EXHIBIT C

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Leah Wade
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January 18, 2013

Via Certified U.S. Mail

Julie Beth Teicher, Trustee for MOH Liquidating Trust
Erman, Teicher, Miller, Zucker & Freedman, P.C.
400 Galleria Officentre, Suite 444
Southfield, MI 48034

Re: MOH Liquidating Trust, Proof of Claim

Ms. Teicher:

Enclosed is a Proof of Claim, with attachments, filed by the United States Consumer Product Safety Commission against the MOH Liquidating Trust. I am requesting a receipt of the Proof of Claim, and have included a duplicate copy of the document and a self-addressed, stamped envelope.

Sincerely,

Leah Wade

Leah Wade
Trial Attorney
Division of Compliance
Office of the General Counsel

Enclosure

MOH LIQUIDATING TRUST
PROOF OF CLAIM

The undersigned asserts a claim against **Maxfield and Oberton Holdings, LLC**, a Delaware limited liability company that, pursuant to applicable Delaware law, dissolved and ceased to exist on December 27, 2012. The basis for the undersigned's claim is one of the following (check appropriate reason):

____ Refund for retail or consumer purchase
____ Refund for wholesale purchase
____ Injury claim
____ Breach of contract
_X_ Lawsuit
____ Other

PLEASE ATTACH ALL DOCUMENTS IN SUPPORT OF YOUR CLAIM.

Documents must include, as applicable to the particular claim, invoices, paid shipping receipts, filed complaint, judgment, administrative award, and all other documents that support your claim. You should also include a written description of the basis for your claim. The Trustee reserves the right to require the submission of additional documents and information regarding your claim. If you are represented by an attorney in connection with your claim, provide the name and contact information of the attorney.

TOTAL CLAIM AMOUNT: At least $57,057,000.
The CPSC submits this preliminary Proof of Claim reflecting a partial monetization of the Commission's claims for relief. This submission is without prejudice to the CPSC's ability to file an amended Proof of Claim before the Claims Deadline.

Company:

Company Name:	United States Consumer Product Safety Commission
Signature:	Kenneth R. Hinson
Title:	Kenneth R. Hinson, Executive Director
Date:	January 16, 2013
Legal Contact:	Mary B. Murphy, Assistant General Counsel Division of Compliance, Office of the General Counsel United States Consumer Product Safety Commission
Company Address:	4330 East West Highway, Bethesda, Maryland 20814
Phone No.:	(301) 504-7809
Fax No.:	(301) 504-0403
E-Mail Address:	MMurphy@cpsc.gov
Tax ID No.:	Not Applicable

Basis of Claim:

On July 25, 2012, the staff of the U.S. Consumer Product Safety Commission (CPSC) initiated an administrative enforcement action, pursuant to section 15 of the Consumer Product Safety Act, as amended, 15 U.S.C. § 2064. The Complaint is attached to this Proof of Claim as Exhibit A, and it is captioned: "In the Matter of Maxfield and Oberton, LLC." The case has been assigned to the Honorable Dean C. Metry, Administrative Law Judge for the United States Coast Guard, in Galveston, TX, and docketed as "CPSC Docket No. 12-1."

On September 18, 2012, the CPSC filed a "Motion for Leave to File Amended Complaint." On September 24, 2012, the CPSC filed a "Supplemental Motion for Leave to File Amended Complaint." A copy of the Amended Complaint, dated September 18, 2012, was attached to both motions. The Amended Complaint was deemed filed on November 16, 2012, pursuant to an Order entered by the Honorable Dean C. Metry. The Amended Complaint is attached to this Proof of Claim as Exhibit B. On December 10, 2012, Respondent, Maxfield and Oberton Holdings, LLC, filed an Answer to the Amended Complaint (Answer), which is attached to this Proof of Claim as Exhibit C.

The Amended Complaint seeks an order requiring that the Respondent refund consumers the purchase price of the Subject Products and requiring that the Respondent provide public notification as well as undertake 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 Buckyballs and Buckycubes (Subject Products), imported and distributed by Maxfield and Oberton Holdings, LLC. The Amended Complaint alleges that the Subject Products pose a risk because they may be ingested by children under the age of 14. If more than two 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.

The Amended Complaint alleges that the Subject Products were sold at retail prices that ranged from approximately $19.95 to $100.00 per set. The Amended Complaint further alleges that Maxfield and Oberton Holdings, LLC, sold more than 2,500,000 sets of Buckyballs and 290,000 sets of Buckycubes to consumers. In their Answer, Respondent Maxfield and Oberton Holdings, LLC admits that it sold 2.57 million sets of Buckyballs and 290,000 sets of Buckycubes, as of July 2012.

Amount of Claim:

Maxfield and Oberton Holdings, LLC, filed a certificate of cancellation with the State of Delaware on December 27, 2012, and they created the MOH Liquidating Trust (Trust) before the CPSC could initiate discovery in this matter. As a result, the CPSC currently does not have all the information necessary to report a final monetization of our claim.

Nevertheless, the CPSC believes that the claim can be monetized initially at an amount of, ***at least***, $57,057,000. This amount was determined by multiplying the known number of Subject Products sold to consumers, to wit, 2,860,000, by the lowest retail price of the Subject Product known to the CPSC, which is $19.95. The CPSC anticipates that the final claim amount may exceed that figure because that figure does not include the cost of the Subject Products that sold for more than $19.95, the number of additional units sold through December 2012, or the costs of public notification and administration of a consumer-level refund process. Accordingly, the CPSC submits this preliminary Proof of Claim, based on the information available at the present time, without prejudice to the CPSC's ability to submit an amended Proof of Claim before the Claims Deadline.

