

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

In the Matter of

CPSC Docket No: 13-1

BABY MATTERS, LLC

Respondent.

**HON. WALTER J. BRUDZINSKI
Administrative Law Judge**

ORDER

Respondent BABY MATTERS, LLC asks the undersigned Administrative Law Judge (ALJ) to compel the Consumer Products Safety Commission (CPSC or Commission) to correct and retract an allegedly false and misleading statement it made in a December 27, 2012 press release. Respondent further claims the Commission failed to sufficiently correct the statement and that such failure violates 15 U.S.C. §2055(b)(7). To sanction the Commission, Respondent requests the ALJ dismiss the Complaint. Respondent's motion and sanction request are denied for lack of jurisdiction.

The CPSC brought this action under 15 U.S.C. § 2064(c), (d), and (f) "for public notification and remedial action." *See Complaint* at ¶¶ 1 and 3. Title 16 C.F.R. Part 1025, contains the procedural rules governing this administrative adjudication. Section 1025.1 states as follows:

The rules in this part govern procedures in adjudicative proceedings relating to the provisions of section 15 (c), (d), and (f) and 17 (b) of the Consumer Product Safety Act (15 U.S.C. 2064 (c), (d), (f); 2066 (b)), Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274), and sections 3 and 8 (b) of the Flammable Fabrics Act (15 U.S.C. 1192, 1197 (b)), which are required by statute to be determined on the record after opportunity for public hearing.


See 16 C.F.R. § 1025.1

The rules in Part 1025 include the ALJ's authority but that authority pertains exclusively to proceedings "relating to the provisions of 15 U.S.C. §§ 2064 (c), (d), and (f)." Respondent's motion pertains to 15 U.S.C. § 2055(b)(7). The regulations for that statute are found at 16 C.F.R. §§ 1101.51 and 1101.52 and contain no delegation of authority to the ALJ.

Sections 1101.52(b) and (c) prescribe the retraction request shall be made to the Secretary of the CPSC. The Commission's decision is final agency action and Respondent may seek review in U.S. District Court. See Bennett v. Spear, 520 U.S. 154, 178 (1997); see also, Reliable Automatic Sprinkler Co., Inc. v. Consumer Product Safety Com'n., 324 F.3d 726 (D.C. Cir. 2003). Respondent's motion and sanction request are therefore DENIED.

SO ORDERED.

Done and dated January 22, 2013
New York, NY


Walter J. Brudzinski
Administrative Law Judge