



distributor or retailer of such product to provide the notice required by subsection (c) and to take any one or more of the following actions it determines to be in the public interest:

(A) To bring such product into conformity with the requirements of the applicable rule, regulation, standard, or ban or to repair the defect in such product.

(B) To replace such product with a like or equivalent product which complies with the applicable rule, regulation, standard, or ban or which does not contain the defect.

(C) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more

(i) at the time of public notice under subsection (c) of this section, or

(ii) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

Specifically, in this matter, Complaint Counsel is seeking “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™.” Second Amended Compl. at ¶ 1. Complaint Counsel is also seeking an order holding Respondent Craig Zucker responsible for the recall under the doctrine holding corporate officers responsible for criminal acts of corporations upheld in United States v. Dotterweich, 320 U.S. 277 (1943) and United States v. Park, 421 U.S. 658 (1975).

Every single Answer of Complaint Counsel to Respondents’ Amended First Set of Interrogatories is non-responsive.<sup>1</sup> The CPSC has taken actions that have forced M&O out of business, and now is using the power of the federal government to seek to hold Mr. Zucker

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<sup>1</sup> A copy of Complaint Counsel’s Responses to Respondent’s Amended First Set of Interrogatories to Consumer Product Safety Commission accompanies this motion as **Exhibit A**.

individually responsible for paying for a recall based on unprecedented legal theory. Having done so, however, Complaint Counsel has failed to honor its obligations to respond fully to Respondent's discovery requests. Specifically, Complaint Counsel's Answers are evasive, improperly invoke certain privileges, and improperly shift the burden of discovery to Respondents. For the reasons more thoroughly discussed below, Respondent respectfully request that the Presiding Officer enter an order directing Complaint Counsel to answer Respondent's Amended First Set of Interrogatories to Consumer Product Safety Commission to Consumer Product Safety Commission. Respondent has a constitutional right to conduct a defense in the matter, and the rules permit broad discovery as part of conducting that defense. Complaint Counsel's attempt to respond only to the discovery it wants to answer has already put undue financial burden on both parties and should not be allowed.

## **II. ARGUMENT**

### **A. The option to produce business records does not permit Complaint Counsel to refer Respondent to Respondent's own records.**

A number of Complaint Counsel's responses to a number of interrogatories state that the responsive information may be derived or ascertained from Respondents' business records. For example:

**INTERROGATORY NO. 6:** Describe in complete detail the basis for the allegation in paragraph 68 of the Complaint that Respondents "advertised and marketed Buckyballs® by comparing its appeal to that of other children's products," including but not limited to identifying the time period in which you claim such advertising and marketing occurred.

**RESPONSE:** Objection. Information responsive to this Interrogatory may be derived or ascertained from Respondent's and M&O's business records, and the burden of deriving the answer is substantially the same or less for Respondent as for Complaint Counsel. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Subject to and without waiving these objections, Respondent also is directed to Complaint

Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 2, 12, 22, 28 and 35.

Responses to Interrogatory Numbers: 4, 6, 8, 10, 11, 12, 14, 16, and 28 are the same.

Federal Rule of Civil Procedure 33(d) provides parties with an option to answer an Interrogatory by referring the propounding party to its business records, where the burden of ascertaining the answer will be substantially the same for either party. FED. R. CIV. P. 33 (d). The notes of the Advisory Committee emphasize that Rule 33(d) relates “. . . especially to interrogatories which require a party to engage in burdensome or expensive research *into his own business records* in order to give an answer.” *Id.* at advisory committee's note (emphasis added). Moreover, it is well established that the party invoking the rule “must specify the records and cannot merely indicate that the information sought may or may not be found in the records *made available.*” *Daiflon, Inc. v. Allied Chem. Corp.*, 534 F.2d 221, 226 (10th Cir. 1976) (emphasis added). It is obvious that it would be impossible for a responding party to meet this burden if it were permitted to simply refer to the propounding party's business records. Accordingly, it is clear that the option to produce business records does not permit Complaint Counsel to refer Respondents to Respondents' own business records.

Based on the above, Respondent moves to compel Complaint Counsel's responses to Interrogatory Numbers: 4, 6, 8, 10, 11, 12, 14, 16, and 28.

**B. The Privacy Act, 5 U.S.C. § 552a, and Section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c) do not protect the information sought by Respondents' Interrogatories.**

Complaint Counsel's responses to numerous Interrogatories<sup>2</sup> contain an objection on the grounds that the response encompasses information protected from disclosure by the Privacy

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<sup>2</sup> Complaint Counsel interposes this objection in its Answers to Interrogatory Numbers: 1, 2, 5, 7, 10, 12, 14, 15, 17, 18, 19, 22, 23, 24, 25, 27, 29, 30, 33, 34, 38, 39, 41, 46, 47, 56, 57, 58, 60, 61, 62, 63, 65, 66, 68, 69, 70, 74, 75, 76, 77, 78, 79, and 80.

Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c), and fails to provide information pursuant to claimed “privilege.” Neither of these provisions provide Complaint Counsel with a basis for failing to respond to the Interrogatories.

First, the Privacy Act only protects against records “about an individual that is maintained by an agency . . . .” 5 U.S.C. § 552a(a)(4). And even then, the record can be produced with the consent of the individual involved. It does not provide any protection to internal Commission documents, and in the context of this litigation generally applies only to reports of incidents of these products. Moreover, the Privacy Act does not prohibit disclosure of any documents that are subject to the Freedom of Information Act, 5 U.S.C. § 552. 5 U.S.C. § 552a(b)(2). And, the Commission’s own regulations provide for the public availability of accident or investigation reports, subject only to the redaction of identifying information if there is not consent to it being provided. 16 C.F.R. § 1015.20. In short, in this case, the Privacy Act should only protect against disclosure of the names or other identifying information of persons involved in incidents, and that information could be easily redacted from any responses.

Second, section 25(c) of the Consumer Product Safety Act does not provide a privilege against disclosure. Again, it merely protects the identity of a person contained in an investigation report provided to the Commission, unless that person consents. The CPSC routinely handles redaction of personal identifying information when responding to Freedom of Information Act Requests and sending investigation reports to companies outside of the context of litigation, and can easily do so here. Other than protecting the identity of a complaining person, section 25(c) does not protect any other information.

Finally, by responding as it has, Complaint Counsel leaves Mr. Zucker with no idea what information is being withheld. At a minimum, Complaint Counsel should be required to

specifically identify what information is being withheld so that Mr. Zucker can review, and contest if appropriate, the assertion of the privacy provisions cited. See also, section II.D, infra.

Based on the above, Respondent moves to compel Complaint Counsel's responses to Interrogatory Numbers: 1, 2, 5, 7, 10, 12, 14, 15, 17, 18, 19, 22, 23, 24, 25, 27, 29, 30, 33, 34, 38, 39, 41, 46, 47, 56, 57, 58, 60, 61, 62, 63, 65, 66, 68, 69, 70, 74, 75, 76, 77, 78, 79, and 80.

**C. The attachment of documents is not a sufficient Answer to an Interrogatory where the identity of such documents is not described in sufficient detail.**

While the Federal Rules of Civil Procedure permit a party to produce records in lieu of answering an Interrogatory, when doing so the party must identify the documents in sufficient detail. Lucero v. Valdez, 240 F.R.D. 591, 595 (D.N.M. 2007). Moreover, it is well established that “[s]imply referring a party to a mass of records, or offering to make a party's records generally available, is not a sufficient response.” Id. Complaint Counsel's responses to Interrogatory Numbers: 5, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 34, 35, 43, 44, 44, 45, 47, 48, 53, 56, 57, 58, 60, 61, 62, 68, 70, and 80 all direct Respondents to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents. Neither Complaint Counsel's Answers to these Interrogatories nor their responses to Respondents' Requests for production of documents sufficiently identify the documents. Rather, Complaint Counsel's responses are precisely the type precluded by the Rules and Federal jurisprudence in that they refer Respondents to *a mass of records*.

Based on the above, Respondent moves to compel Complaint Counsel's responses to Interrogatory Numbers: 5, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 34, 35, 43, 44, 44, 45, 47, 48, 53, 56, 57, 58, 60, 61, 62, 68, 70, and 80.

**D. When invoking the work-product doctrine or privilege a party must describe the information in detail sufficient to allow other parties to assess the applicability of the privilege.**

The Federal Rules of Civil Procedure require Interrogatories to be “answered separately and fully in writing.” FED. R. CIV. P. 33(b)(1). Thus a party may not rely on the work product doctrine to withhold a response to the interrogatories where it fails to describe the withheld documents or information in detail sufficient to allow other parties to assess the applicability of the privilege. U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc., 235 F.R.D. 521, 524 (D.D.C. 2006). Courts have specifically rejected one-sentence restatements of the privilege. Id. Complaint Counsel’s responses to Interrogatory Numbers: 1, 2, 5, 7, 10, 12, 14, 15, 17, 18, 19, 22, 23, 24, 25, 27, 29, 30, 33, 34, 38, 39, 41, 46, 47, 56, 57, 58, 60, 61, 62, 63, 65, 66, 68, 69, 70, 74, 75, 77, and 80 all assert that the Answer involves “information protected from discovery by the attorney-client privilege [and] the attorney-work product doctrine.” Complaint Counsel’s Answers in no way provide sufficient information for Respondents to assess the applicability of the privileges, as required by the Rules. Indeed, Complaint Counsel’s Answers are mere one-sentence restatements of the privilege.