Exhibit A

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of MAXFIELD AND OBERTON HOLDINGS, LLC Respondent.	)	CPSC DOCKET NO. 12-1

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 Buckyballs® and Buckycubes™ (collectively, the "Subject Products"), imported and distributed by Maxfield and Oberton Holdings, LLC ("Maxfield" 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 Maxfield is a domestic corporation with its principal place of business located at 180 Varick Street, Suite 212, New York, New York, 20014. Respondent is an importer and distributor of the Subject Products known as Buckyballs® and Buckycubes.™

6. 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

7. 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 different sized containers holding 10, 125, and 216 small magnets, ranging in size from approximately 4.01 mm to 5.03 mm, with a variety of coatings, and a flux index of over 50. Upon information and belief, the flux of the Subject Products has reached levels ranging from 204.1 to 556kg²mm² Surface Flux Index.

8. Upon information and belief, Buckyballs,® which are small spherically shaped magnets, were introduced in U.S. commerce in March 2009.

9. Upon information and belief, Buckycubes,™ which are small cube shaped magnets, were introduced in U.S. commerce in October 2011.

10. Upon information and belief, the Subject Products are manufactured by Ningo Prosperous Imp. & Exp. Co. Ltd., of Ningbo City, in China.

11. Upon information and belief, Respondent initially advertised and marketed Buckyballs® to appeal to children, calling it an "amazing magnetic toy."

12. Upon information and belief, Respondent advertised and marketed Buckyballs® by comparing its appeal to that of other children's products such as erector sets, hula hoops, and silly putty.

13. Upon information and belief, despite making no significant design or physical changes to the product since its introduction in 2009, Respondent subsequently rebranded Buckyballs® as an adult executive desk toy and/or stress reliever, marketing and advertising it as such.

14. The Subject Products are sold with a carrying case and range in retail price from approximately $19.95 to $100.00. Upon information and belief, the Subject Products can also be purchased in sets of 10 for $3.50 without a carrying case.

15. Upon information and belief, more than 2,000,000 Buckyballs® have been sold to consumers in the United States.

16. Upon information and belief, more than 200,000 Buckycubes™ have been sold to consumers in the United States.

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

17. The Subject Products pose a risk of magnet ingestion by children below the age of 14, who may, consistent with developmentally appropriate behavior, place single or numerous magnets in their mouth. 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.

18. 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. 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.

19. 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 non specific symptoms and/or a

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

20. Magnets which become affixed through the gastrointestinal walls and are not surgically removed may result in intestinal perforations which 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.

21. 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.

22. 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 possible fertility issues for women.

COUNT I

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

23. Paragraphs 1 through 22 are hereby re-alleged and incorporated by reference as though fully set forth herein.

24. Since Buckyballs® were introduced into commerce in 2009, numerous incidents involving ingestions by children under the age of 14 have occurred.

25. Upon information and belief, on January 28, 2010, a 9-year-old boy used

Buckyballs® to make tongue and lip rings, and accidentally ingested seven magnets. He was treated at an emergency room.

26. Upon information and belief, on September 5, 2010, a 12-year-old girl accidentally swallowed two Buckyballs®. She sought medical treatment at a hospital, including x-rays and monitoring for infection and internal damage.

27. Since March 2009 to approximately March 11, 2010, the Subject Products were sold in packaging that contained the following warning label: "**Warning**: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. **Ages 13+.**"

28. In February 2010, CPSC notified Respondent that the Buckyballs® failed to comply with the requirement that such products be marketed to children 14+. On or about March 11, 2010, Respondent changed its packaging, warnings, instructions, and labeling on Buckyballs® and later conducted a recall of the products.

29. Since recalling Buckyballs®, Respondent agreed to certain labeling and marketing changes in an effort to prevent the sale of Buckyballs® to children under 14.

30. Despite the marketing and labeling changes made by the Respondent, ingestion incidents continued to occur.

31. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested 8 Buckyballs® magnets she found on a refrigerator in her home, requiring surgery to remove the magnets. The magnets had caused intestinal and stomach perforations, and had also become embedded in the girl's trachea and esophagus.

32. Upon information and belief, on or about January 6, 2011, a 4-year-old boy

suffered intestinal perforations after ingesting three Buckyballs® magnets he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

33. In November 2011, the Commission issued a public safety alert warning the public of the dangers of the ingestion of rare earth magnets. However, such ingestion incidents continue to occur. Since the November 10, 2011 safety alert, the Commission has received over one dozen reports of children ingesting the Subject Products, many of which required surgical intervention.

34. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two Buckyballs® after using them to mimic a tongue piercing. The magnets became embedded in her large intestine, and she had to undergo x-rays, CT scans, endoscopy, and an appendectomy to remove them. The girl's father had purchased the Buckyballs® for her at the local mall.

35. Notwithstanding the labeling, warnings, and efforts taken by Respondents, ingestion incidents requiring surgery continue to occur because such warnings are ineffective.

36. Warnings are ineffective because parents and caregivers do not appreciate the hazard associated with Subject Products and magnet ingestion and will continue to allow children to have access to the Subject Products. Children cannot and do not appreciate the hazard and will continue to mouth the items, swallow them, or, in the case of young adolescents and teens, mimic body piercings.

37. Warnings are ineffective because once the Subject Product is removed from its carrying case, the magnets carry no warning guarding against ingestion or aspiration, and the small size of the individual magnets precludes the addition of such a warning.

