

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

COMPLAINT COUNSEL’S
FIRST SET OF REQUESTS FOR ADMISSIONS TO RESPONDENT
ZEN MAGNETS, LLC

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

DEFINITIONS

1. “You,” “your,” “Respondent,” “Zen” and “Zen Magnets, LLC,” mean the Respondent to whom these discovery requests are directed (including, if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present Persons acting or purporting to act on the Respondent’s behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present parents, subsidiaries, divisions, or branches of the Respondent.

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” means 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 Respondent.

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 Respondent.

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

10. “Subject Products” means Zen Magnets® and Neoballs.

11. “Complaint” means the Complaint and any amendments to the Complaint, filed in this action, CPSC Docket 12-2.

12. “Answer” means the Answer and Defenses, and any amendments to the Answer and Defenses, of Respondent Zen Magnets, LLC, filed in this action.

13. “Interrogatories” means Complaint Counsel’s First Set of Interrogatories to Respondent Zen Magnets, LLC, served upon the Respondent.

14. “Requests for Production” means Complaint Counsel’s First Set of Requests for Production of Documents and Things to Respondent Zen Magnets, LLC, served upon the Respondent.

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 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 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 here. If the meaning of any word or phrase used here is unclear, the Respondent’s attorneys are requested to contact Complaint Counsel to resolve 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 answer fully and an explanation of all reasons a full answer cannot be made.

H. Pursuant to 16 C.F.R. § 1025.31, the Respondent is 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 Zen.
2. The Subject Products were and are distributed in commerce by Zen.
3. Zen 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. Zen 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. Zen 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. Zen is the importer of record for the Subject Products.
7. Zen is organized as a limited liability company under the laws of Colorado.
8. Zen is headquartered at 4155 East Jewell Avenue, Suite 908, Denver, CO 80222.
9. The Subject Products are “consumer products,” as that term is defined in the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(5).

10. The Subject Products are manufactured by Bestway Magnet Corp., in the Northern Section of Huangcheng Westroad, Ningbo, China.
11. The Subject Products are spherically shaped magnets.
12. Zen Magnets consist of individual magnets that are packaged as aggregated masses of magnets.
13. Zen Magnets consist of loose-as-received magnets.
14. Zen Magnets consist of individual magnets that are approximately 5.03 mm in diameter.
15. Zen Magnets consist of individual magnets each of which has a surface flux index greater than $50\text{kg}^2\text{mm}^2$.
16. Zen Magnets consist of individual magnets each of which has a surface flux index greater than $577.1\text{kg}^2\text{mm}^2$.
17. An individual Zen Magnets magnet is capable of attracting to another similar magnet across a distance of 1.5 cm or greater.
18. Zen Magnets may connect in configurations such as strings, rings, or clumps.
19. Zen Magnets can attract to non-magnetic ferrous items such as steel ball bearings.
20. The attraction force between two individual Zen Magnets that are separated by 1.5 cm is approximately 0.5 grams or 0.002 lbs.
22. The amount of force required to separate two individual Zen Magnets that are attached together ranges from 0.728 to 0.768 lbf.
23. Zen Magnets have been distributed in commerce since September 2009.

24. As of August 14, 2013, Zen Magnets currently are being distributed in commerce.
25. As of August 14, 2013, Zen Magnets currently are being distributed in commerce on the website www.zenmagnets.com.
26. Zen's sales of Zen Magnets and/or Neoballs totaled approximately \$700,000 in the last year.
27. Zen's sales of Zen Magnets totaled approximately \$50,000 in 2009.
28. Shihan Qu is the owner of Zen.
29. Shihan Qu founded Zen.
30. Shihan Qu acknowledged to Denver Post reporter Steve Raabe that injuries can occur when rare earth magnets are ingested.
31. The website, www.zenmagnets.com, was designed by Zen.
32. The website, www.zenmagnets.com, is operated by Zen.
33. More than 50,000 sets of Zen Magnets have been distributed in commerce since September 2009.
34. Zen Magnets are offered for sale on www.zenmagnets.com in sets of 72, 216 or 1,728 magnets.
35. Zen Magnets distributed in sets of 72 magnets are packaged in a velvet sack.
36. The purchase price for a 72 magnet set of Zen Magnets is \$12.65.
37. Zen Magnets distributed in sets of 216 magnets are packaged in either a velvet sack or an MDF hard case.

