

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-00955-CMA-MJW

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZEN MAGNETS, LLC, and  
SHIHAN QU,

Defendants.

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**JOINT MOTION TO ENTER CONSENT JUDGMENT**

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Plaintiff, the United States of America (“the government”), and Defendants Zen Magnets, LLC, (“Zen”) and Shihan Qu (“Qu”) jointly submit and respectfully request the Court to enter the attached proposed Consent Judgment that would resolve this case. The proposed Judgment would impose a \$5.5 million civil penalty on Zen, suspend all but \$10,000 of that penalty, preclude the government from collecting the remainder unless Defendants breach the terms of the Judgment, issue no separate penalty against Qu, and require Defendants to destroy its remaining inventory of Star magnets within 60 days, as ordered by the Court in March 2016.

On March 22, 2016, the Court granted the government’s motion for summary judgment. (Doc. 37.) The Court found that Defendants knowingly violated the Consumer Product Safety Act (“CPSA”) by selling magnets that were subject to a voluntary corrective action, in violation of 15 U.S.C. § 2068(a)(2)(B). The Court’s order

made permanent the preliminary injunction that had been issued the year before, and ordered additional injunctive relief. Defendants have complied with the Court's order, except that Defendants have not yet destroyed the Star magnets, as required by paragraph (h) of the Court's order (Doc. 37 at 28.) Following the Court's summary judgment decision, the sole remaining issue in this case is the amount of the civil penalty, if any, Defendants should pay for their violation of the CPSA, pursuant to 15 U.S.C. § 2069(a)(1).

One of the factors for the Court to consider in determining the civil penalty is the Defendants' ability to pay – or the appropriateness of the penalty in relation to the size of the business, including how to mitigate undue adverse economic impacts on small businesses. See 15 U.S.C. § 2069(b); 16 C.F.R. § 1119.4(a)(7)(i); *United States v. Mirama Enters., Inc.*, 387 F.3d 983, 988 (9th Cir. 2004); *United States v. Shelton Wholesale, Inc.*, 34 F. Supp. 2d 1147, 1166 (W.D. Mo. 1999). Defendants argued, in response to the government's civil penalty brief, that they had little to no ability to pay a civil penalty. (Doc. 43 at 9-11.) The parties have conducted considerable discovery on that issue. Defendants produced tax records, bank records, and other financial records in response to the government's written discovery requests. On August 31, 2016, the government deposed Qu, who is both an individual defendant and the sole decision maker at Zen.

The proposed judgment is intended to address both the gravity of the violation and Defendants' limited financial resources.

Regarding the former, the government views Defendants' conduct as serious. Defendants bought magnets that they knew were about to be recalled because of the Consumer Product Safety Commission's ("CPSC") concerns about the magnets' safety. Defendants turned around and sold the magnets after the recall, albeit under different names and in different packaging with different warnings, and continued to sell the magnets after receiving multiple warning letters from the CPSC. As this Court has noted, "Defendants' interpretation would allow manufacturers and importers of consumer products to simply circumvent (and effectively disarm) Section 2068, by merely repackaging recalled products as they saw fit." (Doc. 37 at 16 n.8.) A small civil penalty would allow Defendants to avoid consequences for this serious violation. The proposed \$5.5 million civil penalty, with all but a small portion suspended, would recognize the gravity of the violation while staying true to the statutory guidance for mitigating undue adverse economic impact on this business.

Regarding the latter, it is clear from the discovery process that Qu individually and Zen have the ability to pay only a limited amount. Qu has minimal savings and his only income comes from Zen. Zen's liquid assets are small, it has few sellable assets, and its current sales are only \$4,000 per month. Suspending the remainder as to Zen – and not issuing any civil penalty as to Qu individually – takes into account the statutory guidance and Defendants' financial situation.

Entry of the proposed Judgment will end this case. For good and valuable consideration, Defendants hereby expressly waive their right to appeal any rulings

made to date in this case by the district court, including the order granting summary judgment.

For these reasons, the parties respectfully request that the Court enter the attached proposed judgment.

Dated: November 23, 2016

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### CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2016, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which will send notification of such filing to the following email address:

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s/ Patrick Jasperse  
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**(PROPOSED) CONSENT JUDGMENT**

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Plaintiff, the United States of America (“the government”), by its undersigned attorneys, and Defendants Zen Magnets, LLC, (“Zen”) and Shihan Qu (“Qu”), by their undersigned attorney, having consented to this Judgment;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

This Court previously determined that Defendants knowingly violated the Consumer Product Safety Act (“CPSA”) by selling magnets<sup>1</sup> that were subject to a voluntary corrective action, in violation of 15 U.S.C. § 2068(a)(2)(B). (Doc. 37). The sole remaining issue to be decided in this case is whether, pursuant to 15 U.S.C. § 2069(a)(1), Defendants should be ordered to pay a civil penalty as a result of that violation.

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<sup>1</sup> Defendants purchased the magnets from Star Networks, USA LLC. The magnets at issue, which are further discussed in the Court’s order granting summary judgment (Doc. 37), are referred to in this Judgment as the “Star magnets.”

Defendant Zen is ordered to pay a civil penalty of \$5,500,000 for violating the CPSA, with \$5,490,000 of the total suspended. The non-suspended portion of the civil penalty shall be paid to the government no later than March 15, 2017. The government is precluded from ever seeking to collect the suspended portion of the civil penalty, unless Defendants fail to comply with any of the terms of this Judgment. A determination that Defendants have failed to comply with a term of the Judgment may be made only by this Court, upon motion by the government, after allowing Defendants reasonable time to respond to any such motion.

Defendant Qu is not ordered to pay a civil penalty, unless he fails to comply with the terms of this Judgment. In the event that the government believes that Qu has failed to comply with the terms of this Judgment, the government shall make a motion to this Court, asking for a determination as whether Qu has complied. Qu shall have a reasonable time to respond to such motion. If the Court determines that Qu has not complied with the terms of this Judgment, the Court may impose a civil penalty in an amount to be determined at the Court's discretion.

Defendants Zen and Qu shall destroy the Star magnets and indistinguishable intermingled magnets in its inventory, in a manner approved and witnessed by CPSC staff, as already required by this Court's order granting summary judgment (Doc. 37 at 28, paragraph h), within sixty (60) days of the entry of this Judgment.



DATE: \_\_\_\_\_, 2016.

BY THE COURT:

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CHRISTINE M. ARGUELLO  
United States Judge