

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.)	
_____)	

**EXPEDITED MOTION TO STAY RESPONDENT CRAIG ZUCKER’S MOTIONS TO
COMPEL OR FOR EXTENSION OF TIME**

Pursuant to 16 C.F.R. §§ 1025.1, 1025.15(c), and 1025.23(c), Complaint Counsel moves this Court to stay Craig Zucker’s Motions to Compel, filed on March 31, 2014, and order the parties to meet and confer concerning those motions to attempt to resolve any discovery disputes raised therein. In light of Complaint Counsel’s April 10, 2014 deadline to respond to Mr. Zucker’s voluminous motions, Complaint Counsel respectfully requests that this Court grant expedited review of Complaint Counsel’s Motion to Stay pursuant to 16 C.F.R. § 1025.1 and 1025.23(c). Alternately, if the Court denies Complaint Counsel’s Motion to Stay, Complaint Counsel requests an extension of time so that it can adequately respond to the multitude of objections raised for the first time in Mr. Zucker’s motions.

BACKGROUND

On July 29, 2013, this Court held a pre-hearing conference, and thereafter ordered that the parties “need not file discovery requests or responses with either the undersigned or the

Commission unless a dispute regarding the same arises.” Order, Sept. 17, 2013. Consistent with this Order, Complaint Counsel understood that the parties should attempt to resolve discovery disputes amongst themselves before asking the Court to intervene. In fact, the parties have made such efforts during the course of the litigation.¹

On December 12, 2013, Complaint Counsel timely served its Responses to Craig Zucker’s First Set of Requests for Admissions (RFAs), First Set of Requests for Production of Documents (RFPs), and First Set of Interrogatories (Interrogatories). On March 31, 2014, Craig Zucker filed voluminous Motions to Compel concerning Complaint Counsel’s responses to Mr. Zucker’s RFAs, RFPs and Interrogatories, consisting of 377 pages of objections and attachments. Under 15 C.F.R. § 1025.23(c), Complaint Counsel’s responses to these motions would be due on April 10, 2014.

In the more than three intervening months between receiving responses to these discovery requests and filing motions to compel, counsel for Mr. Zucker made absolutely no effort to meet and confer concerning Complaint Counsel’s discovery responses. Indeed, Mr. Zucker’s counsel never communicated to Complaint Counsel in any way that he considered any of Complaint Counsel’s discovery responses to be deficient and never attempted to resolve any dispute about any alleged deficiency in those responses.²

¹ For example, Complaint Counsel called a conference call of the parties to jointly discuss discovery issues, which occurred on December 19, 2013, and the parties later met and conferred to agree on a Joint Motion to Amend Discovery Schedule and for Protective Order, filed on January 3, 2014, and a Joint Motion for Extension of Time Within Which to File Motions to Compel Discovery, filed on February 11, 2014. Likewise, Complaint Counsel contacted counsel for Mr. Zucker on March 5, 2014, and again on March 13, 2014, in an effort to have Mr. Zucker produce documents in response to Complaint Counsel’s First Set of Requests for Production of Documents and Things. *See* Exh. A.

² Counsel for Mr. Zucker’s only communications concerning any dispute regarding Complaint Counsel’s discovery responses was to challenge Complaint Counsel’s designation of documents as Confidential. Pursuant to the meet and confer obligations of the Protective Order entered by the Court, Complaint Counsel discussed this issue with counsel for Mr. Zucker in February 2014 and agreed to remove the Confidentiality stamp from two documents that Mr. Zucker’s counsel had argued should not have been marked as such. *See* Exh. B.

ARGUMENT

The Rules allow this Court broad discretion to alter time limits and other procedural aspects of the proceeding. *See* 16 C.F.R. §§ 1025.1 (“broad discretion has been vested in the Presiding Officer who will hear a matter being adjudicated to allow him/her to alter time limitations and other procedural aspects of a case, as required by the complexity of the particular matter involved”), 1025.15(c) (“For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed by these rules”), and 1025.23(c) (allowing responses to motions “within such longer or shorter time as may be designated by these Rules or by the Presiding Officer”). Granting Complaint Counsel’s Motion to Stay Mr. Zucker’s pending motions to compel and ordering the parties to meet and confer, as necessary to promote an efficient resolution of this proceeding, fall squarely within such discretion. *See id.* Similarly, the Presiding Officer may expedite consideration of any motion, such as the present motion. *See id.*

