolescents and teens, mimic body piercings.

33. Warnings are ineffective for the Subject Products because once the Subject Product is removed from its packaging, the individual magnets display no warning against ingestion or aspiration, and the small size of the individual magnets precludes the addition of such a warning.

34. Warnings are ineffective because individual magnets are easily shared among children so that many end users of the product are likely to have had no exposure to any warning.

35. The Subject Products are defective because their packaging and warning labels cannot guard against the foreseeable misuse of the product and prevent the substantial risk of injury to children.

36. Therefore, the Subject Products are defective pursuant to sections 15(a)(2) of the CPSC, 15 U.S.C. §2064 (a)(2).

COUNT II

The Subject Products, as Designed, Are Defective and Pose a Substantial Risk of Injury

37. Paragraphs 1 through 36 are hereby realleged and incorporated by reference as though fully set forth herein.

38. The Subject Products are defective because they do not operate exclusively as intended, and thus, they present a substantial risk of injury to the public. Although the Subject Products warn against placing the magnets in the mouth, misuse is foreseeable nonetheless.

39. The Subject Products present a substantial risk of injury to children because the individual magnets are intensely appealing to children due to the tactile features, small size, and highly reflective, shiny metallic coatings of the magnets.

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

41. The Subject Products also move in unexpected, incongruous ways as the poles on the magnets move to align properly, which may evoke a degree of awe and amusement among children.

42. The Subject Products also have the unique capability of adhering to one another through body tissue, enabling adolescents to use the magnets to mimic body piercings. This can be appealing to adolescents who are experimenting with what they, and their caregivers, might erroneously believe to be safer risk-taking than getting an actual body piercing.

43. The Subject Products present a substantial risk of injury to children because they do not act solely as adult products or manipulatives.

44. The Subject Products present a substantial risk of injury to children because they are marketed to appeal to both children and adults.

45. The Subject Products are marketed as “fun to play with” products that “look good on cute people.”

46. The Subject Products are marketed and intended to be used as a “science kit” that “commemorate the natural rhythm of geometric shapes, and rouse the dreams of inspired imaginations.”

47. The packaging of the Subject Products also constitutes a design defect. The velvet bags and assorted boxes that are designed to hold the Subject Products do not prevent children from accessing the magnets; nor do they prevent individual magnets from detaching from the product and getting lost. In addition, the packaging of the Subject Product does not allow parents and caregivers to know readily whether a magnet is missing, and is potentially

within the reach of a young child, who could get a hold of it and may mouth or ingest the product.

48. The hazard posed by the Subject Products cannot be remedied by different packaging because users are unlikely to return the magnets to any container or case to store them, regardless of the packaging design. Users of the Subject Products are unlikely to disassemble magnet configurations, many of which are elaborate and time-consuming to create, and replace them in a case or container after each use. This is more likely with the subject product which comes with a steel plate upon which designs can be affixed and will likely be displayed.

COUNT III

The Subject Products Are a Substantial Product Hazard

49. Paragraphs 1 through 48 are hereby realleged and incorporated by reference as though fully set forth herein.

50. The Subject Products present a substantial risk of injury because the pattern of defect—failure to operate exclusively as an adult toy, failure to communicate warnings effectively, and marketing the product for uses applicable to children under the age of 14—is present in all of the Subject Products.

51. Therefore, 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), by reasons of the substantial risk of injury or death alleged in paragraphs 1 through 48 above.

52. The Respondent has refused to stop sale and conduct a recall of the Subject Products voluntarily.

Relief Sought

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

A. Determine that Respondents' Subject Products, known as Zen Magnets™, present a "substantial product hazard" within the meaning of Section 15 U.S.C. §2064(a)(2).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to protect children adequately from the risks of injury presented by rare earth magnet 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 and entities 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 product immediately;
- (3) Notify appropriate state and local public health officials;
- (4) Give prompt public notice of the defect in the Subject Products, including the incidents and injuries associated with ingestion or aspiration, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which Respondent has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice;
- (5) Mail notice to each distributor or retailer of the Subject Products; and
- (6) Mail notice to every individual to whom the person required to give notice knows

such product was 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 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 (5) 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 (5) and C(1) through (4) 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 6th day of August, 2012

BY: Kenneth Hinson
Executive Director

U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7854

Mary Murphy, Assistant General Counsel
Division of Compliance, Office of General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Jennifer Argabright, Trial Attorney
Sarah Wang, Trial Attorney
Complaint Counsel
Division of Compliance
Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7808

CERTIFICATE OF SERVICE

I hereby certify that on August 6th, 2012, I served the foregoing Complaint upon all parties of record in these proceedings by mailing, certified mail, postage prepaid, a copy to each at their principal place of business, and e-mailing a courtesy copy, as follows:

Shihan Qu, Founder
Zen Magnets, LLC
4155 E. Jewell Avenue
Suite 908
Denver, CO 80222
shihanqu@gmail.com

Complaint Counsel for
U.S. Consumer Product Safety Commission

[FR Doc. 2012-19693 Filed 08/09/2012 at 8:45 am; Publication Date: 08/10/2012]