Based on the above, Respondent moves to compel Complaint Counsel’s responses to Interrogatory Numbers: 1, 2, 5, 7, 10, 12, 14, 15, 17, 18, 19, 22, 23, 24, 25, 27, 29, 30, 33, 34, 38, 39, 41, 46, 47, 56, 57, 58, 60, 61, 62, 63, 65, 66, 68, 69, 70, 74, 75, 77, and 80.

**E. While Interrogatories must be relevant to the litigation the concept of relevancy is liberally construed.**

Both the Federal Rules of Civil Procedure and 16 C.F.R. § 1035.31(c)(1) define the scope of discovery with the same terms. When considering challenges to Interrogatories on the grounds of relevancy, Courts consistently recognize that the Rules of Federal Civil Procedure are to be liberally construed and that the scope of discovery under those rules is broad. V.D. Anderson Co. v. Helena Cotton Oil Co., 117 F. Supp. 932, 940 (E.D. Ark. 1953). Moreover,

Federal Rule of Procedure 26(b)(1) explicitly provides that the scope of discovery includes information “relevant to any party's claim or defense--including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.” FED. R. CIV. P. 26. Further, Rule 26 also confirms that relevant information need not be admissible at trial if the discovery is reasonably calculated to lead to the discovery of admissible evidence. Id.

As stated above, in this matter, Complaint Counsel is seeking “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™.” Second Amended Compl. at ¶ 1. Complaint Counsel is also seeking an order holding Respondent Craig Zucker responsible for the recall under the doctrine holding corporate officers responsible for criminal acts of corporations upheld in United States v. Dotterweich, 320 U.S. 277 (1943) and United States v. Park, 421 U.S. 658 (1975). In this regard, Complaint Counsel improperly asserts relevancy objections to the following Interrogatories:

**INTERROGATORY NO. 36:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of magnet ingestions to the number or frequency of ingestion of any other product, including but not limited to consumer products.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is not relevant to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 36, directly relates to the CPSC’s determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 38:** Do you contend that the "nonspecific" "initial symptoms of injury from magnet ingestion," as those "nonspecific" symptoms are described in the last sentence of paragraph 104 of the Complaint, are unique to



ingestion of magnets? If your answer is "yes," please describe in complete detail the basis for your answer.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel also objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Complaint Counsel further objects to this Interrogatory to the extent that it seeks the premature discovery of expert testimony. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

The scope of Interrogatory No. 38 directly relates to the allegations made against Respondents in its Complaint by the CPSC and is thus relevant to the litigation.

**INTERROGATORY NO. 39:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the symptoms associated with magnet ingestion with the symptoms associated with ingestion of any other product, including but not limited to consumer products.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel also objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Complaint Counsel further objects to this Interrogatory to the extent that it seeks the premature discovery of expert testimony. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

The scope of Interrogatory No. 39 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 40:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the

symptoms associated with magnet ingestion with the symptoms associated with ingestion of single-load liquid laundry detergent packets.

**RESPONSE:** Objection. This Interrogatory is overbroad, duplicative, and seeks information that is not relevant to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 40, directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 41:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the awareness or unawareness of medical professionals "of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring," as alleged in paragraph 105 of the Complaint, to the awareness or unawareness of medical professionals of the dangers posed by ingestion of any other consumer product or the corresponding need for immediate evaluation and monitoring of the ingestion of any other product, including but not limited to consumer products.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is not relevant to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Complaint Counsel also objects to this Interrogatory to the extent that it seeks the premature discovery of expert testimony. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

The scope of Interrogatory No. 41 directly relates to the allegations made against Respondents in its Complaint by the CPSC and is thus relevant to the litigation.

**INTERROGATORY NO. 42:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the awareness or unawareness of medical professionals "of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring," as alleged in paragraph 105 of the Complaint, to the awareness or unawareness of medical professionals of the dangers posed by

ingestion of single-load liquid laundry detergent packets or the corresponding need for immediate evaluation and monitoring of the ingestion of single-load liquid laundry detergent packets.

**RESPONSE:** Objection. This Interrogatory is overbroad, duplicative and seeks information that is *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 42 directly relates to the allegations made against Respondents in its Complaint by the CPSC and is thus relevant to the litigation.

**INTERROGATORY NO. 46:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the risks alleged in paragraph 108 of the Complaint with the risk associated with surgery to remove any other products from the gastrointestinal tract of children, including but not limited to consumer products.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is not relevant to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel also objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Complaint Counsel further objects to this Interrogatory to the extent that it seeks the premature discovery of expert testimony. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

The scope of Interrogatory No. 46 directly relates to the allegations made against Respondents in its Complaint by the CPSC and is thus relevant to the litigation.

