

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)	CPSC Docket No. 12-1
In the Matter of)	CPSC Docket No. 12-2
)	CPSC Docket No. 13-2
MAXFIELD AND OBERTON)	
HOLDINGS, LLC)	Hon. Dean C. Metry
and)	Administrative Law Judge
CRAIG ZUCKER, individually and as an)	
officer of MAXFIELD AND OBERTON)	
HOLDINGS, LLC)	
and)	
ZEN MAGNETS, LLC)	
STAR NETWORKS USA, LLC)	
)	
Respondents.)	
_____)	

MOTION TO COMPEL DISCOVERY

Pursuant to 16 C.F.R. § 1025.36, Complaint Counsel moves to compel Respondent Craig Zucker to produce financial documents relating to Mr. Zucker and Maxfield and Oberton as described herein.

BACKGROUND

On March 26, 2014, this Court granted in part and denied in part Mr. Zucker’s Motion for Protective Order concerning financial information that Complaint Counsel sought in discovery. The Court held that “[a]s the company’s accounts and finances may be relevant, CPSC may seek discovery on all requested company financial information, including the financial records of Maxfield and Oberton, insurance policies maintained by Maxfield and Oberton, information regarding the dissolution of Maxfield and Oberton, and the formation of the Trust.”¹ Further, the Court ruled that the documents requested in Complaint Counsel’s August 8, 2013, Requests for Production of Documents and Things (Requests), numbers 46(g)-(j), 49, 50 and 51 are

¹ Order Granting in Part, Denying in Part Respondent Craig Zucker’s Motion for a Protective Order (Order) at 9.

discoverable. *Id.* at 9 n.4. Complaint Counsel's Requests numbers 46(g)-(j), 49, 50 and 51, and Mr. Zucker's Responses, are as follows:

REQUEST 46. Please provide the following Documents: ...

- g) M&O's federal and state tax returns filed for the past three years.
- h) Audited consolidated financial statements for M&O for the past three fiscal years and interim audited statements for fiscal year 2011-2012, including income statements, balance sheets, cash flow statements, and related notes;
- i) All agreements and arrangements relating to Borrowings of any nature by M&O or its subsidiaries or pursuant to which M&O or any subsidiary is or was between 2009-2012, a debtor party (including all amendments, and all consents and waivers issued in connection with such agreements or arrangements); and
- j) All agreements or arrangements involving M&O and any Affiliate of M&O that has or may have the direct or indirect effect of providing capital support or contributions of any nature to M&O.

RESPONSE: Objection. To the extent the requests seek personal financial information of Mr. Zucker, those documents are not relevant to the subject matter involved in this proceeding and are not reasonably calculated to lead to the discovery of admissible information. To the extent the requests seek financial information of M&O through Mr. Zucker, those documents are not relevant to the subject matter involved in this proceeding and are not reasonably calculated to lead to the discovery of admissible information; and to the extent they exist, any responsive documents are contained within the business records of M&O, including without limitation documents already provided to the CPSC, and are available from the Liquidating Trust. See Objection No. 5, incorporated by reference herein.² ...

REQUEST 49. All Documents relating to the efforts undertaken by M&O to comply with the requirements of the Consumer Product Safety Act and any other statute or regulation enforced by the Consumer Product Safety Commission.

RESPONSE: Objection. To the extent they exist, any responsive documents are contained within the business records of M&O, including without limitation

² Objection number 5 reads: "Mr. Zucker objects to the requests to the extent they seek information from Mr. Zucker that is contained in the business records of M&O on the basis that it constitutes an undue burden and expense on Mr. Zucker to obtain the information when the information is equally available to Complaint Counsel from the MOH Liquidating Trust (the "Liquidating Trust") and the burden of obtaining those documents is substantially the same for Complaint Counsel as it is for Mr. Zucker."

documents already provided to the CPSC, and are available from the Liquidating Trust. See Objection No. 5, incorporated by reference herein.

REQUEST 50. All Documents relating to your role, responsibilities, decision-making authority, and each and every step you took regarding M&O's efforts to comply with the requirements of the Consumer Product Safety Act and any other statute or regulation enforced by the Consumer Product Safety Commission.

