

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

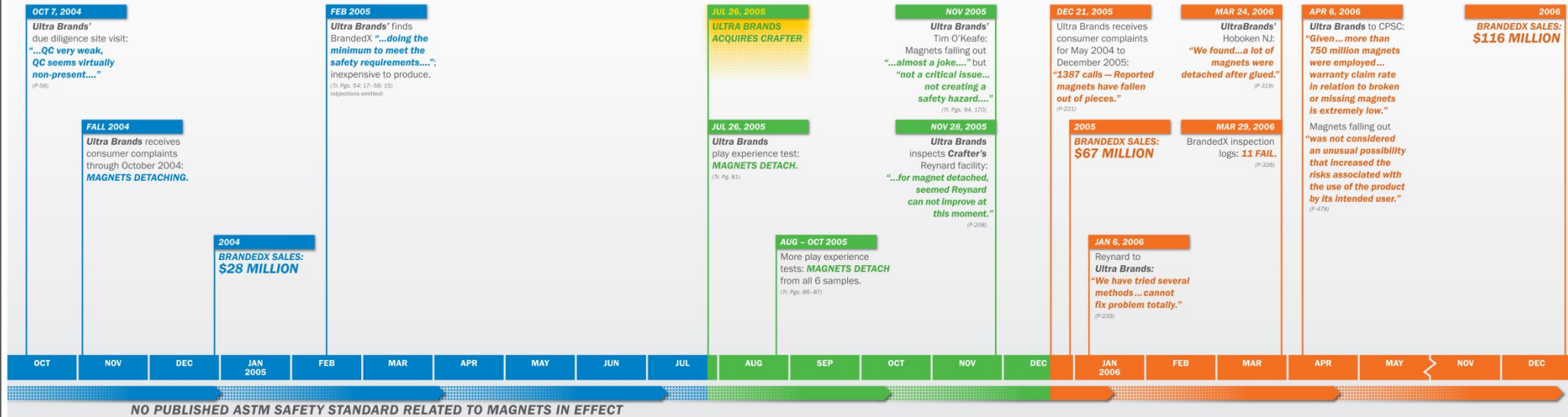
PRODUCT SAFETY STANDARDS GENERALLY EXIST AND APPLY TO ALL MANUFACTURERS OF CONSUMER PRODUCTS:

- ▶ 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***

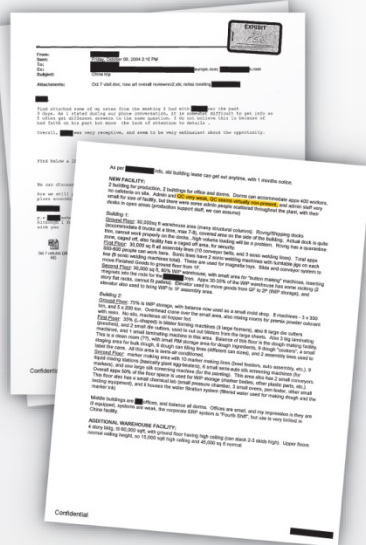
BrandedX: Value Product for the Mass Market



BrandedX: Value Product for the Mass Market

OCTOBER 7, 2004

Ultra Brands' due diligence site visit:
"...QC very weak, QC seems virtually non-present...."



R-72

OCT 7, 2004

OCT

NO

DEC

JAN
2005

FEB

MAR

APR

MAY

JUN

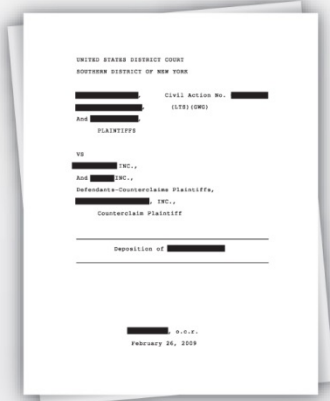
JUL

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



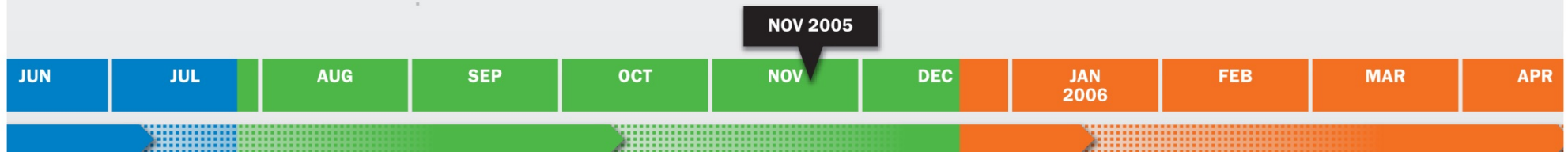
Q. ...You testified that at some point in time after the acquisition you started to learn or observe that magnets were falling out of BrandedX, right?

A. Right.

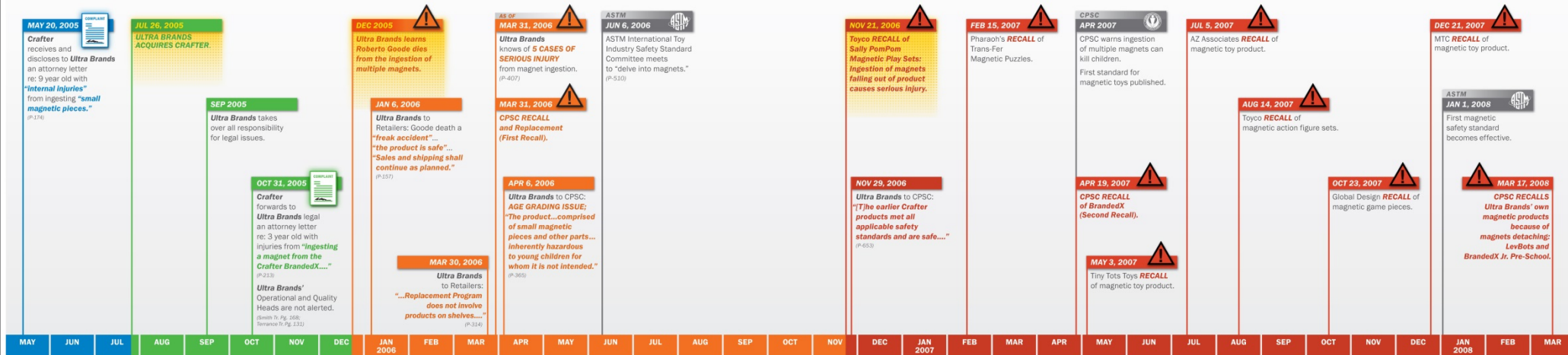
* * * *

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



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



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



NOVEMBER 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
2007

FEB

MAR

APR

MAY

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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.

APR 2007

SEP

OCT

NOV

DEC

**JAN
2007**

FEB

MAR

APR

MAY

JUN

JUL

AUG

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OCT

NOV