





United States Government  
 Interagency Agreement (IAA) – Agreement Between Federal Agencies  
 General Terms and Conditions (GT&C) Section

IAA Number CPSC-I-15-0004 - 0000 -  
 GT&C #                      Order # Amendment/Mod #

**13. Restrictions (Optional)** (State and/or attach unique requirements and/or mission specific restrictions specific to this IAA).

See Attachment B.

**14. Assisted Acquisition Small Business Credit Clause** (The Servicing Agency will allocate the socio-economic credit to the Requesting Agency for any contract actions it has executed on behalf of the Requesting Agency.)

**15. Disputes:** Disputes related to this IAA shall be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 10; Intragovernmental Business Rules.

**16. Termination** (Insert the number of days that this IAA may be terminated by written notice by either the Requesting or Servicing Agency.)

30

If this agreement is canceled, any implementing contract/order may also be canceled. If the IAA is terminated, the agencies shall agree to the terms of the termination, including costs attributable to each party and the disposition of awarded and pending actions.

If the Servicing Agency incurs costs due to the Requesting Agency's failure to give the requisite notice of its intent to terminate the IAA, the Requesting Agency shall pay any actual costs incurred by the Servicing Agency as a result of the delay in notification, provided such costs are directly attributable to the failure to give notice.

**17. Assisted Acquisition Agreements – Requesting Agency's Organizations Authorized To Request Acquisition Assistance for this IAA.** (State or attach a list of Requesting Agency's organizations authorized to request acquisition assistance for this IAA.)

**18. Assisted Acquisition Agreements – Servicing Agency's Organizations authorized to Provide Acquisition Assistance for this IAA.** (State or attach a list of Servicing Agency's organizations authorized to provide acquisition for this IAA.)

**19. Requesting Agency Clause(s) (Optional)** (State and/or attach any additional Requesting Agency clauses.)

**Amendments and Review:** This Agreement may be amended in writing at any time by mutual consent of the parties. The parties may elect to conduct an audit on an annual basis.

**Other Provisions:** Nothing herein is intended to conflict with current law, rules or regulations. If the terms of this Agreement are inconsistent with any of the above rules or regulations, then those portions of this Agreement which are determined to be inconsistent shall be invalid. However, the remaining terms and conditions of this Agreement not affected by the inconsistency shall remain in full force and effect. Nothing in the Agreement shall be construed to indemnify either party on behalf of the other absent expressed written language and specific statutory authorization.

United States Government  
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20. Servicing Agency Clause(s) (Optional) (State and/or attach any additional Servicing Agency clauses.)

21. Additional Requesting Agency and/or Servicing Agency Attachments (Optional) (State and/or attach any additional Requesting Agency and/or Servicing Agency attachments.)

22. Annual Review of IAA

By signing this agreement, the parties agree to annually review the IAA if the agreement period exceeds one year. Appropriate changes will be made by amendment to the GT&C and/or modification to any affected Order(s).

**AGENCY OFFICIAL**

The Agency Official is the highest level accepting authority or official as designated by the Requesting Agency and Servicing Agency to sign this agreement. Each Agency Official must ensure that the general terms and conditions are properly defined, including the stated statutory authorities, and, that the scope of work can be fulfilled per the agreement.

The Agreement Period Start Date (Block 5) must be the same as or later than the signature dates.

Actual work for this IAA may NOT begin until an Order has been signed by the appropriate individuals, as stated in the Instructions for Blocks 37 and 38.

