

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
MAXFIELD AND OBERTON HOLDINGS, LLC)	
)	
)	
)	
and)	CPSC Docket NO. 12-1
)	
)	
CRAIG ZUCKER, individually, and as an officer)	
of MAXFIELD AND OBERTON HOLDINGS,)	
LLC.)	
)	
)	
)	
)	
Respondents.)	
)	

**COMPLAINT COUNSEL'S
FIRST SET OF REQUESTS FOR ADMISSIONS TO RESPONDENT
CRAIG ZUCKER**

Pursuant to 16 C.F.R. § 1025.34, Complaint Counsel hereby requests that Respondent Craig Zucker, serve upon Complaint Counsel, within thirty (30) days, written answers to each of the Requests for Admissions set forth below.

DEFINITIONS

1. “You,” “your,” “Respondent”, “Zucker” and “Craig Zucker” mean the Respondent to whom these discovery requests are directed (including if previously known under different names).

2. “Person” means any natural person, entity, group, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority,

commission, office, or other business or legal entity, whether private or governmental and whether foreign or domestic.

3. “Documents” mean the original and any nonidentical copy of any written, printed, reproduced, graphic, photographic, electronic, audio, visual, or computer records, however produced or reproduced, of any kind or description, whether prepared by you or by any other Person, that is in your possession, custody, or control, including, but not limited to, the following: electronic mail; electronically stored information; papers; notes; books; letters; telecopies; facsimiles; photographs; motion pictures; videotapes; video disks; audio recordings; drawings; schematics; manuals; blueprints; intra- and interoffice communications; transcripts; minutes; reports; audio recordings; affidavits; statements; pleadings; summaries; indices; analyses; evaluations; agreements; calendars; appointment books; diaries; telephone logs; tabulations; charts; graphs; data sheets; computer tapes, disks, cards, printouts, and programs; microfilm; microfiche; social media communications, including, but not limited to, information posted on or transmitted through social networking platforms (e.g., MySpace, LinkedIn and Facebook), digital file-sharing services (e.g., Flickr), blogs and microblogs (e.g., Twitter); instant messages, customer reviews and/or comments posted on the your website(s) relating to the Subject Products; and all drafts, alterations, and/or amendments of or to any of the foregoing. The term includes all drafts of a Document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in or accessible through computer or other information retrieval systems (including computer archives or backup systems), together with instructions and all other materials necessary to use or interpret such data compilations.

4. “Relating to” or “related to” means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. “Identify” or “identity” when used with respect to an individual means to provide the individual’s present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the individual works, business affiliation, and business or employment address, and the individual’s relationships or associations, if any, to the Respondents.

6. “Identify” or “identity” when used with respect to a business, entity, building, or place means the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents.

7. “Identify” or “identity” when used with respect to a Document means the name or title of the Document, a description of the Document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the Person who currently has custody of, possession of, or control over the Document. You may also identify a Document by providing a complete and legible copy thereof, and by stating that you have done so.

8. “Identify” when used with respect to a Communication means to describe in detail the nature and content of the Communication, state the date of the Communication, identify all

Persons to and from whom the Communication was made, and identify all Persons hearing, witnessing, and/or present during the Communication.

9. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to, emails, voice mails, fax, memoranda, inquiries, reports, claims, and complaints.

10. “Subject Products” means Buckyballs® and Buckycubes.™

11. “Complaint” shall mean the Complaint, and any amendments to the Complaint, filed in this action, CPSC Docket 12-1.

12. “Answer” shall mean the Answer and Defenses, and any amendments to the Answer and Defenses, of Respondent Craig Zucker, filed in this action.

13. “Interrogatories” shall mean Complaint Counsel’s First Set of Interrogatories to Respondent Craig Zucker, served upon the Respondent.

14. “Requests for Production” shall mean Complaint Counsel’s First Set of Requests for Production of Documents and Things to Craig Zucker, served upon the Respondent.

15. “M&O” shall mean Maxfield & Oberton Holdings, LLC of New York, New York, including all past and present officers, directors, representatives, agents, and employees of M&O, all other past and present Persons acting or purporting to act on M&O’s behalf (including, but not limited to, all past or present agents, employees exercising discretion, discharging duties, making policy, or making decisions with respect to M&O), and all past and present parents, subsidiaries, divisions or branches of M&O.

