

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 15-cv-00955

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZEN MAGNETS, LLC, and
SHIHAN QU,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF AND CIVIL PENALTIES

Plaintiff, the United States of America, alleges:

1. This action relates to 917,000 recalled dangerous magnets. The tiny magnets are generally marketed as desk toys or sculpture sets. When more than one magnet is swallowed by a child or an adult, the magnets rapidly clamp together and can cause serious internal damage. Zen Magnets, LLC, and Shihan Qu (collectively, “Defendants”) purchased the magnets just before the manufacturer’s publicly announced recall. Defendants then sold the recalled magnets after the public announcement of the recall. Defendants knew about the manufacturer’s recall and have continued to sell the recalled magnets despite demands to stop by the Consumer Product Safety Commission (“CPSC”).

2. This action is brought by the United States under the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051-2089. Defendants’ sale and distribution in commerce of the magnets was prohibited by two provisions of the CPSA:

a. Defendants' sale, offer for sale, and distribution in commerce of the magnets violated 15 U.S.C. § 2068(a)(2)(B), because the magnets were subject to voluntary corrective action taken by the manufacturer, in consultation with the CPSC, of which action the CPSC has notified the public and of which Defendants knew; and

b. Defendants' sale, offer for sale, and distribution in commerce of the magnets violated 15 U.S.C. § 2068(a)(2)(C), because the magnets were the subject of an order issued under 15 U.S.C. § 2064.

3. The United States, pursuant to 15 U.S.C. § 2071(a)(1), is seeking a preliminary injunction and permanent injunctive relief to enjoin and restrain Defendants from selling, offering for sale, manufacturing, distributing, or importing the small, powerful magnets and to recall magnets Defendants already have sold, in violation of 15 U.S.C. § 2068(a)(2)(B) and (C).

4. The United States, pursuant to 15 U.S.C. § 2069, is also seeking civil penalties against Defendants for knowingly violating 15 U.S.C. § 2068(a)(2)(B) and (C). Under the CPSA, knowingly means "(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations." 15 U.S.C. § 2069(d).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, and 1355(a).

6. Venue in the District of Colorado is proper under 28 U.S.C. §§ 1391(b), (c), and

1395(a).

DEFENDANTS

7. Defendant Zen Magnets, LLC, is a corporation organized and existing under the laws of Colorado, located at 12445 East 39th Avenue, Denver, Colorado, 80239.

8. Defendant Shihan Qu is the founder, owner, operator, and registered agent of Zen Magnets, LLC. He is the individual responsible for ensuring compliance with the requirements of the CPSA and the regulations issued thereunder. At all times relevant to this Complaint, he formulated, directed, controlled, and participated in the acts and practices of the corporate defendant, including the acts and practices set forth in this Complaint.

FACTS

9. The CPSC is an independent federal regulatory agency that enforces the CPSA and related regulations. One of the purposes of the CPSC is to protect the public against unreasonable risks of injury associated with consumer products. 15 U.S.C. § 2051(b)(1). The principal offices of the CPSC are at 4330 East West Highway, Bethesda, Maryland, 20814-4408.

10. Defendants sell small, powerful magnets through an Internet website. The magnets, typically comprising dozens or hundreds of tiny magnetic spheres or cubes, have a high degree of magnetic attraction, can be formed into different shapes, and generally are marketed as desk toys or sculpture sets.

11. When swallowed by children or others, the magnets are dangerous and have resulted in numerous hospitalizations and serious injuries. When a person swallows more than one magnet, the magnets rapidly clamp together, damaging intestinal tissue trapped in between.

16 C.F.R. § 1240.5(a)(2). Ingestion of the magnets can cause serious internal damage, necessitate invasive procedures, and result in severe long-term health consequences. *Id.* Ingestion of the magnets has led to hundreds of emergency room visits every year. 16 C.F.R. § 1240.5(a)(1).

12. On or about July 10, 2014, Defendants purchased approximately 917,000 magnets from Star Networks, USA LLC (“Star”). The purchase included magnet cubes sold by Star under the brand name Magnicube Magnet Cubes and magnet spheres sold by Star under the brand name Magnicube Magnet Balls. At the time of the sale, Star was negotiating with the CPSC to resolve a CPSC administrative complaint that was intended to stop sale of the magnets.

13. One week later, on or about July 17, 2014, Star signed a Consent Agreement to settle the administrative complaint. The Consent Agreement required Star to implement a voluntary corrective action plan in which Star would recall the magnets, issue refunds to consumers who returned the magnets, and destroy the magnets in its possession. The Consent Agreement also prohibited Star from selling such magnets in the future. The same attorney who represented Star in its negotiations with the CPSC and who signed the Consent Agreement as Star’s counsel represents Defendants.

14. On or about July 28, 2014, the CPSC issued an Order, pursuant to 15 U.S.C. § 2064, that said the Consent Agreement was necessary to protect the public from the hazard presented by Star’s magnets, ordered Star to implement the voluntary corrective action plan in accordance with the Consent Agreement, prohibited the sale, manufacture, distribution, and importation of the magnets, and warned that violation of the order would subject the violator to civil and/or criminal penalties under 15 U.S.C. §§ 2069 and 2070.