23.	Requesting Agency	Servicing Agency
Name	Donna Hutton	Megan H. Allison
Title	Contracting Officer	Director of Judicial Administration
Telephone Number(s)	(301) 504-7009	(202) 372-4440
Fax Number	(987) 244-8640	(202) 372-8304
Email Address	dhutton@cpsc.gov	megan.h.allison@uscg.mil
SIGNATURE		
Approval Date		

**United States Government  
Interagency Agreement (IAA) – Agreement Between Federal Agencies  
Order Requirements and Funding Information (Order) Section**

IAA Number CPSC-I-15-0004 - \_\_\_\_\_ - \_\_\_\_\_      Servicing Agency's Agreement  
 GT&C #                              Order #      Amendment/Mod #      Tracking Number (Optional) \_\_\_\_\_

**PRIMARY ORGANIZATION/OFFICE INFORMATION**

<b>24.</b>	<b>Requesting Agency</b>	<b>Servicing Agency</b>
Primary Organization/Office Name	Consumer Product Safety Commission Office of General Counsel	USCG, Administrative Law Judge (ALJ) Program
Responsible Organization/Office Address	Todd Stevenson 4330 East-West Highway, Bethesda, MD	2703 Martin Luther King Jr Ave SE Washington DC, 20593-7000

**ORDER/REQUIREMENTS INFORMATION**

**25. Order Action (Check One)**

**New**

**Modification (Mod)** – List affected Order blocks being changed and explains the changes being made. For Example: for a performance period mod, state new performance period for this Order in Block 27. **Fill out the Funding Modification Summary by Line (Block 26) if the mod involves adding, deleting or changing Funding for an Order Line.**

**Cancellation** – Provide a brief explanation for Order cancellation and fill in the Performance Period End Date for the effective cancellation date.

<b>26. Funding Modification Summary by Line</b>	Line # _____	Line # _____	Line # _____	Total of All Other Lines (attach funding details)	Total
Original Line Funding	\$ 15,000.00	\$	\$	\$	\$15,000.00
Cumulative Funding Changes From Prior Mods [addition (+) or reduction (-)]	\$	\$	\$	\$	\$ 0.00
Funding Change for This Mod	\$	\$	\$	\$	\$ 0.00
<b>TOTAL Modified Obligation</b>	<b>\$ 15,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$15,000.00</b>
Total Advance Amount (-)	\$	\$	\$	\$	\$ 0.00
<b>Net Modified Amount Due</b>	<b>\$ 15,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$15,000.00</b>

**27. Performance Period**                      Start Date      10-01-2014                      End Date      09-30-2015  
 For a performance period mod, insert the start and end dates that reflect the new performance period.                      MM-DD-YYYY                      MM-DD-YYYY

**IAA Order**

IAA Number CPSC-I-15-0004 - \_\_\_\_\_ - \_\_\_\_\_      Servicing Agency's Agreement  
 GT&C #                                      Order #      Amendment/Mod #      Tracking Number (Optional) \_\_\_\_\_

<b>28. Order Line/Funding Information</b>										Line Number _____							
					<b>Requesting Agency Funding Information</b>					<b>Servicing Agency Funding Information</b>							
ALC		61000001															
Component TAS Required by 10/1/2014	SP	ATA	AID	BPOA	EPOA	A	MAIN	SUB	SP	ATA	AID	BPOA	E POA	A	MAIN	SUB	
OR Current TAS format		TAS: 61-0100															
BETC		DISB															
Object Class Code (Optional)		US TREASURY CODE: 61150100															
BPN		TIN: 520978750															
BPN + 4 (Optional)		DUNS: 069287522															
Additional Accounting Classification/Information (Optional)		0100A15DSE 2015 525810000 GC00001320 252H0 - \$15,000 Subject to Availability of Funds															
Requesting Agency Funding Expiration Date 09-30-2015 MM-DD-YYYY									Requesting Agency Funding Cancellation Date 09-30-2020 MM-DD-YYYY								
<b>Project Number &amp; Title</b>																	
<p><b>Description of Products and/or Services, including the Bona Fide Need for this Order (State or attach a description of products/services, including the bona fide need for this Order.)</b></p> <p>CPSC utilizes the services of the U.S. Coast Guard Office of Administrative Law Judge to perform adjudicatory and case management functions with respect to administrative proceedings pursuant to 15 U.S.C. 2064(c) and the CPSC's Rules of Practice for Adjudicative Proceedings pursuant to 16 C.F.R. Part 1025. The U.S. Coast Guard Office of Administrative Law Judge will process, manage, and adjudicate certain CPSC administrative proceedings referred, including those carried forward from the previous Fiscal Year.</p>																	
North American Industry Classification System (NAICS) Number (Optional) _____																	
<b>Breakdown of Reimbursable Line Costs</b>									<b>OR Breakdown of Assisted Acquisition Line Cost:</b>								
Unit of Measure								Contract Cost		\$							
Quantity		Unit Price		Total				Servicing Fees		\$							
				\$ 0.00				Total Obligated Cost		\$ 0.00							
Overhead Fees & Charges		\$						Advance for Line (-)		\$							
Total Line Amount Obligated		\$ 0.00						Net Total Cost		\$ 0.00							
Advance Line Amount (-)		\$						Assisted Acquisition Servicing Fees Explanation									
Net Line Amount Due		\$ 0.00															
<b>Type of Service Requirements</b>																	
<input checked="" type="checkbox"/> Severable Service <input type="checkbox"/> Non-severable Service <input type="checkbox"/> Not Applicable																	



