

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

-----x

	:	CPSC Docket No. 12-2
In the Matter of	:	CPSC Docket No. 13-2
	:	
ZEN MAGNETS, LLC	:	Hon. Dean C. Metry
STAR NETWORKS USA, LLC	:	
	:	
Respondents.	:	

-----x

DEPOSITION OF BOYD EDWARDS

Bethesda, Maryland

Tuesday, July 22, 2014

REPORTED BY:

CARMEN SMITH

1 P R O C E E D I N G S

2 Whereupon,

3 BOYD EDWARDS

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. ARAGON:

8 Q Dr. Edwards, my name is Ray Aragon. I'll
9 be asking you some questions this morning. Would
10 you please state your full name and address.

11 A Boyd Edwards, 921 North 2000 West, Vernal,
12 Utah 84078.

13 Q Is there any reason why you cannot give
14 full and accurate testimony this morning?

15 A No.

16 Q You've been identified as a potential
17 expert by counsel for Zen Magnets. Do you intend to
18 offer expert opinions in this litigation?

19 A Yes.

20 Q Please give me the subjects of the expert
21 opinions that you'll be offering in this litigation.

22 A I will offer my opinion about the

1 educational value and utility of Zen Magnets.

2 Q And is that the scope of the expert
3 testimony you're going to offer today?

4 A Yes.

5 (Exhibit 1 identified.)

6 BY MR. ARAGON:

7 Q I have shown your counsel and marked as
8 Exhibit 1 a document titled "COMPLAINT COUNSEL'S
9 NOTICE OF DEPOSITION OF PROPOSED EXPERT BOYD
10 EDWARDS, PH.D."

11 Do you see that?

12 A Yes.

13 Q Have you seen this document before,
14 Dr. Edwards?

15 A Yes.

16 Q When did you see it?

17 A About a week ago.

18 Q Okay. Now, you will see that at the
19 bottom of the first paragraph, it states,
20 "Dr. Edward is directed to bring with him copies of
21 any documents upon which he will rely in his
22 testimony, and produce copies of those documents to

1 had with Mr. Qu or Zen Magnets?

2 A I have bought magnets from the company. I
3 have received payment for contest winnings in which
4 I have participated, contest winnings paid to me by
5 Zen Magnets.

6 Q And how much have you been paid as a
7 contest winner from Zen Magnets?

8 A I was paid \$2500 for winning contest
9 number 39 and \$55 for winning contest 34.

10 Q Does that list exhaust the financial
11 transactions between you on the one hand and Zen
12 Magnets or Mr. Qu on the other?

13 A No. The exhaustive list appears on page 2
14 of the report. Actually, beginning on the bottom
15 paragraph of page 1, "In November 2012," and ending
16 on page 2, the right column just prior to the
17 paragraph that begins "In this report."

18 Q In November 2013, when you placed second
19 in contest 34, had you already been identified as an
20 expert for Zen Magnets in this proceeding?

21 A I do not remember.

22 Q When you placed first for the contest 39,

1 Let's -- let's do the whole question and
2 the whole answer together, if you don't mind,
3 Mr. Aragon. Or do you want the reporter to repeat
4 it back?

5 MR. ARAGON: No, it's clear enough.

6 BY MR. ARAGON:

7 Q Have you ever used Zen magnets in any of
8 your college courses?

9 A I first learned about Zen magnets after I
10 had accepted a position as a full-time
11 administrator.

12 Q Okay. Is it accurate to say that you have
13 never used Zen magnets in your classroom?

14 A Yes.

15 Q Is it accurate to say that in the last 35
16 years, you've never taught at the high school level?

17 A Yes.

18 (Exhibit 4 identified.)

19 BY MR. ARAGON:

20 Q Doctor, I'm going to show you a document
21 that I've shown to counsel, it's been marked as
22 Exhibit 4, it's a curriculum vitae. For your

1 MR. ARAGON: Okay. Counsel, I'm going to
2 move to strike the answer, other than "no," as not
3 responsive to the question being asked.

