



American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



Benjamin C. Mizer  
Principal Deputy Assistant Attorney General, Civil Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

December 21, 2016

Dear Mr. Mizer,

As organizations dedicated to preventing product-related deaths and injuries to children, we write to express our strong support for filing a request for an en banc review in the case *Zen Magnets v. Consumer Product Safety Commission* (No. 14-9610).

Our organizations, Consumer Federation of America, Consumers Union, U.S. PIRG, Kids In Danger, Public Citizen, the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition, and the American Academy of Pediatrics urge the U.S. Consumer Product Safety Commission (CPSC) and the Department of Justice to request an en banc review due to the dangerous implications for consumers and children of the November 22, 2016, panel decision of the Tenth Circuit Court of Appeals.

Direct and dire public health consequences result from this decision. Zen Magnets and other manufacturers are again marketing and selling high-powered, rare earth magnet sets. Zen Magnets is now taking orders on its web site for delivery in 2017.<sup>1</sup> Numerous press reports also have indicated that these products will again be available for legal sale.<sup>2</sup>

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<sup>1</sup> <http://zenmagnets.com/>.

<sup>2</sup> <http://www.foxnews.com/tech/2016/12/02/buckyballs-magnets-now-available-after-ban-is-overturned.html>;  
<http://www.popsci.com/buckyballs-are-back-on-market>;  
<http://www.popularmechanics.com/culture/a24110/buckyballs-legal-us-2016/>.

These rare earth magnet products are of great interest to children of all ages: infants and toddlers are prone to putting small objects in their mouths, children may mistakenly believe that they are candy, and older children use these products as faux tongue, lip, and nose piercings. Even when played with as a building set, it is highly likely that young children might mouth the tiny magnets, either to pull them apart, to hold them while building with both hands, or other scenarios. The danger is not an obvious one, as the reaction of magnets to each other in the body does not match the usual pattern for small swallowed objects. Children who swallow two or more magnets are at risk of developing serious injuries such as holes in the stomach and intestines, intestinal blockage, sepsis, and even death. Removing magnets surgically often requires the repair of the child's damaged stomach and intestines. In the past, physicians have likened the internal damage caused by magnets to that of a bullet wound.

The CPSC's magnet rule<sup>3</sup> has protected children by significantly changing the types of magnets that are available in magnet sets for purchase by consumers. The rule addresses both the size and the strength of the magnets. Magnet sets containing magnets that fit in the small parts test fixture<sup>4</sup> and could be swallowed or inhaled must have a flux index of 50 kG<sup>2</sup> mm<sup>2</sup> or less.

The CPSC documented 2,900 possible magnet set ingestions occurring in the United States from January 1, 2009, through December 31, 2013, that required emergency department treatment. CPSC is aware of one fatality, which occurred in 2013.

Pediatric gastroenterologists and surgeons have performed endoscopy and surgery on hundreds of children with magnet ingestions. We are concerned that doctors across the country will again experience a spike in magnet ingestions and their ensuing injuries.

We urge the Department of Justice to file a request for an en banc review to prevent magnet ingestion deaths and injuries that are an inevitable result of the November 22, 2016, Tenth Circuit panel decision.

Thank you for your consideration. If you would like more information, please contact Rachel Weintraub at Consumer Federation of America at [rweintraub@consumerfed.org](mailto:rweintraub@consumerfed.org) or (202) 939-1012.

Sincerely,

Rachel Weintraub  
Legislative Director and General Counsel  
Consumer Federation of America

William Wallace  
Policy Analyst  
Consumers Union

Edmund Mierzwinski  
Consumer Program Director  
U.S. PIRG

Nancy Cowles  
Executive Director  
Kids In Danger

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<sup>3</sup> Final Rule: Safety Standard for Magnet Sets, 79 Fed. Reg. 59,962 (Oct. 3, 2014).

<sup>4</sup> The small parts test fixture is the device used to measure toys and components to identify those that would fit in a small child's mouth and could be swallowed or cause choking.

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Chairman Elliot F. Kaye, U.S. Consumer Product Safety Commission  
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