INSTRUCTIONS

A. The answers to these requests for admissions shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission.

B. When good faith requires that a party qualify an answer or deny only a part of the matter to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder.

C. Identify each Person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these requests for admissions.

D. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word “including” shall be construed to mean without limitation. The words “any” and “all” shall be construed so as to make the request inclusive rather than exclusive.

E. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

F. The singular shall include the plural, and vice versa.

G. These requests for admissions shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents’ attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible

with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

H. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

REQUESTS FOR ADMISSIONS

1. All of the Subject Products were imported by M&O.
2. All of the Subject Products were distributed in commerce by M&O.
3. M&O distributed in commerce the Subject Products, as the term “distribution in commerce” is defined in the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(8).
4. M&O is a “distributor” of the Subject Products as that term is defined in the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(7).
5. M&O is a “retailer” of the Subject Products as that term is defined in the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(13).
6. M&O is the importer of record for the Subject Products.
7. You co-founded M&O.
8. You were M&O’s Chief Executive Officer from the formation of M&O, until December 2012.
9. M&O was organized as a limited liability company under the laws of Delaware.
10. M&O was headquartered at 180 Varick Street, Suite 212, New York, NY, 10014.
11. M&O stopped distributing the Subject Products on December 27, 2012.

12. The Subject Products were manufactured by Ningbo Prosperous Imp. & Exp. Co. Ltd., of Ningbo City, in China.

13. The Subject Products are “consumer products” as that term is defined in the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(5).

14. The Subject Products consist of individual magnets packaged in different size containers holding 10, 125, and 216 magnets.

15. The Subject Products that were sold in sets of 125 and 216 magnets were sold with a carrying case.

16. The Subject Products that were sold in sets of 125 and 216 magnets ranged in retail price from \$19.95 to \$100.00.

17. The Subject Products could be purchased in sets of 10 magnets for \$3.50.

18. Buckyballs are spherically-shaped magnets.

19. Buckyballs consist of individual magnets that are packaged as aggregated masses.

20. Buckyballs consist of loose-as-received magnets.

21. Buckyballs could be purchased in a variety of colors.

22. Buckyballs consist of individual magnets that range in size from 4.01 mm to 5.03 mm.

23. Buckyballs consist of individual magnets, each of which has a surface flux index greater than $50\text{kg}^2\text{mm}^2$

24. Buckyballs consist of individual magnets, each of which has a surface flux index greater than $400\text{kg}^2\text{mm}^2$

25. An individual Buckyballs magnet is capable of attracting to another similar magnet across a distance of 1.5 cm or greater.

26. Buckyballs magnets may connect in configurations such as strings, rings, or clumps.
27. Buckyballs magnets can attract to non-magnetic ferrous items such as steel ball bearings.
28. The attraction force between two individual Buckyballs magnets that are separated by 1.5 cm is approximately 0.5 grams or 0.002 lbs.
29. Buckyballs were distributed in commerce from March 2009 through December 2012.
30. More than 2.5 million sets of Buckyballs were distributed in commerce from March 2009 through December 2012.
31. In 2009, M&O, advertised Buckyballs as a “toy.”
32. In 2009, M&O advertised Buckyballs as an “amazing magnetic toy.”
33. In 2009, M&O, advertised Buckyballs as a product that can be used in games.
34. In 2009, M&O, advertised Buckyballs as a product that can be used to hold other items to a refrigerator.
35. In 2009, M&O, advertised Buckyballs as items that individuals can wear as jewelry.
36. In 2009, M&O, created a video advertising Buckyballs that shows a consumer using Buckyballs magnets to simulate a tongue piercing.
37. In 2009, M&O, advertised Buckyballs by comparing Buckyballs to Erector Sets, Hula Hoops, the Slinky and Silly Putty.
38. From March 2009 through October 2009, some Buckyballs were distributed in commerce contained in packaging that displayed the following warning: “WARNING: Ages

13+ only. Do not swallow or ingest. Should one end up inside you, contact the proper authorities immediately. Discontinue use of any ball that has broken or that is in any other way damaged.”