RESPONSE: See response to Request No. 48, which is incorporated by reference herein.³

REQUEST 51. All Documents relating to any compensation, benefits, or other assets you received or were eligible to receive from M&O, including, but not limited to the following:

- a) Your salary, including benefits of any kind, for each year from 2009 to the present;
- b) Any distributions made by M&O to you from 2009 to the present;
- c) Any stock options provided by M&O to you from 2009 to the present; and
- d) Any severance package or other money, assets or benefits provided by M&O to you upon your separation from M&O.

RESPONSE: Objection. The documents requested are not relevant to the subject matter involved in this proceeding and are not reasonably calculated to lead to the discovery of admissible information.

Respondent's Response to Complaint Counsel's First Set of Requests for Production of Documents and Things to Craig Zucker, Sept. 9, 2013, at 2, 22-25.

On March 27, 2014, Complaint Counsel sent the following communication to counsel for Mr. Zucker:

³ Mr. Zucker's Response to Request No. 48 reads:

Objection. To the extent other responsive documents exist, any documents are contained within the business records of M&O, including without limitation documents already provided to the CPSC, and are available from the Liquidating Trust. See Objection No. 5, incorporated by reference herein. Without waiving this objection, a copy of the following responsive document will be provided in response to Request No. 1: Limited Liability Company Agreement of Maxfield and Oberton Holdings, LLC, dated as of August 5, 2009; Amended and Restated Limited Liability Company Agreement of Maxfield and Oberton Holdings, LLC, effective as of June 1, 2011.

In footnote 4 of the court's March 26, 2014, ruling concerning Mr. Zucker's request for a protective order relating to financial documents, the court held that the items requested in Complaint Counsel's First Set of Requests for Production of Documents and Things to Craig Zucker numbers 46(g)-(j), 49, 50, and 51 are discoverable. In light of this ruling, please let us know by close of business Friday [March 28, 2014] whether Mr. Zucker will be producing all documents in Mr. Zucker's possession, custody or control that are responsive to those requests. Thank you.

See Exh. A. On March 28, 2014, counsel for Mr. Zucker responded that Mr. Zucker will not produce any documents in response to those requests, stating:

In our response to your requests number 46(g)-(j), 49, and 50, we refer you to the records of M&O, which you have either obtained or are in the process of obtaining. We stand by that response.

With respect to your request number 51, for which there is only an objection, I refer you to the business records of M&O, and General Objection No. 5 in Mr. Zucker's response.

See Exh. A.

ARGUMENT

The Rules governing this proceeding require a party to produce documents and things “which are in the possession, custody, or control of the party upon whom the request is served....” *See* 16 C.F.R. § 1025.33 (also allowing a party to permit inspection as appropriate). The Rules do not allow a party to refuse to produce documents it possesses on the grounds that a non-party *may* also have similar records. *See id.* at 1025.33(c). If a party refuses to provide discoverable documents, “the party seeking discovery may move within twenty (20) days for an order compelling . . . production of documents, or otherwise compelling discovery. For purposes of this section, an evasive or incomplete response is to be treated as a failure to respond.” 16 C.F.R. § 1025.36.⁴ *See also Haney v. Woods*, 2013 WL 870665 (E.D. Cal., Mar. 7, 2013), at *1 (“If a party, in response to a request for production under [Federal] Rule [of Civil Procedure] 34,

⁴ Pursuant to this Court's Order of February 12, 2014, the time limit to move to compel was extended to March 31, 2014.

fails to produce or permit inspection, the discovering party may move for an order compelling production.”).

Here, Mr. Zucker did not deny that he may have documents responsive to Requests 46(g)-(j), 49, 50 and 51 in his possession, custody, or control. Likewise, Mr. Zucker did not deny that he may have documents responsive to Complaint Counsel’s Requests 42 and 43 concerning the dissolution of Maxfield and Oberton and creation of the Trust.⁵ Instead of producing responsive documents, Mr. Zucker objected on the grounds that such documents were irrelevant and that production of documents that may also be in the possession of the Trust placed an undue burden on him. As to the first point, the Court has rejected Mr. Zucker’s relevance objection. *See* Order at 9.