**IAA Order**

IAA Number CPSC-I-15-0004 -                      -                           Servicing Agency's Agreement  
 GT&C #                      Order #      Amendment/Mod #      Tracking Number (Optional)                     

**35. Funding Clauses/Instructions (Optional) (State and/or list funding clauses/instructions.)**

**36. Delivery/Shipping Information for Products (Optional)**

Agency Name	
Point of Contact (POC) Name & Title	
POC Email Address	
Delivery Address /Room Number	
POC Telephone Number	
Special Shipping Information	

**APPROVALS AND CONTACT INFORMATION**

**37. PROGRAM OFFICIALS**

The Program Officials, as identified by the Requesting Agency and Servicing Agency, must ensure that the scope of work is properly defined and can be fulfilled for this Order. The Program Official may or may not be the Contracting Officer depending on each agency's IAA business process.

	Requesting Agency	Servicing Agency
Name	Todd Stevenson	John C. Johns
Title	Secretary	Managing Attorney Adviser
Telephone Number	(301) 504-6836	(410) 962-7434
Fax Number	(301) 504-0127	(410) 962-1742
Email Address	tstevenson@cpsc.gov	John.C.Johns@uscg.mil
SIGNATURE	tstevenson@cpsc.gov <small>Digitally signed by tstevenson@cpsc.gov DN: cn=tstevenson@cpsc.gov Date: 2014.09.25 11:46:31 -0400</small>	
Date Signed		

**38. FUNDING OFFICIALS** - The Funds Approving Officials, as identified by the Requesting Agency and Servicing Agency, certify that the funds are accurately cited and can be properly accounted for per the purposes set forth in the Order. The Requesting Agency Funding Official signs to obligate funds. The Servicing Agency Funding Official signs to start the work, and to bill, collect, and properly account for funds from the Requesting Agency, in accordance with the agreement.

	Requesting Agency	Servicing Agency
Name	James Baker	John C. Johns
Title	Budget Officer	Allowance Fund Control (AFC) Manager
Telephone Number	(301) 504-7575	(410) 962-7434
Fax Number		(410) 962-1742
Email Address	jbaker@cpsc.gov	John.C.Johns@uscg.mil
SIGNATURE		
Date Signed		



# Inter-Agency Agreement Number CPSC-I-15-0004

Between The

U.S. Consumer Product Safety Commission

And The

U.S. Coast Guard

I. Introduction:

The U.S. Consumer Product Safety Commission ("CPSC or Commission") requires the services of an Administrative Law Judge ("ALJ") to serve as the presiding officer in an adjudicatory proceeding under the Consumer Product Safety Act. These proceedings, entitled *In the Matter of ZEN Magnets, LLC, CPSC Docket No. 12-2* were initiated on August 6, 2012, with the issuance of a Complaint authorized by the Commission and signed by the Executive Director for the Commission (**Attachment 1**).

