

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of)	
)	
ZEN MAGNETS, LLC,)	CPSC DOCKET NO. 12-2
)	
RESPONDENT)	
)	
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)	

RESPONDENT’S MOTION TO DISQUALIFY THE COMMISSION OR SOME OF ITS MEMBERS

Respondent, through counsel, and pursuant to 16 C.F.R. § 1025.23, requests that the Consumer Product Safety Commission (hereafter “CPSC” or “Commission”) disqualify itself and decline to hear the appeal of Administrative Law Judge Metry’s Initial Decision and Order in *In re Zen Magnets, LLC*, CPSC Docket 12-2. In the alternative, Respondent requests that Chairman Elliot Kaye and Commissioners Robert Adler, Joseph Mohorovic, and Marietta Robinson disqualify themselves from hearing the appeal.¹

As general grounds in support of the Motion, and as argued more fully in the Memorandum filed herewith, respondent states:

1. The Commission and the named Commissioners have prejudged material questions of fact and law in this case, and have issued statements indicating their bias against Respondent and the Subject Products, evidencing a lack of complete fairness.

¹ See, by analogy, 16 C.F.R. § 1525.42(e)(1) (a Presiding Officer can disqualify him or herself).

2. If the four members properly disqualify themselves, the Commission will not have a quorum to issue a Final Decision under 16 C.F.R. § 1000.9.

3. In either event, Respondent requests that the Commission adopt the ALJ's Initial Decision and Order as the Final Decision and Order, pursuant to 16 C.F.R. §1025.52 and further identify Zen Magnets as a prevailing party pursuant to 16 C.F.R. §1025.70 and 5 U.S.C. § 504.

4. Because certain Commissioners issued statements showing their bias against Respondent and the Subject Products, neither they nor this Commission can be objective or unbiased, considering all of the powers granted them by 16 C.F.R. § 1025.55(a).

5. Fairness and due process demand that this Commission and certain Commissioners be disqualified from hearing this appeal.

WHEREFORE, Respondent seeks an Order disqualifying this Commission or Chairman Kaye and Commissioners Adler, Mohorovic, and Robinson and adopting the ALJ's Initial Decision and Order as the Final Decision and Order, pursuant 16 C.F.R. §1025.52 and further identifying Zen Magnets as a prevailing party pursuant to 16 C.F.R. §1025.70 and 5 U.S.C. § 504.

DATED THIS 6th day of May, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of May, 2016, I served copies of **THE RESPONDENT'S MOTION TO DISQUALIFY THE COMMISSION OR SOME OF ITS MEMBERS** by the service method indicated:

Original and five 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

One copy by electronic mail (by agreement) and one mailed copy to Complaint Counsel:
Mary B. Murphy, Complaint Counsel and Assistant General Counsel

mmurphy@cpsc.gov

and

Daniel Vice, Trial Attorney
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