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

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

40. Therefore, the warnings and labeling on 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

41. Paragraphs 1 through 40 are hereby realleged and incorporated by reference as though fully set forth herein.

42. The Subject Products are defective because they do not operate exclusively as intended and present a risk of injury to the public. Although the Subject Products warn against placing the magnets in one's mouth, the misuse is forseeable.

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

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

45. 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.

46. The design of the Subject Products presents a risk of injury because they do not operate as intended; that is, they do not act as desk toys or manipulatives that are handled solely by adults and remain on adults' desks out of the reach of children.

47. The packaging of the Subject Products is also a design defect. The plastic carrying case that holds the Subject Products does not prevent children from accessing the magnets, nor does it prevent individual magnet pieces from separating from the product. In addition, the packaging of the Subject Product does not allow parents and caregivers to appreciate if a magnet is missing, and potentially, within the reach of a young child who may mouth or ingest the product.

48. Different packaging cannot remedy the hazard posed by Subject Products because users are unlikely to return the magnets to any case, 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, after each use.

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 as intended, and to effectively communicate warnings that the product should not be purchased for or used by children under the age of 14—is present in all of the

Subject Products.

51. The Subject Products, therefore, 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 Respondents have refused to voluntarily stop sale and conduct a recall of the Subject Products.

Relief Sought

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

A. Determine that Respondents' Subject Products known as Buckyballs® and Buckycubes™ 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 adequately protect children from risks of injury presented by rare earth magnet products and order Respondents under Section 15(c) of the CPSA, 15 U.S.C. §2064(c) to:

(1) Cease importation and distribution of the product;

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

(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, and providing notice to any third party Internet website on which Respondents have 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 person 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 Respondents 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;

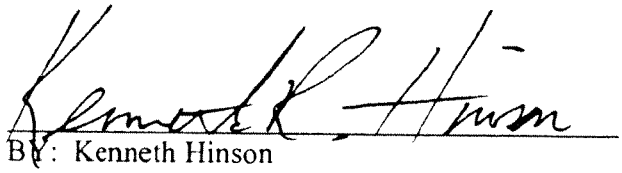
(6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (5) and C(1) through (4) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;

(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 Respondents 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 25 day of July, 2012



BY: Kenneth Hinson
Executive Director

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U.S. Consumer Product Safety Commission
Bethesda, MD 20814
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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2012, I served the foregoing Complaint upon all parties of record in these proceedings by hand-delivering and mailing, certified mail, postage prepaid, a copy to each at their principal place of business, and courtesy copy to counsel, as follows:

Maxfield and Oberton Holdings, LLC
180 Varick Street
Suite 212
New York, NY 10004

Alan H. Schoem, Esquire
Law Office of Alan Schoem LLC
14809 Rolling Green Way
North Potomac, Maryland 20878

Mary B. Murphy
Complaint Counsel for
U.S. Consumer Product Safety Commission

Exhibit B

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of MAXFIELD AND OBERTON HOLDINGS, LLC Respondent.	)	CPSC DOCKET NO. 12-1

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 Buckyballs® ("Buckyballs") and Buckycubes™ ("Buckycubes") (collectively, the "Subject Products"), imported and distributed by Maxfield and Oberton Holdings, LLC ("Maxfield" 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 Maxfield is a domestic corporation with its principal place of business located at 180 Varick Street, Suite 212, New York, New York, 20014.

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

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. 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. The Subject Products consist of small, individual magnets that are packaged as aggregated masses in different sized containers holding 10, 125, and 216 small magnets, ranging in size from approximately 4.01 mm to 5.03 mm, with a variety of coatings, and a flux index greater than 50.

9. Upon information and belief, the flux of Buckyballs ranges from approximately 414 to 556kg²mm² Surface Flux Index.

10. Upon information and belief, the flux of Buckycubes ranges from approximately 204 to 288kg²mm² Surface Flux Index.

11. Upon information and belief, Buckyballs, which are small spherically-shaped magnets, were introduced in U.S. commerce in March 2009.

12. Upon information and belief, Buckycubes, which are small cube-shaped magnets, were introduced in U.S. commerce in October 2011.

13. Upon information and belief, the Subject Products are manufactured by Ningo Prosperous Imp. & Exp. Co. Ltd., of Ningbo City, in China.

14. The Subject Products are sold with a carrying case and range in retail price from approximately $19.95 to $100.00. Upon information and belief, the Subject Products can also be purchased in sets of 10 for $3.50.

15. Upon information and belief, more than 2,500,000 sets of Buckyballs have been sold to consumers in the United States.

16. Upon information and belief, approximately 290,000 sets of Buckycubes have been sold to consumers in the United States.

COUNT I

The Subject Products are Substantial Product Hazards 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

17. Paragraphs 1 through 16 are hereby realleged and incorporated by reference as though fully set forth herein.

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

19. 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.

20. Upon information and belief, from approximately March 2009 through October 2009, Buckyballs' packaging contained 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."

21. Upon information and belief, the bottle containing Buckyballs that Respondent sold between March 2009 and October 2009 displayed no warning.

22. In or about February 2010 Buckyballs contained the following warnings: "**Warning**: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. **Ages 13+.**"

23. On or about March 11, 2010, the Respondent changed its packaging, warnings, instructions, and labeling on Buckyballs and later conducted a recall of the products that were labeled as 13+.

24. On May 27, 2010, the Commission and the Respondent jointly issued a press release announcing the recall: *Buckyballs® High Powered Magnets Sets Recalled by Maxfield and Oberton Due to Violation of Federal Toy Standard.*

25. At the time of the recall, the Respondents knew of at least two incidents involving ingestions of Buckyballs.

26. Upon information and belief, in connection with the recall of Buckyballs labeled for 13+, Respondent relabeled the product in an attempt to remove it from the scope of the mandatory provisions of ASTM International F963-08, *Standard Consumer Safety Specification for Toy Safety*.