II. Subject: SERVICES OF AN ADMINISTRATIVE LAW JUDGE

III. Background Information:

In an adjudicatory proceeding, because the Commission does not have an Administrative Law Judge in its employ, the Commission requested the Office of Administrative Law Judges in the U.S. Office of Personnel Management (OPM) to assign an ALJ to the Commission to conduct the proceeding. For CPSC Docket 12-2, OPM, with the consent of the loaning agency, the U.S. Coast Guard ("USCG"), has selected Mr. Dean Metry as the Administrative Law Judge to be on loan to CPSC on a temporary, intermittent, and reimbursable basis through September 30, 2015 (with possible extension if needed). (**Attachments 2 and 3**)

Statement of Work:

The U.S. Coast Guard and the U.S. Consumer Product Safety Commission hereby agree that USCG will provide the services of an Administrative Law Judge (ALJ) to serve as the presiding officer in an

adjudicatory proceeding under the Consumer Product Safety Act. The Administrative Law Judge will serve as the presiding officer in the adjudicatory proceeding entitled *In the Matter of ZEN Magnets, LLC, CPSC Docket No. 12-2*. The case will be conducted in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025. The ALJ will conduct hearings and entertain motions, make rulings and issue orders, and ultimately issue an Initial Decision on the allegations of the Complaint that initiated this matter, or the ALJ may accept and forward to the Commission a proposed Settlement Agreement should the parties determine ultimately to proceed in that manner.

It is expected that the ALJ will be assisted by the services of a secretary and general attorney at the USCG.

#### V. DELIVERABLE ITEMS/SCHEDULE

The Administrative Law Judge will:

1. Schedule and conduct hearings as required;
2. Prepare and issue orders on all motions and related matters as the ALJ deems appropriate; and
3. Transmit to the Commission the Initial Decision of the ALJ at the conclusion of the adjudication or transmit a proposed Settlement Agreement should the parties enter into agreement as the proposed means to settle this matter.

These deliverables will occur throughout the course of the adjudication and at its conclusion.

#### VI. PERIOD OF PERFORMANCE

The estimated period of performance is from October 1, 2014 through September 30, 2015, subject to possible extension of an additional six (6) to twelve (12) months in fiscal year 2016.

#### VII. Liaison Officers:

Todd A. Stevenson  
U.S. Consumer Product Safety Commission (CPSC)  
Division of the Secretariat, Office of the Secretary (GCOS)  
Office of the General Counsel (GC)  
4330 East West Highway – Room 820  
Bethesda, MD 20814  
301-504-6836 (voice)  
301-504-0127 (fax)  
[tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov)

Commandment (CG-00J)  
Attn: Chief Administrative Law Judge  
U.S. Coast Guard  
2100 Second Street, SW – Stop 7000  
Washington, DC 20593-7000  
202-372-4440

VIII. Estimated Reimbursable Costs:

CPSC will reimburse USCG for actual costs incurred. The estimated cost of the above described Administrative Law Judge services are:

200 hours of ALJ time @ ###.##/hr	=###,###.##
50 hours of secretary time @ ###.##/hr	=###,###.##
200 hours of general attorney time @ ###.##/hr	=###,###.##

Estimated costs for FY 2015 are \$15,000.00 and are obligated at this time. FY 2015 funds are contingent on availability of appropriated funds.

IX. Method of Payment:

- A. Reimbursement will be made within approximately 30 calendar days of the billing date by OPAC.
- B. Billing for all agreed-to-costs shall be chargeable to the following CPSC accounting and appropriation data:

0100A15DSE 2015 5258100000 GC00001320 252H0

- C. Requests for payment shall be sent to:

Ms. Debbie Young, Agency Payment Officer  
CPSC Accounts Payable Branch, AMZ-160  
PO Box 25710  
Oklahoma City, OK 73125  
405-954-7467

Inquiries regarding payment should be directed to the above-named payment officer. Problems related to the late payment of an invoice should be directed to:

Ms. Priscilla Susi, Prompt Payment Contact  
Division of Financial Management  
Consumer Product Safety Commission  
4330 East West Highway, Room 522  
Bethesda, MD 20814  
301-504-7566  
[psusi@cpsc.gov](mailto:psusi@cpsc.gov)

X. Items or Property to be furnished by CPSC

The Commission's Office of the Secretary ("OS") performs a "clerk of the court" function in this proceeding. This function includes receiving and maintaining filings by the parties, transmitting filings to the ALJ (by agency delivery shuttle and/or special courier if required), issuing Orders of the ALJ as requested, arranging for publication of notices in the *Federal Register* as directed by the ALJ, and arranging and paying for transcription services for hearings. The Commission's Hearing Room will be made available for hearings in this matter.

