



Playing with Safety:

Dangerous Toys and the Role of America's Civil Justice System

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Introduction

Today's toys are not your parents' toys. Toys have grown in sophistication and technological advancement, but so have their dangers. In 1970, the most popular toy on the market was the then brand new Nerf Ball. Forty years later, the Nerf is still popular but has morphed into a "Blaster" – armed with a flip-up sight, red dot light beam, and shoulder stock with an extra ammo clip – and had to be recalled after the gun's mechanism injured more than 45 children.¹

While most parents have always had the common sense to watch for small objects that might choke a child or sharp pieces that might cause harm, today's toys feature unseen hazards. Now, the danger comes from lead, cadmium, asbestos, and other carcinogens undetectable to the eye, or small, innocent-looking magnets that can rip a child apart from the inside.

Since 1974, the Consumer Product Safety Commission (CPSC) has issued more than 850 recalls for toy products. In 2007, 45 million toys had to be recalled.² Between 2004 and 2008, toy-related injuries increased 12 percent, and over the last 10 years, toy-related injuries have increased 54 percent.³

This increase in the number of injuries to children every year has coincided with a marked increase in imported toys. The U.S. imports more than 30,000 tons of toys every year from foreign markets, accounting for 95 percent of toys sold.⁴

This has resulted in a host of dangerous products hitting the market. The vast majority of products recalled in 2009 came from outside the U.S., yet foreign manufacturers are able to operate without facing the same rules of accountability that domestic manufacturers abide by.⁵

The CPSC is woefully under-resourced to cope with the flood of products entering the U.S. marketplace. Until 2007, the CPSC had only 15 inspectors to monitor all ports in the United States for all products, and only one employee to conduct safety tests on toys.⁶ Walmart alone spends more than 20 times the CPSC budget on marketing in a given year.⁷

The result of such corporate negligence and regulatory powerlessness is that dangerous products can be sold on shelves for years before the public has any idea of their hazards. A Public Citizen analysis of consumer recalls found that companies waited an average of 993 days to inform the CPSC of defects, and the agency then waited another 209 days before informing the public.⁸

In the face of such risks, and with so few resources at hand, the nation's parents have come to rely on consumer groups and the civil justice system to serve both as an early warning system and an enforcement mechanism against negligent corporations. While the CPSC is reduced to asking manufacturers to recall products voluntarily, civil actions by parents across the country have consistently forced corporations and regulators to take action.

Danger in Familiar Places

In 2008, more than 235,000 children were treated at U.S. emergency rooms for toy-related injuries, and at least 19 children died. Injuries from riding toys (such as scooters) and choking hazards accounted for the vast majority of fatalities and injuries, and have every year in the last decade. But beyond such commonplace hazards lies a myriad of dangers to confound even the most cautious parent.⁹

54% Increase in toy-related injuries from 1999-2008.

235,300 Toy-related emergency room visits in 2008.

19 Toy-related deaths in 2008.¹⁰

The current generation of 1950s style scooters hit the market in 1999, and have accounted for approximately a quarter of all toy-related emergency room visits since. Most of the more than 220,000 incidents each year comprise of falls or accidents involving motor vehicles. But defective scooters have also been blamed for amputated fingers, lacerations, and broken arms, wrists, and teeth.¹¹

Likewise, the choking hazards of small toy parts, small balls and balloons have long been one of the leading causes of toy-related fatalities. At least 196 children died from choking on such items between 1990 and 2007, and choking hazards were the leading cause of CPSC toy recalls in 2009. Yet the millions of recalled toys may just be the tip of the iceberg. Many toys still on shelves barely meet the CPSC standard for small pieces.¹²

Of particular danger are objects narrow in shape, such as toy nails or darts, because they can more easily cause suffocation. In 2007, a nine-year-old boy from Chicago died after asphyxiating on a two-inch soft dart from a Chinese-made "Auto-Fire" toy gun. The CPSC attempted to persuade the toy's importer, Henry Gordy International, Inc., to recall the guns, but the company refused. At least one other child – a 10-year-old boy from Milwaukee – died under the exact same circumstances. After the nine-year-old's family filed a lawsuit, toy retailer Family Dollar finally agreed to recall the guns in May 2010.¹³

After the risks posed by scooters and small parts, the potential dangers of toys become more exotic and harder to prepare against. Injuries and deaths have been caused by everything from swimming pool toys that drop babies underwater to toys that explode and spit out acid at children. In such instances the CPSC is left playing catch up, and it becomes the civil justice system that both identifies dangers and forces action, as it did with the Family Dollar gun case.

