# When Drawing Conclusions about a Product Defect, Information about Product Quality and Product Safety Must Be Considered and Evaluated SEPARATELY

## **PRODUCT QUALITY**

# EACH MANUFACTURER ESTABLISHES ITS OWN TOLERANCE LEVEL FOR QUALITY:

- NO common product quality specifications
- NO common quality control inspection guidelines or sampling plans
- NO consistent evaluation from one manufacturer to another since individual quality policies and goals differ
- All quality control inspection plans will accept some defective product
- Quality issues become material when they impact a company financially
- Quality performance is determined by measuring the total quality costs

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### **PRODUCT SAFETY**

# PRODUCT SAFETY STANDARDS GENERALLY EXIST AND APPLY TO ALL MANUFACTURERS OF CONSUMER PRODUCTS:

- Standardization of safety criteria
- Standardization of safety inspection guidelines and procedures
- Consistent evaluations concerning product safety can be made due to the existence of meaningful and objective standards
- ► A product is considered defective when:
  - it fails to comply with mandatory product safety standards;
  - it creates an unreasonable risk of serious injury or death; or
  - it contains a defect which could create a substantial product hazard

Based on the
Standards
and Knowledge
in Existence in the
Toy Industry as of
July 26, 2005:

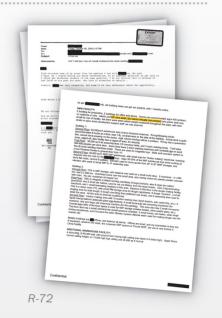
- The BrandedX product:
  - Was neither defective in design nor manufacture
  - Did not present an unreasonable risk of injury or death
  - Conformed to all applicable toy safety standards
  - Was a good product based on industry standards of quality
- "Magnets falling out" would have been considered a quality issue and NOT a safety concern

#### **BrandedX: Value Product for the Mass Market** Ultra Brands to CPSC: BRANDEDX SALES: Ultra Brands' Ultra Brands' finds Ultra Brands' Ultra Brands receives UltraBrands' due diligence site visit: BrandedX "...doing the ACQUIRES CRAFTER Tim O'Keafe: \$116 MILLION consumer complaints Hoboken NJ: "Given ... more than ...QC very weak, 750 million magnets minimum to meet the Magnets falling out for May 2004 to "We found ... a lot of QC seems virtually safety requirements...." magnets were "...almost a joke...." but December 2005: were employed... non-present...." inexpensive to produce. (Tr. Pgs. 54: 17-56: 15) (objections omitted) "not a critical issue... "1387 calls - Reported detached after glued.' warranty claim rate not creating a magnets have fallen in relation to broken safety hazard.... out of pieces." or missing magnets is extremely low." JUL 26, 2005 NOV 28, 2005 MAR 29, 2006 Magnets falling out was not considered Ultra Brands receives Ultra Brands BRANDEDX SALES: Ultra Brands BrandedX inspection \$67 MILLION logs: 11 FAIL. an unusual possibility consumer complaints play experience test: **MAGNETS DETACH**. inspects Crafter's that increased the through October 2004: MAGNETS DETACHING. Reynard facility: risks associated with "...for magnet detached, the use of the product seemed Reynard by its intended user." can not improve at this moment. AUG - OCT 2005 \$28 MILLION tests: MAGNETS DETACH Ultra Brands: from all 6 samples. "We have tried several methods...cannot fix problem totally."

NO PUBLISHED ASTM SAFETY STANDARD RELATED TO MAGNETS IN EFFECT

### **BrandedX: Value Product for the Mass Market**

#### **OCTOBER 7, 2004**



## **Ultra Brands' due diligence site visit:**

"...QC very weak, QC seems virtually non-present...."

OCT 7, 2004

NOV

DEC

JAN 2005 FEB

MAR

APR

MAY

JUN

JUL

NO PUBLISHED ASTM SAFETY STANDARD RELATED TO MAGNETS IN EFFECT

### **BrandedX: Value Product for the Mass Market**

#### **NOVEMBER 2005**

Deposition Testimony of TIM O'KEAFE

FEBRUARY 26, 2009



- Q. ...You testified that at some point in time after the acquisition you started to learn or observe that magnets were falling out of BrandedX, right?
- A. Right.
- A. ...It was very because it was a subject we thought regularly, in fact it was almost a joke in the morning, sorry, but it was sad, but "Let's look at what we found today" and "Oh, five magnets." So it was a regular discussion.

Tr. Pg. 132: 1-4, 12-19

JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR

**NOV 2005** 

NO PUBLISHED ASTM SAFETY STANDARD RELATED TO MAGNETS IN EFFECT

#### The Emerging Hazards Posed by Swallowing Multiple, Powerful Magnets or Toy Pieces Containing Magnets Ultra Brands knows of 5 CASES OF SERIOUS INJURY Crafter MTC RECALL of haraoh's RECALL of CPSC warns ingestion of multiple magnets can AZ Associates RECALL of ASTM International Toy Trans-Fer Magnetic Puzzles. magnetic toy product. discloses to Ultra Brands kill children. an attorney letter re: 9 year old with from magnet ingestion. (P-407) First standard for illing out of product magnetic toys published from ingesting "small magnetic pieces." ASTM JAN 1, 2008 CPSC RECALL Ultra Brands takes Ultra Brands to Retailers: Goode death a "freak accident"... over all responsibility for legal issues. and Replacement (First Recall). nagnetic action figure sets. safety standard "the product is safe"... "Sales and shipping shall ontinue as planned." NOV 29, 2006 Ultra Brands to CPSC: AGE GRADING ISSUE; "The product...comprised CPSC RECALL of BrandedX (Second Recall). Ultra Brands to CPSC: Global Design **RECALL** of magnetic game pieces. CPSC RECALLS Ultra Brands' own forwards to Ultra Brands legal products met all applicable safety standards and are safe...." magnetic products because of magnets detaching: of small magnetic pieces and other parts... inherently hazardous to young children for an attorney letter re: 3 year old with injuries from "Ingestin, a magnet from the LevBots and BrandedX Jr. Pre-School Crafter BrandedX...." whom it is not intended. Ultra Brands to Retailers lacement Program does not involve Operational and Quality Heads are not alerted. JAN 2007

## The Emerging Hazards Posed by Swallowing Multiple, Powerful Magnets or Toy Pieces Containing Magnets



**NOVEMBER 21, 2006** 

NOV 21 2006 Toyco RECALL of Sally PomPom Magnetic Play Sets: Ingestion of magnets falling out of product cause serious injury.

NOV 21, 2006

APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN 2007

# The Emerging Hazards Posed by Swallowing Multiple, Powerful Magnets or Toy Pieces Containing Magnets

**APRIL 2007** 



CPSC warns ingestion of multiple magnets can kill children.

First standard for magnetic toys published.

SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV