

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

**JOINT MOTION TO AMEND DISCOVERY SCHEDULE
AND FOR PROTECTIVE ORDER**

On July 30, 2013, this Court issued a Memorandum of Pre-Hearing Conference and Scheduling Order establishing a discovery schedule in the above matter. The Court ordered that the parties shall exchange a list of expert witnesses by November 15, 2013, shall complete the exchange of discovery by January 17, 2014, and shall file any motion to amend the list of expert witnesses or to seek further discovery related to expert witnesses not later than January 31, 2014. Order of July 30, 2013, at 2-3. The Court further ordered that “Any requests for an extension, amendments to pleadings, or relief from the terms of this Order must be made by motion and with a showing of good cause.” *Id.* at 3.

The parties respectfully request additional time to complete discovery. Although the parties have been exchanging discovery, the government shutdown interrupted the discovery schedule in October. In addition, Complaint Counsel and counsel for Respondent Mr. Zucker agreed to an eight week stay of discovery while they engaged in settlement negotiations. That

stay expired on December 12, 2013. Complaint Counsel and counsel for the Respondents Zen Magnets, LLC and Star Networks USA, LLC, also had agreed to mutual extensions in the time allotted to respond to discovery.

In addition, counsel for Respondent Mr. Zucker has stated that documents relating to Maxfield and Oberton Holdings, LLC are now in the possession of the Trustee for the MOH Liquidating Trust. Complaint Counsel has attempted to obtain those documents from the Trustee, but she has refused to produce them absent a subpoena. On December 12, 2013, Complaint Counsel filed a notice for leave to depose the trustee, and indicated that, if such leave was granted, Complaint Counsel would then file a Notice of Application for subpoena duces tecum on the Trustee. Without the ability to review the Maxfield and Oberton documents currently in the possession of the Trustee, Complaint Counsel states that it will be unable to adequately prepare for depositions of Mr. Zucker, Mr. Bronstein, or individuals formerly employed by Maxfield and Oberton Holdings. Complaint Counsel also states that review of the documents in the possession of the Trustee will be necessary for Complaint Counsel to be adequately prepared to depose other witnesses, including experts whose opinions may be based on or impeached with such documents.

Complaint Counsel and Counsel for Mr. Zucker have responded to each party's Request for Production of Documents. In those responses, both Complaint Counsel and Counsel for Mr. Zucker stated that responsive documents are appropriately produced pursuant to a Protective Order. Complaint Counsel, Counsel for Mr. Zucker, and Counsel for Zen Magnets and Star Networks have conferred on this point and agree that a protective order may be necessary and should be sought in this case. The parties have attached a proposed joint Protective Order pursuant to 16 C.F.R. § 1025.31(d), and ask that the Court enter a Protective Order to allow

for the production of confidential documents and to protect confidential deposition testimony.

Accordingly, the parties do not believe that it would be possible to complete depositions and other discovery by January 17, 2014, and submit that the aforementioned facts constitute good cause. Complaint Counsel, Counsel for Craig Zucker, and Counsel for Zen Magnets and Star Networks therefore respectfully request that the deadline for the completion of discovery be extended. *See* 16 C.F.R. § 1025.31(g) (providing that the Presiding Officer may extend the deadline for completion of discovery past 150 days “in exceptional circumstances and for good cause shown.”).

Complaint Counsel and Counsel for Respondents Zucker, Zen Magnets, and Star Networks have conferred and respectfully ask this Court to extend the deadline to exchange discovery to 90 days after the Trustee for the MOH Liquidating Trust fully responds to and produces all documents required by Complaint Counsel’s subpoena duces tecum, if leave to issue such subpoena is granted. The parties jointly propose that a determination of when the Trustee has fully responded to and produced all documents required by any such subpoena shall be determined either by joint agreement of the parties, or if the parties cannot reach such an agreement, by determination of the Court.

The parties further request that the deadline to move to amend the list of experts or to seek further discovery related to expert witnesses be extended to 14 days after the parties have completed their exchange of discovery.

In addition, without the production of documents (which the parties have requested be produced pursuant to a protective order) the parties agree that filing motions to compel discovery would premature. Consequently, the parties further request that the Court extend the time for filing motions to compel under 16 C.F.R. § 1025.36 until 20 days after a party has produced documents in response to a Request for Production of Documents, pursuant

this Court’s “broad discretion . . . to alter time limits and other procedural aspects of a case, as required by the complexity of the particular matter involved.” See 16 C.F.R. § 1025.1.

The parties have jointly agreed to file this motion.