Mr. Zucker’s assertion that he need not produce the documents because he believes that the documents may also be in the possession of the Trust is similarly unavailing. If Mr. Zucker is in possession of documents responsive to these requests, the Rules require that he must produce them regardless of whether the non-party Trust also may have responsive documents. *See* 16 C.F.R. § 1025.33(c). *See also National Fire Ins. Co. of Hartford v. Jose Trucking Corp.*, 264 F.R.D. 233, 240 (W.D.N.C. 2010) (ruling that under similar Federal Rule of Civil Procedure 34, a party must produce documents it possesses, and may not instead “refer the plaintiffs to [an attorney who is not counsel in this action]. It is not that attorney’s obligation to answer the request for production of documents. It is the obligation of the defendants.”).

⁵ Request 42 sought: “All Documents related to any steps taken and efforts made by you or any other officer or employee of M&O to wind down the company.” Request 43 sought: “All Documents related to any steps taken and efforts made by you or any other officer or employee of M&O to prior to filing a certificate of cancellation, (if any) to identify, quantify, and make reasonable provision for: (i) claims and obligations known to M&O; (ii) claims against M&O that were the subject of a pending action, suit, or proceeding to which M&O was a party; and (iii) claims against M&O that were likely to arise or become known to M&O within 10 years after the date of dissolution.”

In this matter, Complaint Counsel is entitled to obtain all relevant documents in the possession of Mr. Zucker, whose actions in transferring Maxfield and Oberton's documents to the Trust after initiation of this action necessitated that Complaint Counsel issue a subpoena to obtain those documents. Only after obtaining the documents from both Mr. Zucker and the Trust will Complaint Counsel be able to compare Mr. Zucker's documents to the Trust's to ensure their accuracy and completeness. The Trust has not and cannot make any guarantee that its records are complete – it possesses only what was provided to it when Maxfield and Oberton was dissolved. Even Mr. Zucker is unable to verify whether the documents he transferred are intact, as he asserted that he was unable to access the documents subsequent to the transfer. The transfer of the Maxfield and Oberton files by Mr. Zucker to the Trustee has injected uncertainty into the integrity and completeness of the documents; Complaint Counsel does not and cannot know whether Maxfield and Oberton lost or destroyed any documents prior to turning them over to the Trust. Unless Mr. Zucker produces documents responsive to Requests numbers 42, 43 and 51, Complaint Counsel will be unable to understand the nature of the dissolution or the scope of financial transfers made to Mr. Zucker both prior to, and as a result of, the dissolution.

Complaint Counsel respectfully requests that this Court enter an order pursuant to 16 C.F.R. § 1025.36 compelling Mr. Zucker to produce documents in his possession, custody or control responsive to Complaint Counsel's Requests 42, 43, 46 (g)-(j), 49, 50, and 51, which this Court has held are discoverable. *See* Order at 9.

Dated: March 31, 2014



Mary B. Murphy
Jennifer C. Argabright
Daniel R. Vice
Complaint Counsel
U.S. Consumer Product Safety Commission
Office of the General Counsel
4330 East West Highway
Bethesda, Maryland 20814

EXHIBIT A

From: [Mullin, Timothy L.](#)
To: [Vice, Daniel](#)
Cc: [Argabright, Jennifer](#); ["Erika Jones"](#); ["John Fleder"](#); [Murphy, Mary](#)
Subject: RE: Order from Judge Metry
Date: Friday, March 28, 2014 5:14:56 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

Dan:

In our response to your requests number 46(g)-(j), 49, and 50, we refer you to the records of M&O, which you have either obtained or are in the process of obtaining. We stand by that response.

With respect to your request number 51, for which there is only an objection, I refer you to the business records of M&O, and General Objection No. 5 in Mr. Zucker's response.

If you have any questions, please do not hesitate to contact me.



From: Vice, Daniel [mailto:DVice@cpsc.gov]
Sent: Thursday, March 27, 2014 9:30 AM
To: Mullin, Timothy L.
Cc: Argabright, Jennifer; 'Erika Jones'; 'John Fleder'; Murphy, Mary
Subject: RE: Order from Judge Metry

In footnote 4 of the court's March 26, 2014, ruling concerning Mr. Zucker's request for a protective order relating to financial documents, the court held that the items requested in Complaint Counsel's First Set of Requests for Production of Documents and Things to Craig Zucker numbers 46(g)-(j), 49, 50, and 51 are discoverable.

