

Defective

Definitely Not Child's Play

Toys



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C A R R I E R . F R A N K

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The label warned about a choking hazard, so she was careful that all of the plastic pieces were picked up and put away, and she made sure that the older children knew not to let their two year old sister play with the new Magnetix toy. When the little girl became ill, they thought it was a stomach virus, and since the child was breathing and talking and crying, they would never suspect that she swallowed something. But the little girl continued to complain of stomach pain. When the child began vomiting, they worried about dehydration and brought her to the hospital. It was there that they discovered that the child had swallowed several magnets that had fallen out of the Magnetix toy and the magnets were destroying the child's intestines. Emergency surgery saved her life; other children were not so lucky.

How Are The Toys Monitored

Unfortunately, toys do not have to pass stringent safety tests before they are sold. While toys sold in the United States need to meet certain safety standards, all presale testing is voluntary. The most well know

hazards such as choking risks and the use of lead paint are covered by federal laws such as the Federal Hazardous Substances Act¹ and the Child Safety Protection Act². But other potential hazards, such as the problem with magnets described above, are generally determined by the voluntary standards set by ASTM International³. Many toy companies use independent labs to test their toys prior to the initial sale. The independent lab will test pursuant to the ASTM specifications, and if the toy meets those specifications, the lab will write a letter of approval. There are some stores that will not sell a new toy unless they get that letter of approval.

The ASTM has prepared the Standard Consumer Safety Specification for Toy Safety⁴ which outlines the tests that toys should pass in order to be sold in the U.S. market. However, the standard does not cover every possible hazard and does not cover every toy⁵. The ASTM standards provide guidelines for things such as labeling and packaging⁶, whether the toys withstand the typical wear and tear of use, whether small pieces break off if the toy is dropped and whether a stuffed toy rips at the seams when tugged.

The Consumer Product Safety Commission enforces safety violation standards, but is woefully inadequate to police or test every toy. Toy manufacturers introduce 3,000 to 5,000⁷ new toys each year. Since the cuts by the Reagan administration in the early 1980s, and the continued decline in employees over the years, the CPSC has less than half the number of employees than it had in 1980⁸. They currently have only one employee who is a toy tester for small parts⁹, and they lack

the personnel to investigate the majority of the complaints they receive 10.

In light of these problems, it is no wonder that defective, dangerous toys make it to the store shelves.

What Are The Defects

Some defects, such as sharp edges, can be easy to see. Other defects may be more insidious. Some defects are much more prevalent than others. The defects can cause serious injury and death¹¹. There have over twenty million toys recalled since the spring of 2007.

Magnets The hidden danger of magnets hit the news following the massive recall of toys containing these lethal components. Magnetix Building Sets, Rose Art Industries and Mega Brands, as well as toys made by Mattel, contain powerful magnets that cause catastrophic injury if swallowed. When the problem with the Magnetix magnets first surfaced, Mega Brands who bought Rose Art, engaged in a “voluntary replacement campaign” offering to replace the older building sets with new models. Unfortunately, this left the dangerous toys on the shelves and then sold to consumers. In addition, the same problems were turning up in the new versions of the building sets.

The Magnetix Building Sets contain plastic building pieces in different shapes, steel balls and come in a variety of colors. The pieces are held together by baby aspirin sized magnets, tucked into the ends of the plastic pieces. There have been over 1,500 complaints¹² of the mag-

nets falling out of the Magnetix building pieces. Mattel issued a recall for its toys with embedded magnets, such as Polly Pocket and Barbie play sets and Batman action figures. Once on the loose, the small size of the magnets makes them difficult to spot in carpet and they can attach to the metal legs of furniture placing them at the perfect height for small children. The size of the magnets makes them easy to ingest, and since the child will not choke on the tiny magnet, the parent or caregiver typically has no warning that something is amiss. If a child swallows more than one magnet, or a magnet and other metal object, the objects attract each other while inside the intestines and can cause perforations, intestinal blockage, gangrene, and death, if not treated immediately.

Lead Scientific studies as far back as the 1940s, show that we have known about the dangers of lead poisoning. Often used in household paint, the dust or paint chips can easily be ingested by children who get the material on their hands. Lead is a neurotoxin which can attack the kidneys and nervous system and prevent growth and development. Children with lead poisoning can show cognitive and behavioral changes, lower IQ scores, impulsivity and an inability to control anger. Lead can be stored in bones and teeth and can disrupt brain function. At very high levels, it can be fatal. Given this knowledge, lead paint was banned in 1977.

