

NEWS & DEVELOPMENTS

New CPSC Magnet Standard Tackles Safety Concerns

November 25, 2014

The Consumer Product Safety Commission (CPSC/Commission) recently approved a new safety standard that effectively bans once wildly popular magnet sets. This rule [\[16 CFR 1240\]](#) affects millions of small high-powered magnet sets used as adult desk toys. The rulemaking followed a long history of CPSC efforts to address safety concerns with magnet sets—none of which eliminated ongoing incidents of serious harm to children.

In taking this action, the CPSC sought to prevent injuries that occurred when children or teenagers accidentally ingested the small but powerful individual magnets, which are typically composed of 200 or more individual BB-sized magnets. If more than one magnet is ingested, the magnets can attract to each other and pinch or trap intestines and other parts of the digestive tract. This can cause tissue death and subsequent serious—even life-threatening injuries. The CPSC states that ingested high-powered magnets have resulted in an estimated 2,900 emergency room visits and the death of a 19-month-old child.

Rule

The [Rule](#) is effective April 1, 2015. Under the regulation, individual magnets in a set must either be too big to fit into the CPSC “[small parts cylinder](#)” (about 1.25 inches wide) or the magnet must be weaker than a specified industry measure (a flux index of 50 or less). The Rule applies to sets of high-powered magnets and to individual magnets that are intended to be part of a set. The April 1, 2015, enactment date is not retroactive. However, any magnet sets or individual magnets manufactured or imported after that date must meet the new CPSC standard. It will then be illegal to manufacture, import, distribute, or sell such non-complying products.

Background

In the recent past there has been extensive media coverage about the public battles between the Commission and Maxfield & Oberton, the company who imported and distributed “Buckyballs” magnet sets. Initially the CPSC and Maxfield & Oberton cooperated by jointly developing a public education program, enhancing product warnings, and limiting the marketing of Buckyballs to adults.

However, when ingestion incidents did not stop, the CPSC sought to recall all high-powered magnet sets. Maxfield & Oberton refused to voluntarily recall Buckyballs, and the Commission initiated litigation against the company and eventually against the CEO individually. The CPSC also pressured Amazon and other large retailers to stop selling Buckyballs, allegedly contributing to the failure of Maxfield & Oberton’s business. The Commission and the Buckyballs CEO subsequently reached a settlement that required the CEO to fund a product recall. Nevertheless this retrospective solution did not prevent problems with future distributors of such magnet sets.

Application

In order to tackle that concern, the CPSC wanted a standard applicable to all manufacturers, importers, and distributors of high-powered, small-sized magnet sets. The new standard is

Products Liability Litigation Committee

prospective and seeks to prevent the hazards the CPSC previously addressed through recalls, administrative lawsuits, and informal market pressure.

This Rule applies to all high-powered small-sized magnet sets and effectively eliminates the entire class of consumer products from the marketplace. As part of the rulemaking, the CPSC had to first find the rule was “reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product” and, additionally, find that the expected benefits of the rule have a reasonable relationship to the cost of the rule. Further, the rule had to impose the least burdensome requirements that would adequately reduce the risk of injury.

Other Effects

In analyzing alternatives to a strict mandatory standard, the CPSC considered whether product warnings could adequately reduce the risk of ingestion-related injuries. The CPSC, for a number of reasons, decided that warnings were unlikely to effectively reduce the ingestion of the magnets. This determination has the potential to significantly affect product safety regulatory practice. In the past, the CPSC relied on warnings to reduce hazards that otherwise could not be eliminated. In fact, the Consumer Product Safety Act contains mandatory provisions for warnings involving small parts in children’s products. The CPSC’s rejection of warning systems as a solution to the magnet ingestion problem may be a decision limited to this unique hazard and set of facts. If applied more broadly, however, it could call into question the regulatory use of consumer product safety warnings. How all of this may affect the development and regulation of consumer products in the future remains to be seen.

Whether other consumer products will suffer a similar fate is uncertain. For now, an entire group of popular products has been regulated out of existence. Buckyballs will go the way of the lawn dart.

Keywords: litigation, products liability, Consumer Product Safety Commission, CPSC, Consumer Product Safety Act, Magnets, Warnings

—[*Charles E. Joern, Jr.*](#), *Joern Law Firm, Oak Brook, IL*