In light of this ruling, please let us know by close of business Friday whether Mr. Zucker will be producing all documents in Mr. Zucker's possession, custody or control that are responsive to those requests. Thank you.

Daniel Vice
Trial Attorney
Office of the General Counsel
U.S. Consumer Product Safety Commission
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Bethesda, Maryland 20814
301-504-6996 (phone)
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dvice@cpsc.gov

From: Hammond, Rocky
Sent: Wednesday, March 26, 2014 1:32 PM
To: Stevenson, Todd; Argabright, Jennifer; 'davidjapha@japhalaw.com'; 'Emig, Janice'; 'Erika Jones'; 'Joseph@dykema.com' (Joseph@dykema.com); 'Joanna.M.Sherry@uscg.mil'; 'John Fleder'; 'Katy.J.Duke@uscg.mil'; 'meus'; Murphy, Mary; 'plarenza@dykema.com'; 'Timothy Mullin'; Vieira, Patricia; Hammond, Rocky; Vice, Daniel
Subject: Order from Judge Metry

Please find attached ORDER GRANTING IN PART, DENYING IN PART RESPONDENT CRAIG ZUCKER'S MOTION FOR A PROTECTIVE ORDER dated March 26, 2014 from Judge Metry.

Paper copies will follow.

Rocky Hammond
Docket & Hearing Coordinator Specialist
Office of the Secretary
Office of the General Counsel
US Consumer Product Safety Commission
(301) 504-6833, Fax (301) 504-0127



UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of)	CPSC Docket No. 12-2
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MAXFIELD AND OBERTON)	
HOLDINGS, LLC)	Hon. Dean C. Metry
and)	Administrative Law Judge
CRAIG ZUCKER, individually and as an)	
officer of MAXFIELD AND OBERTON)	
HOLDINGS, LLC)	
and)	
ZEN MAGNETS, LLC)	
STAR NETWORKS USA, LLC)	
)	
Respondents.)	
_____)	

**[PROPOSED] ORDER GRANTING COMPLAINT
COUNSEL’S MOTION TO COMPEL DISCOVERY**

Having considered Complaint Counsel’s Motion to Compel Discovery, and any responses, it is ORDERED that Complaint Counsel’s Motion to Compel Discovery is GRANTED. Respondent Craig Zucker shall produce all documents in his possession, custody or control responsive to Complaint Counsel’s Requests for Production of Documents and Things 42, 43, 46(g)-(j), 49, 50 and 51.

Dated: _____

The Honorable Dean C. Metry
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that I have provided on this date, March 31, 2014, Complaint Counsel's Motion to Compel Discovery upon the Secretary, the Presiding Officer, and all parties and participants of record in these proceedings in the following manner:

Original and three copies by hand delivery to the Secretary of the U.S. Consumer Product Safety Commission: Todd A. Stevenson.

One copy by electronic mail to the Presiding Officer for *In the Matter of Maxfield and Oberton Holdings, LLC*, CPSC Docket No. 12-1, *In the Matter of Zen Magnets, LLC*, CPSC Docket No. 12-2, and *In the Matter of Star Networks USA, LLC*, CPSC Docket No. 13-2:

The Honorable Dean C. Metry
U.S. Coast Guard
U.S. Courthouse
601 25th St., Suite 508A Galveston, TX 77550
Janice.M.Emig@uscg.mil

One copy by electronic mail to counsel for Craig Zucker:

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One copy by electronic mail to the Trustee for MOH Liquidating Trust:

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plautzena@dykema.com

Julie Beth Teicher, Trustee
MOH Liquidating Trust
Erman, Teicher, Miller, Zucker & Freedman, P.C.
400 Galleria Officentre, Suite 444
Southfield, MI 48034
jteicher@ermanteicher.com

One copy by electronic mail to counsel for Respondents Zen Magnets, LLC and Star Networks USA, LLC:

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davidjapha@japhalaw.com

Daniel Vice