Since July 2007, twenty million toys made in China have been recalled for having excessive lead paint levels. Many of these toys are designed for young children, who often explore their worlds by putting things in

their mouths. Children under six years of age are most susceptible to lead poisoning and their bodies are developing very quickly. Unlike the problems with magnets, a child does not have to swallow the toy to consume lead. Inexpensive jewelry has been found to have high lead levels, and children often chew on necklaces. Young children will often suck on toys and many of these toys are brightly colored, making them very enticing. Some of the toys that have been recalled include¹³: Winnie-the-Pooh spinning tops and Duck Family Collectible Wind-up toys imported by Schylling Associates, Inc., Pull-Back Action Toy Cars imported by Dollar General Merchandising, Inc., "Big Red" wagons imported by Northern Tool & Equipment Co., Sesame Street and Nickelodeon characters such as the Elmo Tub Sub, Dora the Explorer Backpack, and the Giggle Gabber, a toy shaped like Elmo or Cookie Monster that giggles when children shake it, American Girl Inc. jewelry and Tabletop Puppet Theaters manufactured by Guidecraft, Inc..

Choking/Suffocation By far, choking is the most common cause of toy related deaths among children under fifteen, being responsible for 57% of the total deaths from 1990 to 2005¹⁴. Small toys or toy parts, balls, balloons and marbles are all culprits. It is easy to understand how choking can occur; a small object is swallowed and lodges in the child's throat making breathing impossible. While most parents or caregivers could quickly identify a marble as a potential hazard, simply looking at many toys cannot always identify the risk.

Effective January 1, 1995, the toys that were made or imported into the U.S. had to comply with the Child Safety Protection Act which provided

details regarding age appropriate toys to reduce the chance of choking. For example, a ball with a diameter of 1.75 inches or less that was intended for use by children under three years of age was banned¹⁵. Specific choking warnings were established if the same diameter ball was in a toy designed for children older than three but less than eight years old. Warnings were given for all toys that contained latex balloons to warn parents that children less than eight can choke and suffocate on uninflated or broken balloons. But other toys escaped these restrictions because the ball or small part was part of a larger toy, not a separate component. In 2004, the ASTM changed its guidelines for choking risks to include hazards that might not be considered by an otherwise cautious parent¹⁶. “Toys with Spherical Ends” were added to the list of dangers as the small, spherical shapes that were attached to a shaft or handle, such as an antennae or mallet, could become lodged in a child’s throat. The ASTM also issued guidelines for “hemispheric objects” such as cups, bowls, half-balls or half-egg shaped toys which could become sealed over a child’s face causing suffocation. In order to prevent a vacuum from being formed, a divider in the object, a scalloped edge, or holes needed to be used.

But, dangers posed by other toys were often not detected until disaster happened. In November, 2007, Mattel issued its fifth recall in less than four months because of concerns about choking risks to young children playing with the Fisher-Price Laugh & Learn 2-1 Learning Kitchen line of toys¹⁷. Mattel learned that four children began gagging or choking on loose pieces that came off the toy. There have been other similar recalls. The Shape Sorting Toy Castles made by Infanti-

no® and sold by large chain stores such as Wal-Mart and Target were recalled because a plastic rod came loose which allowed the colored counting beads to slide off the toy. Often the color of candy, these beads are enticing to young children. Even the innocuous teddy bear can be dangerous. Some stuffed animals are made with zippers which could pose a risk of a child choking on the stuffing.

Entrapment/Strangulation The small size of a child's head and hands are jeopardy of getting caught in places that would otherwise be safe for a full size adult. As a result, products designed for children need to have smaller pinch locations to prevent them from being trapped. In September, Simplicity, Inc. issued a voluntary recall with the CPSC of approximately one million Simplicity and Graco cribs which caused the deaths of several infants¹⁸. The drop side of the crib could become detached which caused a dangerous gap and lead to the entrapment and suffocation of the babies. CPSC was aware of seven entrapments and fifty-five other incidents with these cribs. Mattel was also involved in another recall involving the Rainforest infant swing made by Fisher-Price. This child swing was removed from the market because of the risk that children could be trapped in the moving parts.