4 MR. JAPHA: Okay. I object.

5 BY MR. ARAGON:

6 Q You're not asking the Court to take notice
7 of you as an expert in marketing, are you?

8 A No.

9 Q We were talking before and you mentioned,
10 you know, your fee for being an expert. And if I
11 recall, in addition to these other issues, winning
12 the contest and whatnot, you told me you're being
13 paid \$5000 to be an expert; is that correct?

14 A \$5000 plus expenses.

15 Q Plus expenses.

16 A Yes.

17 Q Okay. And so we know that's correct, and
18 now I want to ask, is it complete? Is there -- is
19 there -- do you have any other financial interest in
20 this administrative proceeding at all?

21 MR. JAPHA: Object to the form.

22 You may answer.

1 A I could tell you to the magnet until I
2 received an order two weeks ago. Until that order
3 was received two weeks ago, I had 10,684. And by
4 taking precautions, I maintained that number,
5 unchanged, for about four to six months.

6 Q And then the number was augmented by your
7 purchase of Neoballs; is that right?

8 A By purchase of Neoballs and more Zen
9 magnets, and I haven't yet tallied up the current
10 tally.

11 Q In your expert report dated today, you
12 said that Mrs. Edwards used magnets in a class. Do
13 you remember saying that?

14 A I believe that that's incorrect.

15 Q Please set me straight.

16 A On page 6 of Exhibit 5, on the left
17 column, last full paragraph, it says that "In Fall"
18 of "2012, my wife, Nadine Edwards, took a college
19 chemistry class," dot, dot, dot, "which included a
20 discussion of the face-centered-cubic lattice. She
21 mentioned to me that my Zen Magnet models of this
22 lattice helped her to understand it better."

1 So it wasn't her use of the magnets, but
2 mine, to which this paragraph refers.

3 Q Okay. And thank you for that. And what I
4 was getting at is, does she have a separate stash of
5 Zen magnets?

6 A No.

7 Q Did I identify all the sources of the
8 Edwards collection?

9 A Yes.

10 Q Now, in the area you just quoted, there is
11 a citation, citation 15, which seems to correspond
12 with -- or excuse me, footnote 15, which seems to
13 correspond with a reference 1, page 16 of this
14 exhibit.

15 Do you see that?

16 A Yes.

17 Q Now, I'm going to suggest you quoted that
18 because that was the base chemistry book being used
19 in the course and not because that book had anything
20 to do with the use of magnets; is that correct?

21 A That's correct.

22 MR. ARAGON: Why don't we take a

1 and repulsive forces far beyond what we're talking
2 about here; is that right?

3 A Yes. Yes.

4 Q So would it be correct to say that you
5 haven't published any papers on solid magnets?

6 A Yes.

7 Q Have we gone over all of the aspects of
8 your engagement in what I'll call the Zen community
9 of magnet aficionados, or are there other
10 engagements and involvements in that community that
11 we haven't discussed?

12 MR. JAPHA: I'll object to the form.

13 If you understand the question, go ahead
14 and answer it.

15 THE WITNESS: Yes, there are two other
16 instances of engagement with the magnetic sphere
17 community. A man named Andreas Halm from Germany
18 requested that I carry some magnets to him when I
19 went to visit Ireland last spring, and then we
20 shipped those magnets to him from Ireland.

21 The other is potential, but not complete,
22 a -- Mr. Qu asked me to work with a man named Zach

1 A Of a 14-year-old girl who swallowed
2 magnets accidentally while going to the bathroom.

3 Q And what are you -- what do you believe
4 the consequence of that turned out to be?

5 A I believe that she had surgery, but I
6 don't remember for sure.

7 Q Okay. Well, actually, just to clear it
8 up, you're not presenting yourself as a medical
9 expert, are you?

10 A No.

11 Q Okay. Or an expert on comparative risk?

12 A No.

13 Q Did I exhaust your knowledge of what we're
14 calling the potential Zen magnets ingestion
15 incident?

16 A Yes.

17 Q And other than that one incident --
18 potential incident involving a 14-year-old girl, are
19 you aware, have you been informed, do you know of
20 any other ingestions of Zen magnets by anyone?

