

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	CPSC Docket No. 12-2
ZEN MAGNETS, LLC,)	
Respondent.)	

**JOINT STATEMENT REGARDING FACTUAL AND LEGAL ISSUES IN DISPUTE
REGARDING THE DRAFT ACTION PLAN AND DRAFT PUBLIC NOTIFICATION**

Pursuant to the Commission’s Final Decision and Order (“FDO”) issued October 26, 2017, the parties hereby submit this Joint Statement to the Commission Regarding Factual and Legal Issues in Dispute Regarding the Draft Action Plan and the Draft Public Notification.

BACKGROUND

On November 6, 2017, Complaint Counsel submitted draft Public Notifications to Respondent as required by the FDO. (Exhibit A). The draft Public Notifications contained the nine elements required by the FDO including:

- 1) A joint news release from the Commission and the Respondent;
- 2) A video news release;
- 3) A recall notice to be posted prominently and for an extended period of time on all of Respondent’s Internet websites;
- 4) A recall notice or similar communication to appear prominently and for an extended period of time on every social media platform used by Respondent, including but not limited to, Google+, YouTube, Twitter, Reddit, Flickr, Facebook, and Internet blogs;
- 5) Direct notice via first class mail and electronic mail to each third party Internet website on which Respondent placed the Subject Products for sale;
- 6) Direct notice via first-class mail and electronic mail to each manufacturer, distributor, and retailer, including, but not limited to, marijuana dispensaries and head shops, of the Subject Products;

- 7) Recall poster to be provided with each direct notice sent to retailers with instructions regarding posting;
- 8) Direct notice via first-class mail and electronic mail to each third party Internet platform on which the Subject Products may be sold by persons other than Respondent, including but not limited to eBay; and
- 9) Direct notice via first class mail and electronic mail to each person whom Respondent knows such product was delivered or sold.

On November 6, 2016, Respondent submitted a draft Action Plan to Complaint Counsel.

(Exhibit B.) The draft Action Plan contained Respondent's plan to provide for a refund of the purchase price of the Subject Products that considered:

- 1) The generally accepted useful life of the magnets;
- 2) The original cost paid by consumers;
- 3) Incentives to encourage returns;
- 4) Whether and how many magnets should be returned by consumers to qualify for a refund;
- 5) The timing and duration of any refund;
- 6) Shipping or other costs associated with returns; and
- 7) The limits, if any, of the refund.

On November 15, 2017, Complaint Counsel submitted to Zen written responses and objections to Zen's draft Action Plan. (Exhibit C).

On November 16, 2017, Respondent submitted to Complaint Counsel written responses and objections to the draft Public Notifications. (Exhibit D).

On November 21, 2017, the parties conferred in an effort to resolve Zen's objections to the draft Public Notifications and Complaint Counsel's objections to the draft Action Plan. The parties were able to resolve some, but not all of the issues. The points of disagreement are set forth below.

A. OUTSTANDING OBJECTIONS TO THE DRAFT NOTIFICATION DOCUMENTS

When the parties met and conferred on November 21, 2017, Complaint Counsel agreed to some of Zen's suggested edits to the draft Public Notifications. A copy of Complaint Counsel's proposed Public Notifications, included changes agreed to when the parties met and conferred, are attached at Exhibit E1-9. The Public Notifications attached at Exhibit E1-9 include notations stating where Zen continues to object to Complaint Counsel's proposed Public Notifications.

1. Joint press release (Exhibit E1)

Points of disagreement:

Manufacturer Name

Zen objects to stating the name of the foreign manufacturer, contending that the manufacturer's identity is not public information and is a trade secret. Zen states that it imported the Subject Products and then assembled them in their packaging, and that in addition there were several overseas manufacturers who manufactured the magnets and packaging.

Complaint Counsel submits that foreign manufacturers of the Subject Products must be identified in the press release. Identification of foreign manufacturers is required pursuant to 16 C.F.R. § 1115.27(h) ("a recall notice must identify the foreign manufacturer and the United States importer"). Complaint Counsel agrees that Zen should be identified as the importer in the press release, but that the foreign manufacturers must also be stated.

Zen has not provided Complaint Counsel with the names of all foreign manufacturers of the Subject Products, but states that it will provide the names of those manufacturers if the Commission so orders.

Hazard Description

In the Hazard section of the press release, Zen proposes inserting the word “perhaps” in the last line before the word “death.” Complaint Counsel disagrees, because the Subject Products present a risk of death. *See* FDO at 3; 16 C.F.R. § 1115.27(f)(2) (recall notice must clearly and concisely state the type of hazard or risk, including the risk of “death”).

Incidents/Injuries

In the Incidents/Injuries section, Zen proposes inserting the following bolded words in the last line of that section: “a 19-month old girl died after ingesting high powered magnets, **though a direct causal link is not certain.**” Complaint Counsel disagrees, because the Commission found that the girl’s death was caused by SREM ingestion. FDO at 24 (“a 19-month-old girl died as a result of ischemic bowel from SREMs located in the small intestine,” citing “conclusion by medical examiner who performed the autopsy on Patient A that “the cause of death was ischemic bowel due to magnet ingestion”).

Dates of Sale

Zen proposes changing the sale dates to “between 2009 and 2011.” Complaint Counsel objects because the Subject Products are defined as all Zen Magnets and Neoballs sold *since* “2009 and 2011, respectively.” FDO at 1. This includes all Subject Products sold through the date that the recall is announced. All Zen Magnets and Neoballs create the same risk of harm regardless of packaging and warnings, and the FDO requires all Subject Products be recalled. FDO at 30-34, 46, 49.

2. Video news release (Exhibit E2)

Complaint Counsel sent Zen a video news release prepared by the Office of Communications. A CD containing the new release is attached to this pleading.

Zen objects to the content of the video release, and proposes an alternate youtube video that will educate the public on the hazard of magnets. *See Zen Magnets' Objections to CPSC Draft Action Plan, Exhibit 2 (attached here as Exh. D).* Complaint Counsel does not agree with Zen's proposal, because the purpose of the video news release is to inform the public that they should return the Subject Products, not an educational announcement about how to use the Subject Products. *See 16 C.F.R. § 1115.27(m)* (recall notice "must contain a clear and concise statement" of the remedy).

3. Recall Notice for Internet Websites (Exhibit E3)

Zen proposed to insert the words "genuine" in the first line before Zen Magnets and to insert "sold by Zen Magnets LLC" after Neoballs in the first line. Complaint Counsel does not agree to the edits proposed by Zen because consumers may have purchased Subject Products through retailers, not directly from Respondent. Zen's proposed language suggests that some consumers may be denied a remedy if they did not purchase directly sold by Respondent. Complaint Counsel objects to the term "genuine" because it is extraneous language that suggests that consumers bear a burden of proof beyond the requirements of other typical recalls announced by the Commission. *See 16 C.F.R. § 1115.27(c)* (description should be limited to a "clear and concise" statement). Respondent maintains a database of the vast majority of sales of the Subject Products that will allow it to confirm whether a consumer purchased the Subject Products directly from Respondent.

4. Recall Notice—Social Media (Exhibit E4)

No objections.

5. Direct Notice to Third Party Retailers (Exhibit E5)

Zen proposes changing “sometime in the past few years” to “between 2009 and 2011.” Complaint Counsel objects because the Subject Products are defined as all Zen Magnets and Neoballs sold *since* “2009 and 2011, respectively.” FDO at 1. This includes all Subject Products sold through the date that the recall is announced. All Zen Magnets and Neoballs create the same risk of harm regardless of packaging and warnings, and the FDO requires all Subject Products be recalled. FDO at 30-34, 46, 49.

In the paragraph entitled Reason for the Recall, Zen proposes that the sentence that states: “The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally,” should instead read: “The magnets present a substantial risk of injury to children if swallowed, either accidentally or intentionally.” Complaint Counsel disagrees with Zen’s proposed edits. The hazard description should clearly state the risk of death. *See* FDO at 3; 16 C.F.R. § 1115.27(f)(2) (recall notice must clearly and concisely state the type of hazard or risk, including the risk of “death”). Consumers also should be informed that this risk applies to teenagers, who consumers might not expect to be at risk from the hazard. *See* FDO at 32 (caregivers of older children may not realize the hidden hazard, believing “their tween or teen is old enough to know not to intentionally swallow SREMs”).

6. Direct Notice—Manufacturer and Retailer Notice (Exhibit E6)

Zen proposes that no notice be given to foreign manufacturers, stating that Zen is the manufacturer because it imports the Subject Products and then puts them into the product packaging. Complaint Counsel disagrees, because the Commission ordered that Zen notify

“each manufacturer.” FDO at 50. While Zen is the importer, the products are manufactured by manufacturers in China and those manufacturers should be notified of the recall.

Zen also raises the same concerns to the sale dates and Reason for the Recall as stated for the Direct Notice to Third Party Retailers (Exhibit E5) and Complaint Counsel interposes the same objections.

7. Recall Poster (Exhibit E7)

Zen proposes to state “medical treatment” rather than surgery in the second paragraph of the Hazard section. Zen states that the trial transcripts reflect that in 21% of cases, no medical intervention was required. Other cases require noninvasive treatment, and invasive treatment in yet other circumstances. The distinction between surgery and other forms of medical intervention is something that Zen feels is important and is clearly reflected in the administrative record. Complaint Counsel disagrees, because “surgery” more accurately conveys the severe risk poses by the Subject Products. In fact, the Commission made specific findings that “if SREMs become lodged in the digestive tract, intervention, usually through endoscopy, colonoscopy or abdominal surgery, is necessary. FDO at 26.

8. Direct Notice to Third Party Platformers (Exhibit E8)

Zen raises the same objections as it raised with regard to Direct Notice to Third Party Retailers and Complaint Counsel has the same objections.

9. Direct Notice to Consumers (Exhibit E9)

Zen proposes changing the sale dates to “between 2009 and 2011.” Complaint Counsel objects because the Subject Products are defined as all Zen Magnets and Neoballs sold *since* “2009 and 2011, respectively.” FDO at 1. This includes all Subject Products sold through the date that the recall is announced. All Zen Magnets and Neoballs create the same risk of harm

regardless of packaging and warnings, and the FDO requires all Subject Products be recalled. FDO at 30-34, 46, 49.

Zen has withdrawn the poster it initially proposed to be sent with this notice.

B. OUTSTANDING OBJECTIONS TO THE DRAFT ACTION PLAN (Exhibit F)

1. Who shall receive the refund.

Respondent proposed that: “The refund shall apply to all customers who purchased Zen Magnets or Neoballs on Respondent’s websites, Neoballs.com and ZenMagnets.com, through third party internet retailers, and at retail outlets.”

Complaint Counsel proposed that: “The refund shall apply to all customers who purchased Zen Magnets or Neoballs on Respondent’s websites (neoballs.com, and zenmagnets.com and any other sites Zen has operated, if any), through third party internet retailers, and at retail outlets. In addition, all current owners of the Subject Products should receive a refund even if they are not the original purchasers (for example, if they received the item as a gift).

Respondent does not agree to Complaint Counsel’s proposed terms.

2. The amount of the refund.

a. Useful life. Respondent proposed terms and conditions of the refund that would include a refund for magnets returned within the generally accepted useful life of the magnets, which Zen proposes is 6 months for Zen Magnets and 4 weeks to 3 months for Neoballs.