Chemicals A number of years ago the Public Interest Research Group found children's nail polish contained dibutyl phthalate which had been linked to reproductive damage, mutations, skin and respiratory irritations and might affect the nervous system¹⁹. Other toy cosmetic kits were found to contain xylene which is used as a solvent and

has been linked to liver and kidney damage, headaches, nausea and vomiting. Toulene is often used in nail polish to make the polish go on smoothly and stick to the nail²⁰. Toulene is a strong sensitizing agent, a toxic inhalant and has a risk of causing contact dermatitis and eye irritation. There is even a risk that overexposure can cause nervous system problems²¹. These chemicals may pose even greater risks to children who often place their fingers in their mouths and may chew on their nails, thereby swallowing small pieces of nail polish.

Following on the heels of the other recalls, a toy called Aqua Dots was recalled after scientists found that they contain the chemical that converts into gamma hydroxyl butyrate, a powerful “date rape” drug, when ingested²². Over four million of these toys were pulled from the shelves after two children, a two year old and ten year old, slipped into comas after swallowing the Aqua Dots beads. Children who consume the beads can become comatose, develop respiratory depressions or have seizures. Composed of many tiny balls, the Aqua Dots are made into shapes and then sprayed with water which solidifies the design. Manufactured by Spin Master, this toy is aimed at children over four years old, but the small dots are easily eaten by younger children. Aqua Dots hit the shelves in April 2007 and was considered one of the bright stars of the holiday season.

Will It Improve

In the past, the Bush administration and China have deterred efforts to strengthen the rules that would have prevented lead paint from being used in toys, jewelry and other children’s products. The Bush administration has hindered stronger regulations by delaying efforts for

better inspections of imported children's products and it altered the focus of the CPSC from that of consumer protection to more manufacturer friendly²³. But the Bush administration has needed to reevaluate its position in light of the recent recalls.

China has now agreed to prohibit the use of lead paint on toys exported to the United States. Unveiled at the U.S.-China summit on consumer product safety, China has pledged to increase its inspections of exports and to take other steps to ensure that the products coming to the U.S. meet our standards. Both countries also agree to work together improving the overall safety of China's toy exports, as well as other products.

Toy manufacturers are in the process of working on a certification program that would enable buyers to tell whether or not a toy meets safety standards just by reading the label²⁴. Unfortunately, this certification will not be in place until Christmas 2008. So until then, as the expression goes, caveat emptor. Let the buyer beware.

- 1 16 CRF parts 1500 et seq.
 - 2 15 USCS § 1278
 - 3 ASTM International is originally known as the American Society for Testing and Materials. ASTM International was formed in 1898 and is a voluntary organization.
 - 4 ASTM F963-07e1
 - 5 ASTM F963-07e1, article 1.1 and 1.4
 - 6 This would include functional hazards such as the sharp point of sewing needle and appropriate age range.
 - 7 ASTM Standardization News, March 2004
 - 8 Chicago Tribune, May 9, 2007
 - 9 Channel 9 News; www.9news.com/money/consumer/recalls/article.aspx?storyid=80322
 - 10 Chicago Tribune, May 9, 2007
 - 11 See attachment "Toy-Related Deaths", 1990-2005
 - 12 News from CPSC, April 19, 2007; www.cpsc.gov/CPSCPUB/PREREL/PRHTML07/07164.html
 - 13 The New York Times, August 2, 2007; www.nytimes.com/2007/08/02/business/02toy.html
 - 14 See attachment "Toy-Related Deaths", 1990-2005
 - 15 CPSC Document #282
 - 16 ASTM Standardization News, March 2004
 - 17 GuardianUnlimited, Nov. 6, 2007, www.guardian.co.uk/business/2007/nov/06/uknews
 - 18 News from CPSC, Office of Information and Public Affairs, Sept. 21, 2007, Release #07-307
 - 19 Trouble in Toyland: NYPIRG's 2007 Toy Safety Report; www.nypirg.org/consumer/2002/other.html
 - 20 Emedicine.com/derm/topic507.htm
 - 21 Handbook of Cosmetic and Personal Care Additives, Second Edition, Volume 2, 2002
 - 22 News from CPSC, Office of Information and Public Affairs, Release #08-074
 - 23 McClatchy Washington Bureau, Efforts to Crack Down on Lead Paint Thwarted by China, Bush Administration, Aug. 21, 2007; www.mcclatchydc.com/staff/kevin_hall/v-print/story/19070.html
 - 24 Channel 9 news; www.9news.com/money/consumer/recalls/article.aspx?storyid=80572&GID=ym+B
- See more at: http://www.lawcolorado.net/community/books/defective_toys#sthash.nlhDYVoZ.dpuf