21 A No.

22 Q What type of ingestion injuries are you

1 A I mean the items discussed in the
2 paragraph above, the first full paragraph on page
3 11, right-hand column, I mean that Zen Magnets
4 curates a photography gallery which is -- really
5 those sculptures, in my experience, are not
6 accessible to children to build. Children usually
7 don't have the patience or the manual dexterity to
8 build them.

9 And in addition, the contests -- let's
10 see, I think it's discussed in there too. The
11 contests tend to cater to older children or adults.
12 And so for that reason, Zen Magnets is incentivizing
13 activity with their product that tends to be geared
14 toward an older audience.

15 Q I see. Okay. But now, as we discussed
16 before, though, you're not asking the Court to
17 accept you as an expert in marketing; right?

18 A Correct.

19 Q Okay. And -- or -- should the Court
20 accept you as an expert in child development?

21 MR. JAPHA: I'm going to object on
22 relevance grounds. He's not being offered as an

1 children and grandchildren -- let me start again.

2 Other than your young relatives, have you
3 taught any children science principles using
4 neodymium magnets?

5 A Yes.

6 Q Please explain.

7 A The family to which I referred earlier
8 during whose visit four magnets were lost, I taught
9 them about the icosahedron shape and perhaps a
10 dodecahedron. There are -- I also -- well, that was
11 my family.

12 Well, at a New Year's party in December of
13 2012, attended by members of my family and by
14 friends, I made a presentation which is Appendix A
15 to which you've just turned, in order to teach them
16 about the platonic solids.

17 Q So you mentioned that one incident New
18 Year's party and also teaching some young people, I
19 don't know who, about two geometric designs that you
20 made; right?

21 A Yes.

22 Q And you said who those young people were?

1 I forget.

2 A That was the same family that -- at which
3 time the four magnets were lost, so the 10-year-old,
4 12-year-old, 16-year-old.

5 Q Good. And that's what I was -- just
6 wanted to make sure that if you had had experience
7 teaching children, that I had asked you about it.
8 So now I have, yeah?

9 A Yes. And I believe that there have been
10 other incidents, but I don't remember specifics.

11 Q Are your videos, your YouTube videos, for
12 children?

13 A No.

14 Q Why not?

15 A Because in my experience, younger children
16 don't have the patience to build the shapes and they
17 become frustrated in trying to build something
18 coherent.

19 My experience with little children is that
20 they pull them and kind of play with them, but they
21 tire -- they tire of them quickly.

22 Q Do you think it's appropriate science

1 expert on child development.

2 Go ahead and answer it if you can.

3 THE WITNESS: I would say no, except --
4 well.

5 BY MR. ARAGON:

6 Q Okay. And I want to challenge a statement
7 that you made, which is this. You discussed certain
8 activities, such as Web sites, packaging, that sort
9 of thing, that you indicate promotes mature use of
10 magnets; right?

11 Do you remember that conversation?

12 A Yes.

13 Q So I ask you this. If a young child finds
14 five magnets on the floor and picks them up, I ask
15 what difference the marketing or the packaging of
16 the magnets makes in that instant and at that
17 moment.

18 A I don't believe I'm being endorsed as an
19 expert in child development or marketing. I can
20 offer my personal, unexpert opinion about it.

21 Q Well, that's okay, because actually, if
22 you just want to -- if you don't have, you know, an

1 the explanation. Children would be discouraged by
2 attempts to upload photos to the Zen Magnets gallery
3 because they would likely not have those photos
4 accepted. But in fairness, I think that children
5 are not actively discouraged from engaging with
6 magnets in their own way, except for the warnings
7 that are in place about the magnets being for 14 and
8 up.