Wherefore, the parties respectfully request that this court grant the instant motion.

Respectfully submitted,

David
Japha

Digitally signed by David Japha
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)	
ZEN MAGNETS, LLC, and)	Hon. Dean C. Metry
)	Administrative Law Judge
STAR NETWORKS USA, LLC)	
)	
Respondents.)	
_____)	

ORDER

Having considered the Joint Motion to Amend Discovery Schedule and for Protective Order and for good cause shown,

IT IS HEREBY ORDERED THAT the parties shall complete the exchange of discovery within 90 days after the Trustee for the MOH Liquidating Trust fully responds to and produces all documents required by a subpoena duces tecum issued by Complaint Counsel. The date upon which the Trustee for the MOH Liquidating Trust has fully responded to and produced all documents required by any such subpoena shall be determined by agreement of all parties and notice of such filed with this Court or, if the parties cannot reach such an agreement, by the Court;

IT IS FURTHER ORDERED THAT the deadline to move to amend the list of experts or to seek further discovery related to expert witnesses be shall be extended to 14 days after the parties have completed their exchange of discovery;

IT IS FURTHER ORDERED THAT the time for filing motions to compel under 16 C.F.R. § 1025.36 shall be extended until 20 days after a party has produced documents in response to a Request for Production of Documents; and

IT IS FURTHER ORDERED THAT the attached protective order is GRANTED.

The Honorable Dean C. Metry
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that I have provided on this date, January 3, 2014, the foregoing Joint Motion to Amend Discovery Schedule and for Protective Order 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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Erika Z. Jones
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006
ejones@mayerbrown.com

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

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:

David C. Japha
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**DANIEL
VICE**  Digitally signed by DANIEL VICE
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ou=Consumer Product Safety
Commission, cn=DANIEL VICE,
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Daniel Vice
Complaint Counsel

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ZEN MAGNETS, LLC, and)	
STAR NETWORKS USA, LLC,)	
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PROTECTIVE ORDER

Pursuant to 16 C.F.R. § 1025.31(d), Complaint Counsel and Respondents (the parties) have requested that the Court enter a Protective Order.

Accordingly, it is ORDERED that Complaint Counsel and Respondents are hereby bound to the following Protective Order to control disclosure of protected documents to be exchanged in this proceeding:

1. Confidential Information. As used in this Order, Confidential Information means information designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” by the producing party that falls within one or more of the following categories: (a) information prohibited from disclosure or subject to confidentiality by any statute or regulation, (b) information that reveals trade secrets, (c) research, technical, financial or commercial information that the party has maintained as confidential, (d)

medical information concerning any individual, (e) personally identifiable information (including without limitation home addresses, personal telephone and cell numbers and social security numbers), and (f) income tax returns and other non-public financial information.

2. Scope. All materials produced in the course of discovery, including discovery responses and deposition testimony and exhibits (Documents), shall be subject to this Order concerning Confidential Information. Documents include electronic images, duplicates, extracts, summaries, or descriptions that contain Confidential Information or disclose the substance of Confidential Information. The Court, as referred to herein, includes the Presiding Officer and the Commissioners of the U.S. Consumer Product Safety Commission, as appropriate.
3. Designation as Protected Material. A party may designate a Document as Confidential Information under this Order by placing the words “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” on the Document and all copies in a manner that will not interfere with the legibility of the Document. Such designation shall be made by the producing party prior to or at the time the Documents are produced or disclosed.
4. Depositions. This Order protects deposition testimony only if designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” on the record at the time the testimony is taken. Deposition testimony so designated shall be treated as Confidential Information until 14 days after delivery of the transcript by the court reporter to any party. Within 14 days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties identifying the specific portions of the transcript that are designated Confidential Information, and thereafter those portions identified in the Notice of Designation shall be protected under this Order.

5. Protection of Confidential Information.

(a) General Protections. Confidential Information shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in subparagraph (b) for any purpose other than in this proceeding or any appeal thereof.

(b) Limited Disclosures. The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except to the following:

(1) Counsel. Counsel for the parties and employees of counsel who are reasonably involved in assisting counsel in representing the parties to this proceeding.

(2) Parties. Individual parties and employees of a party, but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation.

(3) The Court and its personnel. The Presiding Officer and U.S. Consumer Product Safety Commissioners and staff responsible for this proceeding.

(4) Court reporters. Court reporters engaged for depositions.

(5) Contractors. Those persons specifically engaged for the limited purpose of making copies of Documents or organizing or processing Documents.

(6) Consultants and Experts. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this proceeding, but only after such persons have completed the certification contained in Attachment A.

