

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

---

In the matter of  
ZEN MAGNETS, LLC  
STAR NETWORKS USA, LLC

CPSC DOCKET NO. 12-2  
CPSC DOCKET NO. 13-2  
(CONSOLIDATED)

Respondents.

---

**SECOND AMENDED MEMORANDUM IN SUPPORT OF RESPONDENT ZEN  
MAGNETS, LLC'S AND STAR NETWORKS USA, LLC'S APPLICATION FOR LEAVE  
TO TAKE DEPOSITIONS**

Respondents Zen Magnets, LLC and Star Networks USA, LLC, through counsel and pursuant to 16 C.F.R. §1025.35(a), request from the Honorable Presiding Officer leave to take depositions upon oral examination in defense of Complaint Counsel's allegations against them in the above-styled action. In support of their application, Respondents present the following memorandum:

In December, 2013, Complaint Counsel and counsel for Respondents, including then-Respondent Zucker, undertook discussions to determine how best to conduct depositions in light of the number being sought by Mr. Zucker, Complaint Counsel and these Respondents. At the time, the parties attempted to enter into a discovery and scheduling agreement. Unfortunately, as concerns depositions, no resolution was ever reached. The goal was to be able to determine definite witnesses and dates by which the parties would undertake depositions. These discussions were reflected in a December 30, 2013 letter from Mr. Daniel Vice, Trial Attorney with Complaint Counsel, to Respondents' respective counsel. As noted, no informal schedule was agreed upon with which to approach the Presiding Officer with formal requests by Respondents for leave to take depositions.

Complaint Counsel applied for and was granted leave to take depositions in January, 2014. To date, depositions have been scheduled for Mr. Shihan Qu and Mr. Eric Sigurdson of Zen Magnets, LLC. Filed herewith is Respondents Zen's and Star's Amended Application for Leave to take depositions of specific individuals. Respondents wish to proceed to take depositions as requested in their Amended Request filed hereith.

Attached to the Application is Respondent Zen's and Star's Appendix A showing the topics they wish to explore. Counsel for these respondents has not discussed with Complaint Counsel the issues of depositions before filing the Request and this Memorandum. 16 C.F.R. §1025.31(c)(1) provides:

Parties may obtain discovery regarding any matter ,not privileged, which is within the Commission's statutory authority and is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

These full list of individuals identified are 1) involved in making determinations regarding the information alleged in the complaints against the Respondents; and/or 2) have had positions of authority and decision making with the Consumer Products Safety Commission in regard to the complaints against the Respondents; or are 3) experts identified by Complaint Counsel or previously by then-Respondent Zucker. As such, the testimony of each of these persons is relevant to the subject matter involved in this proceeding and within the scope of permissible discovery or "appears reasonably calculated to lead to the discovery of admissible evidence" of the kind reasonable and

necessary to support the Respondents's defenses.

Respondents Zen and Star have responded to Complaint Counsel's first and second discovery requests and in so doing have provided numerous documents relevant to their own defenses. Counsel anticipates some of the inquiry in depositions of a narrowed list of individuals, including Dr. Midgett, Mr. Williams and Mr. Tarnoff, would be based on the discovery provided to date. In addition, these Respondents believe the testimony of two of Mr. Zucker's named experts, Dr. Miller and Dr. Morrall, is relevant to the issues in this matter. In the meantime, Complaint Counsel have responded to Respondents' interrogatories and, as noted, Respondents will be serving responses to Complaint Counsel's second set of requests for production of documents on this date.

WHEREFORE, the Respondents Zen Magnets, LLC and Star Networks USA, LLC request the Honorable Presiding Officer for leave to take depositions of the individuals and experts listed in the Application for Leave filed herewith consistent with the Presiding Officer's Modified Scheduling Order issued on May 30, 2014.

RESPECTFULLY SUBMITTED,

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



---

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 on the 13th day of June, 2014, I served copies of this **SECOND AMENDED MEMORANDUM IN SUPPORT OF RESPONDENT ZEN MAGNETS, LLC'S AND STAR NETWORKS USA, LLC'S APPLICATION FOR LEAVE TO TAKE DEPOSITIONS**

by the service method indicated:

Original and three copies by U.S. mail, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission:

Todd A. Stevenson

Secretary

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814

[tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov)

One copy by U.S. mail and one copy by electronic mail to the Presiding Officer for *In the Matter of Zen Magnets, LLC*, CPSC Docket No. 12-2, and *In the Matter Of Star Networks UA, LLC*, CPSC Docket No. 13-2:

The Honorable Dean C. Metry

U.S. Coast Guard

U.S. Courthouse

601 25th Street, Suite 508A

Galveston, TX 77550

[Janice.M.Emig@uscg.mil](mailto:Janice.M.Emig@uscg.mil)

One copy by electronic mail (by agreement) to Complaint Counsel:

Mary B. Murphy, Complaint Counsel and Assistant General Counsel

[mmurphy@cpsc.gov](mailto:mmurphy@cpsc.gov)

Jennifer C. Argabright, Trial Attorney

[jargabright@cpsc.gov](mailto:jargabright@cpsc.gov)

Daniel Vice, Trial Attorney

[dvice@cpsc.gov](mailto:dvice@cpsc.gov)

Division of Compliance

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814



---

David C. Japha