27. Upon information and belief, Respondent changed the Buckyballs warning in or about March 2010 to state: "**Warning**: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. Ages 14+."

28. Upon information and belief, the Respondent implemented a second change to the warnings on Buckyballs in 2010 so that the warnings read: "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."

29. Upon information and belief, these warnings are present on Buckyballs currently sold by the Respondent.

30. Upon information and belief, since their introduction into commerce in October 2011, Buckycubes have displayed a warning on their packaging that states: "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."

31. Since Buckyballs were introduced into commerce in 2009, numerous incidents involving ingestions by children under the age of 14 have occurred.

32. Upon information and belief, on or about January 28, 2010, a 9-year-old boy used Buckyballs to mimic tongue and lip piercings, and accidentally ingested seven magnets. He was treated at an emergency room.

33. Upon information and belief, on or about September 5, 2010, a 12-year-old girl accidentally swallowed two Buckyballs magnets. She sought medical treatment at a hospital, including x-rays and monitoring for infection and damage to her gastrointestinal tract.

34. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested eight Buckyballs magnets she found on a refrigerator in her home, and required surgery to remove the magnets. The magnets had caused intestinal and stomach perforations, and had also become embedded in the girl's trachea and esophagus.

35. Upon information and belief, on or about January 6, 2011, a 4-year-old boy suffered intestinal perforations after ingesting three Buckyballs magnets he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

36. By November 2011, the Commission was aware of approximately 22 reports of ingestions of high-powered magnets.

37. On November 11, 2011, the Commission, in conjunction with Respondent, issued a public safety alert to further warn of the dangers of the ingestion of rare earth magnets like the Subject Products.

38. Ingestion incidents, however, continue to occur.

39. Since the safety alert, the Commission has received over one dozen reports of children ingesting Buckyballs. Many of these children required medical treatment, including surgical intervention.

40. The Commission has received dozens more reports of children ingesting products that are substantially similar to Buckyballs but may be manufactured and/or sold by firms other than the Respondent.

41. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two Buckyballs magnets 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 Buckyballs for her at the local mall.

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

43. Because the warnings on the Subject Products are inadequate and defective, parents will continue to give children the Subject Products or allow children to have access to the Subject Products.

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

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

46. 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 product and are often 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.

47. 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.

48. 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 products will have no exposure to any warnings prior to using the Subject Products. These uses can and do result in injury.

49. All warnings displayed on the carrying cases are inadequate and defective because consumers are unlikely to disassemble configurations made with the Subject Products after each use, 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.

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

51. In 2009, Respondent advertised Buckyballs as, *inter alia*, a "toy" and as an "amazing magnetic toy." The advertisement encouraged consumers to use them for games, use

them to hold items to a refrigerator, and "[w]ear them as jewelry," stating "the fun never ends with Buckyballs." In small print, the advertisement cautioned that the products not be "given to a [sic] children age 12 or below."

52. Upon information and belief, a video appearing in Respondent's 2009 advertisement shows a consumer using Buckyballs magnets to simulate a tongue piercing.

53. Upon information and belief, Respondent advertised and marketed Buckyballs by comparing its appeal to that of other children's products such as Erector sets, Hula Hoops, the Slinky, and Silly Putty.

54. Upon information and belief, some internet retailers that sell the Subject Products do not display any age recommendations, or promote erroneous age recommendations on their websites.

55. Upon information and belief, despite making no significant design or other physical changes to Buckyballs since their introduction in 2009, Respondent attempted to subsequently rebrand Buckyballs as, *inter alia,* an adult "executive" desk toy and/or stress reliever, among other things, and Respondents marketed and advertised it as such.

56. The advertising and marketing of the Subject Products conflict with the claimed 14+ age grade label on Subject Products.

57. Because the advertising and marketing of the Subject Products conflict with the age label, the effectiveness of the age label is diminished.

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

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

60. No warnings or instructions could be devised that would effectively communicate the hazard in a way that would be understood and heeded by consumers and would reduce the incidences of magnet ingestions.

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

The Subject Products Are Defective Because the Risk of Injury Occurs as a Result of their Operation and Use and the Failure of the Subject Products to Operate as Intended

62. A design defect can be present if the risk of injury occurs as a result of the operation or use of the product or a failure of the product to operate as intended. 16 C.F.R. § 1115.4.

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

64. Upon information and belief, certain of 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 are currently used by, both children and adults.

65. 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.

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

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

68. Upon information and belief, Respondent contends that the Subject Products are "desktoys" or manipulatives that provides stress relief and other benefits to adults only.

69. The Subject Products are intensely appealing to children due to their tactile features, their small size, and their highly reflective, shiny metallic coatings.

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

71. 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.

72. Upon information and belief, Respondent's independent tester reported that the "appropriate age grade" for Buckyballs is "over 8 years of age."

73. Despite the Respondent's current age label and intended use of the Subject Products, they do not operate as intended because they are intensely appealing to and are often played with by children.

74. The 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 Subject Products.

The Type of the Risk of Injury Renders the Subject Products Defective

75. The risk of injury associated with a product may render the product defective. 16 C.F.R. § 1115.4.

76. Upon information and belief, the Subject Products have low utility to consumers.

77. Upon information and belief, the Subject Products are not necessary to consumers.

78. 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.

79. Children, a vulnerable population protected by the CPSA, are exposed to risk of injury by the Subject Products.

80. The risk of injury associated with the ingestion of the Subject Products is neither obvious nor intuitive.

81. Warnings and instructions cannot adequately mitigate the risk of injury associated with ingesting the Subject Products.

