UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of MAXFIELD AND OBERTON HOLDINGS, LLC Respondent.	)	CPSC DOCKET NO. 12-1

COMPLAINT

Nature of Proceedings

1. This is an administrative enforcement proceeding pursuant to Section 15 of the Consumer Product Safety Act ("CPSA"), as amended, 15 U.S.C. §2064, for public notification and remedial action to protect the public from the substantial risks of injury presented by aggregated masses of high-powered, small rare earth magnets known as Buckyballs® and Buckycubes™ (collectively, the "Subject Products"), imported and distributed by Maxfield and Oberton Holdings, LLC ("Maxfield" or "Respondent").

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (the "Commission"), 16 C.F.R. Part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d) and (f) of the CPSA, 15 U.S.C § 2064 (c), (d) and (f).

Parties

4. Complaint Counsel is the staff of the Division of Compliance within the Office of the General Counsel of the Commission ("Complaint Counsel"). The Commission is an independent federal regulatory agency established pursuant to Section 4 of the CPSA, 15 U.S.C. § 2053.

5. Respondent Maxfield is a domestic corporation with its principal place of business located at 180 Varick Street, Suite 212, New York, New York, 20014. Respondent is an importer and distributor of the Subject Products known as Buckyballs® and Buckycubes.™

6. As importer and distributor of the Subject Products, Respondent is a "manufacturer" and "distributor" of a "consumer product" that is "distributed in commerce," as those terms are defined in CPSA sections 3(a)(5),(7), (8) and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(5),(7), (8) and (11).

The Consumer Product

7. The Subject Products are imported and distributed in U.S. commerce and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, and in recreation or otherwise. The Subject Products consist of small, individual magnets that are packaged as aggregated masses in different sized containers holding 10, 125, and 216 small magnets, ranging in size from approximately 4.01 mm to 5.03 mm, with a variety of coatings, and a flux index of over 50. Upon information and belief, the flux of the Subject Products has reached levels ranging from 204.1 to 556kg²mm² Surface Flux Index.

8. Upon information and belief, Buckyballs,® which are small spherically shaped magnets, were introduced in U.S. commerce in March 2009.

9. Upon information and belief, Buckycubes,™ which are small cube shaped magnets, were introduced in U.S. commerce in October 2011.

10. Upon information and belief, the Subject Products are manufactured by Ningo Prosperous Imp. & Exp. Co. Ltd., of Ningbo City, in China.

11. Upon information and belief, Respondent initially advertised and marketed Buckyballs® to appeal to children, calling it an "amazing magnetic toy."

12. Upon information and belief, Respondent advertised and marketed Buckyballs® by comparing its appeal to that of other children's products such as erector sets, hula hoops, and silly putty.

13. Upon information and belief, despite making no significant design or physical changes to the product since its introduction in 2009, Respondent subsequently rebranded Buckyballs® as an adult executive desk toy and/or stress reliever, marketing and advertising it as such.

14. The Subject Products are sold with a carrying case and range in retail price from approximately $19.95 to $100.00. Upon information and belief, the Subject Products can also be purchased in sets of 10 for $3.50 without a carrying case.

15. Upon information and belief, more than 2,000,000 Buckyballs® have been sold to consumers in the United States.

16. Upon information and belief, more than 200,000 Buckycubes™ have been sold to consumers in the United States.

The Subject Products Create a Substantial Risk of Injury to the Public

17. The Subject Products pose a risk of magnet ingestion by children below the age of 14, who may, consistent with developmentally appropriate behavior, place single or numerous magnets in their mouth. The risk of ingestion also exists when adolescents and teens use the product to mimic piercings of the mouth, tongue, and cheek and accidentally swallow the magnets.

18. If two or more of the magnets are ingested and the magnetic forces of the magnets pull them together, the magnets can pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences. Magnets that attract through the walls of the intestines result in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation or fistula formation. Such conditions can lead to infection, sepsis, and death. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures. However, because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals may easily mistake these nonspecific symptoms for other common gastrointestinal upsets, and erroneously believe that medical treatment is not immediately required.

19. Medical professionals may not be aware of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring. A delay of surgical intervention due to the patient's presentation with non specific symptoms and/or a

lack of awareness by medical personnel of the dangers posed by multiple magnet ingestion can exacerbate life-threatening internal injuries.

20. Magnets which become affixed through the gastrointestinal walls and are not surgically removed may result in intestinal perforations which can lead to necrosis, the formation of fistulas, or ultimately, perforation of the bowel and leakage of toxic bowel contents into the abdominal cavity. These conditions can lead to serious injury and possibly even death.

