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For Buckyballs Toys, Child Safety Is a Growing Issue

Three years ago, two pals from Brooklyn came up with the idea of creating a desktop toy out of powerful magnets. Their creation, Buckyballs, became an instant hit. And by this year, the two — Craig Zucker and Jake Bronstein — had expected annual sales to reach about \$25 million.

But their business plan has hit a major, unanticipated snag.

Buckyballs are made from rare-earth elements, which makes them much more powerful than most magnets — and potentially more dangerous when ingested. Though the product is marketed to adults and festooned with warning labels, regulators have moved to stop sales because children keep swallowing Buckyballs and similar products made by others.

An administrative complaint filed last month by the Consumer Product Safety Commission seeks to require the company — officially called Maxfield & Oberton Holdings — to tell the public about the problem and offer customers a refund. The safety commission also asked 12 other manufacturers of rare-earth magnets to voluntarily recall their products and stop sales; 11 have complied.

Besides Buckyballs, Zen Magnets, a small company in Denver, refused. Last week, the safety commission filed an administrative complaint against Zen Magnets too. “The labeling, the warnings, the packaging does not work,” Scott Wolfson, spokesman for the safety agency, said of the products. “You have young children who come into a room and get their hands on a loose magnet or two.”

The action involving Buckyballs and Zen Magnets is unusual because the safety commission rarely files an administrative complaint, which is essentially a request for a mandatory recall. The last one, filed 11 years ago, was against Daisy Manufacturing, which makes BB guns. In Buckyballs’ case, a hearing will be scheduled before an administrative law judge, who will decide whether to grant the safety commission’s request.

In the meantime, Mr. Zucker has started an aggressive public campaign to win support for Buckyballs. Using the cheeky slogan “Save Our Balls,” his company has taken out newspaper

ads in Washington, directed at President Obama and lawmakers, and stoked a campaign on social media Web sites like Facebook and Twitter.

In doing so, Mr. Zucker has found enthusiastic support from those who believe the Obama administration has pushed regulation too far.

“When an adult, a 28-year-old, can’t buy this for their desk, then this agency has run amok,” said Mr. Zucker. “This is government gone absurd.”

There were an estimated 1,700 incidents of rare-earth magnets being swallowed and requiring emergency room care, in some cases surgery, in the three years beginning in January 2009, according to the safety commission.

It was not clear how many of those incidents involved Buckyballs, the dominant vendor in the United States. Mr. Zucker, 33, said there have been 2.5 million sets of Buckyballs sold and the company has confirmed 12 swallowing incidents. A set of 216 Buckyballs, which are about the size of BBs, costs \$35 (colored Buckyballs cost \$40).

Swallowing two or more rare-earth magnets is particularly dangerous because they attract each other in the intestines and can cause blockages, tissue damage and even perforation.

“Kids do swallow all kinds of stuff, but few pose the kind of risk that these magnets do,” said Dr. Bryan Vartabedian, a pediatric gastroenterologist at Texas Children’s Hospital, who treated a toddler whose bowel had been perforated after swallowing rare-earth magnets. “These are very unique magnets. They are incredibly powerful.”

While expressing sympathy for the victims, Mr. Zucker maintained that the complaint against his company was a case of selective enforcement. He noted that the safety commission has not banned many other products that cause far more injuries, and even deaths, to children, including all-terrain vehicles, button-cell batteries and window blinds.

“You can’t say warnings work on some products but not others,” he said.

But this is not the first effort by the safety commission to crack down on magnets. In 2006, for instance, the agency announced the recall of several million toys because children were swallowing magnets that had fallen out of them, causing injuries and at least one death. Toy manufacturers are now required to encase magnets so they will not fall out.

Initially at least, Mr. Zucker worked with the safety commission to try to educate consumers that the magnets were dangerous to children. The company voluntarily recalled 175,000 sets of Buckyballs in 2010 because they were labeled for “Ages 13+.” The warning was changed to say that Buckyballs should be kept away from all children.

A year and half later, the safety agency and Mr. Zucker created a safety alert video to warn consumers about the dangers of ingesting magnets. Mr. Zucker said his company also created a

Web site, called magnetsafety.com, for the same purpose, and required retailers to agree not to sell the product to children.

But the injuries continued, leading to the newest action against the 13 manufacturers.

In a statement on its Web site, Zen Magnets' founder, Shihan Qu, noted that there had been no reports of children ingesting its magnets. "Obviously we are being punished because children have regrettably misused our competitor's magnets," he said. "I urge those within the C.P.S.C. to think twice before applying the death penalty to innocent corporate citizens."

Daniel Peykar, co-founder of Magnicube, said his six-month-old company agreed to voluntarily stop selling its rare-earth magnets, at least temporarily, because it did not want to pay the legal fees associated with an administrative complaint. "Hopefully, they will come up with a resolution on labeling and that will apply to everyone in the industry," he said.

But Mr. Peykar, of Pine Brook, N.J., said he did not agree with the commission's actions.

"The C.P.S.C. has gone to great lengths to try to ban a product rather than come up with a reasonable resolution," he said.

The safety commission and consumer advocates maintain that the ban is warranted because rare-earth magnets are irresistible to children, even if the packaging says the toys are intended for adults. In the past, the commission has banned toys that it deemed too dangerous, like lawn darts, Mr. Wolfson said.

Not surprisingly, Betty Lopez, whose 12-year-old daughter swallowed four Buckyballs in March while pretending to have a pierced tongue, supports the commission's actions.

"There were kind of three portions of the bowel that were stuck together by the Buckyballs," said Ms. Lopez, who explained that her daughter required two operations and missed a month of school. "Knowing what my daughter went through, I don't feel that Buckyballs serve any true purpose."

Such injuries have marred what may have been a feel-good business success story that started in a Williamsburg apartment in Brooklyn in 2009.

Mr. Zucker was an entrepreneur who started, among other things, a bottled water business that sold New York City tap water. Mr. Bronstein wrote a blog, zoomdogle.com, that offered tips about workplace fun.

After they saw rare-earth magnets on YouTube, they bought some inventory and repackaged them as Buckyballs (the nickname of a spherical carbon molecule that resembles the geodesic dome popularized by the inventor R. Buckminster Fuller).

At first, the two packed the magnets themselves and walked orders to the post office. Before long, they struggled to keep up with the demand. This year, they were on pace to sell 1.5 million sets, at least before the safety commission's actions.

"We put \$1,000 each into it," said Mr. Zucker, whose cause to stay in business has been championed by the conservative commentators Rush Limbaugh and Michelle Malkin, among others. "We never put in another dime. No loans. No investors. We exceeded every single expectation."

But now, Mr. Zucker says he is fighting for the survival of his business, which is in a cramped office with eight employees and a "We Love Our Jobs" sign, made out of Buckyballs, on the front door. And he is hoping customers will rally behind his unconventional campaign.

For instance, last week his company urged its Facebook fans to contact the agency "that is trying to take away our balls," and it listed the names, phone numbers and e-mail addresses of Mr. Wolfson and the commission members, along with unflattering caricatures.

Rachel Weintraub, director of product safety at the Consumer Federation of America, said the Buckyballs campaign was simply an effort to shift the focus away from safety. "The essence here is safety, that children are being injured in horrendous ways," she said. "It is classic industry strategy: changing the subject, attacking the messenger."

Mr. Zucker prefers to cast the issue as one of fairness. "This is an issue about when can consumers make a decision to buy an adult product?" he said. "It's a good fight. And it's a fight I think we can win."