Complaint Counsel proposed that a full refund is appropriate in this case, and based on a recent assessment by CPSC technical staff, disputes the factual predicate underpinning the calculation of the useful life of the Subject Products put forth by Zen. The useful life of the magnets is not conditioned upon the integrity of the coatings but rather the strength of the

magnets. Zen has stated on its website that the magnets will retain their strong magnetism for many years and that “demagnetization due to time alone is about 5% in a human lifetime.” Zen further stated on its website that it would require extreme conditions such as “bak[ing] them” or “shoot[ing] them out of a BB gun” to “weaken[.]” this magnetism. Complaint Counsel believes that it is unlikely that consumers will subject the Subject Products to such extreme conditions. Zen’s statements about the substantial longevity of its magnets comport with the expected longevity of rare-earth magnets in general. Rare earth magnets are among the strongest available and hold their magnetism for many years, with estimated loss of magnetism on the order of only a few percent over the course of several decades or longer. Accordingly, Complaint Counsel submits that the Subject Products will retain their magnetism for many years, and will continue to pose a hazard to children even if their magnetism is reduced or their coatings are less shiny or if the color coating shows wear. Complaint Counsel proposed a full refund of the Subject Products.

b. Cost of each magnets. Respondent proposed that the magnets price range from 10 to 18 cents per magnet. Complaint Counsel objected to that calculation, noting that in the FDO the Commission found that the Subject Products were sold at prices of \$12.65 for a 72 piece set, \$32.98 to \$38.24 for the 216 piece set, and up to \$263.85 for the 1728 piece set, and that they could be purchased individually for 20 cents per magnet.

After a conference call on November 21, 2017, Respondent agreed with Complaint Counsel’s position on this issue.

c. Incentives to encourage returns.

Zen proposes to offer a full refund to consumers who purchased the Subject Products within the past 180 days, excluding original shipping costs. Zen further offers to provide

consumers with coupons for twenty percent off of other products to incentivize customers to return the Subject Products, and will offer customers the opportunity to enter a contest to win a poster.

Complaint Counsel objected to these terms, noting that consumers are more likely to participate in a recall if they receive a substantial refund. Consumers are more likely to participate in a recall if they are compensated for the full purchase price of the product. Complaint Counsel also disagrees that a full refund should be limited to consumers who purchased the Subject Products within the last 180 days. Zen has provided no justification to unduly restrict the refund to consumers who purchased within that time frame. Complaint Counsel submits that all consumers should be afforded the same incentive to participate in the recall given that the Subject Products retain their strong magnetism for many years and thus present the same hazard to children. Therefore, this factor weighs in favor of a full refund for all consumers.

The parties have been unable to reach agreement on this issue.

d. Whether and how many magnets should be returned by consumers to qualify for a refund

Zen proposed offering a refund to consumers who return at least 50 percent of the magnets.

Complaint Counsel agreed with Respondent that Subject Products owners who return at least 50% of a set should be entitled to a return of the full purchase price of the products. Consumers who return less than a full set, however, should be entitled to a prorated refund based on the percentage of magnets returned (for example, a return of 54 magnets from a set of 216 magnets would result in a refund of 25% of the full purchase price of the set).

Respondent agreed with Complaint Counsel's proposal, so the parties have reached an agreement on this issue.

e. The Timing and Duration of any refund

Zen offers to provide a refund to consumers for 6 months after the recall is announced.

Complaint Counsel submits that such a limited time frame is unacceptable. Instead, consumers should be allowed 2 years to return the magnets for a full or partial refund. At the conclusion of the 2 years, Zen should consult with the Office of Compliance at which time staff will determine (based on the rate of return, number of recalled products still in circulation, and other relevant factors), whether Zen should continue to offer refunds to consumers, and how long the refund program should continue.

The parties have been unable to reach agreement on this issue.

f. Shipping and other costs associated with the returns.

Zen offered to reimburse consumers for first class package service only. Complaint Counsel disagreed: some returns may be too heavy to qualify for first class shipping and would thus disincentivize some consumers from participating in the recall. *See* U.S.P.S. website, <https://www.usps.com/ship/first-class-mail.htm> (maximum first class parcel weight is 13 ounces).

At a conference call on November 21, 2017, Zen agreed with Complaint Counsel's position on this matter. The parties have thus reached agreement on this issue.

g. The limits of the refund.

Zen has proposed a refund program that provides that consumers who purchased the magnets more than 180 days ago or who return less than 50 percent of a set will only be entitled to a refund if Zen determines that the magnets are returned in "like new condition and in proper

working order.” Zen also requires that consumers provide “the original order information or packaging for proof of purchase.”

Complaint Counsel objected to this proposal, noting that the restrictions will discourage consumers from taking advantage of the recall and unfairly exclude the majority of consumers from eligibility. The Subject Products maintain their strong magnetism for decades, continuing to pose a hazard whether or not Zen deems them “like-new” or “proper.” The Subject Products pose a risk due to their magnetic strength, whether or not a magnet retains a uniformly “proper” color or “like-new” shiny coating.

Zen also proposed a condition on its refund that would entitle consumers who return less than 50 percent of the magnets purchased to a prorated refund. Complaint Counsel agrees with Zen that anyone who returns less than 50% of a set may receive a prorated refund based on the amount returned. However, this refund shall be based on the full purchase price of the product. This will encourage consumers to return as many magnets as they can, even if some have been lost. It will also encourage consumers to return additional Subject Product magnets if they later find magnets that have become separated from sets.

However, Complaint Counsel strongly disagrees that consumers must present the original packaging or original order information to receive a refund. Many consumers do not retain a product’s original packaging, and it is unlikely that consumers of a product sold as far back as 2009 would have retained such materials. In addition, Zen maintains an electronic database of online sales and is able to confirm a product’s purchaser without the original order form. Zen’s restrictions on returns could very likely preclude consumers who purchased the Subject Products at a retailer or who received the item as a gift from participating in the recall.

Complaint Counsel suggested that instead of requiring original order documentation, Zen may request a written statement from consumers affirming that they are returning the Subject Products, as long as that does not place an undue burden on the consumer (for example, consumers should not be required to obtain or pay for the services of a notary).

Following a conference call on November 21, 2017, Zen proposed that all claims be made in writing and accompanied by proof of purchase, which shall consist of a receipt showing that the purchase was made in the United States or an affidavit showing the same executed under 18 U.S.C. § 1001, acknowledging the purchase of the Subject Products in the United States, the place of purchase, and the purchase price. Complaint Counsel does not agree that those conditions are acceptable. In particular, consumers should be permitted to affirm that they are returning the Subject Products without having to submit a notarized affidavit, which would burden consumers by requiring them to find and pay for the services of a notary to submit an affidavit.

The parties have not reached agreement on these specific issues relating to the limits of the refund.

3. Additional Elements in the Action Plan

Complaint Counsel proposed additional terms to be included in the Action Plan, based on elements contained in corrective action plans regularly accepted by Compliance staff.

Zen agreed to add the following three provisions:

- Zen shall submit monthly progress reports to the Office of Compliance and Field Operations (“Compliance”) as directed by Compliance Staff;
- Zen shall contact Compliance staff if there are any issues with adherence to the Action Plan by Zen or third parties; and
- Zen shall maintain all records relating to the Action Plan for 5 years:

In addition, Zen will agree to permit Compliance staff to monitor Zen's implementation of the Action Plan, does not agree to monitoring as provided in 16 C.F.R. 1118.2.

In addition, Zen objects to the following terms proposed by Complaint Counsel for inclusion in the Action Plan, so the parties have not reach agreement on these terms:

- Prior to disposal or destruction of the Subject Products in the distribution chain and in Zen's inventory (including transfer for disposal or destruction to third party), Zen shall ensure that all Subject Products that are in the distribution chain and in Zen's inventory and returned pursuant to the recall are properly quarantined, and
- Prior to disposal or destruction of the Subject Products in the distribution chain and in Zen's inventory (including transfer for disposal or destruction to third party) Zen shall notify the Office of Compliance and Field Operations so that Compliance staff may approve and witness such disposal, destruction or transfer of the Subject Products. Zen must ensure that Subject product destruction will destroy the units completely so that they cannot be reused and that Zen's method of destruction complies with all state and local regulations.

Respectfully Submitted,

David C. Japha
Evan House
Counsel for Zen Magnets, LLC

Mary B. Murphy
Daniel Vice
Complaint Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2017, a copy of the foregoing Joint Statement Regarding Factual and Legal Issues in Dispute Regarding the Draft Action Plan and Draft Public Notification was emailed (with digital exhibits attached) to counsel for Zen Magnets LLC at Davidjapha@japhalaw.com, and a copy with all exhibits was mailed, postage prepaid to counsel for Zen Magnets, LLC, at 950 South Cherry Street, Suite 912, Denver Colorado 80246.

Complaint Counsel

EXHIBIT A



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

Daniel R. Vice, Trial Attorney
Division of Compliance
Office of the General Counsel

Tel: (301) 504-6996
Email: dvice@cpsc.gov

November 6, 2017

Via E-mail and U.S. Mail

David C. Japha
Levin Jacobson Japha, P.C.
950 S. Cherry Street, Ste. 912
Denver, CO 80246
davidjapha@japhalaw.com

Re: In the Matter of Zen Magnets, LLC, CPSC Docket 12-2

Dear Mr. Japha:

Pursuant to the Commission's Order of October 26, 2017, enclosed please find the draft Public Notifications required to be submitted to Respondent.

Sincerely,

Daniel R. Vice
Complaint Counsel

EXHIBIT 1

Joint News Release



U.S. Consumer Product Safety Commission – Recall

Recall Date: December XX, 2017

Recall Number: 17-DRAFT

Zen Magnets and Neoballs Magnets Recalled Due to Ingestion Hazard

Recall Summary

Name of Product: Zen Magnets and Neoballs magnets

Hazard: When two or more high-powered magnets are swallowed, either accidentally or intentionally, the ingested magnets can attract to each other, or to another metal object, and become lodged in the digestive system. This can result in perforations, twisting and/or blockage of the intestines, infection, blood poisoning, and death.

Remedy: Refund

Consumers should immediately stop using the recalled magnets and contact Zen Magnets LLC for a refund.

Consumer Contact: Zen Magnets LLC toll-free at XXX-XXX-XXXX from TIME and DAYS, email at XXX, or online at URL and click on XXX for more information.

Recall Details

Units: About 10 million magnets, sold individually and in magnet sets

Description: This mandatory recall involves all Zen Magnets and Neoballs magnets. Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

Incidents/Injuries: Zen Magnets LLC is aware of two children who ingested Zen Magnets and required surgery to remove the magnets and parts of their intestines and bowels. In addition, CPSC is aware of other reports of children and teenagers ingesting high-powered magnets and requiring surgery. A 19-month-girl died after ingesting similar high-powered magnets.

Sold at: Online at Neoballs.com and ZenMagnets.com and the Colorado retailers listed below from January 2009 through October 2017 for \$12 and \$260 per set, or individually for 6 to 10 cents per magnet.