**INTERROGATORY NO. 48:** For any incident of ingestion of the Subject Products or another Magnet that you allege to have occurred and that you have not already identified in response to Interrogatory No. 47, provide for each incident the following information: (i) the name, address, and telephone number of the person who ingested the magnets and his or her parent(s) or guardian(s); (ii) the person's age at the time of incident who ingested the magnets; (iii) the date on which the incident allegedly occurred; (iv) the total number of magnets allegedly ingested; (v) a complete description of any injuries allegedly incurred as a result of the incident, including any medical records in your possession; (vi) how and when you became aware of the incident; and (vii) identify whether or not the

ingestion involved a Subject Product (and if so, which Subject Product), or another product (and if so, identify the product).

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is ***not relevant*** to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Subject to and without waiving its objections, Complaint Counsel states that Respondent is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 12, 40, and 59.

The scope of Interrogatory No. 48, directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 49:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of ingestion incidents involving the Subject Products and children under the age of 14 to the number or frequency of incidents involving ingestion of any other product by children under the age of 14, including but not limited to consumer products.

**RESPONSE:** Objection. This Interrogatory is overbroad and is ***not relevant*** to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 49 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 50:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of ingestion incidents involving the Subject Products and children under the age of 14 to the number or frequency of incidents involving ingestion of single-load liquid laundry detergent packets by children under the age of 14.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is not relevant to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 50, directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 51:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of injuries resulting from ingestion incidents involving the Subject Products and children under the age of 14 to the number or frequency of injuries resulting from ingestion of any other product by children under the age of 14, including but not limited to consumer products.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is not relevant to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 51 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 52:** Identify any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of injuries resulting from ingestion incidents involving the Subject Products and children under the age of 14 to the number or frequency of injuries resulting from ingestion of single-load liquid laundry detergent packets.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 52 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 58:** Do you contend that parents and caregivers will continue to allow children to have access to the Subject Products regardless of any warnings on the products? If your answer is "yes," please describe in complete detail the basis for your answer.

**RESPONSE:** Objection. Complaint Counsel objects to this Interrogatory as vague and ambiguous, and *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Moreover, because Respondent states that he no longer manufactures or distributes the Subject Products, any answer to this question would be speculative, irrelevant and would not further the resolution of the issue before this Court. Complaint Counsel also objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited

to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Complaint Counsel further objects to this Interrogatory to the extent that it seeks the premature discovery of expert testimony. Subject to and without waiving these objections, Respondent is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 12, 20, 35, and 40. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

The scope of Interrogatory No. 58 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 59:** State whether CPSC believes that the majority of parents and caregivers will restrict access by children under three years of age to products containing small parts if the products are properly labeled with warnings in compliance with the regulations contained in 16 C.F.R. §1500.19, and describe in complete detail the basis for your answer.

**RESPONSE:** Objection. This Interrogatory is overbroad, duplicative, speculative, and seeks information that is *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 59 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 69:** Do you contend that the alleged hazard associated with the Subject Products is "hidden," as that term is used in the following statement from the CPSC's September 4, 2012 Federal Register Notice of Proposed Rulemaking (77 Fed. Reg. at 53,782): "As those complaints allege, among other things, CPSC staff experts do not believe warnings will ever be effective in protecting children from this hidden hazard."? If your answer is "yes," please describe in complete detail the basis for your answer.

**RESPONSE:** Objection. This Interrogatory is overbroad and seeks information that is *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel notes that the Second Amended Complaint speaks for itself. Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Complaint Counsel also objects to this Interrogatory to the extent that it seeks the

premature discovery of expert testimony. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

The scope of Interrogatory No. 69 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 71:** Identify each person who participated in drafting or developing CPSC Chairman Tenenbaum's testimony to Congress in or about July 2012 involving M&O, the Subject Products, and/or other Magnets.

**RESPONSE:** Complaint Counsel objects to this Interrogatory as vague and ambiguous. This Interrogatory is overbroad and seeks information that *is not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1).

The scope of Interrogatory No. 71 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation. Moreover, the individuals involved in CPSC Chairman Tenenbaum's testimony to Congress may also have relevant information.

**INTERROGATORY NO. 72:** Identify any person at the CPSC who subscribed to receive updates and promotions from M&O, or who provided their email address to M&O either on the M&O website or the Buckyballs® Facebook page in order to receive updates and promotions from M&O.

**RESPONSE:** Complaint Counsel objects to this Interrogatory as vague and ambiguous, and *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel also objects to the Interrogatory to the extent that it seeks information about persons at CPSC outside of their role as CPSC staff, because such information is not relevant and is not in Complaint Counsel's custody or control. Subject to and without waiving its objections, Complaint Counsel states that this information may be located within Respondents' records which may be accessible to Respondents but not currently accessible to Complaint Counsel. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents.

The scope of Interrogatory No. 72 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation. Moreover, the individuals at the CPSC who subscribed to receive updates and promotions from M&O, or

who provided their email address to M&O either on the M&O website or the Buckyballs® Facebook page in order to receive updates and promotions from M&O may also have relevant information.

