

The CPSC's Latest Attempts to Expand Its Enforcement Authority

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WASHINGTON, D.C., August 16, 2013 /EINPresswire.com/ -- A year ago, I wrote: "It's rare for a regulated company to mount open and disrespectful resistance to a federal regulatory agency, but that's what the maker of BuckyBalls, the popular desktop magnetic toy, is doing in response to the Consumer Product Safety Commission's effort to ban its product." The maker in question had devised cheeky, sarcastic ads asking why other products with injurious potential (coconuts, hot dogs) weren't banned on the CPSC's logic.

One reason it's rare to mount open and disrespectful resistance to a federal agency is that agencies have so many ways to make business people's lives unhappy. This spring, breaking new legal ground, the CPSC reached out and named CEO Craig Zucker personally as a respondent in its recall proceeding. According to a [Gibson Dunn commentary](#),

For the first time, the CPSC is pursuing individual and personal liability against an executive for a company's alleged violations of the Consumer Product Safety Act. Although it remains to be seen whether the CPSC will adopt this approach in other cases, at minimum, this demonstrates just how far the CPSC is willing to push the envelope.

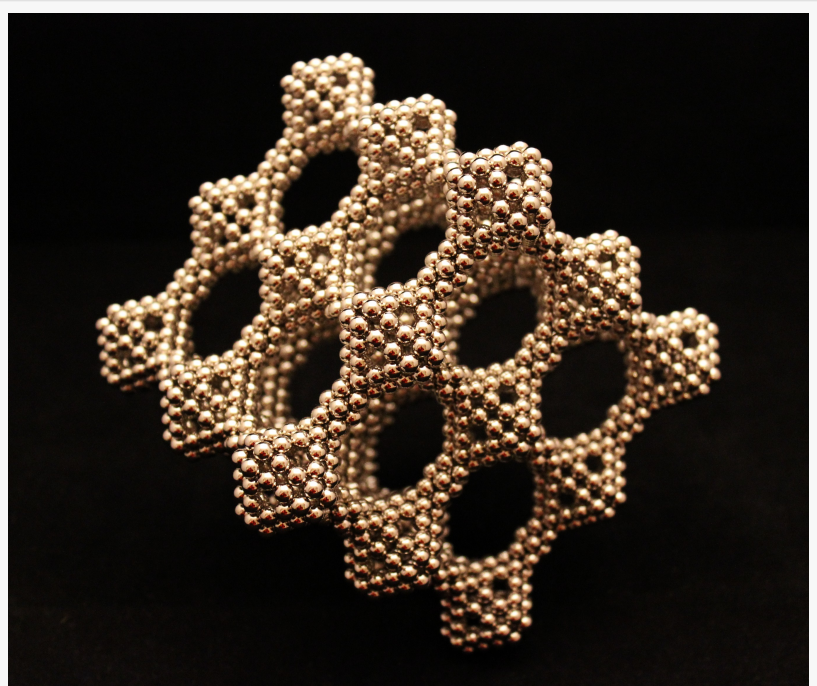
It's just the latest example, the law firm says, of a pattern in which "the CPSC has aggressively enforced its governing statute and regulations, repeatedly pushing the limits of its expanded authority."

As Morrison & Foerster says in its client alert:



Walter Olson

Despite [Buckyballs maker] Maxfield and Oberton's aggressive publicity campaign against the CPSC, the CPSC continued to pursue its complaint. Maxfield and Oberton folded and the company dissolved in December 2012, making the complaint moot. In February 2013, the CPSC moved for leave to file a second amended complaint naming the former CEO, Craig Zucker, both individually and as an officer of Maxfield and Oberton. The CPSC requested the same relief against Zucker as it had against Maxfield and Oberton—i.e., recall, refund, and compliance reports.



Zen Magnets

While Zucker has “argued that he could not be liable as he did not personally manufacture, distribute, or sell the product at issue,” CPSC has invoked something called the responsible corporate officer doctrine, approved by the Supreme Court in *U.S. v. Dotterweich* (1943) and *U.S. v. Park* (1975), which “permits responsible corporate officers to be held liable for the actions of the corporation, even in the absence of personal guilt on the part of the individual.”

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Gibson Dunn

Especially when the individual has helped promote Internet memes making fun of the CPSC.

P.S. [Zen Magnets LLC](#) of Denver, which markets a similar product which it says has not been linked to injury reports, and which has refused to withdraw its product from the market despite CPSC's demands, is calling attention [to a poll](#) that it says shows the U.S. public overwhelmingly in favor of leaving recreational rare earth magnets on the

market labeled for adult use (& Brian Doherty, Reason, Joe Patrice/Above the Law; cross-posted in slightly different form at Cato at Liberty).

P.P.S. Noted at the Cato version: “If the move succeeds, Zucker could be ordered to foot the bill personally for offering consumers full refunds for all products sold, reimbursing retailers for recall costs, and various other expenses potentially reaching into the millions.”

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