Colorado Retailers of Zen Magnets

Botanico, 3054 Larimer Street, Denver, CO 80205

Chronic Life, 12 Federal Boulevard, Denver, CO 80219

The Glass Hut, 1350 South Sheridan Boulevard #9, Denver, CO 80232

The Hemp Center - Colorado Springs, 2501 West Colorado Avenue #106, Colorado Springs, CO 80904

The Hemp Center – Littleton, 2430 West Main Street, Littleton, CO 80120

Herbal Alternatives: New Broadsterdam, 2568 South Broadway, Denver, CO 80210

Herbal Dazed, 6525 Federal Boulevard, Denver, CO 80221

Hobby Town – Aurora, 1915 South Havana Street, Aurora, CO 80014

Hobby Town – Lakewood, 3355 South Wadsworth Boulevard, Lakewood, CO 80227

Lightshade on Holly, 3950 North Holly Street, Denver, CO 80207

Lyon's Finest 2, 11080 East 47th Avenue, Denver, CO 80239

Meadowlark 64, 2701 Larimer Street, Denver, CO 80205

MK Vapor, 10273 East Iliff Avenue, Aurora, CO 80247

Nimbus Smoke Stop, 2960 South Federal Boulevard #7, Denver, CO 80236

Octpipe, 5303 Leetsdale Drive, Denver, CO 80246

Science Toy Magic, 11 Old Town Sq., Fort Collins, CO 80524

Secret Stashh Gifts, 3655 Brighton Boulevard, Denver, CO 80216

Soldis, Colorado Mills Mall, Lakewood, CO 80401

Vaper Jungle, 7033 East Colfax Avenue, Denver, CO 80220

Distributor: Zen Magnets LLC, of [ENTER CITY], Colorado

Manufacturer: [REDACTED], of China

Manufactured in: China

Photos



Zen Magnets



Zen Magnets



Zen Magnets



Neoballs magnets

About U.S. CPSC:

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of types of consumer products under the agency's jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually. CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical or mechanical hazard. CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters and household chemicals – contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years.

Federal law bars any person from selling products subject to a publicly-announced voluntary recall by a manufacturer or a mandatory recall ordered by the Commission.

For more lifesaving information, follow us on [Facebook](#), Instagram [@USCPSC](#) and Twitter [@USCPSC](#) or sign up to receive our [e-mail](#) alerts. To report a dangerous product or a product-related injury go online to www.SaferProducts.gov or call CPSC's Hotline at 800-638-2772 or teletypewriter at 301-595-7054 for the hearing impaired.

CPSC Consumer Information Hotline

Contact us at this toll-free number if you have questions about a recall:

800-638-2772 (TTY 301-595-7054)

Times: 8 a.m. – 5:30 p.m. ET; Messages can be left anytime

Call to get product safety and other agency information and to report unsafe products.

Media Contact

Please use the phone numbers below for all media requests.

Phone: 301-504-7908

Spanish: 301-504-7800

EXHIBIT 2

Video News Release

(video sent via e-mail)



EXHIBIT 3

Recall Notice – Respondent Websites

To be posted on the home page of all Zen Magnets websites (including zenmagnets.com, neoballs.com):

PRODUCT SAFETY RECALL – All Zen Magnets and Neoballs have been recalled and are no longer for sale.

Click here or call XXX-XXX-XXX to receive a refund. [include link to contact Zen for a refund]

Click here to view the U.S. Consumer Product Safety Commission recall notice. [link to recall notice]

EXHIBIT 4

Recall Notice – Social Media

Social media:

Facebook and other social media:

#Recall: All Zen Magnets and Neoballs magnets. Young children and teens may accidentally or intentionally ingest the high-powered magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death. Consumers should immediately stop using the recalled magnets and contact Zen Magnets, LLC for a refund.

CONTACT: [Firm Phone Number] or [Firm email or web address]. Full recall announcement: [link to recall press release]

[insert video news release]

Twitter:

#Recall: Zen Magnets & Neoballs magnets. Ingestion hazard to children & teens, risk of injury or death. Get refund.[link to recall press release]

[insert video news release]

EXHIBIT 5

Direct Notice – Third Party Internet Retailers

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as an internet retailer that sold Zen Magnets or Neoballs sometime in the past few years.

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Please note that federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

In addition, the Commission ordered that all manufacturers, distributors and retailers of Zen Magnets and Neoballs be provided with direct notice of the recall.

You should prominently announce the recall on your website home page from now until June 30, 2018. The announcement should link to the recall press release located at [recall press release link].

Please also announce the recall via any of your social media accounts with the messages listed below.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Social Media Messaging

Facebook and other social media:

#Recall: All Zen Magnets and Neoballs magnets. Young children and teens may accidentally or intentionally ingest the high-powered magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death. Consumers should immediately stop using the recalled magnets and contact Zen Magnets, LLC for a refund. CONTACT: [Firm Phone Number] or [Firm email or web address]. Full recall announcement: [link to recall press release]

[insert video news release]

Twitter:

#Recall: Zen Magnets & Neoballs magnets. Ingestion hazard to children & teens, risk of injury or death. Get refund.[link to recall press release]

[insert video news release]

EXHIBIT 6

Direct Notice – Manufacturer and Retailer Notice

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as a manufacturer of Zen Magnets or Neoballs.

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

In addition, the Commission ordered that all manufacturers, distributors and retailers of Zen Magnets and Neoballs be provided with direct notice of the recall.

Please note that federal law prohibits any person from selling, offering for sale, manufacturing for sale, distributing in commerce or importing into the United States recalled Zen Magnets and Neoballs.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. "Zen Magnets" or "Neoballs" is printed on the packaging.

If you have any questions, please see [\[insert recall press release link\]](#).

Sincerely,

[Contact Name]
Zen Magnets

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as a retailer that sold Zen Magnets or Neoballs sometime in the past few years.

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Please note that federal law prohibits any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

In addition, the Commission ordered that retailers of Zen Magnets and Neoballs be provided with a recall poster to be displayed within stores.

As a retailer that sold Zen Magnets or Neoballs at any time, you should prominently display the enclosed poster inside the store from now until June 30, 2018.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen

Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Attachment: Recall Poster

EXHIBIT 7

Recall Poster

RECALL NOTICE

Zen Magnets and Neoballs



Hazard: Young children and teens may accidentally or intentionally ingest the magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death.

In many cases, children required surgery to remove ingested magnets, including two children who ingested Zen Magnets and required emergency surgery to remove parts of their intestines and bowels. A 19-month-old girl died after ingesting similar high-powered magnets.

Recalled Products: All Zen Magnets and Neoballs. The products were sold from 2009 – 2017.

Remedy: Stop using the recalled magnets and contact Zen Magnets LLC for a refund.

**For more information call 800-XXX-XXX,
Monday through Friday 8am to 5pm ET
or visit www.zenmagnets.com**

This recall is being conducted pursuant to an order of the U.S. Consumer Product Safety Commission.
Post this notice until June 30, 2018

EXHIBIT 8

Direct Notice – Third Party Internet Platforms

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

Please take all necessary steps to ensure that third parties do not sell or offer for sale any Zen Magnets or Neoballs on your website.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. "Zen Magnets" or "Neoballs" is printed on the packaging.

We appreciate your cooperation in preventing the illegal sale of Zen Magnets and Neoballs on your website.

If you have any questions, please see [\[insert recall press release link\]](#).

Sincerely,

[Contact Name]
U.S. Consumer Product Safety
Commission

EXHIBIT 9

Direct Notice – Consumers

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

[Consumer contact information]

Re: URGENT Recall of Zen Magnets and Neoballs

Dear [name],

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs high-powered magnets.

Please stop using the magnets immediately and contact Zen Magnets for a refund. [link to Zen contact info]

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

The Commission is aware of numerous reports of children and teenagers ingesting small, rare earth magnets. In many cases, children required surgery to remove ingested magnets, including two children who ingested Zen Magnets and required emergency surgery to remove parts of their intestines and bowels. In addition, a 19-month-old girl died after ingesting similar high-powered magnets.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

Please note that federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Sample pictures of Zen Magnets and Neoballs:





EXHIBIT B

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
ZEN MAGNETS, LLC)	
)	
Petitioner-Respondent)	CPSC Docket No. 2-12
)	
)	
)	
)	

ZEN MAGNETS' DRAFT ACTION PLAN

November 6, 2017

Pursuant to the Commission's October 26, 2017 Final Decision and Order, Zen Magnets, LLC submits the following draft Action Plan to Complaint Counsel:

1. The refund shall apply to all customers who purchased Zen Magnets or Neoballs on Respondent's websites, Neoballs.com and ZenMagnets.com, through third party internet retailers, and at retail outlets.

2. The terms and conditions of the refund shall take into consideration the following:
 - a. The generally accepted useful life of the magnets. The coating on a set of Zen Magnets will last about 6 months under typical usage before being discarded, depending on usage and care. The coating on polymer-coated Neoballs will last about 3 months, depending on usage and care. The coating on Nickel and Black nickel-plated Neoballs will last about 3 months, depending on usage and care. The coating on silver-plated Neoballs will last about four weeks before discoloration, but can still be used without affecting interoperability with other magnets for about 3 months, depending on usage and care. Coating on 22k gold-plated Neoballs will last about four weeks before the gold begins to rub off, but that will not affect interoperability of those magnets with other magnets for about 3 months, depending on usage and care. Coating on polymer Neoballs will last about 3 months, depending on usage and care.

 - b. The original cost paid by consumers. The original cost paid by consumers generally ranges from 10 cents to 18 cents per magnet, in sets of 72, 216 and 1,728. Customers paid shipping costs separately from the purchase price of the magnets.

 - c. Incentives to encourage returns. A full refund of the consumer's product purchase price for magnets (not for original shipping costs paid by customers)

purchased within the last 180 days will be offered as the primary incentive mechanism. Coupons for twenty percent (20%) off of Respondent's other products, such as Micromagnets, will also be offered to incentivize customers to return Zen Magnets and Neoballs. Zen Magnets will also enter customers who return magnets for a drawing in which they can win a poster.

- d. Whether and how many magnets must be returned to qualify for a refund. Customers must return at least fifty percent (50%) of the magnets purchased in a set, or, if individual magnets were purchased, at least 50% of the total number of magnets purchased in a single transaction, to qualify for a refund of the purchase price.
 - e. The timing and duration of any refund. Customers will be able to avail themselves of the proposed refund for a period of six months from the date that the Public Notifications are issued pursuant to the October 26, 2017 Final Decision and Order.
 - f. Shipping or other costs associated the returns. Pursuant to 15 U.S.C. § 2064(e)(1), customers who avail themselves of the recall will not incur any cost. Actual costs to customers for returning magnets via the USPS First Class Package Service will be reimbursed for shipment costs in addition to the refund amount for the returned magnets, subject to Paragraph (g), below.
 - g. The limits of the refund. For magnets purchased outside of the 180-day window specified in Paragraph (c) above, and for magnets returned where Zen Magnets receives less than fifty percent (50%) of the total number of magnets purchased in a single transaction or magnet set, Zen Magnets will refund said customer the ratio of the magnets returned per product for each of the magnets actually returned in like-new condition and in proper working order. Additionally, the customer must provide to Zen Magnet the original order information or packaging for proof of purchase of Zen Magnets or Neoballs.
3. Public notice of the recall and available refund will be made available pursuant to the Public Notifications required by the Final Decision and Order.