9 Q So I want to -- I'm going to try to
10 restate that a little bit and tell me if I got it
11 right, which is that your language here wasn't
12 intended to say that there was any active
13 discouragement of child use, but only that there are
14 certain aspects, like the Zen gallery, that it's
15 hard to get into, the high cost of the big sets,
16 that might discourage kids from buying it?

17 A Yes. And the -- and the product warnings
18 that say it's for ages 14 and up.

19 Q But now, two things. First of all, I'm
20 going to remind you you can change if you want, but
21 you said you were not an expert on warnings and not
22 giving opinions on that; correct?

1 A Yeah, yeah.

2 Q Okay.

3 Moving to the next paragraph, why did you
4 put the language that "lower quality and
5 less-expensive magnets," skipping one word, which is
6 that, "might be more appealing to children"?

7 What is the basis for that statement?

8 A It's my understanding that the Zen magnets
9 price point is higher than other competing companies
10 are or were. And a child or a parent of a child who
11 is just looking for something for a small child
12 might be more inclined to buy a lower-priced
13 product.

14 Q And by lower-priced product, do you mean
15 something like NeoCubes or Neoballs?

16 A Yes.

17 Q And so really then, just comparatively
18 speaking, Neoballs might be attractive to children,
19 yeah?

20 A Might be more attractive to children, yes.

21 Q Sir, may I see the marked-up copy of
22 exhibit --

1 Q "And has used them with his family," also
2 true; right?

3 A Yes.

4 Q And then I want to get to the next
5 sentence, "and believes" "there is no defect
6 whatsoever."

7 Now, in light of the -- I mean, I know
8 that you like them, but I just want to confirm that
9 you're not trying to say that you're an expert in
10 the safety aspects of magnets; is that correct?

11 A Yes, except in my own personal experience
12 with them.

13 Q Okay. Well, actually, then, let me say
14 that. Outside of your own personal experience,
15 you're not testifying about anything related to the
16 safety of magnets; is that right?

17 A That's right.

18 Q Okay. "The factual basis of Dr. Edwards's
19 opinion is his use of the magnets and" "experience
20 with them."

21 Is that still an accurate statement? Now
22 you've added the research that you did and public

1 at all?

2 A I read through the report on the poll.
3 And I saw a margin of error of 3-1/2 percent, which
4 says to me that they're doing their statistics. I
5 did not test to make sure the 3-1/2 percent is the
6 right margin of error.

7 Q Well, why don't -- what is your expertise
8 in scientific integrity in public polling?

9 A I have studied statistical physics and
10 published on percolation theory that we talked about
11 before is statistics.

12 Q So I'm asking you what -- how does that --
13 why should you be considered an expert in public
14 polling?

15 A I should not be considered an expert in
16 public polling.

17 Q Okay. So really the scientific integrity
18 that you're talking about from the polling is the
19 margin of error that you just happened to read on
20 the report --

21 A On the report.

22 Q -- done by the company that did the

1 lifetime of studying physics and then encountering
2 these magnets at a later stage in my career that has
3 taught me things that a lifetime of solving
4 equations on the blackboard did not teach me.

5 BY MR. ARAGON:

6 Q Now, you mentioned exercises that are on
7 page 3 and 4 of your report. We just talked about
8 them; right?

9 A Yes.

10 Q And you thought that those would be useful
11 exercises, and I ask, have you ever conducted them
12 in a classroom setting, or are you aware of others
13 having conducted these exercises in a classroom
14 setting?

15 A No.

16 Q And what I'm getting at is that you've
17 gathered some evidence and reached the conclusions
18 that magnets are a very useful educational tool;
19 right? That's what we've been talking about. And
20 now I want to move sort of beyond that and ask is
21 there any statistical technique, any scientific
22 technique, that can be used to scientifically test

1 right?

2 A Yes.

3 Q Okay. Now, you've not had any of your
4 statements in this report subjected to any type of
5 peer review, have you?

6 A No.

7 Q And you've not published anything on the
8 educational uses of magnets?

9 A No.

10 MR. ARAGON: Off the record.

11 (Discussion off the record.)

