

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

ORDER GRANTING MOTION TO AMEND COMPLAINT AND
SUPPLEMENTAL MOTION TO AMEND COMPLAINT
AND
MEMORANDUM OF PRE-HEARING CONFERENCE
AND
SCHEDULING ORDER

a. Pre-Hearing Conference

On September 27, 2012, the undersigned convened a pre-hearing telephone conference pursuant to 16 C.F.R. § 1025.21.¹ Mary B. Murphy, Esq. and Jennifer Argabright, Esq. appeared for the U.S. Consumer Product Safety Commission (“CPSC”); Attorney David C. Japha appeared on behalf of Respondent Zen Magnets, LLC.

At the outset, the undersigned Administrative Law Judge (ALJ) introduced himself and advised the parties of his role as an independent Trier of Fact. The undersigned acknowledged pending motions in the matter, most notably, a Motion to Consolidate the instant proceeding with another adjudicative proceeding.

¹ Pursuant to 16 C.F.R. § 1025.21(a), the undersigned is required to hold a pre-hearing conference within fifty (50) days of publication of the Complaint in the Federal Register, and upon ten (10) days notice to all parties and participants. A Notice of Pre-Hearing Conference was submitted for publication in the Federal Register in accordance with 16 C.F.R. § 1025.21(b), and the pre-hearing conference was transcribed and open to the public in accordance with 16 C.F.R. § 1025.21(d).

The undersigned explained that the Motion to Consolidate was not before him, and that he had only received a courtesy copy. He noted that he was unsure as to whether the Motion to Consolidate would be ruled on by ALJ Bruce T. Smith, the judge to whom the other proceeding is assigned, or by Acting Chief ALJ Parlen McKenna, but that, in any event, the outcome of the ruling could impact the posture of the instant case, possibly removing the matter from his docket altogether. However, as the Motion had not yet been ruled on, and in the interest of moving the instant case forward in a timely manner in accordance with 16 C.F.R. § 1025.1, the undersigned determined that it was best to continue with the pre-hearing conference.

Next, the undersigned acknowledged two additional pending motions: a September 20, 2012 Motion for Leave to File Amended Complaint, and a September 25, 2012 Supplemental Motion for Leave to File Amended Complaint. Pursuant to 16 C.F.R. § 1025.23, Respondent still had time to respond to both Motions. The undersigned informed Respondent that he could respond to both Motions simultaneously within ten (10) days of the latter Motion.

Respondent expressed concern as to the methods of service required by 16 C.F.R. § 1025.14, and inquired as to whether the undersigned would waive the requirement that he mail an original and three (3) copies of all filings to the Secretary. The undersigned denied the request, explaining that the Secretary, and not the undersigned, maintained the official record. However, the undersigned and CPSC Counsel agreed that Respondent could serve CPSC Counsel electronically.

Next, the parties and the undersigned discussed discovery. Absent a showing of exceptional circumstances and good cause, the parties must complete discovery within

150 days of issuance of the Complaint. 16 C.F.R. § 1025.31(g). The undersigned explained that, in light of the pending Motion to Consolidate, he would permit the parties to utilize the full 150 day period. The undersigned ordered the parties to file a preliminary list of expected witnesses within 100 days of issuance of the Complaint, and explained that he would convene a subsequent pre-hearing conference prior to setting the matter for hearing.

b. Post Pre-Hearing Conference

On October 5, 2012, Acting Chief ALJ McKenna issued a Notice of Request for Consolidation of CPSC Docket Numbers 12-1 and 12-2 by Agency and Order for Zen Magnets' Response. In the Order, ALJ McKenna provided Respondent ten (10) days to respond to the Motion to Consolidate.

On October 10, 2012, Respondent's counsel filed a Notice of No Objection to Complaint Counsel's Supplemental Motion for Leave to File Amended Complaint, indicating no objection to the Agency's Supplemental Motion.

WHEREFORE²,

IT IS HEREBY ORDERED that the Agency's September 20, 2012 Motion for Leave to File Amended Complaint, and September 25, 2012 Supplemental Motion for Leave to File Amended Complaint are hereby **GRANTED**.

IT IS FURTHER ORDERED that the parties shall complete the exchange of discovery by February 22, 2013. Additionally, the parties shall provide a preliminary list of expected witnesses to one another and the undersigned by January 3, 2013, and shall file any dispositive motions not later than March 25, 2013.

² The undersigned notes that these dates are subject to change pending the outcome of the Motion to Consolidate.

SO ORDERED.

Done and dated this 15th day of October, 2012, at
Galveston, TX


DEAN C. METRY
Administrative Law Judge
U.S. Coast Guard