Respectfully Submitted,

LEVIN JACOBSON JAPHA, P.C

By David C. Japha
6 November 2017

EXHIBIT C



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

Daniel R. Vice, Trial Attorney
Division of Compliance
Office of the General Counsel

Tel: (301) 504-6996
Email: dvice@cpsc.gov

November 15, 2017

Via E-mail and U.S. Mail

David C. Japha
Levin Jacobson Japha, P.C.
950 S. Cherry Street, Ste. 912
Denver, CO 80246
davidjapha@japhalaw.com

Re: In the Matter of Zen Magnets, LLC, CPSC Docket 12-2

Dear Mr. Japha:

Pursuant to the Commission's Order of October 26, 2017, Complaint Counsel submits the following responses and objections to Respondent's draft Action Plan.

1. Complaint Counsel agrees with Zen that the refund shall apply to all customers who purchased Zen Magnets or Neoballs on Respondent's websites (neoballs.com, and zenmagnets.com and any other sites Zen has operated, if any), through third party internet retailers, and at retail outlets. In addition, all current owners of the Subject Products should receive a refund even if they are not the original purchasers (for example, if they received the item as a gift).

2. Complaint Counsel submits that a full refund is appropriate in this case. As required by the Commission's Order, the terms and conditions of the refund shall take into account the following considerations:

a. The generally accepted useful life of magnets.

Zen has stated that the "coating on a set of Zen Magnets will last about 6 months under typical usage before being discarded, depending on usage and care." Zen further states that the coating on Neoballs will last between 4 weeks and 3 months, depending on usage and care. Zen suggests that the degradation of the coatings may affect the operability of the magnets.

Complaint Counsel submits that the useful life of the magnets is not dependent upon the integrity of the coatings but rather the strength of the magnets. In fact, Zen has stated on its website that the magnets will retain their strong magnetism for many years and that "demagnetization due to time alone is

about 5% in a human lifetime.” Zen has further stated on its website that it would require extreme conditions such as “bak[ing] them” or “shoot[ing] them out of a BB gun” to “weaken[]” this magnetism.

Complaint Counsel believes that it is unlikely that consumers will subject the Subject Products to such extreme conditions. Zen’s statements about the substantial longevity of its magnets comport with the expected longevity of rare-earth magnets in general. Rare-earth magnets are among the strongest available and hold their magnetism for many years, with estimated loss of magnetism on the order of only a few percent over the course of several decades or longer.

Accordingly, Complaint Counsel submits that the Subject Products will retain their magnetism for many years, and will continue to pose a hazard to children even if their magnetism is reduced or their coatings are less shiny or if the color coating shows wear. This factor weighs in favor of a full refund of the Subject Product’s purchase price.

b. The original cost paid by consumers.

Zen submits that the magnets price range from 10 to 18 cents per magnet. Complaint Counsel disagrees with this assessment.

In its Final Decision and Order, the Commission found that the Subject Products were sold “at prices ranging from approximately \$12.65 for the 72-piece set, \$32.98 to \$38.24 for the 216-piece set, and up to \$263.85 for the 1,728-piece set.... Zen Magnets also could be purchased individually for 20 cents per magnet.... Individual Neoballs could be purchased at prices ranging from 6 cents to 10 cents per magnet.”

Consumers are less likely to participate in a recall if they will not receive a substantial refund. Because the cost for most of the Subject Products is low, this factor weighs in favor of a full refund for all consumers to ensure that the magnets are removed from consumer’s homes.

c. Incentives to encourage returns.

Zen offers a full refund to consumers who purchased the Subject Products within the past 180 days, excluding original shipping costs. Zen further offers to provide consumers with coupons for twenty percent off of other products to incentivize customers to return the Subject Products, and will offer customers the opportunity to enter a contest to win a poster.

Complaint Counsel believes such a proposal is insufficient. Consumers are more likely to participate in a recall if they are compensated for the full purchase price of the product. Complaint Counsel also disagrees that a full refund should be limited to consumers who purchased the Subject Products within the

last 180 days. Zen has provided no justification to unduly restrict the refund to consumers who purchased within that time frame. Complaint Counsel submits that all consumers should be afforded the same incentive to participate in the recall given that the Subject Products retain their strong magnetism for many years and thus present the same hazard to children. Therefore, this factor weighs in favor of a full refund for all consumers.

Complaint Counsel believes the strongest incentive for consumers to participate in the recall is a full refund, rather than the incentive program advanced by Respondent.

d. Whether and how many magnets should be returned by consumers to qualify for a refund.

Zen states that customers must return at least 50 percent of the magnets purchased in order to qualify for a refund.

Complaint Counsel agrees with Respondent that consumers who return at least 50% of a set should be entitled to a return of the full purchase price of the products. Consumers who return less than a full set, however, should be entitled to a prorated refund based on the percentage of magnets returned (for example, a return of 54 magnets from a set of 216 magnets would result in a refund of 25% of the full purchase price of the set).

Just two small magnets pose a hazard if swallowed (or one magnet if it attracts to another metallic object). The magnets are not contained and may easily be split off from a set. Because of the severe hazard posed by a few magnets and the likelihood that magnets may be lost or shared and pose a hazard to children, consumers should be strongly encouraged to return any magnets they have. This factor weighs in favor of the refund program advanced by Complaint Counsel.

e. The timing and duration of any refund.

Zen states that it will provide a refund to consumers for 6 months. Complaint Counsel submits that such a limited time frame is unacceptable.

Zen's proposed time period is not acceptable because refunds should be available to owners of the Subject Products for a sufficient time period to allow as many people as possible to avail themselves of the recall. In addition, because the Subject Products may easily become lost or separated from a set, consumers may continue to find magnets and should be encouraged to return any that they find after the recall is announced.

Instead, Zen should provide all consumers who return the magnets with the refund required by the Action Plan for a minimum of 2 years. Zen should consult with the Office of Compliance and Field Operations at the end of the 2

year time period, at which time Compliance staff will determine (based on the rate of return, number of recalled products still in circulation, and other relevant factors), whether Zen should continue to offer refunds to consumers who return the Subject Product, and how long the refund program should continue.

f. Shipping or other costs associated with the returns.

Complaint Counsel agrees with Zen that 15 U.S.C. § 2064(e)(1) does not allow consumers to incur a charge to take part in the recall.

Zen submits that consumers would only be reimbursed for first class package service. Complaint Counsel disagrees: some returns may be too heavy to qualify for first class shipping, so this restriction does not comport with the CPSA and would discourage some consumers from participating in the recall. *See* U.S.P.S. website, <https://www.usps.com/ship/first-class-mail.htm> (maximum first class parcel weight is 13 ounces).

Because the products must be securely shipped to ensure that no magnets are lost during transport or stick to other metallic objects during shipment, the Commission should require that Zen provide postage-paid shipping materials to anyone availing themselves of the recall. Zen must ensure that the shipping materials will provide secure transport of the Subject Products without loss during shipment.

g. The limits of the refund.

Zen submits that consumers who purchased the magnets more than 180 days ago (which is likely a large percentage of consumers) or who return less than 50 percent of a set will only be entitled to a refund if Zen determines that the magnets are returned in “like-new condition and in proper working order.” Zen also requires that consumers provide “the original order information or packaging for proof of purchase.”

Complaint Counsel disagrees that these are acceptable conditions to a corrective action plan and submits that the restrictions will discourage consumers from taking advantage of the recall and unfairly exclude the majority of consumers from eligibility. The Subject Products maintain their strong magnetism for decades, continuing to pose a hazard whether or not Zen deems them “like-new” or “proper.” The Subject Products pose a risk due to their magnetic strength, whether or not a magnet retains a uniformly “proper” color or “like-new” shiny coating.

Zen also submits that consumers who return less than 50 percent of the magnets purchased will be entitled to a prorated refund. Complaint Counsel agrees with Zen that anyone who returns less than 50% of a set may receive a prorated refund based on the amount returned. This refund shall be based on the

full purchase price of the product. This will encourage consumers to return as many magnets as they can, even if some have been lost. It will also encourage consumers to return additional Subject Product magnets if they later find magnets that have become separated from sets.

Complaint Counsel strongly disagrees that consumers must present the original packaging or original order information to receive a refund. Many consumers do not retain a product's original packaging, and it is unlikely that consumers of a product sold as far back as 2009 would have retained such materials. In addition, Zen maintains an electronic database of online sales and is able to confirm a product's purchaser without the original order form. Zen's restrictions on returns could very likely preclude consumers who purchased the Subject Products at a retailer or who received the item as a gift from participating in the recall. Instead of requiring original order documentation, Zen may request a written statement from consumers affirming that they are returning the Subject Products, as long as that does not place an undue burden on the consumer (for example, consumers should not be required to obtain or pay for the services of a notary).

3. Complaint Counsel agrees with Zen that Public Notifications shall be provided as required by the Commission.

Furthermore, the following elements should be required as part of the Action Plan¹:

- Zen shall submit monthly progress reports to the Office of Compliance and Field Operations ("Compliance") as directed by Compliance staff;
- Zen shall contact Compliance staff if there are any issues with adherence to the Action Plan by Zen or third parties;
- Zen shall maintain all records relating to the Action Plan for 5 years;
- Zen shall permit Compliance staff to monitor Zen's implementation of the Action Plan, including consenting to monitoring as provided in 16 C.F.R. § 1118.2;
- Prior to the disposal or destruction of the Subject Products in the distribution chain and in Zen's inventory (including transfer for disposal or destruction to a third party), Zen shall ensure that all Subject Products that are in the distribution chain, in Zen's inventory, and returned pursuant to the recall are properly quarantined; and
- Prior to the disposal or destruction of the Subject Products in the distribution chain and in Zen's inventory (including transfer for disposal or destruction to a third party), Zen shall notify the Office of Compliance and Field Operations so that Compliance staff may approve and witness such disposal, destruction or transfer of the Subject Products. Zen must ensure that Subject Product destruction will destroy the units completely so that they cannot be reused and that Zen's method of destruction complies with all state and local regulations.

¹ These provisions comport with the elements contained in corrective action plans regularly accepted by Compliance staff.

Sincerely,

Daniel R. Vice
Complaint Counsel

EXHIBIT D

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
ZEN MAGNETS, LLC)
Petitioner-Respondent) CPSC Docket No. 2-12
)
)
)

ZEN MAGNETS' OBJECTIONS TO CPSC DRAFT ACTION PLAN

Pursuant to the Commission's October 26, 2017 Final Decision and Order, Zen Magnets, LLC submits the attached objections to Complaint Counsel's Draft Action Plan. Zen's objections and suggested changes are set forth in red line.

Respectfully Submitted,
LEVIN JACOBSON JAPHA, P.C



By David C. Japha
16 November 2017

EXHIBIT 1
Joint News Release

Zen believes the manufacturer of its products is not public information and holds that information as a trade secret. For that reason, the manufacture's name has been stricken in this response.

Zen proposes the following changes to this Exhibit:



U.S. Consumer Product Safety Commission – Recall

Recall Date: December XX, 2017

Recall Number: 17-DRAFT

Zen Magnets and Neoballs Magnets Recalled Due to Ingestion Hazard **Substantial Product Hazard Finding**

Recall Summary

Name of Product: Zen Magnets and Neoballs magnets

Hazard: When two or more high-powered magnets are swallowed, either accidentally or intentionally, the ingested magnets can attract to each other, or to another metal object, and become lodged in the digestive system. This can result in perforations, twisting and/or blockage of the intestines, infection, blood poisoning, and **perhaps** death.

