

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
MAXFIELD AND OBERTON HOLDINGS, LLC)	
AND)	
ZEN MAGNETS, LLC)	CPSC DOCKET NO. 12-1
)	CPSC DOCKET NO. 12-2
)	
Respondents.)	

In the Matter of)	
)	
STAR NETWORKS USA, LLC)	CPSC DOCKET NO. 13-2
)	
)	
Respondent.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
COMPLAINT COUNSEL’S MOTION TO CONSOLIDATE PROCEEDINGS**

The adjudicative proceedings against Respondents Maxfield & Oberton Holdings, LLC (“M&O”) and Zen Magnets, LLC (“Zen”) were consolidated before this Court on October 30, 2012.¹ Complaint Counsel now moves to consolidate before this Court a newly-filed third proceeding against an importer and distributor of substantively identical magnets, Star Networks USA, LLC (“Star Networks”). On July 27, 2012 Star Networks represented to Consumer

¹ CPSC Docket Nos. 12-1 and 12-2 were initially assigned to Administrative Law Judges Bruce T. Smith and Dean C. Metry, respectively. Because the proceedings were assigned to different Presiding Officers, Acting Chief Administrative Law Judge Parlen L. McKenna considered CPSC’s motion to consolidate those two proceedings and ordered that they be consolidated before Judge Metry. *See* Order Granting CPSC’s Motion to Consolidate Proceedings at 2 n.3 (October 30, 2012). Complaint Counsel’s instant Motion to Consolidate is filed before Judge Metry because he is the Presiding Officer for the two consolidated proceedings, but a copy has also been sent to Chief Judge McKenna should he be the appropriate judicial officer to decide the instant Motion. No judge has been assigned yet to CPSC Docket No. 13-2 naming Star Networks USA, LLC as Respondent.

Product Safety Commission (“CPSC” or “Commission”) staff that it would voluntarily stop importing and distributing aggregated masses of high-powered, small rare earth magnets under the brand name Magnicube (“Subject Products”) effective July 31, 2012. Subsequently, the Firm notified CPSC staff that it was considering modifications to the product’s packaging, warnings, and shapes. However, at no time did the Firm provide sufficiently detailed proposals regarding any such product, packaging or warnings changes for staff’s consideration and staff is unaware that any such changes were in fact made. On November 13, 2012, the Firm, through counsel, notified staff that it had reversed its decision to stop sale and announced that it intended to resume sale and distribution of the Subject Products. CPSC staff requested that Star Networks renew its commitment to stop sale voluntarily and submit a voluntary corrective action plan, but Star Networks refused to stop sale and produced no formal corrective action plan for staff’s consideration. On November 15, 2012, and again on December 7, 2012, counsel for the Firm confirmed in writing to CPSC staff that Star Networks had resumed sale of the Subject Products.

On December 17, 2012, Complaint Counsel filed an administrative complaint (attached as Exhibit A) against Star Networks requesting that the Commission determine that the Subject Products are a substantial product hazard under sections 15(a)(1) and 15(a)(2) of the Consumer Product Safety Act, 15 U.S.C. § 2064(a)(1), (2). Complaint Counsel further requested, among other relief, that the Commission order Star Networks to cease importation and distribution of the Subject Products and offer consumers a refund. The administrative complaint against Star Networks alleges the same violations of the CPSA and seeks identical relief as the amended complaints against M&O and Zen. Moreover, the Subject Products are substantively identical to the products imported and sold by M&O and Zen.

Commission Regulations at 16 C.F.R. § 1025.19 provide that “two or more matters which have been scheduled for adjudicative proceedings and which involve similar issues may be consolidated for the purposes of hearing or Commission review.” Commission Regulations give the Court broad latitude to order consolidation at any time during the proceedings and to determine which issues should be considered jointly. *See* 16 C.F.R. § 1025.19 (“the proceedings may be consolidated to such extent and upon such terms as may be proper.”).² *See also* Preamble to 16 C.F.R. Part 1025, 45 Fed. Reg. 29206, 29207 (May 1, 1980) (attached as Exhibit B) (“The granting of broad discretion to the Presiding Officer can be seen throughout the provisions of these rules.”).³ For example, the Court might decide that issues relating to the magnets’ physical properties and the health risks associated with ingestion of the products should be considered in a joint session, while issues relating to individual marketing and packaging for each Respondent should be considered separately. In short, consolidated proceedings would provide a more efficient and economical forum for resolution of these three administrative actions than resolving the same issues in duplicative proceedings in separate jurisdictions.

Legally and factually, the case against Star Networks is extremely similar to the cases against M&O and Zen. The products at issue in all three cases consist of aggregated masses of small, high-powered rare earth magnets that can cause serious injury if ingested. Respondents’ products in all three cases share, at a minimum, the following similarities: (1) they are nearly

² *See also* FRCP 42(a)(1) (allowing for the consolidation of “any or all matters at issue in the actions”); *Simon v. Philip Morris, Inc.*, 200 F.R.D. 21, 27 (E.D.N.Y. 2001) (a court may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue in those claims in a class action proceeding).

³ Although not controlling, federal case law also gives this Court broad discretion to consolidate the proceedings. *See Thomas Inv. Partners, Ltd. v. United States*, 444 Fed. Appx. 190, 193 (9th Cir. 2011) (“The court appropriately determined that ‘the saving of time and effort consolidation would produce’ outweighed ‘any inconvenience, delay, or expense that it would cause.’ [internal citations omitted].”) Although these proceedings are governed by Commission Regulations and not the Federal Rules of Civil Procedure (“FRCP”), “the Commission expects that interpretations of these Rules by the Presiding Officer will be guided by principles stated and developed in case law interpreting the Federal Rules of Civil Procedure.” *See* Preamble to 16 C.F.R. Part 1025, 45 Fed. Reg. 29206, 29207 (May 1, 1980) (attached as Exhibit B).