(7) Witnesses at depositions. During their depositions, witnesses in this action to whom disclosure is reasonably necessary, but only after such persons have completed the certification contained in Attachment A. Witnesses shall not retain any Documents or copies of Documents containing Confidential Information, except that witnesses may receive a copy of all pages of deposition testimony and

exhibits marked at their depositions as containing Confidential Information in connection with review of the transcripts, subject to the terms of this Order.

(8) Others by Consent or Order. Any other person by consent of the producing party or by order of the Court.

6. Inadvertent Failure to Designate. An inadvertent failure to designate a Document as Confidential Information or a failure to serve a timely Notice of Designation does not, standing alone, waive the right to so designate the Document. If a party designates a Document as Confidential Information after it was initially produced, or serves a Notice of Designation after the time set forth in this Order, the receiving party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order.

7. Challenges to Confidential Information Designation.

(a) Meet and Confer. A party may challenge the designation of Confidential Information as provided in this paragraph. A party challenging the designation of Confidential Information must do so in good faith and must begin the process by conferring with counsel for the designating party within 20 days of receipt of any such Document containing Confidential Information. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. The designating party must respond to the challenge within twenty days.

(b) Judicial Intervention. A party that elects to challenge a confidentiality designation may, after completing the requirements of subparagraph (a), file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. The burden of proof in any such challenge proceeding shall be on the designating party. Until the Court rules on the challenge, all parties shall continue to treat the material as Confidential Information.

8. Using Protected Material in Pre-Hearing or Pre-Trial Briefs and Motions. If any Confidential Information is contained in any pleading, motion, exhibit or other paper filed prior to the hearing or trial in this matter, the Secretary and the Court shall be so informed and such papers shall be filed *in camera*.
9. Using Protected Material at the Hearing or Trial. Nothing in this Order shall affect the use of any Documents at any hearing or trial in this matter. A party that intends to present or that anticipates that another party may present Confidential Information at a hearing or trial in this matter shall bring that issue to the Court's and the parties' attention without first disclosing the Confidential Information. The Court may thereafter make such orders as are necessary to govern the use of such Documents at a hearing or trial in this matter.
10. Confidential Information Subpoenaed or Ordered Produced in Other Litigation. If a party other than the designating party is served with a subpoena or order issued in other litigation that would compel disclosure of any Document designated in this action as Confidential Information, the party must notify the designating party, in writing, immediately and in no event more than three business days after receiving

the subpoena or order, in order to permit the designating party to contest such subpoena or order. Such notification must include a copy of the subpoena or court order.

11. Conclusion of Litigation.

(a) Order Continues in Force. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal, and this Court shall retain jurisdiction sufficient to enforce the terms of this Order.

(b) Obligations of Parties and Counsel at Conclusion of Litigation. Within sixty days after dismissal or entry of final judgment not subject to further appeal, all Confidential Information and documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” under this Order, produced by any other party, shall be destroyed unless the Document has been offered into evidence or filed without restriction as to disclosure. Each party shall certify in writing to all other parties that it has complied with the terms of this subparagraph.

(c) Obligations of Consultants, Experts, Witnesses, or Other Persons at Conclusion of Litigation. At the time that any person identified in paragraph 5(b)(5)-(8) concludes participation in this proceeding, such person shall return to counsel or destroy all Documents containing Confidential Information that are in the possession of such person, and shall certify such destruction in writing. Within sixty days after dismissal or entry of final judgment not subject to further appeal, each party shall certify in writing to all other parties that it has notified all such persons employed or contracted or by that party, or witnesses put forth by that party, of the requirements of this subparagraph.

(d) Retention of Work Product and One Set of Filed Documents. Notwithstanding the above requirements to destroy Documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information, and (2) one complete set of all Documents filed with the Court. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

12. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms. The parties, their counsel, and any other persons subject to the terms of this Order shall be subject to the jurisdiction of this Court and the U.S. Consumer Product Safety Commission for enforcement of the terms of this Order.

DATED:

The Honorable Dean C. Metry
Presiding Officer

UNITED STATES OF AMERICA
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ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

The undersigned hereby acknowledges that he/she has read the Protective Order dated in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms.

The undersigned submits to the jurisdiction of the U.S. Consumer Product Safety Commission in matters relating to the Protective Order and understands that the terms of the Order obligate him or her to use materials designated as Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or entity except as provided by law.

The undersigned acknowledges that violation of the Order may result in penalties as provided by statute or regulation.

[next page]

Name:

Job Title:

Employer:

Business Address:

Date: _____

Signature: _____