- In July 2009, four million inflatable baby "boats" were recalled because the leg straps were prone to tear, causing the infant occupant to fall through. The CPSC reported more than 30 cases of infants put at risk of drowning after



falling through the boats into water.¹⁴

- January 2009 saw the recall of more than half a million Chinese-made toy aromatherapy kits that posed a risk of explosion. Pressure from the build-up of carbon dioxide in the kits caused explosions and fired both projectiles and citric acid at children. More than 80 incidents of eye injuries, gashes and bruises were recorded before the recall.¹⁵
- In May 2008, over 150,000 toy helicopters were recalled after reports surfaced that the toy's rechargeable battery was catching fire and igniting the helicopter's foam and plastic parts, and posing a fire danger to nearby combustible materials.¹⁶
- In September 2006, more than 350,000 Lego Trucks were recalled after reports surfaced about the wheels detaching to expose a sharp metal axle. Multiple children suffered injuries, including serious puncture wounds.¹⁷

Lead

The dangers of scooters or toy projectiles may seem readily apparent, and years of warnings have made most aware of the dangers posed to young children by toys with small objects. However, the danger most frequently encountered with toys is invisible to even the most watchful parent's eye – lead contamination.

Lead is the second-most deadly household toxin in existence, after arsenic, and federal authorities assert that there is no safe level of exposure. It can affect almost every organ and system in the body, and high levels of exposure can cause permanent damage to the nervous system and brain, and ultimately death. Children are more vulnerable to lead poisoning than adults, and even at low levels lead exposure can affect a child's physical and mental growth. Yet every holiday season is marked by incidences of children being sickened by lead-tainted toys.

A 2007 investigation by the Michigan-based Ecology Center found a third of all tested toys contained lead, some many times the federal limit. The group tested more than 1,200 toys, most of which were still on store shelves and many of which had allegedly passed toy manufacturers internal tests, and found 35 percent contained lead. One such toy – a Hannah Montana Pop Star Card Game – contained lead at more than 3,000 parts per million, more than 75 times the 40 parts per million that the American Academy of Pediatrics recommends as a maximum.¹⁹

Of particular concern is children's jewelry, which is more likely to contain lead or other toxic metals than many other toys. Between 2005 and 2007, nearly 18 million pieces of children's jewelry were recalled, almost all of it made in China. Despite that, in 2007, CPSC tests found that 20 percent of children's jewelry contained unsafe levels of lead. The vast majority of recalled items were never actually returned, meaning most of the lead jewelry remains on children's dressers.²⁰

Toymakers point to China, suggesting that even when shipments of toys pass initial tests, the Chinese manufacturers use lead in subsequent shipments to produce the toys more cheaply. When consumer groups began lobbying the CPSC for an outright ban on lead, it was China that stood in opposition. China's deputy director general wrote to the CPSC saying a ban on lead would be an obstacle to trade, and was unnecessary because lead posed no danger if covered with a protective coating.²¹

On February 22, 2006, four-year-old Jarnell Brown died after swallowing a lead-tainted charm bracelet manufactured in China. The silver-colored bracelets were given away as

17,901,020 Pieces of children's jewelry recalled between 2005 and 2007.

20% Percentage of children's jewelry CPSC found to contain lead, even after recalls.

99% Lead content of child's charm that killed four-year-old Jarnell Brown.¹⁸

promotional items with the purchase of children’s shoes from May 2004 until March 2006. The CPSC guidelines for children’s jewelry specify a lead limit of 0.06 percent. Jarnell’s autopsy revealed that the charm was 99 percent lead. Nearly one month after Jarnell’s death, Reebok International recalled 300,000 lead tainted charm bracelets.²²

The ongoing lead scare prompted the California attorney general to file a civil action against several of the major toy manufacturers and distributors in 2007. As a result of the lawsuit, the companies agreed to pay \$550,000 to establish California’s Toy Testing and Outreach Fund to help identify defective toys.²³ In 2008, RC2 – the maker of lead-contaminated Thomas the Tank Engine toys – settled a class action by agreeing to step up testing of its products, set tougher standards for its parts manufacturers, introduce random audits, and require lab tests of every batch of wet paint.²⁴ In 2009, toy giant Mattel settled a separate action stemming from its role in putting more than two million lead-contaminated toys on shelves. As part of the settlement, Mattel agreed to create a court-overseen quality assurance program, donate \$275,000 to children’s hospitals, and set aside as much as \$50 million to compensate consumers.²⁵