Remedy: Refund

Consumers should immediately stop using the recalled magnets and **discard them, or** contact Zen Magnets, LLC for a refund.

Consumer Contact: Zen Magnets, LLC toll-free at **XXX-XXX-XXXX** from **TIME** and DAYS, email at **XXX**, or online at URL and click on **XXX** for more information.

Recall Details

Units: About 10 million magnets, sold individually and in magnet sets

Description: This mandatory recall involves all Zen Magnets and Neoballs magnets. Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

Incidents/Injuries: ~~Zen Magnets LLC is aware of~~ **The Commission believes that** two children ~~who~~ ingested Zen Magnets and required surgery to remove the magnets and parts of their

intestines and bowels. In addition, CPSC is aware of other reports of children and teenagers ingesting high-powered magnets and requiring surgery. A 19-month-girl died after ingesting similar high-powered magnets, **though a direct causal link is not certain.**

Sold at: Online at Neoballs.com and ZenMagnets.com and the Colorado retailers listed below from January 2009 through October 2017 for \$12 and \$260 per set, or individually for 6 to 10 cents per magnet.

Colorado Retailers of Zen Magnets

Botanico, 3054 Larimer Street, Denver, CO 80205

Chronic Life, 12 Federal Boulevard, Denver, CO 80219

The Glass Hut, 1350 South Sheridan Boulevard #9, Denver, CO 80232

The Hemp Center - Colorado Springs, 2501 West Colorado Avenue #106, Colorado Springs, CO 80904

The Hemp Center – Littleton, 2430 West Main Street, Littleton, CO 80120

Herbal Alternatives: New Broadsterdam, 2568 South Broadway, Denver, CO 80210

Herbal Dazed, 6525 Federal Boulevard, Denver, CO 80221

Hobby Town – Aurora, 1915 South Havana Street, Aurora, CO 80014

Hobby Town – Lakewood, 3355 South Wadsworth Boulevard, Lakewood, CO 80227

Lightshade on Holly, 3950 North Holly Street, Denver, CO 80207

Lyon's Finest 2, 11080 East 47th Avenue, Denver, CO 80239

Meadowlark 64, 2701 Larimer Street, Denver, CO 80205

MK Vapor, 10273 East Iliff Avenue, Aurora, CO 80247

Nimbus Smoke Stop, 2960 South Federal Boulevard #7, Denver, CO 80236

Octpipe, 5303 Leetsdale Drive, Denver, CO 80246

Science Toy Magic, 11 Old Town Sq., Fort Collins, CO 80524

Secret Stashh Gifts, 3655 Brighton Boulevard, Denver, CO 80216

Soldis, Colorado Mills Mall, Lakewood, CO 80401

Vaper Jungle, 7033 East Colfax Avenue, Denver, CO 80220

Distributor: Zen Magnets, LLC; of ~~[ENTER CITY]~~ **Denver,**

Colorado **Manufacturer:** [REDACTED], of

China **Manufactured in:** China **and US for** by Zen Magnets, LLC

Photos



CPSC)

(Replaced photo shows packaging which was reviewed by



Zen Magnets



Zen Magnets



(Replaced photo shows packaging which was reviewed by CPSC)



Zen Magnets



Neoballs magnets

About U.S. CPSC:

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of types of consumer products under the agency's jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually. CPSC is committed to protecting consumers and families from

products that pose a fire, electrical, chemical or mechanical hazard. CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters and household chemicals – contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years.

Federal law bars any person from selling products subject to a publicly-announced voluntary recall by a manufacturer or a mandatory recall ordered by the Commission.

For more lifesaving information, follow us on [Facebook](#), Instagram [@USCPSC](#) and Twitter [@USCPSC](#) or sign up to receive our [e-mail](#) alerts. To report a dangerous product or a product-related injury go online to www.SaferProducts.gov or call CPSC's Hotline at 800-638-2772 or teletypewriter at 301-595-7054 for the hearing impaired.

CPSC Consumer Information Hotline

Contact us at this toll-free number if you have questions about a recall: 800-638-2772 (TTY 301-595-7054)

Times: 8 a.m. – 5:30 p.m. ET; Messages can be left anytime

Call to get product safety and other agency information and to [report unsafe products](#).

Media Contact

Please use the phone numbers below for all media requests.

Phone: 301-504-7908

Spanish: 301-504-7800

EXHIBIT 2

Video News Release (video sent via e-mail)

Zen objects to the video released by the Commission. The video fails to convey the ingestion risk of magnets in a fashion that is easily understandable to the general public, and fails to hold the attention of the viewer in such a way that it actually does what it is intended to do – to inform the public not only of the recall, but to educate the public in an effort to prevent any injuries from occurring in the first instance. Zen proposes that the Commission review Zen’s video, <https://www.youtube.com/watch?v=uLwR81UyceE>, for guidance on crafting a meaningful video that educates the public. Zen would be more than willing to work with Commission staff to help create a mutually acceptable, informative video.

EXHIBIT 3

Recall Notice – Respondent Websites

Zen proposes the following changes to this Exhibit: Clarification that only real Zen Magnets and Neoballs sold by us are recalled. There are counterfits and copycats that have benefited from our trademark and marketing easily available on the internet.

To be posted on the home page of all Zen Magnets websites (including zenmagnets.com, neoballs.com): **PRODUCT SAFETY RECALL** – All **genuine** Zen Magnets and Neoballs **sold by Zen Magnets LLC** have been recalled and are no longer for sale. Click here or call XXX-XXX-XXX ~~to~~ **to find out how to** receive a refund. [include link to contact Zen for a refund]

Click here to view the U.S. Consumer Product Safety Commission recall notice. [link to recall notice]

EXHIBIT 4

Recall Notice – Social Media

Zen has no objection to this exhibit. If a video cannot be inserted, a link will be provided. Furthermore, it should be clear that the message is a joint message from the CPSC and Zen

Social media:

Facebook and other social media:

#Recall: All Zen Magnets and Neoballs magnets. Young children and teens may accidentally or intentionally ingest the high-powered magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death. Consumers should immediately stop using the recalled magnets and contact Zen Magnets, LLC [to see for a how to get a refund](#). - [CPSC Joint Message](#)

CONTACT: [Firm Phone Number] or [Firm email or web address]. Full recall announcement: [link to recall press release]

[insert [link](#) video news release]

Twitter:

#Recall: Zen Magnets & Neoballs magnets. Ingestion hazard to children & teens, risk of injury or death. Get refund. - [CPSC Joint Message](#) [link to recall press release]

[insert video news release]

EXHIBIT 5

Direct Notice – Third Party Internet Retailers

[Consistent with the Commission’s findings in its Final Decision and Order at pp. 53-54, Zen proposes the following changes to this Exhibit:](#)

<<Name>>

<<Address 1>>

<<Address 2>>

<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as an internet retailer that sold Zen Magnets or Neoballs sometime ~~in the past few years~~ [in 2014 or 2015](#).

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Please note that federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

In addition, the Commission ordered that all manufacturers, distributors and retailers of Zen Magnets and Neoballs be provided with direct notice of the recall.

You should prominently announce the recall on your website home page from now until June 30, 2018. The announcement should link to the recall press release located at [recall press release link].

Please also announce the recall via any of your social media accounts with the messages listed below.

Reason for the Recall

The magnets create ~~present~~ a risk of injury or death to younger ~~children and teens~~ **substantial risk of injury to** children and teens when ~~if~~ swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Social Media Messaging

Facebook and other social media:

#Recall: All Zen Magnets and Neoballs magnets. Young children and teens may accidentally or intentionally ingest the high-powered magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death.

Consumers should immediately stop using the recalled magnets and contact Zen Magnets, LLC for a refund. CONTACT: [Firm Phone Number] or [Firm email or web address]. Full recall announcement: [link to recall press release]

[insert video news release]

Twitter:

#Recall: Zen Magnets & Neoballs magnets. Ingestion hazard to children & teens, risk of injury or death. Get refund.[link to recall press release]

[insert video news release]

EXHIBIT 6

Direct Notice – Manufacturer and Retailer Notice

Zen proposes that the manufacturer exhibit is unnecessary, as Zen is the manufacturer. The factory that provides component parts is not the manufacturer.

<<Name>>

<<Address 1>>

<<Address 2>>

<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as a manufacturer of Zen Magnets or Neoballs.

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

In addition, the Commission ordered that all manufacturers, distributors and retailers of Zen Magnets and Neoballs be provided with direct notice of the recall.

Please note that federal law prohibits any person from selling, offering for sale, manufacturing for sale, distributing in commerce or importing into the United

States recalled Zen Magnets and Neoballs.

Reason for the Recall

The magnets ~~create~~ **present** a **substantial** risk of injury or death to younger ~~to~~ children and teens ~~when~~ **if** swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]

Zen Magnets

<<Name>>

<<Address 1>>

<<Address 2>>

<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as a retailer that sold Zen Magnets or Neoballs

sometime in the past few years: **in 2014 or 2015.**

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Please note that federal law prohibits any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

In addition, the Commission ordered that retailers of Zen Magnets and Neoballs be provided with a recall poster to be displayed within stores.

As a retailer that sold Zen Magnets or Neoballs at any time, you should prominently display the enclosed poster inside the store from now until June 30, 2018.

Reason for the Recall

The magnets ~~create~~ **present** a **substantial** risk of injury or death to younger ~~to~~ children and teens when **if** swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Attachment: Recall Poster

EXHIBIT 7

Recall Poster

In addition to the Recall Poster in this Exhibit, Zen proposes that hospitals and medical facilities be given the posters attached to this Response. Zen believes that informing the public, and especially medical personnel, about the magnet ingestion risk is a crucial step in protecting the public and working towards the goal of zero ingestions. Zen's believes, and has demonstrated, that communicating important information in a way that catches the eye of people and is meant to leave a lasting impression is more effective than simply stating that there has been a recall of magnets. For these reasons, Zen asks that Complaint Counsel add the attached posters to the Public Notification material.

RECALL NOTICE

Zen Magnets and Neoballs



Hazard: Young children and teens may accidentally or intentionally ingest the magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death.

In many cases, children required ~~surgery~~ **medical treatment** to remove ingested magnets, including

two children who ingested ~~the CPSC believes ingested~~ Zen Magnets and required emergency surgery to remove parts of their intestines and bowels. A 19-month-old girl died after ingesting ~~similar~~ high-powered magnets.

Recalled Products: All Zen Magnets and Neoballs. ~~Over 10 million individual magnets were sold~~ The products from 2009 – 2017.

Remedy: Stop using the recalled magnets and contact Zen Magnets LLC for a refund.

**For more information call 800-XXX-XXX,
Monday through Friday 8am to 5pm ET
or visit www.zenmagnets.com**

This recall is being conducted pursuant to an order of the U.S. Consumer Product Safety Commission.
Post this notice until June 30, 2018

EXHIBIT 8

Direct Notice – Third Party Internet Platforms

**Consistent with the Commission’s findings in its Final Decision and Order at pp. 53-54,
Zen proposes the following changes to this Exhibit:**

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

Please take all necessary steps to ensure that third parties do not sell or offer for sale any Zen Magnets or Neoballs on your website.

Reason for the Recall

The magnets ~~create~~ **present** a **substantial** risk of injury ~~or death~~ to younger children ~~and teens~~ **when if** swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

We appreciate your cooperation in preventing the illegal sale of Zen Magnets and Neoballs on your website.

