

# **EXHIBIT D**



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

Cheryl A. Falvey  
General Counsel

Tel: 301-504-7642  
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July 20, 2012

Via Electronic and First Class Mail

Alan H. Schoem, Esq.  
14809 Rolling Green Way  
North Potomac, Maryland 20878

Re: Request for Statement

Dear Mr. Schoem:

Thank you for your July 17, 2012 letter to CPSC Compliance Officer Joe Williams. You state that Mr. William's letter to Brookstone concerned various types of aggregated masses of small, powerful, individual magnets and that he asked Brookstone voluntarily stop selling the magnets pending the outcome of our investigation. You further state that this communication to Brookstone is based on the fact that Maxfield and Oberton identified Brookstone as a retailer in a May 25, 2012 Full Report to the CPSC.

I can assure you that no violation of the disclosure restrictions has taken place for any section 15 information Maxfield and Oberton submitted in its Full Report. Brookstone was identified as a retailer independent from the section 15 report submitted by Maxfield and Oberton. As you know, the Commission has determined that the referenced section 6(b)(5) restrictions to not apply to information independently obtained or prepared by Commission staff. 16 C.F.R. § 1101.63(c).

Furthermore, the Commission staff has statutory authority to investigate retailers when it believes that they may be selling a product that presents a substantial product hazard. Your suggestion of intimidation by the staff is unfounded and belied by the fact that some retailers have not agreed to stop sale. As you acknowledged, the correspondence to retailers contained a generic description of magnets. While you may represent to staff that the firm, Brookstone, is selling only one type of magnet, staff has a duty to investigate fully and request information under the circumstances.

At your request, I am confirming that it is not a violation of any law administered by the CPSC for any retailer to continue to sell Buckyballs and Buckycubes. We are willing to

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communicate that directly to the retailers that staff has contacted. As you note, staff requests have been for voluntary action. If a retailer continues to sell your client's product, it is not in violation of any law CPSC administers until we have obtained a court order, which is the next step in our process after the issuance of a PD, or the firm voluntarily agrees to a corrective action. The scope of administrative action needed to be taken by the agency to address the concern regarding a potential substantial product hazard is certainly minimized to the extent we can obtain voluntary corrective actions from manufacturers or retailers.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Falvey". The signature is written in dark ink and is positioned above the printed name.

Cheryl A. Falvey

## CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2013, a true and correct copy of the foregoing Opposition to Complaint Counsel's Motion For Leave to Amend Complaint in CPSC Docket 12-1 was served first class, postage prepaid, U.S. Mail on the Secretary of the U.S. Consumer Product Safety Commission, the Presiding Officer, and 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.

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 USA, LLC*, CPSC Docket No. 13-2:

The Honorable Dean C. Metry  
U.S. Coast Guard  
U.S. Courthouse  
601 25<sup>th</sup> Street, Suite 508A  
Galveston, TX 77550  
[Janice.M.Emig@uscg.mil](mailto:Janice.M.Emig@uscg.mil)

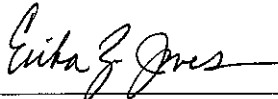
One copy by U.S. mail and one copy by electronic mail to Complaint Counsel:

Mary B. Murphy  
Complaint Counsel  
And Assistant General Counsel  
Division of Compliance  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Jennifer Argabright, Trial Attorney  
Richa Shyam Dasgupta, Trial Attorney  
Leah Wade, Trial Attorney  
Complaint Counsel  
Division of Compliance  
Office of the General Counsel  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

One copy by U.S. mail and one copy by electronic mail to counsel for Respondents Zen Magnets, LLC and Star Networks USA, LLC:

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Erika Z. Jones