

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of )  
 )  
ZEN MAGNETS, LLC )  
 )  
 ) CPSC DOCKET NO. 12-2  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**COMPLAINT COUNSEL'S  
FIRST SET OF INTERROGATORIES TO RESPONDENT  
ZEN MAGNETS, LLC**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Zen Magnets, LLC 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", "Zen" and "Zen Magnets, LLC," mean the Respondent to whom these discovery requests are directed (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.

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 Respondent.

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 Respondent.

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 Zen Magnets® and Neoballs.

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” means the Complaint, and any amendments to the Complaint, filed in this action, CPSC Docket 12-2.

14. “Answer” means the Answer and Defenses, and any amendments to the Answer and Defenses, of Respondent Zen Magnets, LLC, filed in this action.

15. “Interrogatories” means Complaint Counsel’s First Set of Interrogatories to Respondent Zen Magnets, LLC, served upon the Respondent.

16. “Requests for Production” means Complaint Counsel’s First Set of Requests for Production of Documents and Things to Respondent Zen Magnets, LLC, served upon the Respondent.

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

18. “Test” means any examination, inspection, analysis, result, or other assessment of the Subject Products, or any components of the Subject Products.

19. “Retailer” means any Person who sold the Subject Products to consumers in the United States.

20. “ASTM” means 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 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 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 here. If the meaning of any word or phrase used here is unclear, the Respondent’s attorneys are requested to contact Complaint Counsel to resolve 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 answer fully and specifying the 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 Respondent is under a continuing duty to supplement its responses to these discovery requests without further request from Complaint Counsel. Where the Respondent has responded to a discovery request with a response that was complete when made, it is 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 Zen'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.
2. Identify each Person with knowledge regarding Zen's policies and practices regarding management and retention of Documents and information.
3. Identify each Person with knowledge of steps taken by Zen to preserve Documents and information in connection with the above-captioned action.
4. Identify each Person with knowledge regarding the possibility of ingestion of the Subject Products, and describe with specificity the knowledge of each Person identified.

5. Identify each Person whom you expect to call as a witness at the trial or Hearing of this matter, and<sup>7</sup> 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.

6. 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.

7. 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.

8. 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.

9. Identify each iteration or version of each label, warning or instruction that appeared at any time on [www.zenmagnets.com](http://www.zenmagnets.com), [www.neoballs.com](http://www.neoballs.com), and

www.SaveMagnets.com 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.zenmagnets.com, www.neoballs.com, and www.SaveMagnets.com.

10. 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.

11. 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.

12. Identify each iteration or version of each label, warning, or instruction that ever 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.

13. 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, including on www.zenmagnets.com, www.neoballs.com, and

www.SaveMagnets.com. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibilities, role, and contribution.

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

15. Provide a narrative statement setting forth the legal and factual basis for your claim that the Subject Products are science kits.

16. Identify each Person who participated in determining the price(s), both past and present, at which Zen offers 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.

17. Identify each Person involved in creating, maintaining, and developing the contents of the websites: www.zenmagnets.com, www.neoballs.com, and www.SaveMagnets.com, or any iteration of any those sites. For each Person identified, indicate the time period of his or her involvement, and describe the person's responsibilities, role, and contribution.

18. 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, describe the Person's role, responsibilities, and contribution.

19. 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).

20. Identify and describe the role and contribution of any Person with knowledge regarding the manufacturing or packaging of the Subject Products, including any changes thereto. For each Person identified, describe the Person's role, responsibilities, and contribution.

21. Identify each Person with knowledge of the following specific aspects of the manufacturing process for the Subject Products. For each Person identified, state the time period of the work, and describe the Person's role, responsibilities, 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.

22. Identify each Person (whether individual or entity) in Zen'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 each Person provided to Zen.

23. In a submission to the CPSC, dated May 29, 2012, you indicated that you work with "Amazon distributors," "two Amazon retailers," and "Amazon resellers." Please identify all Persons included within these three categories.

24. For each Person identified in response to Interrogatory 23, please provide the following information:

- a) The number of units of each model of the Subject Products you sold to the Person;
- b) The first and last dates on which you sold the Subject Products to the Person; and
- c) State whether you had any Communications with the Person regarding warnings that should accompany the Subject Products; and
- d) State whether you had any Communications with the Person regarding the intended age of the user of the Subject Products.

25. 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 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.

