

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
MAXFIELD AND OBERTON HOLDINGS, LLC	)	
	)	
and	)	CPSC Docket NO. 12-1
	)	
CRAIG ZUCKER, individually, and as an officer	)	
of MAXFIELD AND OBERTON HOLDINGS,	)	
LLC.	)	
	)	
	)	
Respondents.	)	
	)	

**COMPLAINT COUNSEL'S  
FIRST SET OF INTERROGATORIES TO RESPONDENT CRAIG ZUCKER**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Craig Zucker serve upon Complaint Counsel, within thirty (30) days, written answers, under oath, to each of the interrogatories set forth below.

DEFINITIONS

1. "You," "your," "Respondent" and "Zucker" mean the Respondent to whom these discovery requests is directed.
2. "Person" means any natural person, entity, group, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental and whether foreign or domestic.

3. “Documents” means the original and any nonidentical copy of any written, printed, reproduced, graphic, photographic, electronic, audio, visual, or computer records, however produced or reproduced, of any kind or description, whether prepared by you or by any other Person, that is in your possession, custody, or control, including, but not limited to, the following: electronic mail; electronically stored information; papers; notes; books; letters; telecopies; facsimiles; photographs; motion pictures; videotapes; video disks; audio recordings; drawings; schematics; manuals; blueprints; intra- and interoffice Communications; transcripts; minutes; reports; audio recordings; affidavits; statements; pleadings; summaries; indices; analyses; evaluations; agreements; calendars; appointment books; diaries; telephone logs; tabulations; charts; graphs; data sheets; computer tapes, disks, cards, printouts, and programs; microfilm; microfiche; social media Communications, including, but not limited to, information posted on or transmitted through social networking platforms (*e.g.*, MySpace, LinkedIn and Facebook), digital file-sharing services (*e.g.*, Flickr), blogs and microblogs (*e.g.*, Twitter); instant messages, customer reviews and/or comments posted on the your website(s) relating to the Subject Products; and all drafts, alterations, and/or amendments of or to any of the foregoing. The term includes all drafts of a Document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in or accessible through computer or other information retrieval systems (including computer archives or backup systems), together with instructions and all other materials necessary to use or interpret such data compilations.

4. “Relating to” or “related to” means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. “Identify” or “identity” when used with respect to an individual means to provide the individual’s present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the individual works, business affiliation, and business or employment address, and the individual’s relationships or associations, if any, to the Respondents.

6. “Identify” or “identity” when used with respect to a business, entity, building, or place means the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents.

7. “Identify” or “identity” when used with respect to a Document means the name or title of the document, a description of the Document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the Person who currently has custody of, possession of, or control over the Document. You may also identify a Document by providing a complete and legible copy thereof, and by stating that you have done so.

8. “Identify” when used with respect to a communication means to describe in detail the nature and content of the communication, state the date of the communication, identify all Persons to and from whom the communication was made, and identify all Persons hearing, witnessing, and/or present during the communication.

9. “Communications” means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to, e-mails, voice mails, fax, memoranda, inquiries, reports, claims, and complaints.

10. “Subject Products” means Buckyballs® and Buckycubes.™

11. “Manufacture” means to “manufacture, produce, or assemble,” as defined in 15 U.S.C. § 2052(a)(10).

12. “Distribute” means to deliver, sell, give, allot, or otherwise provide in commerce, and shall include giving away free samples and promotional items.

13. “Complaint” shall mean the Complaint, and any amendments to the Complaint, filed in this action, CPSC Docket 12-1.

14. “Answer” shall mean the Answer and Defenses, and any amendments to the Answer and Defenses, of Respondent Craig Zucker filed in this action.

15. “Interrogatories” shall mean Complaint Counsel’s First Set of Interrogatories to Respondent Craig Zucker served upon the Respondent.

16. “Requests for Production” shall mean Complaint Counsel’s First Set of Requests for Production of Documents and Things to Respondent Craig Zucker served upon the Respondent.

17. “Hearing” shall mean any hearing conducted in this matter pursuant to 16 C.F.R. § 1025.41 *et seq.*

18. “Test” shall mean any examination, inspection, analysis, results, or other assessment of the Subject Products, or any components of the Subject Products.

19. “M&O” shall mean Respondent Maxfield & Oberton Holdings, LLC (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present Persons acting or purporting to act on the Respondent’s behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present parents, subsidiaries, divisions, or branches of the Respondent.

