

Former CPSC Commissioner Nancy Nord comments on New CPSC Lawsuit against Zen Magnets and Shihan Qu

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WASHINGTON, DC, May 12, 2015
/EINPresswire.com/ -- Via NancyNord.net

As the saga of the magnets ban continues to unfold, last week another chapter was added when the Consumer Product Safety Commission (CPSC) brought yet another action against Zen Magnets, the one company that has refused the CPSC's demand to do a recall. But this time the agency sued not only the company but also its young founder, Shihan Qu, in his personal capacity. The CPSC alleges that Zen purchased, and then illegally resold, the inventory of a competitor, Magnicube, that was negotiating a recall with the CPSC.

The law is pretty clear—it prohibits the sale of a product which a manufacturer (including an importer) has recalled. However, Mr. Qu argues

forcefully in [[a Zen Newsletter](#)] that the products were totally fungible, one magnet being indistinguishable from another, and it was still legal for him to sell magnets identical to those sold by his competitor. Mr. Qu argues that Magnicube could have sent its remaining inventory back to the factory in China to be co-mingled with other identical magnets and then shipped to Zen—a more complex transaction but achieving the same result.

In raising this latest action by the federal government against tiny Zen Magnets, it is not my purpose to argue the merits of the case being brought. Instead, I raise it because, to me, it poses questions of proportionality and discretion. I have repeatedly [expressed my concerns](#) about the agency's troubling willingness to disregard fair process in an "ends justifies means" mindset, at least with respect to this product. This latest action seems to smack of a vendetta against the one company that did not give in to the agency's demands, especially since the issue of whether Zen's magnets should be recalled is well into the latter stages of litigation and, presumably, will be resolved soon.

The government is no doubt arguing that its latest action is needed to keep products it sincerely believes are unsafe out of the hands of consumers. However, as noted above, the exact same magnets were easily available to Zen from China at the time so the agency's action would not



accomplish this purpose. Further, with a ban on prospective sales of these products now going into effect (unless it is overturned by judicial review at some point down the road), consumers seem to be protected.

Recalls—the remedy the agency was originally ostensibly seeking from Zen—have been totally ineffectual in getting this product out of consumers' hands. (It seems consumers like the product and do not want to hand it over, even for money.) And remember, in spite of the CPSC's rule banning magnet sets sold as adult desk toys, it is possible to go online to buy sets of magnets, like those at issue here. I did so this morning. As long as they are not advertised as having entertainment value, they can be [manufactured and] sold.

I wonder whether this latest action, rather than making the government appear strong, makes it appear vindictive and petty, given the force the federal government can bring against a tiny company that dares to challenge it. I wonder whether the government could not have advanced

whatever safety purpose it had in a less Goliath-like way.

Via "Shihan vs Goliath" on NancyNord.net

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Nancy Nord

Nancy Nord
NancyNord.net
email us here
@nancynord



Form CPSC Commissioner Nancy Nord

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