39. From March 2009 through October 2009, some Buckyballs were distributed in commerce with no warning.

40. In February 2010, Buckyballs were distributed in commerce contained in packaging that displayed the following warning: “Warning: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. Ages 13+.”

41. In March 2010, Buckyballs were distributed in commerce contained in packaging that displayed the following warning: “Warning: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. Ages 14+.”

42. From May 2010 through December 2012, Buckyballs were distributed in commerce contained in packaging that displayed the following warning: “Warning: Keep Away From All Children! Do not put in nose or mouth. Swallowed magnets can stick to intestines causing serious injury or death. Seek immediate medical attention if magnets are swallowed or inhaled.”

43. An individual Buckyball magnet is too small to carry a legible warning or label of any kind.

44. Buckycubes are cube-shaped magnets.

45. Buckycubes consist of individual magnets that are packaged as aggregated masses.

46. Buckycubes consist of loose as-received magnets.

47. Buckycubes consist of individual magnets that range in size from 4.01 mm to 5.03 mm.
48. Buckycubes consist of individual magnets, each of which has a surface flux index greater than $50\text{kg}^2 \text{mm}^2$.
49. Buckycubes consist of individual magnets, each of which has a surface flux index of greater than $200\text{kg}^2\text{mm}^2$.
50. An individual Buckycubes magnet is capable of attracting to another similar magnet across a distance of 1.5 cm or greater.
51. Buckycubes magnets may connect in configurations such as strings, rings, or clumps.
52. Buckycubes magnets can attract to non-magnetic ferrous items such as steel ball bearings.
53. The attraction force between two individual Buckycubes magnets that are separated by 1.5 cm is approximately 0.5 grams or 0.002 lbs.
54. Buckycubes could be purchased in a variety of colors.
55. Buckycubes were distributed in commerce from October 2011 through December 2012.
56. More than 290,000 sets of Buckycubes were distributed in commerce from October 2011 through December 2012.
57. From October 2011 through December 2012, Buckycubes were distributed in commerce contained in packaging that displayed the following warning: "Warning: Keep Away From All Children! Do not put in nose or mouth. Swallowed magnets can stick to intestines causing serious injury or death. Seek immediate medical attention if magnets are swallowed or

inhaled.”

58. An individual Buckycube is too small to carry a legible warning or label of any kind.

59. On May 27, 2010, the United States Consumer Product Safety Commission and M&O, jointly issued a press release entitled “Buckyballs® High Powered Magnets Sets Recalled by Maxfield and Oberton Due to Violation of Federal Toy Standard.”

60. On November 11, 2011, the United States Consumer Product Safety Commission and M&O, jointly issued a public safety alert titled “CPSC Warns High-Powered Magnets and Children Make a Deadly Mix.”

61. The website, www.getbuckyballs.com, was designed by M&O.

62. The website, www.getbuckyballs.com, was operated by M&O.

63. The website, www.magnetsafety.com, was designed by M&O.

64. The website, www.magnetsafety.com, was operated by M&O.

65. The website, www.saveourballs.net, was designed by M&O.

66. The website, www.saveourballs.net, was operated by M&O.

67. The website, www.saveourballs.net, was created in response to the Complaint filed by the U.S. Consumer Product Safety Commission.

68. On July 25, 2012, M&O issued a press release titled: “CPSC: Thank you for trying to drive a \$50 million New York-based consumer product company out of business.”

69. On July 30, 2012, the following statement appeared on www.saveourballs.net: “[e]ven one incident is too many.”

70. On August 1, 2012, you appeared on Fox Business News and stated that “even one injury is too many.”

71. On August 8, 2012, the following statement appeared on www.getbuckyballs.com: “We’ve mentioned the Consumer Product Safety Commission a lot in the past few weeks, but thought it would be fun to put some faces to the agency that’s trying to take away your balls.”

72. On August 8, 2012, www.getbuckyballs.com displayed caricatures of Commissioner Nancy Nord, former Commissioner Anne Northup, Chairwoman Inez Tenenbaum, Commissioner Robert Adler, and Director of Communications Scott Wolfson.

