UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the matter of MAXFIELD AND OBERTON HOLDINGS, LLC and ZEN MAGNETS, LLC Respondents.	CPSC DOCKET NO. 12-1 CPSC DOCKET NO. 12-2 Hon. Parlen McKenna

ZEN MAGNET'S OBJECTION TO COMPLAINT COUNSEL'SMOTION TO CONSOLIDATE PROCEEDINGS IN CASES 12-1 AND 12-2

Zen Magnets, LLC, the respondent in matter 12-2 (hereafter "Zen"), through counsel, and pursuant to the Acting Chief Administrative Judge's October 5, 2012 Notice, hereby objects to Complaint Counsel's Motion to Consolidate Proceedings and as grounds therefor states:

1. Complaint Counsel has moved to consolidate Docket 12-1 and Docket 12-2 and have the matters heard before this Court pursuant to Commission Regulations at 16 C.F.R. Part 1025.19 on the alleged grounds that the proceedings "involve similar issues" that can be resolved more consistently and efficiently in consolidated proceedings than in separate proceedings.

2. Zen Magnets, LLC disagrees with Complaint Counsel and vehemently opposes consolidation of these matters.

3. The factual issues in the two cases are not similar.

4. Specifically, the packaging of the products is completely different and the potential for danger in Zen Magnets is significantly less than that for Buckyballs, the alleged offending product in 12-1.

5. There are physical differences in the magnets. Zen Magnets have much higher precision, and Zen Magnets, LLC has worked hard to gain the reputation of having magnets that have greater precision.

6. There are significant marketing and distribution differences between Zen Magnets and those sold by Maxfiled and Oberton Holdings, LLC.

7. Zen Magnets have never been sold as toys on shelves, nor have they ever been referred to as any sort of toy.

8. Zen Magnets are only available online, and must be sought out by an adult buyer with a credit card or paypal account. There is no possibility for an underage person to purchase Zen Magnets without adult supervision or permission.

9. Zen Magnets have no record of any injury.

10. As a result, in this matter, the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and available judicial

resources are definitely overborne by the specific risk of prejudice to Zen Magnet. There is most certainly confusion of the issues by allowing Complaint Counsel to present the same evidence and witnesses for both products. *Arnold* v. *Eastern Airlines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982).

11. Zen recognizes that this Court has broad discretion in this matter. However, the facts of the two cases do not support Complaint Counsel's request for the reasons set forth above. Contrary to Complaint Counsel's allegations, the magnets distributed by the marketing of Zen Magnets is substantially different than the magnets distributed by and the marketing of Maxfield and Oberton Holdings, LLC. In such a case, consolidation would not be warranted. *See, In re: Consolidated Parlodel Litigation,* 182 F.R.D. 441, 447 (D.N.J. 1998)(District Court denied Motion to Consolidate fourteen cases finding that considerations of judicial economy where claims involved differing issues and stating that "the benefits of efficiency cannot be purchased at the cost of fairness," citing *Malcolm v. National Gypsym Co.*, 995 F.2d 346, 350 (2d Cir.1993)). Here, the circumstances of the distribution and marketing of the magnets in question by each of the respondents in the two cases sought to be consolidated is distinct and should not be considered together in the same proceeding.

WHEREFORE, Zen Magnets, LLC objects to Complaint Counsel's Motion to Consolidate filed in 12-1.

Dated October 15, 2012

Respectfully Submitted,

THE LAW OFFICES OF DAVID C. JAPHA, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have provided a copy of the foregoing Zen Magnets, LLC's Objection to Complaint Counsel's Motion to Consolidate Proceedings, including points and authorities on this 15th day of October, 2012, to the Secretary, the Presiding Officers, and all parties and participants of record in these proceedings in the following manner:

Mr. Todd Stevenson, via email to: tstephenson@scsc.gov
and original + 3 copies via US Mail to: The Secretariat – office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

The Honorable Parlen L. McKenna
Acting Chief Administrative Law Judge
United States Coast Guard
2100 2nd Street., S.W. Stop 7000
Washington, D.C. 20593-7000
via Fax: 202-372-4964
and United States Mail

The Honorable Bruce T. Smith

U.S. Coast Guard
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via Email: nicole.e.simmons@uscg.mil
and United States Mail

The Honorable Dean C. Metry
U.S. Coast Guard
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Galveston, TX 77550
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Ms. Sarah Wang, Trial Attorney
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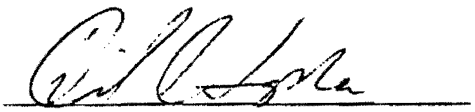
Copy by United States mail to Respondent Maxfield and Oberton Holdings, LLC:
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