20. “Retailer” shall mean any Person who sold the Subject Products to consumers in the United States.

21. “Responsible Seller Agreement” or “RSA” shall mean any iteration or version of the Buckyballs®/Buckycubes™ Responsible Seller Agreement (RSA), attached at Tab 19(c) to M&O’s May 25, 2012 submission to the CPSC.

22. “ASTM” shall mean ASTM International, formerly known as the American Society for Testing and Materials, of West Conshohocken, PA, including all past and present officers, directors, representatives, agents, and employees, all other past and present persons acting or purporting to act on ASTM’s behalf.

#### INSTRUCTIONS

A. Each interrogatory and every subpart thereof shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an interrogatory, that part

shall be specified. An answer should not be supplied solely by reference to the answer to another interrogatory or subpart unless the answer is completely identical to the answer to which reference is made.

B. The answers shall be signed by the Person giving them, and the objections, if any, shall be signed by the Person or attorney making them. When a complete answer to a particular interrogatory is not possible after exercising the required diligence, the interrogatory shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial answer is given, stating the information or knowledge you have concerning the unanswered portion or unproduced Documents, and describing your efforts to secure the unknown information or unproduced Documents.

C. Identify each Person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these interrogatories.

D. If precise information cannot be supplied in response to any interrogatory, an estimate (identified as such) and an explanation of the basis for the estimate shall be supplied.

E. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word “including” shall be construed to mean without limitation. The words “any” and “all” shall be construed so as to make the request inclusive rather than exclusive.

F. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

G. The singular shall include the plural, and vice versa.

H. These interrogatories shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any interrogatory cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

I. If it is claimed that the attorney-client privilege or any other privilege is applicable to any Document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the Document as follows:

- i) State the date, nature, and subject matter of the Document;
  - ii) Identify each author of the Document;
  - iii) Identify each preparer of the Document;
  - iv) Identify each Person who is an addressee or an intended recipient of the Document;
  - v) Identify each Person from whom the Document was received;
  - vi) State the present location of the Document and all copies thereof;
  - vii) Identify each Person who has or ever had possession, custody, or control of the Document or any copy thereof;
  - viii) State the number of pages, attachments, appendices, and exhibits;
- and

- ix) Provide all further information concerning the Document and the circumstances upon which the claim of privilege is asserted.

J. For any Communication with respect to which a privilege is asserted, identify the Persons or entities among whom the Communication took place, the date of the Communication, and the subject.

K. In the event that any Document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that Document is to be identified as completely as possible, by including, without limitation, the following information:

- i) Each author of the Document;
- ii) Each preparer of the Document;
- iii) Each addressee or intended recipient of the Document;
- iv) Each Person who received the Document;
- v) The date of the Document;
- vi) The subject matter of the Document;
- vii) The reason for disposal of the Document;
- viii) Each Person who authorized disposal of the Document;
- ix) Each Person who disposed of the Document.

L. If any Document was, but is no longer, in your possession, custody, or control, provide the following information:

- i) State the disposition of the Document;
- ii) State the date such disposition was made;
- iii) Identify the present custodian of the Document, or, if the Document no longer exists, so state;



- iv) Identify the Person(s) who made the decision regarding the disposition of the Document; and
- v) State the reasons for the disposition and describe the Document and the contents of the Document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all Persons to whom the Document was distributed, shown, or explained.

M. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement its responses to these discovery requests without further request from Complaint Counsel. Where the Respondents have responded to a discovery request with a response that was complete when made, Respondents are under a duty to supplement that response to include information later obtained.

N. Unless otherwise specified, the time period encompassed by these interrogatories is January 1, 2009 to the Present.

#### INTERROGATORIES

1. Identify each Person with knowledge of your efforts to respond to Complaint Counsel's Interrogatories and Requests for Production. For each Person identified, indicate the time period of his or her involvement and describe the Person's responsibility, role and contribution.

2. Identify each Person with knowledge of steps taken by you to preserve documents and information in connection with the above-captioned action.

3. Identify each Person with knowledge of M&O's efforts to respond to Complaint Counsel's Interrogatories and Requests for Production. For each Person identified, indicate the time period of his or her involvement and describe the Person's responsibility, role and contribution.

4. Identify each Person with knowledge regarding M&O's policies and practices regarding management and retention of documents and information.

5. Identify each Person with knowledge of steps taken by M&O to preserve documents and information in connection with the above-captioned action.

