

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

)	
)	
In the matter of)	
)	
STAR NETWORKS USA, LLC)	
)	CPSC DOCKET NO. 13-2
)	
)	
Respondent.)	
)	

ANSWER TO COMPLAINT

Respondent, Star Networks USA, LLC, (hereafter “Star”), through counsel, answers the numbered paragraphs of the Complaint as follows, seriatim:

1. Star admits that this is an administrative enforcement proceeding, but denies all explicit and implicit allegations in ¶1. Star specifically denies that Magnicube Magnet Balls (“Magnicube Sphere”) and Magnet Cubes (“Magnicube Cubes”), (collectively the “Subject Products”) present a substantial risk of injury. The allegations relating to 15 U.S.C. § 2064 state legal conclusions to which no response is required. To the extent a response may be required, Star denies the allegations relating to 15 U.S.C. § 2064.

2. ¶2 is not an allegation, but is a procedural statement to which no response is required. To the extent a response may be required, Star denies the allegation in ¶2.

3. The allegations in ¶3 state legal conclusion to which no response is required. To the extent a response may be required, Star denies the allegations in ¶3. Further, Respondent Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶3, and therefore denies same.

4. ¶4 is not an allegation, but is a procedural statement to which no response is required. To the extent a response may be required, Star denies the allegation in ¶4.

5. Star admits that it is a New Jersey corporation. However, its principal place of business is located at Star Networks USA, 60 Gathering Road, Suite A, Pine brook, New Jersey 07058.

6. Star admits ¶6.

7. The allegations in ¶7 state legal conclusion to which no response is required. To the extent responses may be required, Star denies the allegations in ¶7.

8. Star denies all explicit and implicit allegations contained in ¶8 that are not specifically admitted herein. As to the initial allegation in ¶8, Star admits that it offers the subject products for sale to consumers for their personal use, but it is without knowledge or information sufficient to form a belief whether the subject products were used in or around a permanent or temporary household or residence, a school, and/or in recreation or otherwise and therefore Star denies same. Star also explicitly denies any implicit or explicit allegations of any wrongdoing which may

be inferred from the allegations in ¶8 of the Complaint.

9. Star admits the allegations in ¶9.

10. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations ¶10 and therefore denies the allegations in ¶10.

11. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶11 and therefore denies the allegations in ¶11.

12. Star admits the allegations in ¶12 but states that the date is December, 2011.

13. Star admits the allegations in ¶13, but states that the date is December, 2011.

14. Star admits the allegations in ¶14.

15. Star admits the allegations in ¶15.

16. Star admits the allegations in ¶16.

17. Star admits the allegations in ¶17.

18. Star admits the allegations in ¶18.

19. Star admits the allegations in ¶19.

COUNT 1

The Subject Products are Not a Substantial Product Hazard Pursuant to Section (15)(a)(2) of the CPSA, 15 U.S.C. §2064(a)(2) and Do Not Contain Product Defects and Do Not Create a Substantial Risk of Injury to the Public

The Subject Products are Not Defective and
Their Instructions, Packaging, and Warnings Are Adequate

20. Star incorporates its answers to ¶¶1 through 19 of the Complaint as if set forth fully herein. ¶20 is an incorporation paragraph and requires no response. To the degree that any response may be required, Star denies any and all incorporated and realleged allegations not previously admitted.

21. The allegation in ¶21 states a legal conclusion to which no response is required. To the extent a response may be required, Star denies the allegation in ¶21.

22. The allegations in ¶22 state legal conclusions to which no responses are required. To the extent any responses may be required, Star denies the allegations in ¶22.

23. Star admits the allegation in ¶23.

24. Star admits the allegation in ¶24.

25. Star admits the allegation in ¶25.

26. Star admits the allegation in ¶26.

27. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶27 and therefore denies the allegations in ¶27.

28. Star admits the allegations in ¶28.

29. Star is without knowledge or information sufficient to form a belief as to

the truth of the allegations in ¶29 and therefore denies the allegations in the allegations in ¶29.

30. Star admits the allegations in ¶30.

31. Star admits the allegations in ¶31.

32. Star admits the allegations in ¶32.

33. Star denies the allegations in ¶33.

34. Star denies the allegations in ¶34.

34. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶34 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC.

35. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶35 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC.

36. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶36 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC

37. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶37 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC.

38. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶38 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC.

39. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶39 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC. Further, The allegations do not reference any particular incident, but alleges a list of incidents based on hearsay.

40. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶40 and therefore denies those allegations.

41. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶41 and therefore denies those allegations.

42. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶42 and therefore denies those allegations.

43. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶43 and therefore denies those allegations. The allegations fail to describe any actual incident involving Star Networks USA, LLC.

44. Star denies ¶44.

45. Star denies ¶45. The allegations in ¶45 are speculative and without

foundation.

46. Star denies ¶46. The allegations in ¶46 are speculative and without foundation.

47. Star denies the allegations in ¶47. Star does not market to children and there is no recorded case of Star's products being ingested.

48. Star denies the allegations in ¶48. The allegations are speculative and do not reflect any evidence of actual cases involving the Subject Products or any Star products.

49. Star denies the allegations in ¶49.

50. Star denies the allegations in ¶50.

51. Star denies the allegations in ¶51.

52. Star denies the allegations in ¶52.

53. Star denies the allegations in ¶53.

54. Star denies the allegations in ¶54.

55. Star denies the allegations in ¶55.

56. Star denies the allegations in ¶56.

57. Star denies the allegations in ¶57.

58. Star denies the allegations in ¶58.

59. Star denies the allegations in ¶59.

60. Star denies the allegations in ¶60.

61. Star denies the allegations in ¶61.

62. Star denies the allegations in ¶62.

63. Star denies the allegations in ¶63.

The Subject Products Are Not Defective and no Risk of Injury Occurs as a Result of Their Operation and Use because there is no Operation, intended or otherwise.

64. ¶64 states a conclusion of law and requires no response. To the degree a response is necessary, Star denies any implied allegations in ¶64.

65. Star denies the allegations in ¶65.

66. Star denies the allegations in ¶66.

67. Star denies the allegations in ¶67.

68. Star denies the allegations in ¶68; The Subject Products are not marketed to children and are not available to children unless given to them by their parents or other adults contrary to common sense and to the explicit and adequate warnings on the marketing and packaging of the Subject Products.

70. Star denies the allegations in ¶70.

71. Star admits ¶71 in so far as the Subject Products do provide stress relief, but that is not their only benefit and so Star denies that stress relief is the only benefit of owning either Magnicube Spheres or Magnicube Cubes.

72. Star denies the allegations in ¶72. There appear no relationship to the attractiveness of the magnets to children and placing the object in one's mouth. The Complaint fails to link the attraction of the magnets to a desire to ingest it.

73. Star denies the allegations in ¶73.

74. Star denies the allegations in ¶74. The complaint fails to draw a causal link between any attraction of the magnets to children and a desire they may have to use the magnets in any harmful manner.

75. Star denies the allegations in ¶65. The complaint fails to draw a causal link between any attraction of the magnets to children and a desire they may have to use the magnets in any harmful manner.

76. Star denies the allegations in ¶76

77. Star denies the allegations in ¶77. The complaint fails to draw a causal link between parents's and caregivers' failure to adhere to common sense principles of child safety as identified in the proper packaging and marketing of Star Networks USA, LLC.

If there is a Risk of Injury, it is of a type that Does Not

Render the Subject Products Defective

78. ¶78 states a conclusion of law and requires no response. To the degree a response is necessary, Star denies any implied allegations in ¶78.

79. Star denies the allegation in ¶79.

80. Star denies the allegation in ¶80. It is not within the purview of the CPSC to determine what is of necessity to consumers in a free market.

81. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶81 and therefore denies those allegations. The allegations in ¶81 are speculative, replete with hearsay from unidentified “medical professionals,” and fail to describe any actual incident involving Star Networks USA, LLC.

81. Star denies the allegation in ¶81.

82. Star denies the allegation in ¶82.

83. Star denies the allegation in ¶83.

84. Star denies the allegation in ¶84.

85. Star denies the allegation in ¶85. It is not clear from the context of the allegation what it means that “children mouthing” the magnets is foreseeable.

86. Star denies the allegation in ¶86.

87. Star denies the allegation in ¶87. The allegation in ¶87 is speculative and fails to describe any actual incident involving Star Networks USA, LLC.

88. Star denies the allegations in paragraph 78, and specifically denies that Star Magnets® poses any risk when used as intended. The events described in ¶78

are speculation and are not properly foreseeable uses of Star Magnets®.

79. Star denies the allegations in ¶79. The allegations do not reference any particular incident, but are a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed.

80. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶80 and therefore denies those allegations. The allegations in ¶80 are speculative, replete with hearsay from unidentified “medical professionals,” and fail to describe any actual incident involving Star.

81. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶81 and therefore denies those allegations. The allegations in ¶81 are speculative, replete with hearsay from unidentified “medical professionals,” and fail to describe any actual incident involving Star.

82. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶82 and therefore denies those allegations. The allegations in ¶82 are speculative, replete with hearsay from unidentified “medical professionals,” and fails to describe any actual incident involving Star.

83. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶83 and therefore denies those allegations. The allegations in ¶83 are speculative, replete with hearsay from unidentified “medical

professionals,” and fail to describe any actual incident involving Star.

84. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶84 and therefore denies those allegations. The allegations in ¶84 are speculative, replete with hearsay from unidentified “medical professionals,” and fail to describe any actual incident involving Star.

85. Star denies the allegations in ¶85. The allegations do not reference any particular incident, but rather appear to be a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed

86. Star denies the allegation in ¶86.

87. Star denies the allegation in ¶87.

The subject Products Do Not Create a Substantial Risk of Injury to the Public

88. Star denies the allegations in ¶88.

89. Star denies the allegations in ¶89.

90. Star is without sufficient information to form a belief as to the truth of the allegations in ¶90 and therefore denies the allegations in ¶90. Further, the allegations do not reference any particular incident, but are a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed.

91. Star is without sufficient information to form a belief as to the truth of the allegations in ¶91 and therefore denies the allegations in ¶91. Further, the allegations

do not reference any particular incident, but are a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed.

92. Star is without sufficient information to form a belief as to the truth of the allegations in ¶92 and therefore denies the allegations in ¶92. Further, the allegations do not reference any particular incident, but are a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed.

93. Star is without sufficient information to form a belief as to the truth of the allegations in ¶93 and therefore denies the allegations in ¶93. Further, the allegations do not reference any particular incident, but are a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed.

94. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶94 and therefore denies those allegations. The allegations in ¶94 are speculative, replete with hearsay from unidentified “medical professionals,” and fail to describe any actual incident involving Star.

95. Star is without knowledge or information sufficient to form a belief as to the truth of the allegation in ¶95 and therefore denies those allegations. The allegations in ¶95 are speculative, replete with hearsay from unidentified “medical professionals,” and fail to describe any actual incident involving Star.

96. Star is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶96 and therefore denies the allegations in ¶96. The allegations do not reference any particular incident, but rather appear to be a speculative list of the potential harms that allegedly could occur if two or more magnets are swallowed.

97. Star denies the allegations in ¶97.

98. Star denies the allegations in ¶98.

99. Star denies the allegations in ¶99.

100. ¶100 states a legal conclusion to which no response is required, however to the degree that facts are alleged in this ¶100, they and any legal inferences drawn therefrom are denied.

Count 2

The Subject Product Is not a Substantial Product Hazard Under Section 15(a)(1) of the CPSA, 15 U.S.C. §2064(a)(1)

101. Star incorporates paragraphs 1 through 100 of its Answer to the Complaint as if set forth fully herein. ¶101 is an incorporation paragraph. To the degree it may call for a response, any allegations contained therein and not previously admitted are hereby denied.

102. Star denies the allegations in ¶102. ¶101 states a legal conclusion to

which no response is required, however to the degree that facts are alleged in this paragraph they and any legal inferences drawn therefrom are denied.

103. Star denies the allegations in ¶103. The Subject Products are not toys and have never been sold or marketed by Star as toys.

104. ¶104 states a legal conclusion to which no response is required, however to the degree that facts are alleged in this paragraph they and any legal inferences drawn therefrom are denied.

105. ¶105 states a legal conclusion to which no response is required, however to the degree that facts are alleged in this paragraph they and any legal inferences drawn therefrom are denied.

106. Star denies the first sentence of ¶106. The second sentence of ¶106 states a legal conclusion and to the extent such conclusion incorporates facts, Star denies those facts and any legal inferences drawn therefrom in ¶106.

107. Star denies the allegations in ¶107.

108. ¶108 states a legal conclusion to which no response is required, however to the degree that facts are alleged in this paragraph they and any legal inferences drawn therefrom are denied.

109. Star denies the allegations in the unnumbered paragraph immediately following ¶108 of the Complaint, and denies that the CPSC is entitled to any of the

relief sought.