73. On August 8, 2012, www.getbuckyballs.com displayed the phone numbers and email addresses for Commissioner Nancy Nord, former Commissioner Anne Northup, Chairwoman Inez Tenenbaum, Commissioner Robert Adler, and Director of Communications Scott Wolfson and urged the public to “[f]eel free to give any of them a call and have your voice be heard.”

74. On September 6, 2012, the following statement appeared on www.getbuckyballs.com:

Our CEO’s challenge to CPSC’s Scott Wolfson: Let’s arm wrestle! We haven’t heard back from Scott Wolfson at the CPSC about our debate on high-powered magnets. Look, we understand. Debates on live TV are daunting. Never ones to back down from a challenge, we’re asking Mr. Wolfson to battle our CEO in the ultimate display of might: Arm wrestling!

75. Amware Fulfillment of CT, LLC of 33 Stiles Lane, North Haven, Connecticut, (Amware) provided services, including warehousing and shipping services, to M&O with respect to Buckyballs and Buckycubes between March 2009 and December 2012.

76. As of December 27, 2012, Amware had in its possession a quantity of Buckyballs and Buckycubes that were formerly the property of M&O.

77. As of December 27, 2012, M&O abandoned the Buckycubes and Buckyballs that were in Amware's possession.

78. Amware shipped approximately 49,000 units of Buckyballs to M&O's customers in December 2012.

79. M&O has been named as a defendant in at least five products liability lawsuits alleging injuries due to ingestion of the Subject Products.

80. As of April 17, 2013, M&O, through its attorneys, continued to defend the lawsuit captioned *Lopez v. Maxfield & Oberton Holdings, LLC et al*, No. 1:12-cv-0285 (E.D. Ca).

81. On April 17, 2013, M&O, through its attorneys, filed a Motion for Judgment on the Pleadings in the lawsuit captioned *Lopez v. Maxfield & Oberton Holdings, LLC et al*, No. 1:12-cv-0285 (E.D. Ca).

82. You have been named as a defendant in the lawsuit captioned *Thompson v. Maxfield & Oberton Holdings, LLC et al*, No. 1:13-cv-00751 (D. Colo).

83. Buckyballs and/or Buckycubes were sold at the following retail stores and websites, among others:

- (a) A2Z Toys in Orlando, FL.
- (b) A2Z Science and Learning Store in Northampton, MA.
- (c) ABCTOY4ME in Paramount, CA.
- (d) Amazing Toys in Great Falls, MT.
- (e) ANT Toys in Clifton, NJ.
- (f) Aunt Candy's Toy Company in Rockford, MI.
- (g) Barnhill House Toys and Books in Brenham, TX.
- (h) Barston's Child's Play in Baltimore, MD.
- (i) Beanstalk Toy Store in Saugus, MA.
- (j) Belmont Toys in Belmont, MA.
- (k) Big Bad Toy Store in Somerset, WI.
- (l) Brilliant Sky Toys & Books in Austin, TX.
- (m) Children's Store, Inc. in Boise, ID.
- (n) Cooleykatz Toys in Livermore, CA.
- (o) Child's Play in Portland, OR.
- (p) Dancing Bear Toys in Asheville, NC.

