

# Consumer Product Safety Enforcement Doesn't Usually Go After Individuals, But It Does if You Make Fun of the Government

By: Brian Doherty – August 13, 2013

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Walter Olson at Cato sums up the ongoing story of what appears to be the first time the Consumer Product Safety Commission (CPSC) has deliberately gone after an individual business owner over a safety complaint.

Has Craig Zucker, the former CEO of Maxfield and Oberton, recklessly continued to sell something killing or harming millions with no due diligence? No. The product in question, a rare earth magnet toy known as "Buckyballs," were labeled instructing people to keep them away from children, since they can cause health problems to children if swallowed.

The company was known to stop selling them in stores that didn't try to keep them segregated from children's toys. The CPSC's complaint documents fewer than two dozen problem cases. And the company chose to go out of business in response to CPSC pressure. Anthony Fisher blogged last year about when Buckyballs gave up the ghost in response to state pressure.

Olson tells the story of how the fight became about a man, not a company, and why:

The maker in question had devised cheeky, sarcastic ads asking why other products with injurious potential (coconuts, hot dogs) weren't banned on the CPSC's logic.

One reason it's rare to mount open and disrespectful resistance to a federal agency is that agencies have so many ways to make businesspeople's lives unhappy. This spring, breaking new legal ground, the CPSC reached out and named CEO Craig Zucker personally as a respondent in its recall proceeding....If the move succeeds, Zucker could be ordered to foot the bill personally for offering consumers full refunds for all products sold, reimbursing retailers for recall costs, and various other expenses potentially reaching into the millions.

As Morrison & Foerster says in its client alert:

Despite [Buckyballs maker] Maxfield and Oberton's aggressive publicity campaign against the CPSC, the CPSC continued to pursue its complaint. Maxfield and Oberton folded and the company dissolved in December 2012, making the complaint moot. In February 2013, the CPSC moved for leave to file a second amended complaint naming the former CEO, Craig Zucker, both individually and as an officer of Maxfield and Oberton. The CPSC requested the same relief against Zucker as it had against Maxfield and Oberton—i.e., recall, refund, and compliance reports.

While Zucker has "argued that he could not be liable as he did not personally manufacture, distribute, or sell the product at issue," CPSC has invoked something called the responsible

corporate officer doctrine, approved by the Supreme Court in *U.S. v. Dotterweich* (1943) and *U.S. v. Park* (1975), which “permits responsible corporate officers to be held liable for the actions of the corporation, even in the absence of personal guilt on the part of the individual.”

Especially when the individual has helped promote Internet memes making fun of the CPSC.