

Federal Judge Prohibits Novelty Toy Seller From Selling Products Containing Recalled Magnets

Alert

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By Michelle Corrigan

Rare-earth magnets are small, strong, permanent magnets made from alloys of rare earth elements. The Consumer Product Safety Commission (CPSC) has enacted strict regulations governing the sale of these magnets in the United States, due to their risk of ingestion, particularly by children, which may result in severe injuries, including pinching of intestinal walls. Over the last four years, the CPSC has initiated administrative litigation against multiple rare-earth magnet sellers in the U.S. who refused to voluntarily recall magnetic novelty toys that the CPSC deemed to be defective. The latest development in this series of litigation occurred last week, when a Colorado federal court permanently barred one of these magnet suppliers, Zen Magnets LLC (Zen) of Boulder, Colorado, from selling products containing magnets that had previously been recalled.¹[View a copy](#) of the court's decision.

The magnets at issue were previously purchased by Zen from a New Jersey company called Star Networks USA LLC (Star). Star had also been involved in similar administrative litigation with the CPSC, and in August 2014, settled the CPSC's claims against it by agreeing to voluntarily recall its rare-earth magnet products, known as "Magnicube Spheres" and "Magnicube Cubes." In July 2014, during the settlement negotiations between the CPSC and Star, Zen purchased 917,000 magnets from Star at a substantial discount. The magnets purchased by Zen included the same products that Star recalled in conjunction with its settlement with the CPSC. Zen purchased these magnets at approximately 88 percent off of their original price. Zen then combined these magnets with its own stock of magnets, and sold the repackaged products under the brand names "Neoballs" and "Neocubes" beginning in December 2014.

In March 2015, the CPSC sought an injunction barring Zen from selling any products containing the magnets purchased from Star because the Consumer Product Safety Act (CPSA) prohibits the re-sale of any recalled products. The Court granted a preliminary injunction in May 2015, followed by the permanent injunction on March 22, 2016.

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In opposition to the CPSC's request for a permanent injunction, Zen argued that the CPSC's settlement with Star only involved the recall of Star's Magnicube Spheres and Magnicube Cubes specifically, and did not apply to Zen's later products containing the same magnets. Zen argued that the magnets purchased from Star had been unbranded and converted into raw magnets, which Zen maintained it was permitted to incorporate into its own products for sale. In ordering the permanent injunction, the Court plainly disagreed with Zen's argument, finding that the CPSA prohibits the sale of any products containing the recalled magnets purchased from Star. The court held: "Zen's argument that its new packaging and warnings somehow rendered the "raw" Star Magnets to be "fundamentally different products" is ultimately a red herring: neither the CPSA nor [15 U.S.C. §] 2068 contain some sort of "loophole" or a "safe harbor" permitting the sale of "any consumer product that is subject to voluntary corrective action" so long as the seller purportedly addresses the hazard that led the CPSC to take action in the first place (for example, in providing new or different packaging, warnings, etc.) ... Indeed, [Zen's] interpretation would allow manufacturers and importers of consumer products to simply circumvent (and effectively disarm) [the CPSA] by merely repackaging recalled products as they saw fit." See, page 16 of the court's order.

In addition to permanently enjoining Zen from selling any products containing any of the recalled magnets purchased from Star in July 2014, the court also mandated that Zen perform the following:

1. Post a notice of the court's order on its website for a period of two years
2. Announce the notice through all of its social media accounts, including Facebook and Twitter
3. Email the notice to all customers who purchased any products containing the recalled magnets from Zen
4. Provide a full refund to customers who return a full set of the magnet at issue, and a partial refund to customers who return partial sets
5. Provide the notice to each of its business associates involved in the sale of products containing the recalled magnets
6. Destroy or dispose of the recalled magnets or products containing the recalled magnets in its inventory and distribution chain

The court also agreed with the CPSC that Zen "knowingly" violated the CPSA in continuing to sell products containing the recalled magnets purchased from Star. As a result, the CPSC can recommend to the court by April 6, 2016 that a civil penalty be imposed on Zen.

For more information about this decision, please contact [Michelle Corrigan](#) or the Stinson Leonard Street attorney with whom you regularly work. For more information about the CPSC's regulations of magnets, please see [Children's Products: Safety Regulations Governing Rattles and Magnet Sets](#), Michelle Corrigan, Stinson Leonard Street (March 23, 2016).

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¹See, *U.S. v. Zen Magnets LLC, et al*, Civil Action No. 15-CV-00955 in the United States District Court for the District of Colorado.

CONTACT

Michelle Corrigan Erikson

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