21. Endoscopic and surgical procedures may also be complicated in cases of multiple magnet ingestion due to the attraction of the magnets to the metal equipment used to retrieve the magnets.

22. Children who undergo surgery to remove multiple magnets from their gastrointestinal tract are also at risk for long-term health consequences, including intestinal scarring, nutritional deficiencies due to loss of portions of the bowel, and possible fertility issues for women.

COUNT I

The Warnings and Labeling Are Defective as they Do Not Effectively Communicate the Hazards Associated with Ingestion of the Subject Product

23. Paragraphs 1 through 22 are hereby re-alleged and incorporated by reference as though fully set forth herein.

24. Since Buckyballs® were introduced into commerce in 2009, numerous incidents involving ingestions by children under the age of 14 have occurred.

25. Upon information and belief, on January 28, 2010, a 9-year-old boy used

Buckyballs® to make tongue and lip rings, and accidentally ingested seven magnets. He was treated at an emergency room.

26. Upon information and belief, on September 5, 2010, a 12-year-old girl accidentally swallowed two Buckyballs®. She sought medical treatment at a hospital, including x-rays and monitoring for infection and internal damage.

27. Since March 2009 to approximately March 11, 2010, the Subject Products were sold in packaging that contained the following warning label: "**Warning**: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. **Ages 13+.**"

28. In February 2010, CPSC notified Respondent that the Buckyballs® failed to comply with the requirement that such products be marketed to children 14+. On or about March 11, 2010, Respondent changed its packaging, warnings, instructions, and labeling on Buckyballs® and later conducted a recall of the products.

29. Since recalling Buckyballs®, Respondent agreed to certain labeling and marketing changes in an effort to prevent the sale of Buckyballs® to children under 14.

30. Despite the marketing and labeling changes made by the Respondent, ingestion incidents continued to occur.

31. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested 8 Buckyballs® magnets she found on a refrigerator in her home, requiring surgery to remove the magnets. The magnets had caused intestinal and stomach perforations, and had also become embedded in the girl's trachea and esophagus.

32. Upon information and belief, on or about January 6, 2011, a 4-year-old boy

suffered intestinal perforations after ingesting three Buckyballs® magnets he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

33. In November 2011, the Commission issued a public safety alert warning the public of the dangers of the ingestion of rare earth magnets. However, such ingestion incidents continue to occur. Since the November 10, 2011 safety alert, the Commission has received over one dozen reports of children ingesting the Subject Products, many of which required surgical intervention.

34. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two Buckyballs® after using them to mimic a tongue piercing. The magnets became embedded in her large intestine, and she had to undergo x-rays, CT scans, endoscopy, and an appendectomy to remove them. The girl's father had purchased the Buckyballs® for her at the local mall.

35. Notwithstanding the labeling, warnings, and efforts taken by Respondents, ingestion incidents requiring surgery continue to occur because such warnings are ineffective.

36. Warnings are ineffective because parents and caregivers do not appreciate the hazard associated with Subject Products and magnet ingestion and will continue to allow children to have access to the Subject Products. Children cannot and do not appreciate the hazard and will continue to mouth the items, swallow them, or, in the case of young adolescents and teens, mimic body piercings.

37. Warnings are ineffective because once the Subject Product is removed from its carrying case, the magnets carry no warning guarding against ingestion or aspiration, and the small size of the individual magnets precludes the addition of such a warning.

38. Warnings are ineffective because individual magnets are easily shared among children such that many end users of the product are likely to have had no exposure to any warning.

39. The Subject Products are defective because their labeling and warning labels cannot guard against the foreseeable misuse of the product and prevent the substantial risk of injury to children.

40. Therefore, the warnings and labeling on the Subject Products are defective pursuant to sections 15(a)(2) of the CPSC, 15 U.S.C. §2064 (a)(2).

COUNT II

The Subject Products as Designed Are Defective and Pose a Substantial Risk of Injury

41. Paragraphs 1 through 40 are hereby realleged and incorporated by reference as though fully set forth herein.

42. The Subject Products are defective because they do not operate exclusively as intended and present a risk of injury to the public. Although the Subject Products warn against placing the magnets in one's mouth, the misuse is forseeable.

43. The Subject Products present a risk of substantial injury to children because the magnets are intensely appealing to children due to their tactile features, their small size, and their highly reflective, shiny metallic coatings.