If you have any questions, please see [insert recall press release link].

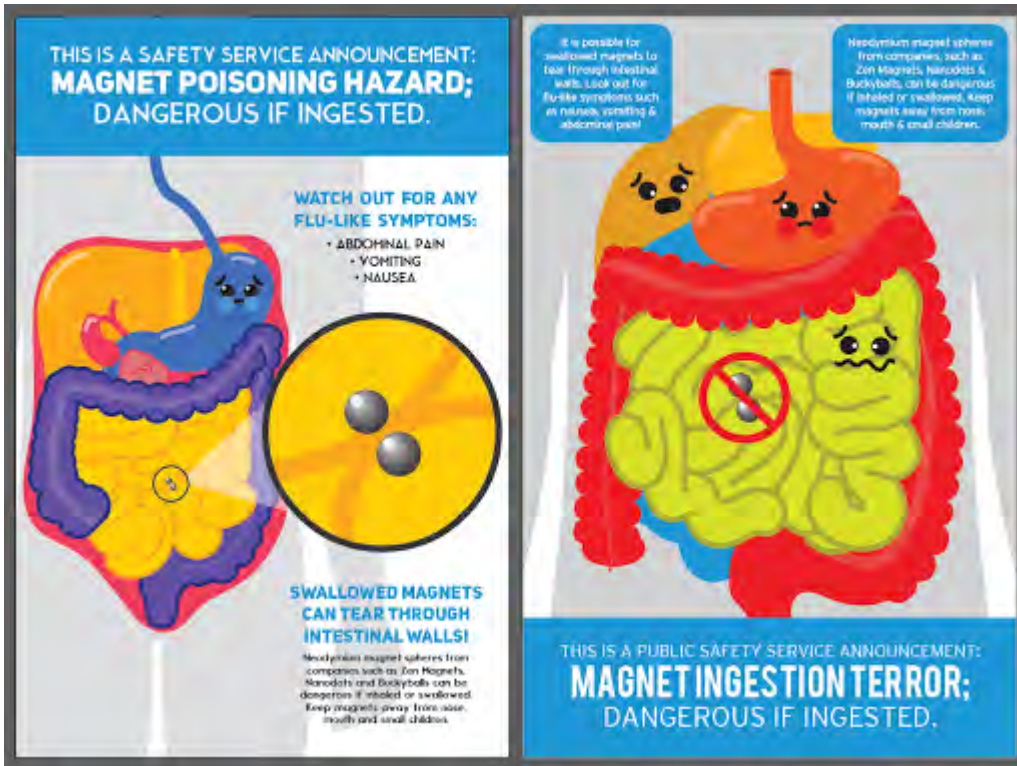
Sincerely,

[Contact Name]
U.S. Consumer Product Safety
Commission

EXHIBIT 9

Direct Notice – Consumers

Consistent with the Commission’s findings in its Final Decision and Order at pp. 53-54, Zen proposes the following changes to this Exhibit: one of following posters is sent to hospitals around the country:



<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs Dear <<Name>>,
{Consumer contact information}

Re: URGENT Recall of Zen Magnets and Neoballs Dear {name},
On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC)
ordered a recall of all Zen Magnets and Neoballs high-powered magnets:

Please stop using the magnets immediately and contact Zen Magnets for a refund. {link to Zen contact info}

Reason for the Recall

The magnets create **present** a **substantial** risk of injury or death to younger children and teens when **if** swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

The Commission is aware of numerous reports of children and teenagers ingesting small, rare earth magnets. In many cases, children required surgery to remove ingested magnets, including two children who ingested Zen Magnets and required emergency surgery to remove parts of their intestines and bowels. In addition, a 19-month-old girl died after ingesting similar high-powered magnets.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

Please note that federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

If you have any questions, please see [insert recall press release link].

Sincerely,

{Contact Name} Zen Magnets

Sample pictures of Zen Magnets and Neoballs:





EXHIBIT E1



Recall Date: December XX, 2017
Recall Number: 17-DRAFT

Zen Magnets and Neoballs Magnets Recalled Due to Ingestion Hazard

Recall Summary

Name of Product: Zen Magnets and Neoballs magnets

Hazard: When two or more high-powered magnets are swallowed, either accidentally or intentionally, the ingested magnets can attract to each other, or to another metal object, and become lodged in the digestive system. This can result in perforations, twisting and/or blockage of the intestines, infection, blood poisoning, and death.

Comment [A1]: Zen would insert "perhaps" prior to "death."

Remedy: Refund

Consumers should immediately stop using the recalled magnets and contact Zen Magnets LLC for a refund.

Consumer Contact: Zen Magnets LLC toll-free at XXX-XXX-XXXX from TIME and DAYS, email at XXX, or online at URL and click on XXX for more information.

Recall Details

Units: About 10 million magnets, sold individually and in magnet sets

Description: This mandatory recall involves all Zen Magnets and Neoballs magnets. Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, blue, and purple. "Zen Magnets" or "Neoballs" is printed on the packaging.

Incidents/Injuries: The Commission found that two children who ingested Zen Magnets required surgery to remove the magnets and parts of their intestines and bowels. In addition, CPSC is aware of other reports of children and teenagers ingesting high-powered magnets and requiring surgery. A 19-month-girl died after ingesting similar high-powered magnets.

Comment [A2]: Zen would insert at the end of this sentence "though a direct causal link is not certain."

Sold at: Online at Neoballs.com and ZenMagnets.com and the Colorado retailers listed below beginning in January 2009 for about \$12, \$32-\$38, and \$263 per set, or individually for 6 to 20 cents per magnet.

Comment [A3]: Zen would limit the dates to 2009 to 2011.

Colorado Retailers of Zen Magnets

Botanico, 3054 Larimer Street, Denver, CO 80205
Chronic Life, 12 Federal Boulevard, Denver, CO 80219
The Glass Hut, 1350 South Sheridan Boulevard #9, Denver, CO 80232

The Hemp Center - Colorado Springs, 2501 West Colorado Avenue #106, Colorado Springs, CO 80904

The Hemp Center – Littleton, 2430 West Main Street, Littleton, CO 80120

Herbal Alternatives: New Broadsterdam, 2568 South Broadway, Denver, CO 80210

Herbal Dazed, 6525 Federal Boulevard, Denver, CO 80221

Hobby Town – Aurora, 1915 South Havana Street, Aurora, CO 80014

Hobby Town – Lakewood, 3355 South Wadsworth Boulevard, Lakewood, CO 80227

Lightshade on Holly, 3950 North Holly Street, Denver, CO 80207

Lyon's Finest 2, 11080 East 47th Avenue, Denver, CO 80239

Meadowlark 64, 2701 Larimer Street, Denver, CO 80205

MK Vapor, 10273 East Iliff Avenue, Aurora, CO 80247

Nimbus Smoke Stop, 2960 South Federal Boulevard #7, Denver, CO 80236

Octpipe, 5303 Leetsdale Drive, Denver, CO 80246

Science Toy Magic, 11 Old Town Sq., Fort Collins, CO 80524

Secret Stashh Gifts, 3655 Brighton Boulevard, Denver, CO 80216

Soldis, Colorado Mills Mall, Lakewood, CO 80401

Vaper Jungle, 7033 East Colfax Avenue, Denver, CO 80220

Importer/Distributor: Zen Magnets LLC, of Denver, Colorado

Manufacturer: [REDACTED], of China

Comment [A4]: Zen objects to inclusion of manufacturer

Manufactured in: China

Photos



Zen Magnets



Zen Magnets



Zen Magnets



Neoballs magnets



Neoballs magnets

About U.S. CPSC:

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of types of consumer products under the agency's jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually. CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical or mechanical hazard. CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters and household chemicals – contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years.

Federal law bars any person from selling products subject to a publicly-announced voluntary recall by a manufacturer or a mandatory recall ordered by the Commission.

For more lifesaving information, follow us on [Facebook](#), Instagram [@USCPSC](#) and Twitter [@USCPSC](#) or sign up to receive our [e-mail](#) alerts. To report a dangerous product or a product-related injury go online to [www.SaferProducts.gov](#) or call CPSC's Hotline at 800-638-2772 or teletypewriter at 301-595-7054 for the hearing impaired.

CPSC Consumer Information Hotline

Contact us at this toll-free number if you have questions about a recall:

800-638-2772 (TTY 301-595-7054)

Times: 8 a.m. – 5:30 p.m. ET; Messages can be left anytime

Call to get product safety and other agency information and to [report unsafe products](#).

Media Contact

Please use the phone numbers below for all media requests.

Phone: 301-504-7908

Spanish: 301-504-7800

EXHIBIT E2

[Video news release on attached CD]

EXHIBIT E3

To be posted on the home page of all Zen Magnets websites (including zenmagnets.com, neoballs.com):

PRODUCT SAFETY RECALL – All Zen Magnets and Neoballs have been recalled and are no longer for sale.

Click here or call XXX-XXX-XXX to receive a refund. [include link to contact Zen for a refund]

Click here to view the U.S. Consumer Product Safety Commission recall notice. [link to recall notice]

Comment [MBM1]: Zen would insert "genuine" before Zen Magnets

Comment [MBM2]: Zen would insert "Sold by Zen Magnets LLC" after Neoballs

EXHIBIT E4

Social media:

Facebook and other social media:

#Recall: All Zen Magnets and Neoballs magnets. Young children and teens may accidentally or intentionally ingest the high-powered magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death. Consumers should immediately stop using the recalled magnets and contact Zen Magnets, LLC to see how to get a refund. CONTACT: [Firm Phone Number] or [Firm email or web address]. Full recall announcement: [link to recall press [release](#)]

[insert video news release]

Comment [MBM1]: Zen proposes including "CPSC and Zen Joint Message"

Twitter:

#Recall: Zen Magnets & Neoballs magnets. Ingestion hazard to children & teens, risk of injury or death. Get refund.[link to recall press [release](#)].

[insert video news release]

Comment [MBM2]: Zen proposes including "CPSC and Zen Joint Message"

EXHIBIT E5

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as an internet retailer that sold Zen Magnets or Neoballs sometime in the past few years.

Comment [A1]: Zen would limit to 2009 to 2011.

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Please note that federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

In addition, the Commission ordered that all manufacturers, distributors and retailers of Zen Magnets and Neoballs be provided with direct notice of the recall.

You should prominently announce the recall on your website home page from now until June 30, 2018. The announcement should link to the recall press release located at [recall press release link].

Please also announce the recall via any of your social media accounts with the messages listed below.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Comment [A2]: Zen proposes that the sentence should read: The magnets present a substantial risk of injury to children if swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Social Media Messaging

Facebook and other social media:

#Recall: All Zen Magnets and Neoballs magnets. Young children and teens may accidentally or intentionally ingest the high-powered magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death. Consumers should immediately stop using the recalled magnets and contact Zen Magnets, LLC for a refund. CONTACT: [Firm Phone Number] or [Firm email or web address]. Full recall announcement: [link to recall press release]

[insert video news release]

Twitter:

#Recall: Zen Magnets & Neoballs magnets. Ingestion hazard to children & teens, risk of injury or death. Get refund.[link to recall press release]

[insert video news release]

EXHIBIT E6

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

Your company has been identified as a manufacturer of Zen Magnets or Neoballs.

Comment [A1]: Zen proposes limiting this to 2009 to 2011.