XI. Authorities:

Pursuant to the authority of the Federal Property and Administrations Services Act of 1949, 63 Stat. 377, as amended; 31 U.S.C. 1535, the Economy Act of 1932, as amended; and Section 27(g) of the Consumer Product Safety Act, as amended, 15 U.S.C. 2076(g); the USCG, and the CPSC hereby agree that USCG will provide the services of an ALJ to serve as the presiding officer in an adjudicatory proceeding under the Consumer Product Safety Act.

XII. Disagreements:

In the event that CPSC and the USCG have a disagreement arising under this interagency agreement, the parties shall cooperatively seek to resolve the disagreement by themselves. If the disagreement cannot be resolved between them, the parties agree to seek the assistance of a third party in resolving the disagreement.

XIII. FASA Compliance:

As the servicing agency, USCG agrees to act in full compliance with Section 1074 of the Federal Acquisition Streamlining Act (FASA) of 1994 entitled ECONOMY ACT PURCHASES.

APPROVED and ACCEPTED by:

U.S. Coast Guard

U.S. Consumer Product Safety Commission

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Donna Hutton

Title: \_\_\_\_\_

Title: Contracting Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_



### Parties

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

5. Upon information and belief, Zen is a Colorado corporation with its principal place of business located at 4155 E. Jewell Avenue, Suite 908, Denver, Colorado, 80222.

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

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

### The Consumer Product

8. The Subject Products are imported and distributed in U.S. commerce and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, and in recreation or otherwise. The Subject Products consist of small, individual magnets that are packaged as aggregated masses in containers of varying size. These containers hold anywhere from 72 to 1,728 small magnets. Each magnet ranges in size from approximately 5.03 mm, with a chrome coating, and a flux index of over 50.

9. Upon information and belief, the flux index of the Subject Products ranges from 577.1 to 581.4kg<sup>2</sup>mm.<sup>2</sup>

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

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

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

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

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

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

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

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

17. If two or more of the magnets are ingested and their magnetic forces pull them together, the magnets can pinch or trap the intestinal walls or other digestive tissue between

them resulting in acute and long-term health consequences. Magnets that attract through the walls of the intestines result in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation or fistula formation. Such conditions can lead to infection, sepsis, and death. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures. However, because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals may easily mistake these nonspecific symptoms for other common gastrointestinal upsets, and erroneously believe that medical treatment is not immediately required.

18. Medical professionals may not be aware of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring. A delay of surgical intervention due to the patient's presentation with nonspecific symptoms and/or a lack of awareness by medical personnel of the dangers posed by multiple magnet ingestion can exacerbate life-threatening internal injuries.

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

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

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

#### COUNT I

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

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

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

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

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

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

Warning: **DO NOT SWALLOW MAGNETS.** How old do you have to be to play with these? Dunno. 14 years old in the U.S. for a strong magnetic toy, unless it's not a toy, then no age limit, but they're fun magnets spheres, aren't they a toy? Unless it's a "science kit" then the government age recommendation is 8+. *But really, it's whatever age at which a person stops swallowing non-foods.*

27. The packaging also states:

Strong magnets can cause fatal intestinal pinching. Place swallowing magnets on your don't do list along with breathing water, drinking poison, and running into traffic. Call poison control if more than one is swallowed. And keep these away from kids (and pets) who don't understand these dangers. BTW, this is a "science kit" for sure.

