

November 28, 2017

The Honorable Ann Marie Buerkle, Acting Chairman
The Honorable Elliot Kaye, Commissioner
The Honorable Marietta Robinson, Commissioner
The Honorable Robert Adler, Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

11/28/17 A 9:23

Dear Acting Chairman Buerkle and Commissioners Kaye, Robinson, and Adler:

The AAP and its Safety Advocacy Partners, NASPHGAN, CFA, CU, KID, PC and PIRG, recently wrote to applaud the U.S. Consumer Product Safety Commission's final decision to stop the sale of Zen Magnets and Neoballs. Although there were many infuriatingly inaccurate statements in the letter, I'm fortunately not writing to defend Zen. In the letter, the CPSC was urged to "issue and work quickly to finalize a safety standard" and also "to order stop-sales to other [firms] immediately." I write to strongly express my support for these two suggestions put forth by the AAP and its Safety Advocacy Partners.

The CPSC should absolutely order stop sales of most sets of high powered magnet spheres.

Sending stop-orders to most sellers is merely enforcing an existing magnet safety regulation: ASTM F963. The CPSC's absence of enforcement has encouraged sales of high-powered magnet spheres designed and marketed as toys for children, many of which are without any warnings and/or instructions. These magnets are available from thousands of listings on Amazon, eBay, and hundreds of independent sites. The enforcement of ASTM F963 would eliminate or improve approximately 90% of these listings. High-powered magnets have been and are listed as "baby development toys" on eBay by irresponsible sellers since 2012, who were apparently unfazed by the 2014 magnet ban. The non-action and lack of enforcement of ASTM F963 by the CPSC is leading to the biggest magnet hazard that American consumers face today. That statement is true whether or not one believes that the public has shown overwhelmingly that it is able to use magnets safely when properly informed and instructed.

Individuals and firms that agreed to a "voluntary stop sale" are once again selling with no retribution from the CPSC. I was walking around my local mall, and the Brookstone had Nanodots (see attached photo). Nanodots are also widely available on Walmart.com, Massdrop.com and other retailers. They are 5mm hazardous magnets that are being sold, despite the company having previously agreed to a voluntary stop sale. So while Zen Magnets is still in

contest over magnets that we have only sold directly since 2014 –with extremely conspicuous warnings –promise-breakers like Nanodots quietly proliferate the retail market, again within the view and reach of small children.

The CPSC should work quickly and responsibly to create a workable safety standard. Though the vacated Magnet Safety Standard was neither supported by data (as I had cautioned in a September 2014 letter), nor necessity (due to the wave of voluntary stop sales months prior), I look forward to real, reasonable, *enforced* regulation.

On this front, Zen Magnets proposed a new rule for the Commission's consideration. On top of warning requirements and flux index requirements of ASTM, the new proposed rule (shortcut to rule on regulations.gov here: <http://safetycomment.com>) has strong instructional requirements and child-safe or lockable packaging requirements. The rule is more stringent than those for products with a more widespread risk of injury and death, such as balloons, skateboards and pools. The proposed safety standard will weed bad actors out of the industry and will ensure that consumers who can safely use magnets are the ones actually using them.

Whether the CPSC wishes to allow firms to ignore voluntary stop-sale agreements without fear of retribution seem to be within the prosecutorial discretion of the Commission. But if safety is truly paramount, please at least enforce the law as it exists already: ASTM F963.

Zen's proposed rule is reasonable, but still errs on the side of caution. Compared to the current unregulated anarchy that resulted from improper prior rulemaking, Zen's proposed rule is a massive safety upgrade (and a barrier to entry) that would apply to all firms that wish to sell high-powered magnet sets in the United States.

But the rule will only be a win-win if the CPSC makes an effort to adopt it. And then actually enforces it.

Sincerely,

Shihan Qu
Zen Magnets LLC