



Written by [Bob Adelman](#) on August 7, 2014

## Magnet Maker Fights Consumer Agency Over Regulatory Overreach

Shihan Qu, the founder of Zen Magnets, is fighting the Consumer Product Safety Commission (CPSC) to the bitter end, writing [on his company's website on Monday](#):

We vow to continue this legal awareness and lobbying battle until our very last drop of cash-flow blood. We will combat CPSC's magnet prohibition until triumph, or until a glorious death of insolvency on the legal battlefield....



Take this as official notice that Zen Magnets LLC is going All-in.... We will not settle for any sort of stop-sale of magnets that are perfectly safe when not misused.

What's at issue is not whether Qu can continue to sell his little round magnetic balls, but whether the CPSC has overstepped its bounds by suing Zen Magnets and ruling unilaterally that the magnets are unsafe and must be removed from the marketplace. Said differently, it's whether the CPSC's "nanny-state" mentality will be allowed to override personal responsibility.

The agency isn't willing to negotiate and is pushing hard in light of its success in intimidating all the other players in the industry to surrender to its demands. It claims that warning labels aren't sufficient to keep people, especially youngsters and teenagers, from swallowing them which has, according to the agency, already caused some victims to require surgery to remove them from their digestive tracts when they clump together.

As Qu noted on his company's website, it's administrative overreach that goes far beyond his little company in Denver, Colorado. If allowed to stand, the implications for every product on the market are huge:

The paramount issue in this case is the CPSC's argument that warnings don't work. [The agency alleges] that "no warnings or instructions could be devised that would effectively communicate the [ingestion] hazard so that warnings and instructions could be understood and heeded by consumers to reduce the number of magnet ingestion incidents....

[The agency assumes that] people are unable to follow or understand instructions ... [and] makes the judgment that the American Population is not worthy or capable of deciding for themselves.

If Qu's challenge is quashed and the CPSC's decision to remove the threatening magnets entirely from the marketplace succeeds, it will cement in place a dangerous precedent in that, in Qu's words, "anything can cause harm if misused" and be unilaterally banned by the agency.

In its defense, the CPSC claims that it "is charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of consumer products under the agency's jurisdiction" and that previous administrative actions have already "contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years."



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Although Qu states, and the CPSC admits, that none of his Zen Magnets has resulted in a single health claim, the agency says that more than 1,000 children have swallowed small magnets made by other companies resulting in major surgery when the magnets obstructed their GI tracts.

In May, Buckyballs folded following demands from the agency that it stop all sales and recall all the magnets they have sold. On August 4, Magnicubes “voluntarily” announced a similar recall following the agency’s “mandatory” demand that it do so. In its announcement, the CPSC said:

The settlement resolves CPSC staff’s allegations that the Magnicube Spheres and Magnicube Cubes create a substantial product hazard. Star disputed these allegations, but has agreed to the recall in settlement of the allegations.

In an interview with Brian Doherty, who has been following the story at *Reason* since the CPSC began its investigation back in 2009, Qu explained why he refused to fold:

I have two very distinct but related motives for continuing this fight.

The first one is obvious. I want to win. I want to keep selling magnets. I want to continue seeing the passion, joy, and inspiration they bring. I want to stay in business. I want to see a victory for magnets.

But number two, I want the CPSC to LOSE. I really really want them to lose. They need some humility and to be reminded of the standard of liberty in this country.

At issue is the Nanny State versus individual responsibility, according to Qu:

By assuming that people cannot follow ... instructions to keep magnets away from children and mouths, they are assuming the American Population is not capable of deciding for themselves. They are taking your right to consent, and fleecing your freedom to do as you will.

The lawsuit goes to a CPSC administrative law judge later this fall. If Qu fails, he can bring his case to the CPSC board for a ruling. If that fails, he must bring his case to federal court, assuming that he is still financially able to do so by then.

He is getting some help, and he is adjusting his marketing strategy as well. More than 2,500 complaints against the CPSC have already been received by the agency. And Qu is now selling his little magnetic balls in two of Denver’s marijuana dispensaries and five local “smoking accessories” stores where customers by law must be at least 18 or 21 years of age, respectively. Previously the allegedly offensive little magnets were available for sale only over the Internet.

Qu told Doherty:

If Zen Magnets doesn’t stand up, the CPSC gains a remarkable amount of power.... They show the ability to determine behind their closed walls what America can and can’t have....

They set the precedent of creating an all-ages, nation-wide ban [under] the assumption that an American cannot be expected to understand or follow warnings.

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