38. The purchase price for a 216 magnet set of Zen Magnets ranges from \$32.98 to \$38.24.

39. Zen Magnets distributed in sets of 1,728 magnets are packaged in a velvet-lined, wooden teak box.

40. The purchase price for a 1,728 magnet set of Zen Magnets is \$296.82.

41. Zen Magnets can be purchased individually.

42. An individual Zen Magnet can be purchased for \$ 0.20.

43. Some sets of Zen Magnets are sold with a “laser etched stainless steel building platform.”

44. From September 2009 through mid-2011, the following warning statement appeared on the home page of www.zenmagnets.com:

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.

45. On August 14, 2013, the following warning statement appears on the home page of www.zenmagnets.com:

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 ends of 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.

46. In October 2011, the following warning statement appeared on the “Buy” page of www.zenmagnets.com:

Magnets cause fatal intestinal pinching if swallowed. Keep from animals and children who don't understand this.

47. As of August 14, 2013, the following warning statement appears on the “Buy” page of www.zenmagnets.com:

Zen Magnets may cause fatal intestinal pinching if swallowed. Don't leave them around animals, or children who don't understand this. US Government Age recommendation is 14 years.

48. In October 2011, the following statements appeared on the “FAQ” page of 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 regulations 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.

49. As of August 14, 2013, the following statement appears on the “Relations” page of 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, or it's a “science kit,” then the age regulations 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.

50. As of July 2012, Zen distributed Zen Magnets with the following warning statement, contained 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.

51. Beginning in August 2012, the lower portion of the opposite side of the 2" x 2" slip of paper that accompanied the magnets included the following warning statement:

"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.

52. Some sets of Zen Magnets distributed in commerce were not accompanied by the 2" x 2" slip of paper containing a warning statement.

53. As of August 14, 2013, the following statement appeared on the home page of www.zenmagnets.com: "Busy Federal CPSC says magnets should not be allowed: guns entrenched to knees. Uncompromising stance, mean sting, and no mind for democracy that disagrees."

54. As of August 14, 2013, the home page of www.zenmagnets.com contains a link to the website www.SaveMagnets.com.

55. The website, www.SaveMagnets.com, was designed by Zen.

56. The website, www.SaveMagnets.com, is operated by Zen.

57. As of August 14, 2013, Zen Magnets were advertised on www.zenmagnets.com as “fun to play with.”

58. As of August 14, 2013, Zen Magnets were advertised on www.zenmagnets.com as items that “look good on cute people.”

59. As of August 14, 2013, Zen Magnets were advertised on www.zenmagnets.com as items that “may have health benefits.”

60. As of August 14, 2013, the following is contained on the “Relations” page of www.zenmagnets.com:

Q: Do you have other colors?

A: Yes, and you can find them at Neoballs.com. However these are not Zen Magnets. Zen Magnets will always only come in one flavor of perfection: mirror polished NiCuNi, unsurpassed geometric tolerances.

61. Neoballs consist of individual magnets that are packaged as aggregated masses.

62. Neoballs consist of loose-as-received magnets.

63. Neoballs consist of individual magnets that range in size from 4.98 mm to 5.11 mm in diameter.

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

65. Neoballs consist of individual magnets each of which has a surface flux index greater than $438.8 \text{ kg}^2\text{mm.}^2$
66. An individual Neoballs magnet is capable of attracting to another similar magnet across a distance of 1.5 cm or greater.
67. Neoballs magnets may connect in configurations such as strings, rings, or clumps.
68. Neoballs magnets can attract to non-magnetic ferrous items such as steel ball bearings.
69. The attraction force between two individual Neoballs magnets that are separated by 1.5 cm is approximately 0.5 grams or 0.002 lbs.
70. The amount of force required to separate two Neoballs magnets that are attached together ranges from 0.566 to 0.748 lbf.
71. Neoballs are available in a variety of color coatings.
72. Zen began distributing Neoballs in commerce in September 2011.
73. In September 2011, Zen distributed Neoballs in sets of 216 magnets.
74. Zen distributed Neoballs in sets of 216 magnets until September 13, 2012.
75. Zen stopped distributing Neoballs on September 12, 2012.
76. On October 2, 2012, Zen advised the U.S. Consumer Product Safety Commission that Zen intended to begin distributing Neoballs again.
77. On October 2, 2012, Zen advised the U.S. Consumer Product Safety Commission that Zen intended to begin distributing Neoballs through the website: www.neoballs.com.

78. On October 2, 2012, Zen advised the U.S. Consumer Product Safety Commission that Zen intended to begin distributing Neoballs as individual magnets.