The number of recalls due to lead contamination are too numerous to list in detail here, but they incorporate some of the most popular children’s toys on the market, including:

- Thomas and Friends, Curious George, Winnie the Pooh: in February 2010, the CPSC fined Massachusetts-based Schylling Associates for knowingly importing tens of thousands of toys, including spinning tops and tin pails, that had excessive lead levels. The company waited five years before telling the government about the dangerous toys.²⁶
- Tiny Tink and Friends: 252,000 of the Chinese-made children’s toy jewelry sets were recalled in February 2010 due to excessive lead levels.²⁷
- Papyrus greeting cards: 174,000 birthday cards with wooden bead bracelets were recalled in February 2010 due to excessive lead levels.²⁸
- In August 2007, Mattel recalled 1.5 million Fisher-Price toys, including Elmo, Big Bird and Dora figures, and 436,000 die-cast “Sarge” jeeps that were covered in lead paint from suppliers in China.²⁹



Toxic Substances

While lead contamination still grabs the bulk of headlines, children have been exposed to an astonishing array of toxic substances. Everything from asbestos to the chemicals used in date rape drugs have been found in children's toys with alarming regularity. In fact, the crackdown on lead in products ironically led to a surge in toys manufactured with other carcinogens.

Cadmium Jewelry

In early 2010, a rash of accounts began appearing about children's jewelry and other toys contaminated with cadmium, a toxic metal known to cause cancer and ranked seventh on a federal list of the 275 most hazardous substances in the environment.³⁰ An *Associated Press* investigation found 12 percent of children's jewelry contained levels of cadmium from 10 to 91 percent. Walmart, the teen fashion chain Aeropostale, and the jewelry and accessories store Claire's all announced they would stop selling any items suspected of containing cadmium.³¹

The *AP* investigation located the suspected origin of cadmium contamination in China, where the use of cadmium had been prompted, ironically, by the prohibition on using lead. Chinese manufacturers had simply replaced the toxic lead with toxic cadmium.³² According to the *AP*, "Despite the risks, manufacturers in factories ringing a city on China's east coast [Yiwu], say their top priority is profit. So offering cut-rate goods often means using lower quality materials, including cadmium, which is known to cause cancer."³³

In October of this year, in the hopes of getting more cooperation from manufacturers, the CPSC raised what it described as the acceptable daily intake of the toxin to more than three times the level it had previously recommended (0.03 micrograms a day to 0.1 micrograms). Without the resources to conduct its own enforcement, the agency will rely on the companies themselves to report toy dangers through their own internal tests.³⁴

Yet relying on manufacturers to protect the public from the dangers of their own products is fraught with risk. After all, these are the same manufacturers the CPSC has fined in the past for not informing regulators of known dangers with its products.³⁵ Insurance experts have also been alarmed, warning manufacturers of the risks they will face in court by allowing the use of cadmium. The threat of civil actions from the families of children harmed by cadmium carries more weight than the recommendations of the CPSC.³⁶

Aqua Dots: Date Rape Drug

One of 2007's more popular toys, Aqua Dots, caused the year's biggest scare when it was found to contain the same toxic chemicals used in date rape drugs. Aqua Dots are small, colorful beads that can be arranged into different designs and then permanently set with a sprinkle of water. The water activates a glue in the coating of the beads, which



fuses them together. The beads hit store shelves April 2007 and quickly became one of the nation's most popular toys, landing on Walmart's top 12 holiday toys list.

Yet even as the toys' popularity surged, reports surfaced of children vomiting and lapsing into comas after swallowing the beads. Upon testing, scientists discovered that the glue contained chemicals that metabolized into gamma-hydroxybutyrate, other wise known as GHB, or more colloquially, the date rape drug. The toy's makers, Canadian-based Spin Master and Australian-based Moose Enterprises, blamed the presence of the chemical to a Chinese subcontractor, which altered the chemical properties of the glue and used a cheaper formula that included the toxic substance.