**INTERROGATORY NO. 73:** Describe in complete detail the purchase of Subject Products by any person at the CPSC, including without limitation, the identity of the person making the purchase, the date of the purchase, the identity of the person from whom the Subject Products were purchased, the price of the Subject Products purchased, and whether the purchase was for governmental or personal purposes.

**RESPONSE:** Complaint Counsel objects to this Interrogatory as vague and ambiguous, and *not relevant* to the subject matter involved in the proceedings as required by 16 C.F.R. § 1035.31(c)(1). Complaint Counsel also objects to the Interrogatory to the extent that it seeks information about persons at CPSC outside of their role as CPSC staff, because such information is not relevant, is not reasonably calculated to the discovery of admissible evidence, and is not in Complaint Counsel's custody or control. Subject to and without waiving objections, Complaint Counsel states that this information may be located within Respondents' records and may be accessible to Respondents. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents.

The scope of Interrogatory No. 73 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 75:** Describe in complete detail the basis for the statement by Scott Wolfson quoted in the August 3, 2012 edition of the Washington Post that "The injuries we have seen are like a gunshot wound to the gut with no sign of entry or exit."

**RESPONSE:** Objection. Complaint Counsel objects to this Interrogatory because it seeks information that is *not relevant* to the subject matter of this proceeding and is not reasonably calculated to the discovery of admissible evidence. Further, Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Subject to and without waiving objections, Respondent is also directed to Complaint Counsel's



response to Respondent's First Set of Requests for Production of Documents number 40.

The scope of Interrogatory No. 75 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 76:** Describe in complete detail any communications with governmental regulatory agencies outside of the United States concerning the Subject Products or any other Magnets.

**RESPONSE:** Objection. This Interrogatory is overbroad, seeks information that is not relevant to the subject matter of this proceeding and is not reasonably calculated to the discovery of admissible evidence because it is not limited to the subject matter of these proceedings. Complaint Counsel also objects to this Interrogatory because it seeks the disclosure of information protected by the deliberative process privilege and the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, or any other privilege, doctrine or protection as provided by any applicable law.

The scope of Interrogatory No. 76 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 77:** Describe in complete detail all communications between the CPSC (including without limitations Scott Wolfson, the Office of Information and Public Affairs and/or the Office of Communications) and representatives of non-governmental organizations (including without limitation Kids in Danger and Consumer Federation of America) involving the Subject Products.

**RESPONSE:** Objection. This Interrogatory is overbroad, seeks information that is not relevant to the subject matter of this proceeding and is not reasonably calculated to the discovery of admissible evidence because it is not limited to the subject matter of these proceedings. Further, Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Subject to and without waiving its objections, Complaint Counsel refers Respondent to Complaint Counsel's Response to Request for Production of Documents number 14.

The scope of Interrogatory No. 77 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 78:** Describe in complete detail all communications between the CPSC and Strong Force, Inc. relating to any corrective action plan for Neocube magnets, and/or the notice posted at <http://www.theneocube.com>.

**RESPONSE:** Objection. This Interrogatory seeks information that is *not relevant* to the subject matter of this proceeding and is not reasonably calculated to the discovery of admissible evidence because it is not limited to the subject matter of these proceedings. It also seeks the disclosure of information protected by the deliberative process privilege and the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, 15 U.S.C. § 2055(a)(2), 15 U.S.C. § 2074(c), the Privacy Act, or any other privilege, doctrine or protection as provided by any applicable law.

The scope of Interrogatory No. 78 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

**INTERROGATORY NO. 79:** Describe in complete detail the reason why the CPSC did not issue a press release or recall alert for the corrective action by Strong Force, Inc. for Neocube magnets posted at <http://www.theneocube.com/>.

**RESPONSE:** Objection. This Interrogatory seeks information that is *not relevant* to the subject matter of this proceeding and is not reasonably calculated to the discovery of admissible evidence because it is not limited to the subject matter of these proceedings. The Interrogatory is also unduly burdensome because it seeks the disclosure of information protected by the deliberative process privilege and the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, 15 U.S.C. § 2055(a)(2), 15 U.S.C. § 2074(c), the Privacy Act, or any other privilege, doctrine or protection as provided by any applicable law.

The scope of Interrogatory No. 79 directly relates to the CPSC's determination that Buckyballs® and Buckycubes,™ present a substantial hazard and is thus relevant to the litigation.

Based on the above, Respondent moves to compel Complaint Counsel's responses to Interrogatory Numbers: 36, 38, 39, 40, 41, 42, 46, 48, 49, 50, 51, 52, 58, 69, 71, 72, 73, 75, and 79.