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

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

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

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

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

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

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

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

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

## COUNT II

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

#### Injury

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

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

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

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

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

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

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

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

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

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

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

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

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

### COUNT III

#### The Subject Products Are a Substantial Product Hazard

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

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

51. Therefore, the Subject Products present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. §2064(a)(2), by reasons of the substantial risk of injury or death alleged in paragraphs 1 through 48 above.

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

Relief Sought

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

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

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to protect children adequately from the risks of injury presented by rare earth magnet products, and order Respondent under Section 15(c) of the CPSA, 15 U.S.C. §2064(c) to:

- (1) Cease importation and distribution of the Subject Products;
- (2) Notify all persons and entities that transport, store, distribute, or otherwise handle the Subject Products, or to whom such product has been transported, sold, distributed, or otherwise handled, to cease distribution of the product immediately;
- (3) Notify appropriate state and local public health officials;
- (4) Give prompt public notice of the defect in the Subject Products, including the incidents and injuries associated with ingestion or aspiration, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which Respondent has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice;
- (5) Mail notice to each distributor or retailer of the Subject Products; and
- (6) Mail notice to every individual to whom the person required to give notice knows

such product was delivered or sold.

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

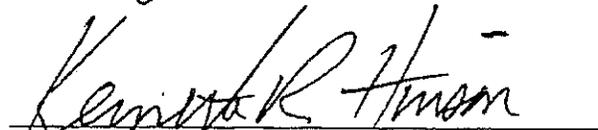
- (1) Refund consumers the purchase price of the Subject Products;
- (2) Make no charge to consumers and to reimburse consumers for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter, as provided by Section 15 U.S.C. § 2064(e)(1);
- (3) Reimburse retailers for expenses in connection with carrying out any Commission Order issued in this matter, including the costs of returns, refunds, and/or replacements, as provided by Section 15 U.S.C. § 2064(e)(2);
- (4) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (5) and C(1) through (3) above be taken in a timely manner;
- (5) To submit monthly reports, in a format satisfactory to the Commission, documenting the progress of the corrective action program;
- (6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (5) and C(1) through (4) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;
- (7) For a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its

business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter; and

D. Order that Respondent shall take other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

ISSUED BY ORDER OF THE COMMISSION:

Dated this 6 day of August, 2012



BY: Kenneth Hinson  
Executive Director

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

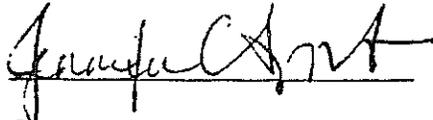
Mary Murphy, Assistant General Counsel  
Division of Compliance, Office of General Counsel  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814  
Tel: (301) 504-7809

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

**CERTIFICATE OF SERVICE**

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

Shihan Qu, Founder  
Zen Magnets, LLC  
4155 E. Jewell Avenue  
Suite 908  
Denver, CO 80222  
[shihanqu@gmail.com](mailto:shihanqu@gmail.com)



Complaint Counsel for  
U.S. Consumer Product Safety Commission

ATTACHMENT 2

United States Government  
Interagency Agreement (IAA) – Agreement Between Federal Agencies  
Order Requirements and Funding Information (Order) Section  
IAA Number \_\_\_\_\_  
FMS Form 7600A

Attachment A

No. 12, Roles & Responsibilities for the Requesting Agency and Servicing Agency

The U.S. Coast Guard Office of Administrative Law Judge (OALJ) will process, manage, and adjudicate certain CPSC administrative proceedings referred, including those carried forward from the previous Fiscal Year.

CPSC agrees to:

1. Forward hearing requests and associated necessary documents to the OALJ Hearing Docket Clerk at the U.S. Coast Guard, ALJ Docketing Center, 40 S. Gay Street, Baltimore, MD 21202;
2. Provide adequate copies upon request of prior ALJ decisions and appellate cases with indices thereto;
3. Inform the OALJ Hearing Docket Clerk or designee when administrative decisions are appealed to the CPSC decision-maker.

The Coast Guard OALJ represents that it is able to provide the requested services.