By early November, the CPSC had reported nine incidences of sickened children, some of whom were hospitalized, and at least two of whom had fallen into non-responsive comas. The CPSC ordered a recall of all 4.2 million Aqua Dots kits, calling it, "one of the most serious announced by CPSC in recent years."³⁷

Unwilling to part with a successful revenue stream, Spin Master rebranded the now allegedly safe Aqua Dots as "Pixos" and put it back on shelves in 2008.³⁸

CSI: Asbestos

In 2007, a consumer group discovered that the CSI Fingerprint Examination Kit - marketed to children as a complement to the popular CBS television show CSI: Crime Scene Investigation - contained a lethal form of asbestos. The kit contained powder, manufactured in China, which children would brush or blow away looking for fingerprints. This powder was found to have contained up to five percent asbestos, sending potentially lethal tremolite asbestos into the air and into the children's lungs. Even once the alarm was sounded in November 2007, the toy's maker, CBS Consumer Products, left it on retail shelves in the run up to Christmas. Rather than wait for the CPSC to negotiate a recall, the Asbestos Disease Awareness Organization filed a civil action to stop sales of the kit and allow consumers who had bought it to receive a refund.³⁹

Magnets

Over the last several years, improvements in technology have made small, powerful, inexpensive magnets available to toy manufacturers. These magnets can come loose and be swallowed by small children. Unlike other small objects, which are often passed through the body, magnets pose a unique risk. If two or more magnets are swallowed, they can attract to each other through intestinal walls, resulting in pinched, blocked or twisted intestines. In some cases magnets have eroded the intestinal wall, spilling bacteria into the body. Serious infections, blood poisoning, and even death may result.

By April 2007, the CPSC was warning the public about the growing problem posed by small magnets in toys. The agency reported it had received hundreds of complaints and knew of more than 30 cases in which children required emergency surgery.⁴¹ Since 2006, the CPSC has issued 22 recalls or warnings concerning 21 million toys prone to breaking and exposing powerful and dangerous magnets.⁴² Yet experts and physicians worry that regulators are still not up to speed with regard to the dangers magnets can pose. For instance, magnetic jewelry has caused more than two dozen injuries in recent years, yet has not been subject to any further regulation from the CPSC.⁴³

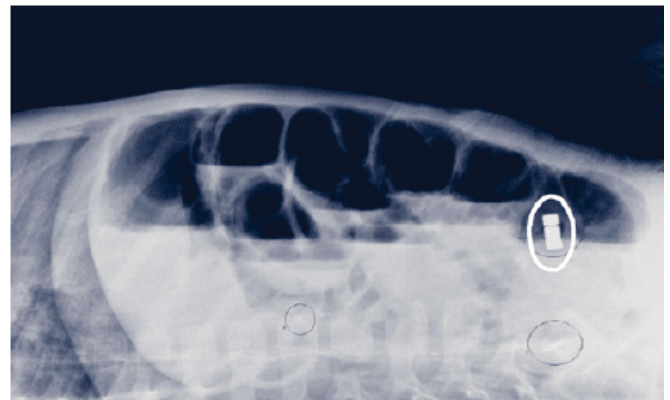
Medical journals have begun alerting physicians to the developing danger of small magnets. Traditionally, if an ingested object is not sharp, physicians will recommend waiting for it to pass. But with magnet ingestion, waiting may cause further complications and emergency surgery may be necessary. Complicating matters is the fact that parents and physicians often have no way of knowing that the objects are magnets. Initial x-rays show small objects, and it is often not until the object has not passed and more x-rays are taken that doctors see the trademark twisting of the intestines as the magnets attract. Patients may also be at even greater risk if physicians unwittingly order further tests with Magnetic Resonance Imaging (MRI) technology, which can make matters worse.⁴⁴

Mega Bloks Magnetix

When Penny Sweet purchased two boxes of Magnetix toys from the supermarket for her son's 10th birthday in 2005, she could not have imagined that the building sets would cause lethal injury to her 22-month-old son Kenny, comparable to a gunshot or stab wound. But that is exactly what happened.

