

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of)	
)	CPSC Docket No: 12-2
)	
ZEN MAGNETS, LLC)	
)	HON. DEAN C. METRY
)	
Respondent.)	
)	

ORDER DENYING AGENCY’S MOTION TO EXCLUDE OPINION POLLS

Complaint Counsel for the Agency moves to exclude two (2) opinion polls from being introduced into evidence at hearing. Complaint Counsel argues these opinion polls are irrelevant to the ultimate issue in this case, whether the subject products constitute a substantial product hazard. Respondent argues the opinion polls are relevant in determining several of the factors considered by the Commission in deciding whether a product has a defect. Specifically, Respondent states the opinion polls directly address the utility of the product, the necessity of the product, the population exposed to the product and its risk of injury, along with the adequacy of warnings and instructions to mitigate such risk. See 15 U.S.C. § 2064(a)(2); 16 C.F.R. § 1115.4.

Upon review of the record and pertinent authority, the ALJ agrees the opinion polls may be relevant to some of the factors set forth in 15 U.S.C. § 2064(a)(2) and 16 C.F.R. § 1115.4. See Fed. R. Evid. 402. Therefore, at this stage in the proceeding, the polls are potentially relevant and Respondent may proffer them as evidence at hearing.

However, whether the polls are ultimately admitted depends not only on relevance, but also upon Respondent laying a sufficient foundation demonstrating their

reliability. These issues are better determined during the course of the hearing, not beforehand.

Accordingly, Complaint Counsel's motion to exclude Respondent's opinion polls is **DENIED**. Complaint Counsel may renew this motion or make a relevant objection at hearing should the need arise.

SO ORDERED.

Done and dated this 19th day of November 2014, at
Galveston, TX



DEAN C. METRY
Administrative Law Judge