**F. 16 C.F.R. § 1025.36 explicitly prohibits Complaint Counsel from providing evasive discovery responses.**

16 C.F.R. § 1025.36 explicitly states that “an evasive or incomplete response is to be treated as a failure to respond.” Moreover, it is well established that discovery by interrogatory requires candor in responding. Dollar v. Long Mfg., N.C., Inc., 561 F.2d 613, 616 (5th Cir. 1977). In this regard, Complaint Counsel is required to engage in “a conscientious endeavor to understand the questions and to answer fully such questions.” Maddox v. Wright, 11 F.R.D. 170, 171 (D.D.C 1951). However, Complaint Counsel failed to do so with respect to the following Interrogatories:

**INTERROGATORY NO. 3:** Describe in complete detail the basis for the allegation in paragraph 15 of the Complaint that the Subject Products are offered for sale to consumers in or around “a school.”

**RESPONSE:** Objection. This Interrogatory *misstates* the allegations of the Complaint. Paragraph 15 of the Complaint does not allege that the Subject Products are offered for sale to consumers in or around a school. Paragraph 15 of the Complaint alleges that “Respondents imported and distributed the Subject Products in U.S. commerce and offered the Subject Products 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.”

Complaint Counsel’s Response to Interrogatory No. 3 indicates that it failed to engage in a conscientious endeavor to understand the questions and to answer fully such questions. The proper response would have described in complete detail the basis for the allegation in paragraph 15 of the Complaint, as Complaint Counsel’s response quotes it.

**INTERROGATORY NO. 4:** Describe in complete detail the basis for the allegation in paragraph 15 of the Complaint that the Subject Products are offered for sale to consumers “in recreation.”

**RESPONSE:** Objection. This Interrogatory *misstates* the allegations of the Complaint. Paragraph 15 of the Complaint does not allege that the Subject Products are offered for sale to consumers “in recreation.” Paragraph 15 of the Complaint alleges that “Respondents imported and distributed the Subject Products in U.S. commerce and offered the Subject Products 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.” Subject to and without waiving this objection, Complaint Counsel states that additional information responsive to this Interrogatory may be derived or ascertained from Respondent’s and M&O’s business records, and the burden of deriving the answer is substantially the same or less for Respondent as for Complaint Counsel. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents.

Complaint Counsel’s Response to Interrogatory No. 4 indicates that it failed to engage in a conscientious endeavor to understand the questions and to answer fully such questions. The proper response would have described in complete detail the basis for the allegation in paragraph 15 of the Complaint, as Complaint Counsel’s response quotes it.

**INTERROGATORY NO. 6:** Describe in complete detail the basis for the allegation in paragraph 68 of the Complaint that Respondents “advertised and marketed Buckyballs® by comparing its appeal to that of other children’s products,” including but not limited to identifying the time period in which you claim such advertising and marketing occurred.

**RESPONSE:** Objection. Information responsive to this Interrogatory may be derived or ascertained from Respondent’s and M&O’s business records, and *the burden of deriving the answer is substantially the same or less for Respondent as for Complaint Counsel*. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Subject to and without waiving these objections, Respondent also is directed to Complaint Counsel’s response to Respondent’s First Set of Requests for Production of Documents numbers 2, 12, 22, 28 and 35.

Complaint Counsel’s Response to Interrogatory No. 6 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 6 inquires as to the basis of the allegations in paragraph 68 of the Complaint; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint Counsel. Moreover, the response improperly shifts the burden from Complaint Counsel to prove the allegations made against Respondents.

**INTERROGATORY NO. 8:** Identify any steps taken by or on behalf of the CPSC, or upon which the CPSC relies or has relied, to prevent retailers from

marketing or promoting the Subject Products or other Magnets as appropriate or intended for persons under the age of 14.

**RESPONSE:** Objection. The Interrogatory is vague and overbroad and seeks the discovery of information outside the scope of this proceeding. Complaint Counsel also objects insofar as the Interrogatory mischaracterizes CPSC's interactions with retailers. Complaint Counsel further objects on the grounds that this Interrogatory seeks to impose an obligation to provide information for or on behalf of any person or entity other than the CPSC or seeks information that is not in Complaint Counsel's possession, custody or control. Subject to and without waiving its objections, Complaint Counsel states that information responsive to this Interrogatory may be derived or ascertained from the public record and from Respondent's and M&O's business records, and *the burden of deriving the answer is substantially the same or less for Respondent as for Complaint Counsel.* Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Respondent is also directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 14, 17, 31, 32, 66 and 67.

Complaint Counsel's Response to Interrogatory No. 8 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 8 inquires as to the steps taken by or on behalf of the CPSC, or upon which the CPSC relies or has relied, to prevent retailers from marketing or promoting the Subject Products or other Magnets as appropriate or intended for persons under the age of 14; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint Counsel. Moreover, the response can only be construed as an attempt to conceal the CPSC's conduct in this regard.

