

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
AMAZON.COM, INC.)	
)	
)	CPSC DOCKET NO.: 21-2
)	
Respondent.)	

JOINT MOTION TO ALTER SCHEDULE

Pursuant to 16 C.F.R. § 1025.31(g), Respondent Amazon.com, Inc. (“Respondent”) and Complaint Counsel (together, the “Parties”) hereby jointly renew their request for an alteration of the schedule set forth in the Order on Motion to Dismiss and Motion for Summary Decision (Doc. No. 27 at page 28) entered by the Presiding Officer. The accompanying Memorandum identifies the “exceptional circumstances” applicable to this request, which respectfully seeks the following alteration to the schedule:

- June 30, 2022: Expert Rebuttal Disclosures;
- August 19, 2022: Discovery Cutoff;
- September 16, 2022: Deadline for filing of Motions for Summary Decision;
- October 14, 2022: Deadline for filing Oppositions to Motions for Summary Decision;
- November 14, 2022: Deadline for filing Replies in Support of Motions for Summary Decision.

Respectfully submitted,



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June 6, 2022

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)

AMAZON.COM, INC.)

Respondent.)

CPSC DOCKET NO.: 21-2

MEMORANDUM IN SUPPORT OF JOINT MOTION TO ALTER SCHEDULE

As noted by the Presiding Officer’s order of June 1, 2022, the default closure of discovery is 150 days following issuance of the Complaint. *See* Doc. No. 39. That default timetable, however, is subject to alteration by the Presiding Officer based on “exceptional circumstances and for good cause shown.” 16 C.F.R. § 1025.31(g). This standard is clear: “the Presiding Officer is, in fact, authorized to increase or decrease the time period for discovery based upon the nature of the proceedings and the circumstances.” *Rules of Practice for Adjudicative Proceedings*, 45 Fed. Reg. 29,206, 29,212 (May 1, 1980).

For the reasons set forth below, the specific circumstances here warrant a limited extension of the default discovery period and subsequent briefing schedule. The Parties have tailored their request to the needs of the case, balancing the Parties’ interests in developing a complete record with moving the adjudication toward a prompt resolution without undue delay.

A. Status of Discovery

The Parties diligently focused early discovery efforts on hazard-related legal issues, including production by the CPSC and review by Amazon of approximately 10,000 pages of documents related to the Subject Products. This post-Complaint production and review was followed by numerous hours conferring and negotiating over the hazard-related Stipulation of

April 26, 2022, which was acknowledged by the Presiding Officer. *See* Doc. No. 37. The Stipulation required extensive effort during the discovery period, but will meaningfully narrow the scope of this adjudication (and conserve judicial resources). *See* Doc. No. 35. Notably, whether the Parties' eventual stipulation was even possible and how long it would take to finalize was not readily knowable by the Parties at the October 2021 prehearing conference.

At this time, both Parties are diligently working to complete document production, after which, both Parties anticipate noticing depositions under Fed. R. Civ. P. 30(b)(6). Both Parties also anticipate noticing expert depositions.

B. Exceptional Circumstances and Good Cause Justifies an Extension of Discovery Deadlines

On May 9, 2022, Respondent submitted an expert report and accompanying material. After receiving this report, Complaint Counsel immediately began identifying potential rebuttal experts on the issues presented in Respondent's expert report. Complaint Counsel promptly identified an "in-house" CPSC employee rebuttal expert.

However, on May 26, 2022, this expert informed Complaint Counsel that he could no longer act as a rebuttal expert because of a life-threatening illness facing one of his children. Complaint Counsel immediately notified counsel for Respondent and, given that Complaint Counsel was now compelled to identify and obtain a rebuttal report from a different rebuttal expert, requested an extension to July 15, 2022, for submission of an expert rebuttal report. Counsel for Respondent agreed contingent on an alteration to the overall schedule which was negotiated, and the parties submitted their Joint Request for Discovery Extension on May 31, 2022.

Complaint Counsel has identified an alternative in-house rebuttal expert and now expects to be able to produce a rebuttal report and attendant materials by June 30, 2022. Amazon does not oppose such a schedule extension, provided that such an extension encompasses related fact

discovery deadlines. The Parties therefore respectfully propose that the discovery closure date be extended to August 19, 2022, to allow time for the Parties to depose their respective experts, complete any other fact-related discovery, and expeditiously resolve any remaining discovery disputes.

C. Good Cause Exists for Extension of the Motion for Summary Decision Deadline

Although 16 C.F.R. § 1025.21(g) sets a general 150-day timetable for the closure of discovery, the regulations set no specific deadline for submission of motions for summary decision, merely providing that motions for summary determination “shall be filed at least twenty (20) days before the date fixed for the adjudicative hearing.” 16 C.F.R. § 1025.25(a). In *In the Matter of Britax Child Safety, Inc.*, 2018 WL 11412783 (C.P.S.C. May 3, 2018), the schedule called for a two-month gap between the closure of discovery and the submission of motions for summary decision. *See id.* at *1. Here, the Parties have requested approximately half of the time that was granted in *Britax*. The proposed schedule requests that the deadline for filing motions for summary decision be set for September 16, 2022, with deadlines for filing oppositions and replies being set for October 14, 2022, and November 14, 2022, respectively.

II. CONCLUSION

The Parties therefore respectfully request that the following schedule be adopted:

June 30, 2022: Expert Rebuttal Disclosures;
August 19, 2022: Discovery Cutoff;
September 16, 2022: Deadline for filing of Motions for Summary Decision;
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Counsel for Respondent Amazon.com, Inc.

June 6, 2022

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2022, a true and correct copy of the foregoing was served upon all parties and participants of record in these proceedings as follows:

- filed by email to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

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