12 (Recess.)

13 MR. ARAGON: Back on the record.

14 BY MR. ARAGON:

15 Q I just want to confirm, you don't profess
16 to be an expert in packaging or marketing; is that
17 correct?

18 A Yes.

19 Q It's correct that you don't claim to be an
20 expert in that area; right?

21 A Yes.

22 Q Okay. Who is Dr. David Richter?

1 Hawaii if he is successful in his -- in this
2 administrative proceeding.

3 Did you take him to be serious about that?

4 A The suggestion came from me, not him.

5 Q Okay. Were you serious about it?

6 A Not fully.

7 Q But there's nothing additional that you
8 forgot to tell Mr. Aragon in terms of compensation
9 for your testimony; correct?

10 A Let me amend that. I -- I think at the
11 moment, it came up in my brain and we were on the
12 phone and I said, okay, well, I'll do it for 5000,
13 but if we're successful and you like my testimony,
14 then send me two tickets to Hawaii.

15 Q Okay.

16 A But I --

17 Q That's the long and short, that's the
18 whole thing; right?

19 A And then he laughed and said that's a
20 great idea or something like that, but there's no
21 formal agreement that that would be -- that that
22 would be done.

1 Have you at times relied upon anecdotal evidence of
2 other people's findings or experiments themselves?

3 A Yes. That's what science is all about.
4 You base -- you make headway on a problem based on
5 the contributions of others.

6 Q And in discerning which comments -- for
7 example, you relied in part on comments that you
8 found -- first of all, where did you find the
9 comments that you rely upon that you identify in
10 your appendix, and I think it's appendix A? Where
11 did you find those comments?

12 A I found them in three different places
13 listed on page 15. Letters written to legislators,
14 comments made during the public comment period and
15 comments made by signers of a petition.

16 Q Okay. Let me ask it more specifically.
17 How did you actually get the comments? Was it
18 online?

19 A Online.

20 Q Was it easy to find?

21 A Yes.

22 Q Was it in the public domain?

1 question.

2 Q Okay. Let me ask again, okay, so we'll go
3 back a question, if you want to say those answers
4 didn't count, that's fine, and I'll ask this.

5 For how long -- when did Buckyballs come
6 on the market?

7 A Maybe eight years ago, I would estimate.

8 Q Okay. And before then, are you saying and
9 are you asking the Court to accept that magnets were
10 never used as educational tools prior to then and
11 that the reason they weren't used ever in history
12 until eight years ago was because they were
13 worthless, since they didn't have the flux -- the
14 high flux index of Zen magnets?

15 A Your earlier question was -- referred to
16 neodymium magnets, and I thought you were referring
17 to them in any shape. So those have been able for
18 some time and used for various purposes, including
19 in education, for 20 or so years.

20 But the -- could we restate your question?
21 Or could we repeat it?

22 (Record read by the court reporter as

1 to -- for you to clarify your question and me to
2 clarify my answer on that last question.

3 BY MR. ARAGON:

4 Q Which was what?

5 A Do you consider yourself an expert on
6 theories of education.

7 Q Well, are you a professor of education?

8 A No.

9 Q Do you have a PhD in education?

10 A No.

11 Q Okay. Is education something that you
12 have written peer-reviewed -- you know, educational
13 theory, as opposed to individual educational
14 methods, something on which you've written
15 peer-reviewed articles?

16 A No.

17 Q Okay. And so with that as background, I
18 mean, do you consider yourself -- acknowledged as a
19 well-experienced, you know, educator of physics and
20 college professor, but do you consider yourself an
21 expert in educational theory?

22 A No.

1 MR. ARAGON: Okay. And with that I want
2 to thank the doctor for his courtesy and say that I
3 have no more questions, Counsel.

4 MR. JAPHA: Okay. No more questions at
5 this point.

6 (Whereupon, at 5:39 p.m., the hearing was
7 concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22