79. In November 2012, Zen began distributing Neoballs.

80. In November 2012, Zen began distributing Neoballs through the website www.neoballs.com.

81. In November 2012, Zen Magnets, LLC, began offering Neoballs for sale as individual magnets.

82. As of August 14, 2013, Zen is currently distributing Neoballs in commerce.

83. The website, www.neoballs.com, was designed by Zen.

84. The website, www.neoballs.com, is operated by Zen.

85. The purchase price for individual Neoballs ranges from 6 to 10 cents per magnet.

86. Neoballs purchased in quantities of less than 216 magnets of a color are packaged in a plastic bag.

87. Neoballs purchased in quantities of 216 or more magnets of a color are sold with a square tin.

88. Regardless of the number of Neoballs purchased, the shipping rate is the same.

89. As of August 14, 2013, the following statement appears on the “Purchase” page of www.neoballs.com: “However, shipping is flat rate no matter how many Neoballs you purchase, whether you buy 216, or 21,600 magnet spheres.”

90. More than 900 sets of Neoballs sold in a set of 216 magnets have been distributed in commerce since September 2009.

91. From November 2012, until at least August 14, 2013, the following warning statement appears on the “Relations” page of www.neoballs.com:

Practice responsible magnet usage!
Practice responsible magnet usage! High power magnets may cause fatal intestinal pinching if swallowed. Keep away from all orifices. 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.

92. On January 9, 2013, there was no warning statement regarding ingestion of rare-earth magnets on the home page of www.neoballs.com.

93. As of August 14, 2013, the home page of www.neoballs.com contained the following statement: “Don't let CPSC bypass Democracy. If magnets are outlawed, only outlaws will have magnets.”

94. As of August 14, 2013, the following warning statement is displayed in a pop-up window when a visitor clicks the “Purchase” page of www.neoballs.com

Warning: Keep away from mouth.
Practice responsible magnet usage!
High power magnets may cause fatal intestinal pinching if swallowed. Keep away from all orifices. 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.

95. As of August 14, 2013, the following statement appears on the “Purchase” page of www.neoballs.com: “Due to **CPSC requests** we are selling the magnets individually.” If a user clicks on the bolded phrase “CPSC requests,” the following statement appears in a pop-up window:

The CPSC is attempting to ban “Aggregates of powerful magnets,” and have requested all magnet sphere brands to stop selling. However, you can still purchase as many neoballs as you would like.

96. As of August 14, 2013, on the following statement appears on the “Purchase” page of www.neoballs.com under the heading “Frequently Asked Questions”:

Can I buy more than one?

Yes! Absolutely! If you haven’t heard, the CPSC has decided that an arbitrary quantity and shape of magnets is defective, and should be harder to purchase than ammunition online. Specifically, a quantity that can be considered an “aggregate” or “collection” of magnets shaped like spheres. To comply with the CPSC, we are now selling Neoballs individually. The CPSC’s attempt to ban magnets is bad, and they should feel bad. Go to SaveMagnets.com to learn more and add your voice.

97. When Neoballs are purchased in quantities greater than 18 individual magnets, the products are accompanied by a 4 ½" x 1 ½" slip of paper that contains the following warning:

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 punching 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.

With the exception of "OMFG" and "READ ME," the warning is in less than 10-point font.

98. When less than 18 Neoballs are purchased, the product is not accompanied by any warning.

99. As of August 14, 2013, the home page of www.neoballs.com contained a link to: www.SaveMagnets.com.

100. As of July 29, 2013, the following statements appeared on www.SaveMagnets.com under the "FAQ to CPSC":

How does it make sense to make magnets harder to obtain than ammunition?

Their only response for this is that "guns are out of their jurisdiction." It seems democracy is out of their jurisdiction too.

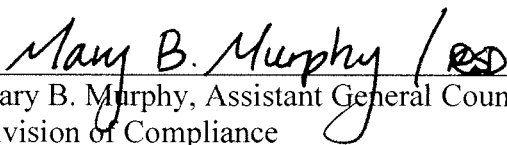
101. An individual Zen Magnet is too small to carry a legible warning or label of any kind.

102. An individual Neoballs Magnet is too small to carry a legible warning or label of any kind.

103. Zen took steps to preserve the Documents and information in the company's files that relate to the Subject Products.

104. Zen did not take steps to preserve the Documents and information in the company's files that relate to the Subject Products.

105. Shihan Qu authored the article titled "17 Fold Injury Data Inflation by CPSC, Health Canada Analysis Shows" that was posted on the website www.SaveMagnets.com on July 18, 2013.


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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 Zen Magnets, LLC 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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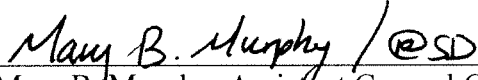
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One copy by electronic mail to the Trustee for MOH Liquidating Trust:

Julie Beth Teicher, Trustee
MOH Liquidating Trust
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