In the interest of efficient litigation and judicial economy, parties should first attempt to resolve discovery disputes amongst themselves before seeking intervention of the court. Although the Rules governing this proceeding do not contain meet and confer requirements as do the Federal Rules of Civil Procedure, the reasoning behind those Federal Rules strongly supports requiring that the parties meet and confer to resolve discovery disputes here.³ The Federal Rules require that a party seeking to compel discovery must have “in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.” Fed. R. Civ. Pro. 37(a)(1). Courts have explained the obvious purpose of

³ The Rules governing this proceeding were promulgated on May 1, 1980, *see* 45 Fed. Reg. 29,206 (May 1, 1980), and Federal Rule 37(a) was amended in 1993 to add a meet and confer requirement. *See* Fed. R. Civ. Pro. 37, 1993 Amendment Note. In promulgating the Commission’s rules, it stated that “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).

this requirement: “to lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants, through promotion of informal, extrajudicial resolution of discovery disputes.” *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 120 (D.Nev. 1993).

Those same principles apply equally to the instant matter. Here, Mr. Zucker has filed 377 pages of objections to three sets of Complaint Counsel’s discovery responses served late last year. Complaint Counsel believes that a conference of the parties is likely to resolve some of these issues. For example, Mr. Zucker claims that Complaint Counsel improperly replied to certain discovery requests by noting that answers to many of the requests could be found in business records of Maxfield and Oberton. It is important to note that at the time Complaint Counsel served its discovery responses in December 2013, Complaint Counsel did not have access to the Trust’s documents, consisting of Maxfield and Oberton’s business records.⁴ In response to a Subpoena issued by the Commission on January 17, 2014, the Trust has recently produced more than 700,000 pages of documents, and it is likely that some of those documents contain information sought in Mr. Zucker’s discovery requests. *See, e.g.*, Zucker Interrogatories 6, 12-15, 21; Zucker RFP 35(e) (seeking information concerning Maxfield and Oberton’s advertising and marketing of the Subject Products); Zucker RFP 28 (seeking documents related to a corrective action taken by Maxfield and Oberton in 2010); Zucker RFP 32 (seeking information relating to retailers of the Subject Products). Complaint Counsel is providing those documents to counsel for Mr. Zucker—documents that Mr. Zucker initially possessed and subsequently turned over to the Trustee after the litigation was initiated—so he will be in a better position than even Complaint Counsel to evaluate their content.

⁴ Mr. Zucker has stated that, upon dissolution of Maxfield and Oberton, all of the firm’s records were turned over to the Trust, necessitating that Complaint Counsel subpoena the Trust to obtain those documents.

In addition, some of Mr. Zucker's challenges concern questions about how Complaint Counsel conducted its search for documents and the format in which the documents were produced. *See* Respondent Craig Zucker's Motion to Compel Complaint Counsel's Responses to Respondent's First Set of Requests For Production of Documents to Consumer Product Safety Commission at 6 (seeking an explanation of how Complaint Counsel's documents are maintained in the ordinary course of business, including "where the documents were maintained, who maintained them, whether the documents came from one single source or file or from multiple sources or files"). Many of those questions could likely be answered if the parties conferred to discuss Complaint Counsel's document production. Complaint Counsel is more than willing to engage in such a dialogue with counsel for the Respondent.

Complaint Counsel suggests that the most reasonable course of action is for the parties to meet and confer to attempt to resolve these disputes before requesting that this Court undertake the task of reviewing hundreds of pages of motions. Such an approach is consistent with Complaint Counsel's understanding of the Court's Order that the parties need not file discovery request unless a dispute arises. Complaint Counsel takes this to mean that the parties should make every effort to resolve discovery disputes before seeking the Court's intervention, and the meeting Complaint Counsel proposes is part of that effort. In the interest of judicial economy and efficiency, Complaint Counsel respectfully requests that this Court stay Craig Zucker's Motions to Compel, and order Mr. Zucker and Complaint Counsel to engage in a good faith effort to meet and confer to resolve as many issues as possible. Such a simple step would minimize the burden on the Court, and facilitate a more orderly resolution of discovery issues. Alternately, if the Court denies Complaint Counsel's Motion to Stay, Complaint Counsel

respectfully requests that the Court grant it an additional 30 days to fully respond to the multitude of issues raised in Mr. Zucker's voluminous motions.

Dated: April 2, 2014



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CERTIFICATE OF SERVICE

I hereby certify that I have provided on this date, April 2, 2014, Complaint Counsel's Expedited Motion to Stay Craig Zucker's Motions to Compel or for an Extension of Time 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:

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