82. Children mouthing and ingesting the Subject Products is foreseeable.

83. Respondent promoted the use of the Subject Products to mimic tongue piercings. Such use by children is foreseeable.

84. The type of the risk of injury renders the Subject Products defective.

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

85. 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.

86. 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.

87. 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.

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

89. 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, thereby delaying potentially critical treatment.

90. 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.

91. 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.

92. 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.

93. 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.

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

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

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

97. 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 Substantial Product Hazards Under Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1)

98. Paragraphs 1 through 97 are hereby realleged and incorporated by reference as though fully set forth herein.

99. 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 963-08, *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").

100. Upon information and belief, Respondent's independent tester reported that the "appropriate age grade" for Buckyballs is "over 8 years of age."

101. 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.

102. 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."

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

104. 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.

105. On May 27, 2010, the Commission, in cooperation with Respondent, and in conjunction with corrective action, announced that Buckyballs failed to comply with the Toy Standard because they were sold for children under the age of 14.

106. 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.

107. 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 substantial product hazards 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 Respondents under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c) to:

(1) Cease importation and distribution of the product;

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

(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 (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 18 day of September 2012

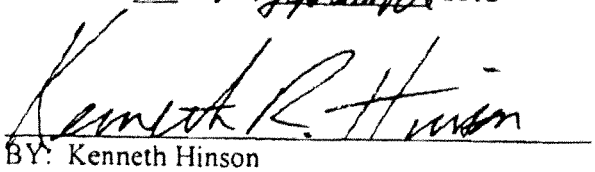

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Exhibit C

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
MAXFIELD AND OBERTON HOLDINGS, LLC AND ZEN MAGNETS, LLC	)	CPSC DOCKET NO. 12-1 CPSC DOCKET NO. 12-2
	)	HON. DEAN C. METRY Administrative Law Judge
Respondent.	)	

RESPONDENT MAXFIELD AND OBERTON HOLDINGS, LLC'S ANSWER TO AMENDED COMPLAINT

Respondent Maxfield and Oberton Holdings, LLC ("Maxfield and Oberton"), by counsel, hereby files this Answer and responds to the allegations in the Consumer Product Safety Commission's ("CPSC") Amended Complaint as follows:

FIRST DEFENSE

In response to the separately numbered paragraphs of the CPSC's Amended Complaint, Maxfield and Oberton responds as follows:

1. In response to the allegations in paragraph 1, Maxfield and Oberton admits that it imports and distributes Buckyballs® and Buckycubes®, but denies the remaining allegations in this paragraph and specifically denies that either Buckyballs® or Buckycubes® presents a substantial risk of injury. The allegations relating to 15 U.S.C. § 2064 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations relating to 15 U.S.C. § 2064.

2. The allegations in paragraph 2 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations in paragraph 2.

3. The allegations in paragraph 3 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations in paragraph 3.

4. The allegations in paragraph 4 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations in paragraph 4.

5. Maxfield and Oberton admits the allegations in paragraph 5.

6. Maxfield and Oberton admits the allegations in paragraph 6.

7. The allegations in paragraph 7 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations in paragraph 7.

8. In response to the allegations in paragraph 8, Maxfield and Oberton admits that it offers Buckyballs® and Buckycubes® for sale to consumers for their personal use. Maxfield and Oberton denies that it offers Buckyballs® or Buckycubes® for sale to consumers for use in or around "schools" or "in recreation," or for any other purpose, to the extent such allegations are intended to describe any entity or activity involving persons under 14 years of age. Maxfield and Oberton further responds that Buckyballs® and Buckycubes® each display multiple, conspicuous warnings that specifically state that they should be kept away from all children. In response to the allegations in the second sentence of paragraph 8, Maxfield and Oberton admits that Buckyballs® and Buckycubes® have a flux index of over 50.

9. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and therefore denies those allegations.

10. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and therefore denies those allegations.

11. Maxfield and Oberton admits the allegations in paragraph 11.

12. Maxfield and Oberton admits the allegations in paragraph 12.

13. Maxfield and Oberton admits the allegations in paragraph 13.

14. In response to the allegations in paragraph 14, Maxfield and Oberton admits that Buckyballs® and Buckycubes®, including replacement sets, are sold with a carrying case. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 and therefore denies those allegations.

15. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and therefore denies those allegations. Maxfield and Oberton further responds that as of July 2012, Maxfield and Oberton had sold more than 2.57 million packaged units of Buckyballs® to retailers for resale to consumers and online.

16. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and therefore denies those allegations. Maxfield and Oberton further responds that as of July 2012, Maxfield and Oberton had sold more than 290,000 packaged units of Buckycubes® to retailers for resale to consumers and online.

COUNT 1

17. In response to the allegations in paragraph 17, Maxfield and Oberton hereby incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 through 16 of the Amended Complaint.

18. The allegations in paragraph 18 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations. Maxfield and Oberton further responds that 16 C.F.R. Part 1115 is a non-binding Commission interpretative rule.

19. The allegations in paragraph 19 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations. Maxfield and Oberton further responds that 16 C.F.R. Part 1115 is a non-binding Commission interpretative rule.

20. Maxfield and Oberton admits the allegations in paragraph 20.

21. Maxfield and Oberton denies the allegations in paragraph 21.

22. Maxfield and Oberton admits the allegations in paragraph 22.

23. In response to the allegations in paragraph 23, Maxfield and Oberton admits that in March 2010, at the request of the CPSC staff, it voluntarily changed its packaging, warnings, instructions and labeling to reflect that Buckyballs® are not intended for persons under 14 years of age, and later conducted a recall, in conjunction with the CPSC, of Buckyballs® that had been labeled as 13+.