**INTERROGATORY NO. 10:** Do you contend that Respondents advertised or marketed Subject Products after May 27, 2010, to or for use by persons under 14 years of age? If your answer is "yes," please describe in complete detail the basis for your answer, including specific examples of advertising that you contend is directed toward persons under 14 years of age.

**RESPONSE:** Objection. Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c).

Further, Complaint Counsel objects to this Interrogatory to the extent that it seeks the premature discovery of expert testimony. The answer to this Interrogatory may be derived or ascertained from Respondent's business records and *the burden of deriving the answer is substantially the same or less for the party serving the Interrogatory as for the party served.* Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Subject to and without waiving its objections, Respondent is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 12 and 35. Complaint Counsel reserves the right to revise and supplement this response as discovery is ongoing.

Complaint Counsel's Response to Interrogatory No. 10 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 10 inquires as to whether Complaint Counsel contends that Respondents advertised or marketed Subject Products after May 27, 2010, to or for use by persons under 14 years of age and the basis for that contention; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint Counsel.

**INTERROGATORY NO. 11:** Describe in complete detail the basis for the allegation in paragraph 70 of the Complaint that Respondents "subsequently attempted to rebrand" Buckyballs®, including but not limited to identifying the time period in which you claim such rebranding occurred.

**RESPONSE:** Objection. The answer to this Interrogatory may be derived or ascertained from Respondent's business records and *the burden of deriving the answer is substantially the same or less for the party serving the Interrogatory as for the party served.* Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Subject to and without waiving its objections, Respondent is directed generally to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents and specifically to its response to numbers 12, 24, 29 and 35.

Complaint Counsel's Response to Interrogatory No. 11 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 11 inquires as the basis for the allegation in paragraph 70 of the Complaint that Respondents; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint

Counsel. Moreover, the response improperly shifts the burden from Complaint Counsel to prove the allegations made against Respondents.

**INTERROGATORY NO. 12:** Describe in complete detail the basis for the allegation in paragraph 71 of the Complaint that "the advertising and marketing of the Subject Products conflict with the 14+ age grade label on the Subject Products," including without limitation identifying each such instance of advertising and marketing and the time period during which it occurred.

**RESPONSE:** Objection. Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Subject to and without waiving its objections, Complaint Counsel states that the answer to this Interrogatory may be derived or ascertained from Respondent's business records and the burden of deriving *the answer is substantially the same or less for the party serving the Interrogatory as for the party served.* Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Respondent also is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 12, 35, 40 and 61.

Complaint Counsel's Response to Interrogatory No. 12 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 12 inquires as the basis for the allegation in paragraph 71 of the Complaint that "the advertising and marketing of the Subject Products conflict with the 14+ age grade label on the Subject Products"; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint Counsel. Moreover, the response improperly shifts the burden from Complaint Counsel to prove the allegations made against Respondents.

**INTERROGATORY NO. 13:** Describe in complete detail the basis for the allegation in paragraph 72 of the Complaint that "the advertising and marketing of the Subject Products conflict with the age label on the Subject Products," including without limitation identifying each such instance of advertising and marketing and the time period during which it occurred.

**RESPONSE:** Objection. This Interrogatory is *duplicative of Interrogatory No. 12* and Respondent is directed to Complaint Counsel's response to that Interrogatory.

Complaint Counsel's Response to Interrogatory No. 13 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 13 inquires as the basis for the allegation in paragraph 72 of the Complaint while Interrogatory No. 12 inquires as the basis for the allegation in paragraph 71 of the Complaint.

**INTERROGATORY NO. 14:** Describe in complete detail the basis for the allegation in paragraph 73 of the Complaint that "the advertising and marketing of the Subject Products conflict with the stated warnings on the Subject Products," including without limitation identifying each such instance of advertising and marketing and the time period during which it occurred.

**RESPONSE:** Objection. Complaint Counsel objects to this Interrogatory to the extent that a response would encompass information protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, the deliberative process privilege, and/or the privilege afforded information given to the staff of the Commission on a pledge of confidentiality and/or by other law or rule of procedure, including, but not limited to, the Privacy Act, 5 U.S.C. § 552a, and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c). Subject to and without waiving its objections, Complaint Counsel states that the answer to this Interrogatory may be derived or ascertained from Respondent's business records and *the burden of deriving the answer is substantially the same or less for the party serving the Interrogatory as for the party served*. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Respondent also is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 12, 34, 35, 40 and 61.

Complaint Counsel's Response to Interrogatory No. 14 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 14 inquires as the basis for the allegation in paragraph 73 of the Complaint that "the advertising and marketing of the Subject Products conflict with the stated warnings on the Subject Products"; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint



Counsel. Moreover, the response improperly shifts the burden from Complaint Counsel to prove the allegations made against Respondents.

**INTERROGATORY NO. 16:** Describe in complete detail the basis for the allegation in paragraph 69 of the Complaint that some Internet retailers that sold the Subject Products did not display any age recommendations or promoted erroneous age recommendations on their websites, including without limitation the identity of the Internet retailers and the period during which they took the alleged actions or inactions.