- (q) Dilly Dally Toy Store in Rogers, AR.
- (r) Distinctive Toys in Fair Haven, NJ.
- (s) Explora Children's Museum in Albuquerque
- (t) Gifted Child in Lenox, MA.
- (u) Got Toys in New Braunfels, TX.
- (v) Hombom Toys in New York, NY.
- (w) IC Toys in Hilton Head, SC.
- (x) Imagine That Toy Shop in Wichita, KS.
- (y) Josh's Toys & Games in Windham, NH.
- (z) Kaleidoscope Toys in Atlanta, GA.
- (aa) Kiddlestix in Tulsa, OK.
- (bb) Kiddly Winks in Longmeadow, MA.
- (cc) Kidtopia in Sioux Falls, SD.
- (dd) Little Tiger Toys in Bellingham, WA.
- (ee) Little Toy Shop in New Orleans, LA.
- (ff) Maui Toy Works in Lahaina, HI.
- (gg) Mrs. Nelson Toys & Books in Laverne, CA.
- (hh) New Canaan Toy Store in New Canaan, CT.
- (ii) New Rochelle Toy Center in New Rochelle, NY.
- (jj) Once-Upon-A-Toy in Edwardsville, IL.
- (kk) Peak-A-Boo Toys LLC in Breckenridge, CO.
- (ll) Perfect Toy in Avon, CT.
- (mm) Quinnderella's Big Fun Toys in Manasquan, NJ.
- (nn) Rainbow Toys in Falmouth, ME.
- (oo) The Red Balloon Toy Shop, Inc. in Orleans, MA.
- (pp) San Marino Toy & Book in San Marino, CA.
- (qq) Sam's Toy Box in Meridian, ID.
- (rr) Tom's Toys in Great Barrington, MA.
- (ss) Totally Kids in Bloomington, MN.
- (tt) Toy Barn in Marshall, MI.
- (uu) Toys for Tots Twin Cities in Minneapolis, MN.
- (vv) Wee Loft in Duna Point, CA.
- (ww) Wishes Toy in Avon, CO.
- (xx) Yiro Toys in Washington, D.C.
- (yy) Zero Toys, Inc. in Concord, MA.
- (zz) Online at Amazon.com
- (aaa) Online at ToysRUs.com
- (bbb) Online at FatBrainToys.com

84. You were aware that as of April 5, 2012, the Subject Products were listed for sale in the Toys and Games section on the website www.Amazon.com.

85. You took steps to preserve the Documents and information in M&O's files as of December 27, 2012 that relate to the Subject Products.

86. You did not take steps to preserve the Documents and information in M&O's files as of December 27, 2012 that relate to the Subject Products.

87. You took steps to preserve Documents and information in your files that relate to the Subject Products.

88. You did not take steps to preserve Documents and information in your files that relate to the Subject Products.

89. You sent and received e-mail related to the Subject Products on behalf of M&O using the e-mail address cjzucker@gmail.com.

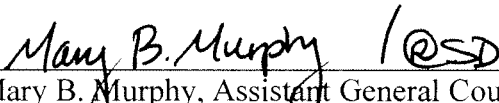
90. You sent and received e-mail related to the Subject Products on behalf of M&O using the e-mail address craig@getbuckyballs.com.

91. You communicated directly with the CPSC on behalf of M&O on the following occasions, among others:

- (a) You submitted a Full Report (dated May 25, 2012) to the CPSC on behalf of M&O.
- (b) You sent an e-mail to Compliance Officer Thomas Lee on regarding new magnet products released by M&O on June 25, 2012.
- (c) You sent an e-mail to Todd Stevenson, Director of the Office of the Secretary, with M&O's comments on a briefing package on August 21, 2012.
- (d) You met with Commissioner Adler regarding the Subject Products at the CPSC's Headquarters in Bethesda, MD on April 10, 2012.
- (e) You met with CPSC staff regarding the Subject Products at the CPSC's Headquarters in Bethesda, MD on April 10, 2012.
- (f) You sent an e-mail to Scott Wolfson, Director of the Office of Communications, regarding other firms selling rare earth magnets on August 2, 2012.
- (g) You sent an e-mail to Compliance Officer Joseph Williams regarding the Subject Products on July 20, 2012.
- (h) You sent an e-mail to Compliance Officer Joseph Williams on July 19, 2012 in reference to CPSC Compliance File CA 120094.

92. You were the primary point of contact at M&O with respect to the CPSC's investigation of the Subject Product.

93. You co-founded the Coalition for Magnet Safety.


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Complaint Counsel for
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2013 I served Complaint Counsel's First Set of Requests for Admissions to Craig Zucker, as follows:

Original and three copies by hand delivery and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission: Todd A. Stevenson.

One copy by certified mail and one copy of electronic mail to counsel of record:

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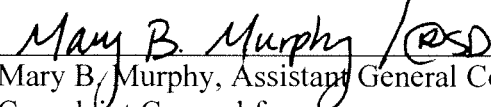
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One copy by electronic mail to the Trustee for MOH Liquidating Trust:

Julie Beth Teicher, Trustee
MOH Liquidating Trust
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Mary B. Murphy, Assistant General Counsel
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U.S. Consumer Product Safety Commission