24. Maxfield and Oberton admits the allegations in paragraph 24.

25. In response to the allegations in paragraph 25, Maxfield and Oberton admits that at the time of the recall it was aware of two reported incidents alleged to involve ingestions of Buckyballs®.

26. In response to the allegations in paragraph 26, Maxfield and Oberton admits that in March 2010, at the request of the CPSC staff, it voluntarily changed its packaging, warnings, instructions and labeling to reflect that Buckyballs® are not intended for persons under 14 years of age. Maxfield and Oberton denies the remaining allegations in paragraph 26.

27. Maxfield and Oberton admits the allegations in paragraph 27.

28. Maxfield and Oberton admits the allegations in paragraph 28.

29. In response to the allegations in paragraph 29, it is unclear what "these warnings" refers to and, therefore, Maxfield and Oberton denies the allegations in paragraph 29. Maxfield and Oberton further responds that multiple warnings appear on the packaging and carrying case for all Buckyballs® currently sold.

30. Maxfield and Oberton admits the allegations in paragraph 30.

31. In response to the allegations in paragraph 31, Maxfield and Oberton admits that Buckyballs® were first sold in 2009, but denies that "numerous" ingestion incidents involving Buckyballs® and children under the age of 14 have occurred.

32. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and therefore denies those allegations.

33. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and therefore denies those allegations.

34. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 and therefore denies those allegations.

35. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 and therefore denies those allegations.

36. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 and therefore denies those allegations. Maxfield and Oberton further responds that the allegations are vague and ambiguous as they do not specify any particular product.

37. In response to the allegations in paragraph 37, Maxfield and Oberton admits that the CPSC issued a public safety alert in November 2011, the contents of which speak for itself. Maxfield and Oberton further responds that it worked cooperatively with the CPSC regarding such public safety education effort.

38. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and therefore denies those allegations. Maxfield and Oberton further responds that the allegations are vague and ambiguous as they do not specify any particular product.

39. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and therefore denies those allegations.

40. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and therefore denies those allegations. Maxfield and Oberton further responds that the allegations with respect to unidentified "products" and "substantially similar to Buckyballs" are vague and ambiguous.

41. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and therefore denies those allegations.

42. Maxfield and Oberton denies the allegations in paragraph 42.

43. Maxfield and Oberton denies the allegations in paragraph 43.

44. Maxfield and Oberton denies the allegations in paragraph 44.

45. Maxfield and Oberton denies the allegations in paragraph 45.

46. Maxfield and Oberton denies the allegations in paragraph 46.

47. In response to the allegations in paragraph 47, Maxfield and Oberton admits only that it is not feasible to attach a warning to each individual magnet, but denies the remaining allegations in paragraph 47.

48. Maxfield and Oberton denies the allegations in paragraph 48.

49. Maxfield and Oberton denies the allegations in paragraph 49.

50. Maxfield and Oberton denies the allegations in paragraph 50.

51. In response to the allegations in paragraph 51, Maxfield and Oberton states that the advertisement speaks for itself and therefore denies the allegations as stated. Maxfield and Oberton further denies that Buckyballs® were advertised and marketed to appeal to children.

52. In response to the allegations in paragraph 52, Maxfield and Oberton states that the video speaks for itself and therefore denies the allegations as stated.

53. Maxfield and Oberton denies the allegations in paragraph 53.

54. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 and therefore denies those allegations.

55. In response to the allegations in paragraph 55, Maxfield and Oberton admits that it has marketed and advertised Buckyballs® as an adult executive desk toy and/or stress reliever, but denies the remaining allegations in paragraph 55.

56. Maxfield and Oberton denies the allegations in paragraph 56.

57. Maxfield and Oberton denies the allegations in paragraph 57.

58. Maxfield and Oberton denies the allegations in paragraph 58.

59. Maxfield and Oberton denies the allegations in paragraph 59.

60. Maxfield and Oberton denies the allegations in paragraph 60.

61. Maxfield and Oberton denies the allegations in paragraph 61.

62. The allegations in paragraph 62 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations. Maxfield and Oberton further responds that 16 C.F.R. Part 1115 is a non-binding Commission interpretative rule.

63. Maxfield and Oberton denies the allegations in paragraph 63.

64. Maxfield and Oberton admits it advertises and markets the Subject Products to and for use by adults, but denies that it advertises and markets the products to or for use by children. Maxfield and Oberton further responds that to the extent the Subject Products are used by children, for whom the products are not intended, such use is solely as a result of parents or caregivers ignoring the multiple, conspicuous warnings accompanying the Subject Products and making the products available or accessible to such children.

65. Maxfield and Oberton denies the allegations in paragraph 65 as stated. Maxfield and Oberton further responds that any risk of injury the Subject Products may pose to children is solely the result of parents and caregivers ignoring the multiple, conspicuous warnings accompanying the Subject Products, which are not intended for children, and making them available or accessible to such children.

66. Maxfield and Oberton denies the allegations in paragraph 66.

67. Maxfield and Oberton denies the allegations in paragraph 67.

68. Maxfield and Oberton admits the allegations in paragraph 68.

69. Maxfield and Oberton denies the allegations in paragraph 69.

70. Maxfield and Oberton denies the allegations in paragraph 70.

71. Maxfield and Oberton denies the allegations in paragraph 71.

72. In response to the allegations in paragraph 72, Maxfield and Oberton admits that its independent tester designated an "appropriate age grade" as "over 8 years of age" for testing purposes, but further responds that this age designation was based solely on the tester's assumption that the product, then labeled for ages 13+, fell within the exemption in ASTM F963 Section 5.17 as a hobby, craft or science kit item.