**RESPONSE:** Objection. Complaint Counsel objects to this Interrogatory on the ground that it seeks to impose an obligation to provide information for or on behalf of any person or entity other than CPSC or seeks information that is not in Complaint Counsel's possession, custody or control. The answer to this Interrogatory may be derived or ascertained from Respondent's business records and *the burden of deriving the answer is substantially the same or less for the party serving the Interrogatory as for the party served.* Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Subject to and without waiving its objections, Respondent is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents numbers 12, 34, 35 and 61.

Complaint Counsel's Response to Interrogatory No. 16 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 16 inquires as the basis for the allegation in paragraph 69 of the Complaint that some Internet retailers that sold the Subject Products did not display any age recommendations or promoted erroneous age recommendations on their websites; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint Counsel. Moreover, the response improperly shifts the burden from Complaint Counsel to prove the allegations made against Respondents.

**INTERROGATORY NO. 21:** Describe in complete detail the basis for the allegation in paragraph 79 of the Complaint that the "Subject Products have been advertised and marketed by the Respondents to both children and adults," including without limitation identifying each such instance of advertising and marketing and the time period during which it occurred, and the age ranges of the children to which the Subject Products were advertised and marketed.

**RESPONSE:** See Complaint Counsel's response to Interrogatory 13.

Complaint Counsel's Response to Interrogatory No. 21 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 21 inquires as the basis for the allegation in paragraph 79 of the Complaint while Interrogatory No. 13 inquires as the basis for the allegation in paragraph 72 of the Complaint.

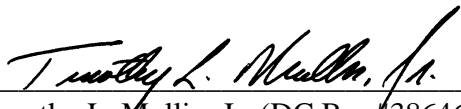
**INTERROGATORY NO. 28:** Describe in complete detail the basis for the allegation in paragraph 98 of the Complaint that [r]espondents promoted the use of the Subject Products to mimic tongue piercings."

**RESPONSE:** Objection. The answer to this Interrogatory may be derived or ascertained from Respondent's business records and the burden of deriving the answer is substantially the same or less for the party serving the Interrogatory as for the party served. Such information also may be available to Respondent from the Trust, and Respondent is directed to those documents. Subject to and without waiving its objections, Respondent is directed to Complaint Counsel's response to Respondent's First Set of Requests for Production of Documents number 35. Because Respondent has not yet fully responded to Complaint Counsel's discovery and discovery in this matter is continuing, Complaint Counsel may supplement this answer as it obtains additional information from Respondents concerning the advertising and marketing of the Subject Products.

Complaint Counsel's Response to Interrogatory No. 28 must be treated as a failure to respond in that it is evasive and incomplete. Specifically, Interrogatory No. 28 inquires as the basis for the allegation in paragraph 98 of the Complaint that [r]espondents promoted the use of the Subject Products to mimic tongue piercings."; it is simply illogical to take the position that the burden of deriving the answer is the same for Respondent and Complaint Counsel. Moreover, the response improperly shifts the burden from Complaint Counsel to prove the allegations made against Respondents.

Based on the above, Respondent moves to compel Complaint Counsel's responses to Interrogatory Numbers: 3, 4, 6, 8, 10, 11, 12, 13, 14, 16, 21, and 28.

Dated: March 31, 2014

  
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Co-Counsel for Respondent, Craig Zucker

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of March, 2014, a true and correct copy of the foregoing Respondent Craig Zucker's Motion to Compel Complaint Counsel's Answers to Respondent's Amended First Set of Interrogatories to Consumer Product Safety Commission was served on all parties and participants of record in these proceedings in the following manner:

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

Todd A. Stevenson  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
tstevenson@cpsc.gov

One copy by U.S. mail and one copy by electronic mail to the Presiding Officer for *In the Matter of Maxfield and Oberton Holdings, LLC*, CPSC Docket No. 12-1; *In the Matter of Zen Magnets, LLC*, CPSC Docket No. 12-2, and *In the Matter Of Star Networks UA, LLC*, CPSC Docket No. 13-2:

The Honorable Dean C. Metry  
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U.S. Courthouse  
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Galveston, TX 77550  
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One copy by electronic mail (by agreement) to Complaint Counsel:

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One copy by electronic mail (by agreement) to counsel for Respondents Zen Magnets, LLC and Star Networks USA, LLC:

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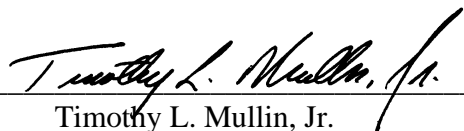
One copy by electronic mail (by agreement) to co-counsel for Craig Zucker:

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One copy by electronic mail (by agreement) to counsel for MOH Liquidating Trust:

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Timothy L. Mullin, Jr.