AFFIRMATIVE DEFENSES

1. The Complaint fails to allege any claims for which relief may be granted.
2. The CPSC and its Complaint Counsel have failed to adhere to the rule-making procedures and have not found sufficient evidence to find that Star Magnets® actually create a substantial risk of injury to the public.
3. The CPSC is basing its Complaint entirely on findings and evidence from a completely different company.
4. Star Networks USA, LLC has not had one incident or complaint against it of the kind alleged in the Complaint.
5. At all material times, Star has marketed the Subject Products to adults and young adults in compliance with FR ASTM F963. In a recent CPSC webcast, the CPSC itself states that CPSC staff lists the recommended age for magnet spheres as 9+. At no time did Star market the Subject Products as toys to children.
6. The allegations in the Complaint fail to establish that the Subject Products contain any defect or constitute a substantial product hazard within the meaning of Section 15(a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2064(a)(2)). More specifically, there is no fault, flaw, or irregularity that causes weakness, failure or inadequacy in the form or function of Star's magnet spheres or magnet cubes, nor

is there any inadequacy or flaw in the contents, construction, finish, packaging, warnings or instructions of the Subject Products. Moreover, the Subject Products do not create a substantial risk of injury to the public.

7. There is no applicable rule, regulation, standard or ban with which Star fails to comply.

8. The Complaint is arbitrary and capricious as it is not based on any reasonable assessment of risk and is facially inconsistent with the CPSC's own mandatory standards.

9. The Complaint alleges that the alleged hazard to children (though the Subject Products marketed and distributed by Star are not marketed as toys to children) is that upon swallowing two or more magnets will cause severe physical problems. This is based, according to the Complaint, on an implied assumption and explicit allegation that the Subject Products are attractive nuisances as that term was once understood in tort law. However, completely missing from the Complaint is any allegation showing a causal connection between the attraction of the magnets and the act of putting the magnets in one's mouth.

10. Any alleged risk of ingestion can occur only if clear, conspicuous warnings, made available to any consumer prior to purchase, are ignored and the products are misused.

11. The procedure employed by the CPSC in determining whether to file the Complaint against Star violated the CPSC's own regulations and resulted in a violation of Star's rights to due process.

12. The allegations in the Complaint are speculative, do not relate to actual incidents involving Star or the Subject Products, and distort the commercial purpose of the products in question.

13. In reference to paragraphs 35 through 43 of the Complaint, Star states affirmatively that the products marketed, packaged and sold by Star are magnet spheres and these magnets are very different from those magnets that Complaint Counsel alleges have been swallowed.

14. Packaging of the Star magnets is completely different from other magnet or magnetic balls and the potential for danger in Star's magnets is significantly less than that for Buckyballs, or other magnet or magnetic balls.

15. Star's magnet products have much higher precision than the magnetic or magnet balls alleged to cause injury through the Complaint.

16. There are significant marketing and distribution differences between Star and other companies distributing magnet or magnetic balls.

17. The Subject Products marketed and sold by Star have never been sold as toys on shelves, nor have they ever been referred to as any sort of toy.

18. The magnet cubes and spheres sold by Star are only available online, and must be sought out by an adult buyer with a credit card or paypal account. There is no possibility for an underage person to purchase the Subject Products from Star without adult supervision or permission.

WHEREFORE Star Networks USA, LLC respectfully requests that the Complaint be dismissed.

Date January 8, 2013

Respectfully Submitted,

THE LAW OFFICES OF DAVID C. JAPHA, P.C.



By: David C. Japha, Colorado State Bar #14434
950 S. Cherry Street, Ste. 912
Denver, CO 80246
(303) 964-9500
Fax: 1-866-260-7454

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer on the following via email on this 8th day of January, 2013:

Mr. Todd Stevenson, via email to: tstephenson@scsc.gov
an original + 3 copies via US Mail to: The Secretariat – office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

The Honorable Dean C. Metry

U.S. Coast Guard
Courthouse 601 25th Street,
Suite 508A
Galveston, TX 77550
via email to: Janice.M.Emig@uscg.mil
Joanna.M.Sherry@uscg.mil

Ms. Mary Murphy, Assistant General Counsel
Jennifer Argabright, Trial Attorney
Richa Shyam Dasgupta, Trial Attorney
Leah Wade, Trial Attorney
Complaint Counsel
Division of Compliance
Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
via email to: Mmurphy@cpsc.gov, Jargabright@cpsc.gov, RDasgupta@cpsc.gov,
Lwade@cpsc.gov