6. Identify each Person with knowledge regarding the ingestion of the Subject Products and describe with specificity the knowledge of each Person identified.

7. Identify each Person whom you expect to call as a witness at the trial or Hearing of this matter, and for each witness, state or provide the following information:

- a) The subject matter on which the witness is expected to testify; and
- b) The substance of the facts to which the witness is expected to testify.

8. Identify each Person whom you expect to call as an expert witness at the trial or Hearing of this matter, and for each such expert witness, state or provide the following information:

- a) The subject matter on which the expert is expected to testify;
- b) The substance of the facts and opinions to which the expert is expected to testify; and
- c) A summary of the grounds for each opinion.

9. Identify each Person with knowledge regarding the design and development of the Subject Products, including any Person who participated in the creation of the look, feel, and appearance of the Subject Products. For each Person identified, indicate the time period of his or her involvement and describe the Person's responsibilities, role and contribution.

10. Identify each Person with knowledge regarding the intended purpose, intended use, and intended user of the Subject Products. For each Person identified, indicate the time period of his or her involvement and describe the Person's responsibilities, role and contribution.

11. Identify each Person who participated in age grading, age labeling and/or age determination of the Subject Products, including any changes thereto. For each Person identified, indicate the time period of his or her involvement and describe the Person's responsibilities, role and contribution.

12. Identify each iteration or version of each label, warning, or instruction that appeared at any time on [www.getbuckyballs.com](http://www.getbuckyballs.com), [www.magnetsafety.com](http://www.magnetsafety.com), and [www.saveourballs.net](http://www.saveourballs.net), that referenced the recommended age of the user of the Subject Products and/or the possible risks associated with ingestion of the Subject Products. For each label, warning, or instruction, provide the first and last dates during which it was visible on [www.getbuckyballs.com](http://www.getbuckyballs.com), [www.magnetsafety.com](http://www.magnetsafety.com), and [www.saveourballs.net](http://www.saveourballs.net).

13. Identify each iteration or version of each label, warning, or instruction that accompanied the Subject Products that referenced the recommended age of the user of the Subject Products and/or the possible risks associated with ingestion of the Subject Products. Provide information (such as dates of distribution or sale; product names or

other identifying information; and quantity of products) sufficient to determine which units of the Subject Products were distributed with each iteration or version of each label, warning, or instruction.

14. Identify each Person involved in creating, designing, and manufacturing any and all versions or iterations of the packaging, labels, warnings, and instructions that accompanied the Subject Products, including any changes thereto. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

15. Identify each Person who participated in the marketing, advertising, and/or promotion of the Subject Products from 2009 through the present, in any form or through any media. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

16. Identify any studies, reports, publications, or written evaluations that discuss or refer to the effectiveness of any warnings that accompany, or in the past accompanied, the Subject Products with respect to the risk of ingestion.

17. In M&O's August 14, 2012 Supplemental Response to the Full Report submitted to the Commission on May 25, 2012, M&O identified a promotional video that can be found at: <http://web.archive.org/web/20090313053433/http://getbuckyballs.com/>. The video describes and demonstrates various uses of the Subject Products such as jewelry and refrigerator decorations. The video includes a clip of a woman using the Subject Products to simulate a tongue piercing. Identify all Persons who were involved in conceiving, developing, producing and promoting the video.

18. State the reasons why the following uses of the Subject Products were included in the video described in Interrogatory 17:

- a) Using the Subject products as jewelry;
- b) Using the Subject Products to simulate tongue piercings; and
- c) Using the Subject Products as magnets on refrigerators.

19. Identify each Person who participated in determining the prices at which M&O offered the Subject Products for sale. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

20. Identify each Person involved in creating, maintaining, and developing the contents of the websites: [www.getbuckyballs.com](http://www.getbuckyballs.com), [www.magnetsafety.com](http://www.magnetsafety.com), and [www.saveourballs.net](http://www.saveourballs.net), or any iteration of any of the above sites. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

21. Identify each Person who participated in marketing, advertising, or public relations campaigns or communications to the public with respect to the Subject Products following the filing of the Complaint. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

22. Identify each Person who communicated with CPSC Chairwoman Inez Tenenbaum, any of the current or former CPSC commissioners, or any CPSC staff member following the filing of the Complaint. For each Person identified, describe the Person's role, responsibilities, and the nature of the communication(s).