21 Million Toys recalled since 2006 because of small, powerful magnets that are prone to falling out.

34 As of 2007, known reports of children who required emergency surgery to remove magnets that destroyed their intestines.⁴⁰



Abdominal x-ray of a three-year-old boy with three attached magnets. The boy's intestines are twisted and perforated. *Source: Centers for Disease Control*

By the 2008 Christmas shopping season, Mega Brands had brought the toy back under its new name – MagNext.⁴⁷

Magnetic Polly Pocket Toys

In February 2006, attorney Gordon Tabor alerted Mattel that his seven-year-old client had to undergo emergency surgery after swallowing magnets from a Polly Pocket toy. The magnets connected inside her intestines, creating a deadly obstruction. It took Mattel a year and a half to alert parents and issue a recall of 18.2 million Polly Pocket, Doggie Day Care, Batman, Barbie, and One Piece toys containing magnets that can connect across intestines and “rip through a child’s bowels like a gunshot.” Mattel executives knew from their own testing that magnets were coming loose in their toys, but did not regard it as a safety issue.⁴⁸



After CPSC received 170 reports of the magnets coming loose, and at least three reports of children requiring surgery, the agency persuaded Mattel to recall some, but not all, the toys. In November 2006, 2.4 million units were recalled. However, the CPSC continued to receive hundreds of reports of magnets coming loose from other units. It took many more meetings, in some of which graphic medical evidence of the damage being done to children was shown, before Mattel executives finally agreed to recall the toys in August of 2007.⁴⁹

As magnet technology has developed, there has been a dramatic increase in recalls involving magnets, including:

- In May 2010, 175,000 Buckyballs sets – named as the toy of the year by Rolling Stone – were recalled because the minimum age of use was incorrectly labeled. Buckyballs feature 216 powerful magnetic balls that can be molded to form a variety of shapes.⁵⁰
- In February 2008, 250,000 Chinese-made “Fun ‘n Safe” magnetic dart boards were recalled because of the risk of tiny magnets falling out of the darts. A further 800,000 Magnetic Dart Boards from a different manufacturer were recalled later that year.⁵¹
- In March 2008, Mega Brands - the same manufacturer behind the deadly Magnetix toy - was forced to recall 1.3 million MagnaMan action figures. The figures had body parts that attached with magnets, and which the CPSC reported were prone to falling out.⁵²
- In 2008, 130,000 Chinese-made Battat Magnabild construction sets were recalled. The sets contained 60 one-inch magnets and 48 small balls, which were used to make structures of varying shapes, but which were prone to fall out.⁵³

Conclusion

More than 30,000 tons of toys enter the United States annually. Only a tiny fraction of these imports will ever be checked by what amounts to a handful of inspectors. Increasingly, toys are coming from foreign manufacturers that have at times shown a callous disregard for the safety of consumers.

This state of affairs has left children more at risk from toys than ever before. While parents may know to check for sharp pieces or small objects, no parent can be expected to detect the presence of unseen toxins or anticipate unforeseeable medical risks. Inevitably, millions of dangerous toys will find their way into the hands of children every year.

Congress attempted to deal with the increased risk from children's products by passing the Consumer Product Safety Improvement Act (CPSIA) to strengthen the CPSC in 2008. However, the agency's resources still amount to little more than a finger in the dyke. The agency has also been hampered in the past by the politicization of its leadership.

Perhaps more than any other category of product, the vast imports of toys illustrate the need for the civil justice system to bolster the front lines of regulators and parents. The civil justice system has time after time served as both a warning system to parents and federal agencies, and is the only mechanism capable of consistently holding corporations to account.

Appendix: Resources for Consumers

U.S. Consumer Product Safety Commission (CPSC) – Toy Safety:

http://www.cpsc.gov/cpsc/pub/pubs/toy_sfy.html

ConsumerReports.org – Toy buying advice:

<http://www.consumerreports.org/cro/babies-kids/school-age-kids/toys/toy-buying-advice/index.htm>

Centers for Disease Control and Prevention (CDC) - Lead Recalls:

<http://www.cdc.gov/nceh/lead/Recalls/toys.htm>

American Academy of Pediatrics - Toy Safety:

Guidelines for Parents - <http://www.aap.org/new/toysafety-part1.pdf>

Age-Appropriate Toys and Toys to Avoid - <http://www.aap.org/new/toysafety-part2.pdf>

World Against Toys Causing Harm (WATCH) - 10 Worst Toys:

<http://toysafety.org/worstToyList.shtml>

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- ⁵³ *Battat Recalls Additional Magnetic Construction Sets; Ingested Magnets Pose Aspiration and Intestinal Hazards*, Consumer Product Safety Commission (CPSC), March 13, 2008.