26. 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 were distributed by Zen. 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 you first received verbal or written information concerning the claim, complaint, inquiry, or report;
- c) State the information you received in the claim, complaint, inquiry, or report and how you received it;
- d) State whether you investigated or took other responsive steps after the initial claim, complaint, inquiry, or report, and if so, 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; and
- i) Describe the type of packaging and warnings on the involved product.

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

28. Identify each insurance policy that provides coverage to Zen (including Zen's officers and directors) for claims arising from the Subject Products.

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

30. Identify each Person who was at any time employed by Zen. 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 Zen.

31. Identify all entities owned by, operated by, or related to, both past and present, Zen or its principals or employees who sell products similar to the Subject Products.

32. With respect to any entity identified in response to Interrogatory 31, indicate if the products sold by those entities or individuals are purchased, warehoused, or distributed by any owner, employee, or principal of Zen.

33. Identify each Person with knowledge of Zen'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.

34. In your Answer filed on November 7, 2012, you assert at paragraph 16: "Zen Magnets have much higher precision than the magnetic or magnet balls alleged to cause injury through the Amended Complaint." Provide the factual and legal bases upon



which you rely in making this assertion and define “higher precision” as you use the term.

35. In your Answer filed on November 7, 2012, you assert at paragraph 5: “In a recent CPSC webcast, the CPSC itself states that CPSC staff lists the recommended age for magnet spheres as 9+.” Please identify the “CPSC webcast” you refer to, and specify each statement in that webcast on which you rely to support your assertion

36. In your Answer filed on November 7, 2012 you assert at paragraph 15: “the potential for danger in Zen Magnets is significantly less than that for Buckyballs, or other magnet or magnetic balls.” Identify what you understand to be the “potential for danger,” the population who would be exposed to such “potential for danger”, and state the basis upon which you believe that Zen Magnets poses a “significantly less” danger.

37. In your Answer filed on November 7, 2012, you assert at paragraph 17: “There are significant marketing and distribution differences between Zen Magnets and other companies distributing magnet or magnetic balls.” Identify all such differences between Zen Magnet and magnets or magnet balls distributed by other companies.

38. Identify each Person with knowledge regarding your decision to manufacture, import, distribute, and/or sell Neoballs.

39. Identify each Person with knowledge regarding your decision to distribute and/or sell Neoballs individually.

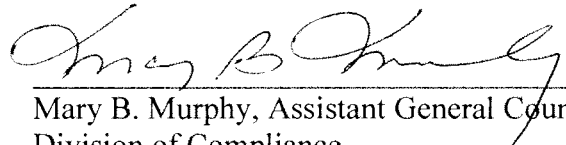
40. Describe the relationship, similarities, and differences, between Neoballs and Zen Magnets®, including, but not limited to:

- a) whether the products are made by the same manufacturer and/or are made at the same facility;

- b) whether the products are made of the same raw materials and component parts;
- c) whether the products are the same or different regarding composition;
- d) whether the products are the same or different regarding the supply chain (from the acquisition of raw materials and component parts to the sale of the products);
- e) whether the products are the same or different regarding the intended purpose, intended use, and intended user;
- f) whether the products are the same or different regarding the age grading, the age labeling, or the age determination;
- g) whether the products are accompanied by the same or different labels, warnings, or instructions that provide information about the recommended age of the user and/or the possible risks associated with ingestion of the product;
- h) whether the label, warning, or instructions that appeared at any time online that provide information about the recommended age of the user and/or possible risks associated with the ingestion of the product are the same or different;
- i) whether the packaging for the products is the same or different;
- j) whether the marketing, advertising, and/or promotion of the products are the same or different; and
- k) whether the pricing of the products is the same or different.

41. State the total number of units of the Subject Products Zen has distributed in commerce as of July 29, 2013.

42. Identify each step that Zen has taken or intends to take in order to preserve documents and information relating to the Subject Products.



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Complaint Counsel for  
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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2013, I served Complaint Counsel's First Set of Interrogatories to Zen Magnets, LLC 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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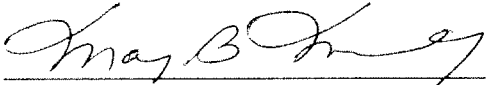
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One copy by electronic mail to the Trustee for MOH Liquidating Trust:

Julie Beth Teicher, Trustee  
MOH Liquidating Trust  
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