

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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	In the matter of)	
)	
	MAXFIELD AND OBERTON)	
	HOLDINGS, LLC)	
)	CPSC DOCKET NO. 12-1
)	
)	
	Respondent.)	
	AND CONCERNING ZEN MAGNETS, LLC))	
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MOTION FOR PERMISSION TO RESPOND TO COMPLAINT COUNSEL’S
MOTION TO CONSOLIDATE PROCEEDINGS IN CASE 12-1

Zen Magnets, LLC, the respondent in matter 12-2 (hereafter “Zen”), through counsel, requests this Honorable Court for permission to file a memorandum in opposition to Complaint Counsel’s request to consolidate cases 12-1 and 12-2, and as grounds therefor states:

1. Complaint Counsel has moved to consolidate Docket 12-1 and Docket 12-2 and have the matters heard before this Court pursuant to Commission Regulations at 16 C.F.R. Part 1025.19 on the alleged grounds that the proceedings "involve similar issues" that can be resolved more consistently and efficiently in consolidated proceedings than in separate proceedings.

2. Zen Magnets, LLC disagrees with Complaint Counsel and vehemently opposes the consolidation.

3. The factual issues in the two cases are not similar.

4. Specifically, the packaging of the products is completely different and the potential for danger in Zen Magnets is significantly less than that for Buckyballs, the magnets in this matter.

5. There are physical differences in the magnets. Zen Magnets have much higher precision, and Zen Magnets, LLC has worked hard to gain the reputation of having magnets that have greater precision.

6. There are significant marketing and distribution differences between Zen Magnets and those sold by Maxfiled and Oberton Holdings, LLC.

7. Zen Magnets have never been sold as toys on shelves, nor have they ever been referred to as any sort of toy.

8. Zen Magnets are only available online, and must be sought out by an adult buyer with a credit card or paypal account.

9. Zen Magnets have no record of any injury.

10. As a result, in this matter, the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and available judicial resources are definitely overborne by the specific risk of prejudice to Zen Magnets and possible confusion of the issues. *Arnold v. Eastern Airlines, Inc.*, 681 F.2d 186,

193 (4th Cir. 1982).

WHEREFORE, Zen Magnets, LLC requests permission to respond and file a memorandum to Complaint Counsel's Motion to Consolidate filed in 12-1.

Dated October 3, 2012

Respectfully Submitted,

THE LAW OFFICES OF DAVID C. JAPHA, P.C.

A handwritten signature in black ink that reads "David C. Japha". The signature is written in a cursive, flowing style.

By: David C. Japha, Colorado State Bar #14434
950 S. Cherry Street, Ste. 912
Denver, CO 80246
(303) 964-9500
Fax: 1-866-260-7454

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer on the following via email on this 3d day of October, 2012:

The Honorable Bruce T. Smith
U.S. Coast Guard
Hale Boggs Federal Building
500 Poydras Street, Room 1211
New Orleans, LA 70130-3396
Through Todd Stevenson
Office of the Secretariat
Consumer Product Safety Commission

The Honorable Dean C. Metry
U.S. Coast Guard
Courthouse 601 25th Street,

Suite 508A
Galveston, TX 77550
Through Todd Stevenson
Office of the Secretariat
Consumer Product Safety Commission

Ms. Mary Murphy, Assistant General Counsel
Ms. Jennifer Argarbight, Trial Attorney
Ms. Sarah Wang, Trial Attorney
Complaint Counsel
Division of Compliance
Office of the General Counsel

U.S. Consumer Product Safety Commission
Bethesda, MD 20814
via email to: Mmurphy@cpsc.gov
Jargabright@cpsc.gov
Swang@cpsc.gov