23. Identify each Retailer to whom M&O offer the Subject Products at a discounted price following the filing of the Complaint. With respect to each Retailer identified, state:

- a) The discounted price per unit;
- b) The number of units purchased by the retailer;
- c) The date of each such purchase; and
- d) Any other terms of the discount.

24. Identify each Person with knowledge of the manufacturing or packaging of the Subject Products, as well as any changes thereto. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

25. Identify each Person with knowledge of the following specific aspects of the manufacturing process for the Subject Products. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

- a) The identification and procurement of raw materials;
- b) The identification and procurement of component parts;
- c) The identification and retention of a facility to manufacture and package the Subject Products, including the component parts; and
- d) The creation and procurement of necessary tools and equipment,

26. Identify each Person (whether individual or entity) in M&O's supply chain for the Subject Products from the acquisition of raw materials and component parts

to the sale of the Subject Products. Your answer should include a description of the product or service that each Person provided to M&O.

27. Identify the author of M&O's Responsible Seller Agreement.

28. Identify each Person who executed a Responsible Seller Agreement with respect to the Subject Products.

29. Describe the circumstances under which, if ever, M&O refused to sell the Subject Products to certain Retailers. Identify those Retailers, and state the reasons for the refusal.

30. Describe those circumstances under which, if ever, M&O withdrew the Subject Products from, or ceased selling the Subject Products to, any Retailer for failure to comply with any provision of the Responsible Seller Agreement or for any other conduct inconsistent with M&O's agreements with that Retailer. Identify each such Retailer, and describe the reasons for the withdrawal of the Subject Products or the cessation of sales.

31. Identify and describe each step you or any other M&O employee took to ensure that Retailers that executed a Responsible Seller Agreement complied with the provisions of such agreements.

32. Identify each Person who was at any time responsible for ensuring compliance by Retailers with the terms of M&O's Responsible Seller Agreements.

33. Identify all Tests performed on the Subject Products. As part of your response for each Test:

a) Identify the specific product or products tested;

- b) Describe each Test including the date of the Test and the standard or protocols used;
- c) Identify all Persons who participated in the Test;
- d) Describe all information, directions, and requests that you or any other M&O employee provided to the Person conducting the Test;
- e) Describe and explain the results of the Test, including all observations and conclusions;
- f) Identify all Persons who participated in evaluating the test results; and
- g) Describe any changes to the Subject Products following the Test.

34. Identify each claim, complaint, inquiry, or report of incidents, injuries, or fatalities related to ingestion of the Subject Products, including those with respect to which it is unknown if the magnets involved were distributed by M&O. For each claim, complaint, inquiry, or report of incidents, injuries, or fatalities:

- a) Provide the name, address, telephone number, e-mail address, and any other identifying information of the claimant, complainant, or person submitting the inquiry or report;
- b) Identify the date M&O first received verbal or written information concerning the claim, complaint, inquiry, or report;
- c) State the information M&O received in the claim, complaint, inquiry, or report and how the information was received;
- d) State whether you or any other Person acting on behalf of M&O investigated or took other responsive steps after the initial claim,



complaint, inquiry, or report, and if so, state the date and description of each investigation or other step;

- e) State whether medical attention was received by any Person involved in any claim, complaint, inquiry, or reports;
- f) State the age of any Person involved in the incident;
- g) State the date of purchase of the product involved.
- h) State where the product involved was purchased and who purchased it;
- i) Describe the type of packaging and warnings on the involved product; and
- j) For each such claim that was submitted to an insurer, identify the insurer, state whether the insurer affirmed that coverage existed for the claim, state whether the insurer paid covered the claim, and state the sum paid, if any.

35. Identify each Person with knowledge of any lawsuits or alternative dispute resolution proceedings related to the Subject Products.

36. Identify each insurance policy that provides coverage to you or M&O (including M&O's officers and directors) for claims arising from the Subject Products.

37. Identify each Person who at any time served as a member, partner, officer or director of M&O. For each Person identified, list each position held and the dates of service.

38. Identify each Person who was at any time employed by M&O. For each Person identified, provide a job description and dates of employment for each position held during the duration of his or her employment at M&O.

39. Identify each Person who had responsibility for any aspect of M&O's 2010 recall of Buckyballs® and the 2011 Magnet Safety Alert.

40. Identify each Person responsible for maintaining the site [www.getbuckyballs.com](http://www.getbuckyballs.com) from December 27, 2012 to the present.