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

In addition, the Commission ordered that all manufacturers, distributors and retailers of Zen Magnets and Neoballs be provided with direct notice of the recall.

Please note that federal law prohibits any person from selling, offering for sale, manufacturing for sale, distributing in commerce or importing into the United States recalled Zen Magnets and Neoballs.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Comment [A2]: Zen proposes that the sentence should read: The magnets present a substantial risk of injury to children if swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. "Zen Magnets" or "Neoballs" is printed on the packaging.

If you have any questions, please see [\[insert recall press release link\]](#).

Sincerely,

[Contact Name]
Zen Magnets

EXHIBIT E7

RECALL NOTICE

Zen Magnets and Neoballs



Comment [MBM1]: Need color photos of Neoballs

Hazard: Young children and teens may accidentally or intentionally ingest the magnets. Within about 8 hours, ingested magnets can become lodged in digestive tissue, causing catastrophic injuries and death.

In many cases, children required surgery to remove ingested magnets, including two children who The CPSC found had ingested Zen Magnets and required emergency surgery to remove parts of their intestines and bowels. A 19-month-old girl died after ingesting similar high-powered magnets.

Comment [MBM2]: Zen proposes "medical treatment" instead of surgery

Recalled Products: All Zen Magnets and Neoballs. Over 10 million individual magnets were sold from 2009 – 2017.

Comment [MBM3]: Zen proposes 2009 to 2011.

Remedy: Stop using the recalled magnets and contact Zen Magnets LLC for a refund.

For more information call 800-XXX-XXX,
Monday through Friday 8am to 5pm ET
or visit www.zenmagnets.com

Comment [MBM4]: Need to insert phone numbers for this

This recall is being conducted pursuant to an order of the U.S. Consumer Product Safety Commission.
Post this notice until June 30, 2018

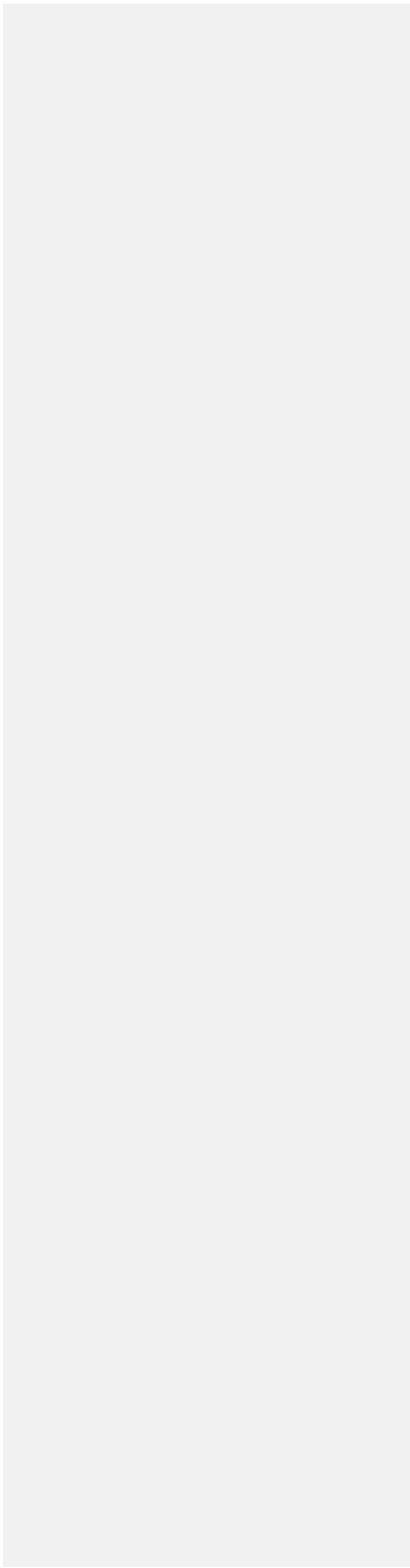


EXHIBIT E8

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs.

Federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

Please take all necessary steps to ensure that third parties do not sell or offer for sale any Zen Magnets or Neoballs on your website.

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. "Zen Magnets" or "Neoballs" is printed on the packaging.

We appreciate your cooperation in preventing the illegal sale of Zen Magnets and Neoballs on your website.

Comment [A1]: Zen proposes that the section read: The magnets present a substantial risk of injury to children if swallowed, either accidentally or intentionally. Complaint Counsel disagrees. 16 C.F.R. §1115.27(f).

If you have any questions, please see [\[insert recall press release link\]](#).

Sincerely,

[Contact Name]
U.S. Consumer Product Safety
Commission

EXHIBIT E9

<<Name>>
<<Address 1>>
<<Address 2>>
<<City>>, <<State>> <<Zip>>

Re: URGENT Recall of Zen Magnets and Neoballs

Dear <<Name>>,

[Consumer contact information]

Re: URGENT Recall of Zen Magnets and Neoballs

Dear [name],

On October 26, 2017, the U.S. Consumer Product Safety Commission (CPSC) ordered a recall of all Zen Magnets and Neoballs high-powered magnets.

Comment [A1]: Zen would limit to 2009 to 2011.

Please stop using the magnets immediately and contact Zen Magnets for a refund. [link to Zen contact info]

Reason for the Recall

The magnets create a risk of injury or death to younger children and teens when swallowed, either accidentally or intentionally.

Comment [A2]: Zen proposes that the sentence should read: The magnets present a substantial risk of injury to children if swallowed, either accidentally or intentionally.

Ingested magnets can attract to each other, or to other metallic objects that are ingested, across loops of bowel or other tissue; once attached, the magnets may become lodged in the digestive system and cannot separate on their own.

Ingested magnets that press against digestive tissue and are not removed within approximately 8 hours can cause catastrophic injuries and death.

The Commission is aware of numerous reports of children and teenagers ingesting small, rare earth magnets. In many cases, children required surgery to remove ingested magnets, including two children who ingested Zen Magnets and required emergency surgery to remove parts of their intestines and bowels. In addition, a 19-month-old girl died after ingesting similar high-powered magnets.

Description of the Product

Zen Magnets and Neoballs are high-powered 5 mm spherical magnets. Zen Magnets were sold individually and in sets of 72, 216 with 6 spares, and 1,728 with 8 spares. Neoballs were sold individually and in sets in the following colors: silver, gold, red, orange, green, red, blue, and purple. “Zen Magnets” or “Neoballs” is printed on the packaging.

Please note that federal law bars any person from selling, offering for sale, manufacturing, distributing or importing recalled Zen Magnets and Neoballs.

If you have any questions, please see [insert recall press release link].

Sincerely,

[Contact Name]
Zen Magnets

Sample pictures of Zen Magnets and Neoballs:



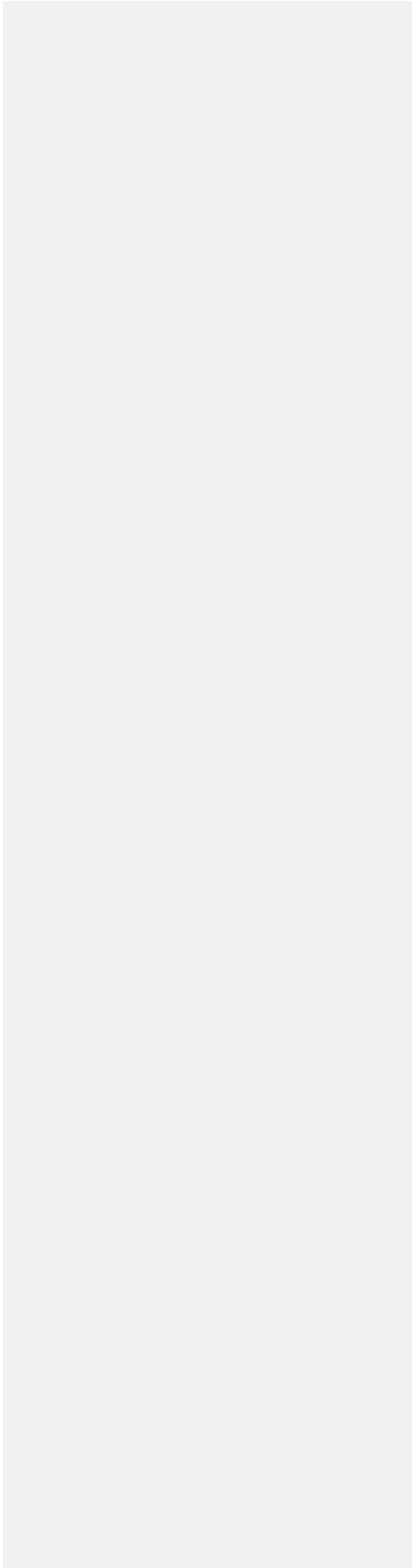


EXHIBIT F



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

Daniel R. Vice, Trial Attorney
Division of Compliance
Office of the General Counsel

Tel: (301) 504-6996
Email: dvice@cpsc.gov

November 15, 2017

Via E-mail and U.S. Mail

David C. Japha
Levin Jacobson Japha, P.C.
950 S. Cherry Street, Ste. 912
Denver, CO 80246
davidjapha@japhalaw.com

Re: In the Matter of Zen Magnets, LLC, CPSC Docket 12-2

Dear Mr. Japha:

Pursuant to the Commission's Order of October 26, 2017, Complaint Counsel submits the following responses and objections to Respondent's draft Action Plan.

1. Complaint Counsel agrees with Zen that the refund shall apply to all customers who purchased Zen Magnets or Neoballs on Respondent's websites (neoballs.com, and zenmagnets.com and any other sites Zen has operated, if any), through third party internet retailers, and at retail outlets. In addition, all current owners of the Subject Products should receive a refund even if they are not the original purchasers (for example, if they received the item as a gift).
2. Complaint Counsel submits that a full refund is appropriate in this case. As required by the Commission's Order, the terms and conditions of the refund shall take into account the following considerations:

- a. The generally accepted useful life of magnets.

Zen has stated that the "coating on a set of Zen Magnets will last about 6 months under typical usage before being discarded, depending on usage and care." Zen further states that the coating on Neoballs will last between 4 weeks and 3 months, depending on usage and care. Zen suggests that the degradation of the coatings may affect the operability of the magnets.

Complaint Counsel submits that the useful life of the magnets is not dependent upon the integrity of the coatings but rather the strength of the magnets. In fact, Zen has stated on its website that the magnets will retain their strong magnetism for many years and that "demagnetization due to time alone is

about 5% in a human lifetime.” Zen has further stated on its website that it would require extreme conditions such as “bak[ing] them” or “shoot[ing] them out of a BB gun” to “weaken[]” this magnetism.

Complaint Counsel believes that it is unlikely that consumers will subject the Subject Products to such extreme conditions. Zen’s statements about the substantial longevity of its magnets comport with the expected longevity of rare-earth magnets in general. Rare-earth magnets are among the strongest available and hold their magnetism for many years, with estimated loss of magnetism on the order of only a few percent over the course of several decades or longer.

Accordingly, Complaint Counsel submits that the Subject Products will retain their magnetism for many years, and will continue to pose a hazard to children even if their magnetism is reduced or their coatings are less shiny or if the color coating shows wear. This factor weighs in favor of a full refund of the Subject Product’s purchase price.

b. The original cost paid by consumers.

Comment [A1]: Zen agrees with this portion of the CAP.