The Coast Guard OALJ agrees to:

1. Control and conduct each assigned case in accordance with CPSC procedural regulations or practice, including, 16 C.F.R. Part 1025;
2. Receive charging letters, discovery requests, orders, consent agreements, associated transmittal memoranda, and other documents forwarded by CPSC;
3. Enter the case information into a database system, maintain accurate paper files, and continuously track the status of cases;
4. Inform all parties that a Coast Guard ALJ will be presiding over these cases;
5. Issue notices of assignment once the case is filed or when respondent files its response to the CPSC charging instrument or when the filing deadline passes;
6. Forward the case files to the assigned ALJ for adjudication;
7. Render decision and service to the applicable parties;
8. Provide the quarterly billing statement;
9. Final Fiscal Year costs may be estimated and submitted prior to the end of each Fiscal Year ending September 30<sup>th</sup>. A final FY invoice will be submitted as necessary following the completion and closeout of each FY;

10. Certify and forward case files requested by CPSC in the event of an administrative or judicial appeal. In the event that no appeal has been filed, then close the record after the conclusion of the appeal period, or after settlement or dismissal, and forward the case to the Division of the Secretariat, Office of General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814;
11. Maintain a closed docket with respect to CPSC cases and refer requests by third parties for records or information pertaining to those cases to CPSC for further information and/or processing;
12. Ensure the Chief ALJ, ALJ, attorney support staff, law clerk, administrative support personnel, field legal assistants, and any contractors that may be required, have appropriate security clearances and procedures, as necessary on a case by case basis.

Both CPSC and Coast Guard ALJ agree to conduct quarterly meetings as deemed necessary to discuss issues and problems arising pursuant to case management and this Agreement.

United States Government  
Interagency Agreement (IAA) – Agreement Between Federal Agencies  
Order Requirements and Funding Information (Order) Section  
IAA Number \_\_\_\_\_  
FMS Form 7600A

Attachment B  
No. 13, Restrictions

The CPSC agrees to pay for the following reimbursable costs and service:

1. Personnel Costs. Actual time spent to include, Chief ALJ, ALJ, attorney support staff, law clerk, administrative support, and field legal assistants;
2. Travel Costs: Actual travel expenses relating to CPSC cases. Costs to be apportioned among the various Coast Guard ALJ docket and CPSC, where travel involves combined cases or authorized travel. Travel expenses will be paid in accordance with the Federal Travel Regulation;
3. Court Reporting. Court reporting will be reimbursed based on invoices filed by the court reporter;
4. Administrative Expenses. Costs associated with mail, overnight delivery services and office supplies used in CPSC cases will be billed. Also, while not anticipated, and only as required, any costs required to establish the necessary security related to controls to hear CPSC cases;
5. Supplemental Contract Support. While not anticipated, CPSC shall reimburse the Coast Guard OALJ for supplemental contract support as needed. All contractual support shall be agreed upon by written addendum to this Agreement.

ATTACHMENT 3

United States Government  
Interagency Agreement (IAA) – Agreement Between Federal Agencies  
Order Requirements and Funding Information (Order) Section  
IAA Number \_\_\_\_\_  
FMS Form 7600B

Attachment A  
No. 35, Funding Clauses/Instructions

Any transfer of funds will be subject to the availability of funds pursuant to the Anti-Deficiency Act, 31 U.S.C. Section 1341.

Invoices for billing services will be submitted on a quarterly basis. Appropriate budget allowance and accounting information for the term will be provided. All reimbursable costs will be billed. The invoice shall include all documentation to support the amounts billed to date, including:

1. Identification and number of CPSC cases heard during the period. Actual invoices submitted to the OALJ by court reporters;
2. Invoices for mail and delivery costs;
3. Apportionment of other office supply expenses, where appropriate, based on the percentage of cost attributable to CPSC;
4. Other costs that may arise under this Agreement shall be reimbursed based on the actual cost paid.

Invoices that do not contain supporting documentation as required by this Agreement and its attachments will be rejected and returned to the Coast Guard.