44. The Subject Products are also appealing to children because they are smooth, unique, and make a soft snapping sound as they are manipulated.

45. The Subject Products also move in unexpected, incongruous ways as the poles on

the magnets move to align properly, which may evoke a degree of awe and amusement among children.

46. The design of the Subject Products presents a risk of injury because they do not operate as intended; that is, they do not act as desk toys or manipulatives that are handled solely by adults and remain on adults' desks out of the reach of children.

47. The packaging of the Subject Products is also a design defect. The plastic carrying case that holds the Subject Products does not prevent children from accessing the magnets, nor does it prevent individual magnet pieces from separating from the product. In addition, the packaging of the Subject Product does not allow parents and caregivers to appreciate if a magnet is missing, and potentially, within the reach of a young child who may mouth or ingest the product.

48. Different packaging cannot remedy the hazard posed by Subject Products because users are unlikely to return the magnets to any case, regardless of the packaging design. Users of the Subject Products are unlikely to disassemble magnet configurations, many of which are elaborate and time-consuming to create, after each use.

COUNT III

The Subject Products Are a Substantial Product Hazard

49. Paragraphs 1 through 48 are hereby realleged and incorporated by reference as though fully set forth herein.

50. The Subject Products present a substantial risk of injury because the pattern of defect—failure to operate as intended, and to effectively communicate warnings that the product should not be purchased for or used by children under the age of 14—is present in all of the

Subject Products.

51. The Subject Products, therefore, present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. §2064(a)(2), by reasons of the substantial risk of injury or death alleged in paragraphs 1 through 48 above.

52. The Respondents have refused to voluntarily stop sale and conduct a recall of the Subject Products.

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that Respondents' Subject Products known as Buckyballs® and Buckycubes™ present a "substantial product hazard" within the meaning of Section 15 U.S.C. §2064(a)(2).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to adequately protect children from risks of injury presented by rare earth magnet products and order Respondents under Section 15(c) of the CPSA, 15 U.S.C. §2064(c) to:

(1) Cease importation and distribution of the product;

(2) Notify all persons that transport, store, distribute, or otherwise handle the rare earth magnet products, or to whom such product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product;

(3) Notify appropriate state and local public health officials;

(4) Give prompt public notice of the defect in the Subject Products, including the incidents and injuries associated with ingestion or aspiration, including posting clear

and conspicuous notice on its Internet website, and providing notice to any third party Internet website on which Respondents have placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice;

(5) Mail notice to each distributor or retailer of the Subject Products; and

(6) Mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

C. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. 2064(d), is in the public interest and additionally order Respondents to:

(1) Refund consumers the purchase price of the Subject Products;

(2) Make no charge to consumers and to reimburse consumers for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter, as provided by Section 15 U.S.C. § 2064(e)(1);

(3) Reimburse retailers for expenses in connection with carrying out any Commission Order issued in this matter, including the costs of returns, refunds and/or replacements, as provided by Section 15 U.S.C. § 2064(e)(2);

(4) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (5) and C(1) through (3) above be taken in a timely manner;

(5) To submit monthly reports, in a format satisfactory to the Commission,

documenting the progress of the corrective action program;

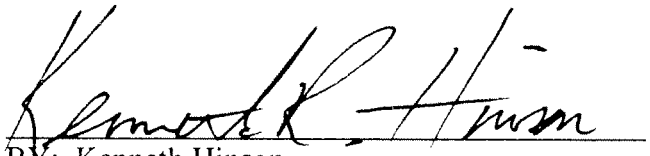
(6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (5) and C(1) through (4) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;

(7) For a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter; and

D. Order that Respondents shall take other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

ISSUED BY ORDER OF THE COMMISSION:

Dated this 25 day of July, 2012



BY: Kenneth Hinson
Executive Director

U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7854

Mary B. Murphy, Assistant General Counsel
Division of Compliance, Office of General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Jennifer Argabright, Trial Attorney
Sarah Wang, Trial Attorney
Complaint Counsel
Division of Compliance
Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7808

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2012, I served the foregoing Complaint upon all parties of record in these proceedings by hand-delivering and mailing, certified mail, postage prepaid, a copy to each at their principal place of business, and courtesy copy to counsel, as follows:

Maxfield and Oberton Holdings, LLC
180 Varick Street
Suite 212
New York, NY 10004

Alan H. Schoem, Esquire
Law Office of Alan Schoem LLC
14809 Rolling Green Way
North Potomac, Maryland 20878

Mary B. Murphy
Complaint Counsel for
U.S. Consumer Product Safety Commission