Zen submits that the magnets price range from 10 to 18 cents per magnet. Complaint Counsel disagrees with this assessment.

In its Final Decision and Order, the Commission found that the Subject Products were sold “at prices ranging from approximately \$12.65 for the 72-piece set, \$32.98 to \$38.24 for the 216-piece set, and up to \$263.85 for the 1,728-piece set.... Zen Magnets also could be purchased individually for 20 cents per magnet.... Individual Neoballs could be purchased at prices ranging from 6 cents to 10 cents per magnet.”

Consumers are less likely to participate in a recall if they will not receive a substantial refund. Because the cost for most of the Subject Products is low, this factor weighs in favor of a full refund for all consumers to ensure that the magnets are removed from consumer’s homes.

c. Incentives to encourage returns.

Zen offers a full refund to consumers who purchased the Subject Products within the past 180 days, excluding original shipping costs. Zen further offers to provide consumers with coupons for twenty percent off of other products to incentivize customers to return the Subject Products, and will offer customers the opportunity to enter a contest to win a poster.

Complaint Counsel believes such a proposal is insufficient. Consumers are more likely to participate in a recall if they are compensated for the full purchase price of the product. Complaint Counsel also disagrees that a full refund should be limited to consumers who purchased the Subject Products within the

last 180 days. Zen has provided no justification to unduly restrict the refund to consumers who purchased within that time frame. Complaint Counsel submits that all consumers should be afforded the same incentive to participate in the recall given that the Subject Products retain their strong magnetism for many years and thus present the same hazard to children. Therefore, this factor weighs in favor of a full refund for all consumers.

Complaint Counsel believes the strongest incentive for consumers to participate in the recall is a full refund, rather than the incentive program advanced by Respondent.

- d. Whether and how many magnets should be returned by consumers to qualify for a refund.

Comment [A2]: Zen agrees with this portion of the CAP

Zen states that customers must return at least 50 percent of the magnets purchased in order to qualify for a refund.

Complaint Counsel agrees with Respondent that consumers who return at least 50% of a set should be entitled to a return of the full purchase price of the products. Consumers who return less than a full set, however, should be entitled to a prorated refund based on the percentage of magnets returned (for example, a return of 54 magnets from a set of 216 magnets would result in a refund of 25% of the full purchase price of the set).

Just two small magnets pose a hazard if swallowed (or one magnet if it attracts to another metallic object). The magnets are not contained and may easily be split off from a set. Because of the severe hazard posed by a few magnets and the likelihood that magnets may be lost or shared and pose a hazard to children, consumers should be strongly encouraged to return any magnets they have. This factor weighs in favor of the refund program advanced by Complaint Counsel.

- e. The timing and duration of any refund.

Zen states that it will provide a refund to consumers for 6 months. Complaint Counsel submits that such a limited time frame is unacceptable.

Zen's proposed time period is not acceptable because refunds should be available to owners of the Subject Products for a sufficient time period to allow as many people as possible to avail themselves of the recall. In addition, because the Subject Products may easily become lost or separated from a set, consumers may continue to find magnets and should be encouraged to return any that they find after the recall is announced.

Instead, Zen should provide all consumers who return the magnets with the refund required by the Action Plan for a minimum of 2 years. Zen should consult with the Office of Compliance and Field Operations at the end of the 2

year time period, at which time Compliance staff will determine (based on the rate of return, number of recalled products still in circulation, and other relevant factors), whether Zen should continue to offer refunds to consumers who return the Subject Product, and how long the refund program should continue.

f. Shipping or other costs associated with the returns.

Complaint Counsel agrees with Zen that 15 U.S.C. § 2064(e)(1) does not allow consumers to incur a charge to take part in the recall.

Zen submits that consumers would only be reimbursed for first class package service. Complaint Counsel disagrees: some returns may be too heavy to qualify for first class shipping, so this restriction does not comport with the CPSA and would discourage some consumers from participating in the recall. *See* U.S.P.S. website, <https://www.usps.com/ship/first-class-mail.htm> (maximum first class parcel weight is 13 ounces).

Because the products must be securely shipped to ensure that no magnets are lost during transport or stick to other metallic objects during shipment, the Commission should require that Zen provide postage-paid shipping materials to anyone availing themselves of the recall. Zen must ensure that the shipping materials will provide secure transport of the Subject Products without loss during shipment.

g. The limits of the refund.

Zen submits that consumers who purchased the magnets more than 180 days ago (which is likely a large percentage of consumers) or who return less than 50 percent of a set will only be entitled to a refund if Zen determines that the magnets are returned in “like-new condition and in proper working order.” Zen also requires that consumers provide “the original order information or packaging for proof of purchase.”

Complaint Counsel disagrees that these are acceptable conditions to a corrective action plan and submits that the restrictions will discourage consumers from taking advantage of the recall and unfairly exclude the majority of consumers from eligibility. The Subject Products maintain their strong magnetism for decades, continuing to pose a hazard whether or not Zen deems them “like-new” or “proper.” The Subject Products pose a risk due to their magnetic strength, whether or not a magnet retains a uniformly “proper” color or “like-new” shiny coating.

Zen also submits that consumers who return less than 50 percent of the magnets purchased will be entitled to a prorated refund. Complaint Counsel agrees with Zen that anyone who returns less than 50% of a set may receive a prorated refund based on the amount returned. This refund shall be based on the

Comment [A3]: Zen agrees with this portion of the CAP

full purchase price of the product. This will encourage consumers to return as many magnets as they can, even if some have been lost. It will also encourage consumers to return additional Subject Product magnets if they later find magnets that have become separated from sets.

Complaint Counsel strongly disagrees that consumers must present the original packaging or original order information to receive a refund. Many consumers do not retain a product's original packaging, and it is unlikely that consumers of a product sold as far back as 2009 would have retained such materials. In addition, Zen maintains an electronic database of online sales and is able to confirm a product's purchaser without the original order form. Zen's restrictions on returns could very likely preclude consumers who purchased the Subject Products at a retailer or who received the item as a gift from participating in the recall. Instead of requiring original order documentation, Zen may request a written statement from consumers affirming that they are returning the Subject Products, as long as that does not place an undue burden on the consumer (for example, consumers should not be required to obtain or pay for the services of a notary).

3. Complaint Counsel agrees with Zen that Public Notifications shall be provided as required by the Commission.

Furthermore, the following elements should be required as part of the Action Plan¹:

- Zen shall submit monthly progress reports to the Office of Compliance and Field Operations ("Compliance") as directed by Compliance staff;
- Zen shall contact Compliance staff if there are any issues with adherence to the Action Plan by Zen or third parties;
- Zen shall maintain all records relating to the Action Plan for 5 years;
- Zen shall permit Compliance staff to monitor Zen's implementation of the Action Plan, including consenting to monitoring as provided in 16 C.F.R. § 1118.2;
- Prior to the disposal or destruction of the Subject Products in the distribution chain and in Zen's inventory (including transfer for disposal or destruction to a third party), Zen shall ensure that all Subject Products that are in the distribution chain, in Zen's inventory, and returned pursuant to the recall are properly quarantined; and
- Prior to the disposal or destruction of the Subject Products in the distribution chain and in Zen's inventory (including transfer for disposal or destruction to a third party), Zen shall notify the Office of Compliance and Field Operations so that Compliance staff may approve and witness such disposal, destruction or transfer of the Subject Products. Zen must ensure that Subject Product destruction will destroy the units completely so that they cannot be reused and that Zen's method of destruction complies with all state and local regulations.

Comment [A4]: Zen agrees with this portion of the CAP

Comment [A5]: Zen agrees with this portion of the CAP, except that it will not agree to the monitoring under 16 CFR 1118.2

¹ These provisions comport with the elements contained in corrective action plans regularly accepted by Compliance staff.

Sincerely,

Daniel R. Vice
Complaint Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	CPSC Docket No. 12-2
ZEN MAGNETS, LLC,)	
)	
Respondent.)	
)	

ZEN MAGNETS’ RESPONSE TO DECEMBER 1, 2017 NOTIFICATION

Zen Magnets, LLC maintains its position that the names of foreign manufacturers, specifically [REDACTED] of China (“[REDACTED]”), is confidential/trade secret information that is not subject to public disclosure, and that Zen Magnets, LLC is the manufacture of the consumer products, as defined in 15 U.S.C. 2052(a)(5).

In response to the correspondence received on December 1, 2017, Zen Magnets states the following:

To the extent the Commission is concerned about the improper disclosure of personal information, Zen does not believe that there is any personally identifiable information contained in the filings identified in its December 1, 2017 Notification.

Further, Zen submits the following statement pursuant to 16 C.F.R. §§ 1101.24(b) and 1015.18(c):

- (1) The portions of the document containing [REDACTED] include:
 - a. Exhibit A, “Zen Magnets and Neoballs Press Release,” under “Manufacturer”;
 - and
 - b. Zen’s response and objections to Complaint Counsel’s Draft Public Notifications.

- (2) That [REDACTED] manufactures Zen Magnets’ proprietary magnet design is not a fact that has been disclosed to the public, nor has it been disclosed to anyone who is not an employee or in a confidential relationship with Zen outside of this administrative proceeding before this Agency.

- (3) That [REDACTED] manufactures Zen Magnets’ proprietary magnet design is not commonly known within the industry and is not readily ascertainable by outside persons with a minimum of time and effort. To the best of Zen’s knowledge, that [REDACTED] manufactures Zen Magnets has not been released in a public filing by the Agency, and Zen does not

believe that the overseas manufacture of Zen Magnets should be disclosed any more than it already has been in this administrative proceeding.

- (4) The release of information regarding who manufactures Zen Magnets' proprietary design will cause substantial harm to Zen's competitive position because the design of Zen Magnets created a unique market space for Zen to operate. Disclosing [REDACTED] to Zen's competition via a public filing will serve to expose Zen's design to both foreign and domestic firms, which will harm Zen's competitive position.
- (5) Zen maintains it is the manufacturer of the Subject Products as they are sold to consumers, and therefore is authorized to claim that information that is confidential to Zen Magnets and/or is a trade secret that should not be released to the public.

Finally, Zen respectfully requests that the Commission, in its public filing related to this matter, also note that the implementation of the Corrective Action Plan pursuant to the Commission's October 26, 2017 Final Decision and Order has been stayed pending the resolution of Zen's Motion for Preliminary Injunction filed in the U.S. District Court for the District of Colorado. A hearing on that motion is set for January 4, 2018 before United States District Judge R. Brooke Jackson.

Respectfully Submitted,

LEVIN JACOBSON JAPHA, P.C

Original signed by David C. Japha on 5 December 2017

Redacted version signed today, 13 December 2017

By David C. Japha
5 December 2017

s/David C. Japha

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2017, I served copies of **Zen Magnets' Response to the Commission's December 1, 2017 Notification** via electronic mail, to the Action Secretary of the U.S. Consumer Product Safety Commission, Ms. Alberta Mills to amilss@cpsc.gov, and to Ms. Rocky Hammond, at Rhammond@cpsc.gov.

In addition, I served the Response via electronic mail to Complaint Counsel:

Ms. Mary B. Murphy, Complaint Counsel and Assistant General Counsel
mmurphy@cpsc.gov
and Mr. Daniel Vice, Trial Attorney to: dvice@cpsc.gov

s/David C. Japha
David C. Japha