15. On or about July 31, 2014, the CPSC posted the Consent Agreement and the Order on its website.

16. On or about August 4, 2014, the CPSC issued a press release that notified the public about the magnet recall required by Star's voluntary corrective action plan. The CPSC posted the press release on its website. The press release contained a link to where the Consent Agreement and Order were posted on the CPSC's website.

17. On or about August 4, 2014, defendant Shihan Qu posted a statement on Zen Magnets' website that said Zen Magnets was "the last surviving magnet sphere company still standing, selling, and fighting in the United States." The statement said "news of Magnicube's settlement comes today" and contained a hyperlink to the announcement on the CPSC's website of Star's recall of the Magnicube magnets.

18. Sometime after August 4, 2014, and continuing until an unknown date, Defendants placed the Star Magnicube Magnet Cubes in different packaging and sold them under the brand name Newbcubes.

19. On or about December 1, 2014, defendant Shihan Qu posted a statement on the defendants' website that said: "We have Cube Magnets, not by popular demand, but inheritance from fallen comrade. We'll call them NewbCubes."

20. Sometime after August 4, 2014, and continuing until the present, Defendants placed the Star Magnicube Magnet Balls in different packaging, comingled them with similar magnet spheres Zen obtained independently of Star, and sold them under the brand name Neoballs.

21. As of May 1, 2015, Neoballs were offered for sale on Zen Magnets' website, even

though on March 4, 2015, and April 3, 2015, the CPSC warned Zen Magnets in writing that selling the recalled magnets purchased from Star is unlawful.

VIOLATIONS OF THE CPSA

22. The CPSA prohibits the sale, offer for sale, manufacture for sale, distribution in commerce, or importation into the United States of any consumer product that is subject to voluntary corrective action taken by the manufacturer in consultation with the CPSC, of which action the CPSC has notified the public. 15 U.S.C. § 2068(a)(2)(B).

23. The CPSA prohibits the sale, offer for sale, manufacture for sale, distribution in commerce, or importation into the United States of any consumer product that is subject to an order issued under 15 U.S.C. § 2064. 15 U.S.C. § 2068(a)(2)(C).

24. On multiple occasions, Defendants knowingly sold, offered for sale, and distributed in commerce Star Magnicubes that, as of August 4, 2014, were subject to voluntary corrective action taken by the manufacturer in consultation with the CPSC, of which action the CPSC notified the public, and were subject to an order issued under 15 U.S.C. § 2064, in violation of 15 U.S.C. § 2068(a)(2)(B) and (C).

INJUNCTION

25. Based on Defendants' past and present conduct, there is a substantial likelihood that, unless restrained by order of this Court pursuant to 15 U.S.C. § 2071(a), Defendants have and will continue to violate the CPSA by selling, offering for sale, and distributing in commerce small, highly magnetic magnets obtained from Star that are subject to voluntary corrective action taken by the manufacturer in consultation with the CPSC, of which action the CPSC notified the public,

and that were subject to an order issued under 15 U.S.C. § 2064, in violation of 15 U.S.C. § 2068(a)(2)(B) and (C).

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

26. Pursuant to 15 U.S.C. § 2071(a), permanently restrain and enjoin Defendants, and each and all of their directors, officers, agents, servants, brokers, employees, successors, assigns, attorneys, and all persons or entities in active concert or participation with any of them, from directly or indirectly selling, offering for sale, or distributing in commerce, or importing into the United States recalled magnets obtained from Star that are subject to voluntary corrective action taken by the manufacturer in consultation with the CPSC, of which action the CPSC notified the public, and that are subject to an order issued under 15 U.S.C. § 2064, in violation of 15 U.S.C. § 2068(a)(2)(B) and (C).

27. Pursuant to 15 U.S.C. § 2071(a), order Defendants to conduct a recall of the recalled magnets Defendants obtained from Star and then sold, which are subject to voluntary corrective action taken by the manufacturer in consultation with the CPSC, of which action the CPSC notified the public, and that are subject to an order issued under 15 U.S.C. § 2064, in violation of in violation of 15 U.S.C. § 2068(a)(2)(B) and (C).

28. Pursuant to 15 U.S.C. § 2069, assess civil penalties against Defendants for each separate violation of 15 U.S.C. § 2068(a)(2)(B) and (C).

29. Grant the United States judgment for its costs and for such other and further relief as it deems necessary and proper.

Dated: May 5, 2015

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
Civil Division

JONATHAN F. OLIN
Deputy Assistant Attorney General

MICHAEL S. BLUME
Director
Consumer Protection Branch

JILL FURMAN
Deputy Director

s/ Patrick Jasperse
By: PATRICK JASPERSE
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
P.O. Box 386
Washington, DC 20044
Telephone: (202) 616-0509
Fax: (202) 514-8742
Email: patrick.jasperse@usdoj.gov

JOHN WALSH
United States Attorney

s/ Jamie L. Mendelson
By: JAMIE L. MENDELSON
Assistant U.S. Attorney
United States Attorney's Office
1225 17th Street, Suite 700
Denver, Colorado 80202
Telephone: (303) 454-0190
Fax: (303) 454-0404
Email: jamie.mendelson@usdoj.gov