41. Identify each position you held during the duration of your affiliation with M&O.

42. With respect to each position identified in response to Interrogatory 41, provide a narrative description of your role, responsibilities, decision-making authority, as well as the name of your direct supervisor (if any) and the employees that reported directly to you.

43. Provide a narrative description of your role, responsibilities, and authority regarding M&O's efforts to comply with the requirements of the Consumer Product Safety Act, and any other statute or regulation enforced by the Consumer Product Safety Commission.

44. Identify, by description and date, each action you took on behalf of M&O in furtherance of M&O's compliance with the requirements of the Consumer Product Safety Act, and any other statute or regulation enforcement by the Consumer Product Safety Commission.

45. Identify each Person with knowledge regarding M&O's decision to wind-down and/or file a certificate of cancellation.

46. Identify the first date on which M&O considered winding-down and/or filing a certificate of cancellation.

47. State the reasons that M&O decided to wind-down and file a certificate of cancellation.

48. Identify each step that you or any other Person acting on behalf of M&O took, prior to filing a certificate of cancellation to ascertain, quantify, and make reasonable provision for: (i) claims and obligations known to M&O; (ii) claims against M&O that were the subject of a pending action, suit, or proceeding to which M&O was a party; and (iii) claims against M&O that were likely to arise or become known to M&O within 10 years after the date of dissolution.

49. Identify by date, amount, and recipient each and every payment or disbursement made by M&O to you or any other employee, member, officer or director of M&O (whether past or present), between July 25, 2012 and December 27, 2012. Your response should include any payments made to entities owned or controlled by a Person who was at any time an employee, member, officer or director of M&O.

50. Identify each Person who participated in the decision-making process with regarding the amount, timing, or recipient each payment or disbursement identified in response to Interrogatory 49.

51. Identify each claim, potential claim, or obligation, identified by M&O prior to dissolution. For each claim, potential claim, or obligation:

- a) Provide the name, address, telephone number, e-mail address, and any other identifying information of the claimant or obligor;
- b) State the nature of the claim or obligation.

52. Provide a narrative statement describing how M&O determined how much money it would transfer to the MOH Liquidating Trust.

53. Identify each Person who participated in determining how much money M&O transferred to the MOH Liquidating Trust.

54. Identify each Proof of Claim that has been submitted to the MOH Liquidating Trust as of August 8, 2013, and for each Proof of Claim identified:

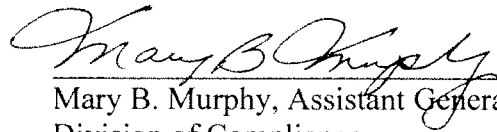
- a) Provide the name, address, telephone number, e-mail address, and any other identifying information of the claimant;
- b) State the nature of the claim or obligation described in the Proof of Claim;
- c) State the amount that the MOH Liquidating Trust has paid or allocated for payment to the claimant.

55. State the total number of units of the Subject Products that M&O had distributed in commerce as of December 31, 2012.

56. Identify each Person with knowledge of M&O's involvement in the formation of an ASTM Standard encompassing the Subject Products. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

57. Identify each step that you took, prior to M&O's filing of a certificate of cancellation, to preserve documents and information relating to the Subject Products.

58. Identify each step that M&O took, prior to filing a certificate of cancellation, to preserve documents and information relating to the Subject Products.



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Richa Shyam Dasgupta, Trial Attorney

Complaint Counsel for  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2013, I served Complaint Counsel's First Set of Interrogatories to Craig Zucker as follows:

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

One copy by certified mail and one copy of electronic mail to counsel of record:

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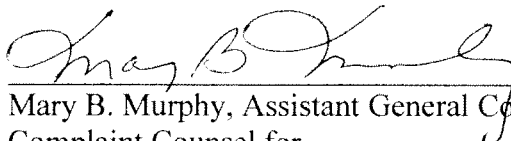
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tmullin@milesstockbridge.com  
*Counsel for Respondent Craig Zucker*

One copy by electronic mail to the Trustee for MOH Liquidating Trust:

Julie Beth Teicher, Trustee  
MOH Liquidating Trust  
Erman, Teicher, Miller, Zucker & Freedman, P.C.  
400 Galleria Officentre, Suite 444  
Southfield, MI 48034

  
Mary B. Murphy, Assistant General Counsel  
Complaint Counsel for  
U.S. Consumer Product Safety Commission