73. Maxfield and Oberton denies the allegations in paragraph 73.

74. In response to the allegations in paragraph 74, Maxfield and Oberton denies that the Subject Products are defective. Maxfield and Oberton further responds that any risk of injury the Subject Products may pose to children is the result solely of parents and caregivers ignoring the multiple, conspicuous warnings accompanying the Subject Products, which are not intended for children, and making them available or accessible to such children.

75. The allegations in paragraph 75 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Maxfield and Oberton denies the allegations. Maxfield and Oberton further responds that 16 C.F.R. Part 1115 is a non-binding Commission interpretative rule.

76. Maxfield and Oberton denies the allegations in paragraph 76. Maxfield and Oberton further responds that the allegation that the Subject Products have "low utility" is vague and ambiguous.

77. Maxfield and Oberton denies the allegations in paragraph 77. Maxfield and Oberton further responds that the allegation that the Subject Products are "not necessary" is vague and ambiguous.

78. Maxfield and Oberton denies the allegations in paragraph 78.

79. Maxfield and Oberton denies the allegations in paragraph 79. Maxfield and Oberton further responds that any risk of injury the Subject Products may pose to children is the result solely of parents and caregivers ignoring the multiple, conspicuous warnings accompanying the Subject Products, which are not intended for children, and making them available or accessible to such children.

80. Maxfield and Oberton denies the allegations in paragraph 80. Maxfield and Oberton further responds that the risk of injury is clearly and conspicuously explained in warnings accompanying the Subject Products, warnings to which the CPSC agreed and which are consistent with established voluntary and mandatory warnings for magnet products.

81. Maxfield and Oberton denies the allegations in paragraph 81.

82. Maxfield and Oberton denies the allegations in paragraph 82.

83. Maxfield and Oberton denies the allegations in paragraph 83. Maxfield and Oberton further responds that it never promoted any use of the Subject Products by children.

84. Maxfield and Oberton denies the allegations in paragraph 84.

85. Maxfield and Oberton denies the allegations in paragraph 85.

86. Maxfield and Oberton denies the allegations in paragraph 86.

87. Maxfield and Oberton denies the allegations in paragraph 87. The allegations do not reference any particular incident, but rather appear to be a speculative list of the potential harms that could occur if multiple magnets are swallowed. Buckyballs® and Buckycubes® are

each sold with multiple, conspicuous warnings which state, *inter alia*, that they should not be put in the mouth or nose, that immediate medical attention should be sought if the magnets are swallowed or inhaled, and that swallowed magnets can cause serious injury or death. Thus, the allegations in this paragraph are based on the supposition that the multiple, conspicuous warnings accompanying Buckyballs® and Buckycubes® will be ignored and the products will be misused. Numerous products can potentially cause injury if product warnings are ignored and the product is misused.

88. Maxfield and Oberton denies the allegations in paragraph 88. The allegations do not reference any particular incident, but rather appear to be a speculative description of the potential harms that could occur if multiple magnets are swallowed.

89. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 89 and therefore denies those allegations. More specifically, Maxfield and Oberton cannot speculate as to what caretakers, parents, and medical professionals may or may not know or the health risks that may or may not occur in any particular case as a result of delay in medical intervention.

90. Maxfield and Oberton is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 90 and therefore denies those allegations. More specifically, Maxfield and Oberton cannot speculate as to what medical professionals may or may not know or the health risks that may or may not occur in any particular case as the result of a medical professional's lack of awareness or delay in medical intervention.

91. Maxfield and Oberton denies the allegations in paragraph 91. The allegations do not reference any particular incident, but rather appear to be a speculative list of the potential harms that could occur if multiple magnets are swallowed. Buckyballs® and Buckycubes® are

each sold with multiple, conspicuous warnings which state, *inter alia*, that they should not be put in the mouth or nose, that immediate medical attention should be sought if the magnets are swallowed or inhaled, and that swallowed magnets can cause serious injury or death. Thus, the allegations in this paragraph are based on the supposition that the multiple, conspicuous warnings accompanying Buckyballs® and Buckycubes® will be ignored and the products will be misused. Numerous products can potentially cause injury if product warnings are ignored and the product is misused.

92. Maxfield and Oberton denies the allegations in paragraph 92. The allegations do not reference any particular incident, but rather appear to be a speculative description of the potential harms that could occur if multiple magnets are swallowed.

93. Maxfield and Oberton denies the allegations in paragraph 93. The allegations do not reference any particular incident, but rather appear to be a speculative list of the potential harms that could occur if multiple magnets are swallowed.

94. Maxfield and Oberton denies the allegations in paragraph 94.

95. Maxfield and Oberton denies the allegations in paragraph 95.

96. Maxfield and Oberton denies the allegations in paragraph 96.

97. Maxfield and Oberton denies the allegations in paragraph 97.

COUNT 2

98. In response to the allegations in paragraph 98, Maxfield and Oberton hereby incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 through 97 of the Amended Complaint.

99. Maxfield and Oberton denies the allegations in paragraph 99.

100. In response to the allegations in paragraph 100, Maxfield and Oberton admits that its independent tester designated an "appropriate age grade" as "over 8 years of age" for testing purposes, but further responds that this age designation was based solely on the tester's assumption that the product, then labeled for ages 13+, fell within the exemption in ASTM F963 Section 5.17 as a hobby, craft or science kit item.

101. Maxfield and Oberton denies the allegations in paragraph 101.

102. The allegations in paragraph 102 state a legal conclusion to which no response is required. To the extent that a response is deemed to be required, Maxfield and Oberton denies the allegations in paragraph 102.

103. The allegations in paragraph 103 state a legal conclusion to which no response is required. To the extent that a response is deemed to be required, Maxfield and Oberton denies the allegations in paragraph 103.

104. Maxfield and Oberton denies the allegations in paragraph 104.

105. In response to the allegations in paragraph 105, Maxfield and Oberton states that the May 27, 2010 announcement speaks for itself and therefore denies the allegations as stated.

106. Maxfield and Oberton denies the allegations in paragraph 106.

107. Maxfield and Oberton denies the allegations in paragraph 107.

108. Maxfield and Oberton denies the allegations in the unnumbered paragraph immediately following paragraph 107, and denies that the CPSC is entitled to any of the relief sought.

109. Maxfield and Oberton denies all allegations in the Amended Complaint that are not expressly admitted, denied, or otherwise responded to.

SECOND DEFENSE

The allegations in the Amended Complaint fail to establish that either Buckyballs® or Buckycubes® contains any defect or constitutes a substantial product hazard within the meaning of Section 15(a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2064(a)(2)). More specifically, there is no fault, flaw, or irregularity that causes weakness, failure or inadequacy in the form or function of either Buckyballs® or Buckycubes®, nor is there any inadequacy or flaw in the contents, construction, finish, packaging, warnings or instructions of either Buckyballs® or Buckycubes®. Moreover, neither Buckyballs® nor Buckycubes® creates a substantial risk of injury to the public.

THIRD DEFENSE

There is no applicable rule, regulation, standard or ban with which either Buckyballs® or Buckycubes® fails to comply.

FOURTH DEFENSE

The Amended Complaint is arbitrary and capricious as it is not based on any reasonable assessment of risk and is facially inconsistent with the CPSC's own mandatory standards.

FIFTH DEFENSE

The CPSC has contributed to the alleged incidence of magnet ingestion and the alleged ineffectiveness of warnings by knowingly and repeatedly failing to take timely remedial action against major retailers that the CPSC staff knew were advertising, marketing, and offering for sale high-powered magnet sets, including those of Maxfield and Oberton, as appropriate for children under the age of 14.

SIXTH DEFENSE

Upon information and belief, the CPSC staff did not fairly and adequately consider, and the Commissioners may not have been made fully aware of, a comprehensive voluntary corrective action plan which Maxfield and Oberton submitted, at the request of the CPSC staff, the day immediately preceding the CPSC staff's filing of its original Complaint. Maxfield and Oberton further asserts that the CPSC staff subsequently included elements of Maxfield and Oberton's voluntary corrective action plan in the CPSC staff's Notice of Proposed Rulemaking for a Safety Standard for Magnet Sets, dated August 8, 2012. The CPSC staff's proposal recommended issuance of a proposed rule seeking public comments on, *inter alia*, measures that are the same as or substantially similar to measures in the Maxfield and Oberton proposed corrective action plan, notwithstanding the CPSC staff's issuance of an administrative complaint on July 25, 2012, alleging that the Maxfield and Oberton proposed voluntary corrective action measures are ineffective.

SEVENTH DEFENSE

The May 27, 2010 joint recall by Maxfield and Oberton and the CPSC, which the CPSC initiated, participated in, oversaw, and monitored, constituted the full relief which the CPSC sought with respect to the Buckyballs® product which the CPSC at that time alleged was a violation of the ASTM F963 toy standard because of its labeling for children age 13+. From that date until the date of the CPSC's filing of its Amended Complaint, the CPSC has never alleged that Buckyballs® or Buckycubes® have been or are subject to the ASTM F963 toy standard.

EIGHTH DEENSE

The CPSC's allegation that the Subject Products as currently advertised and marketed violate the ASTM F963 toy standard, as incorporated as a CPSC mandatory safety standard, is

directly contrary to numerous written communications by the CPSC's General Counsel, the agency's chief legal officer, to Maxfield and Oberton and various retailers, both before and after the CPSC issued its original complaint herein, expressly representing that the sale of the Subject Products was lawful and not in violation of any law administered by the CPSC.

NINTH DEFENSE

The CPSC's allegation that the Subject Products as currently advertised and marketed violate the ASTM F963 toy standard, as incorporated as a CPSC mandatory safety standard, is directly contrary to representations made by the Commission to the public in connection with a notice of proposed rulemaking with respect to adult magnet sets, including the Subject Products, in which the CPSC has expressly represented that such products, including but not limited to the Subject Products, are adult products not subject to ASTM F963.

WHEREFORE, Maxfield and Oberton respectfully requests that the Amended Complaint be dismissed.

Dated: December 10, 2012

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2012, a true and correct copy of the foregoing Respondent Maxfield and Oberton Holdings, LLC's Answer to Amended Complaint was served via first class, postage prepaid, U.S. Mail, on:

Hon. Dean C. Metry
Administrative Law Judge
U.S. Coast Guard
U.S. Courthouse
601 25th Street, Suite 508A
Galveston, Texas 77550

Mary B. Murphy, Assistant General Counsel
Jennifer Argabright, Trial Attorney
Division of Compliance, Office of General Counsel
U.S. Consumer Product Safety Commission
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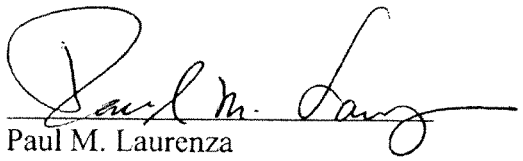

Paul M. Laurenza