UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
TK ACCESS SOLUTIONS CORP. f/k/a THYSSENKRUPP ACCESS CORP.	)	CPSC DOCKET NO.: 21-1
Respondent.	)	

COMPLAINT COUNSEL'S MOTION FOR EXTENSION OF TIME TO SUBMIT ADDITIONAL BRIEFING ON THE MOTION TO AMEND COMPLAINT

Pursuant to 16 C.F.R. §§ 1025.1, 1025.15(c), 1025.23, 1025.31(i), and 1025.42(a) Complaint Counsel respectfully moves this Court to extend the deadline to submit additional briefing on Complaint Counsel's Motion to Amend Complaint in this matter. Pursuant to this Court's February 18, 2022 Order, Dkt. No. 78, additional legal briefing on the Motion to Amend Complaint is due "ten days from the latter of the completion date of Mr. Mauro Carneiro's deposition and the date on which Respondent responds to Complaint Counsel's February 9 discovery requests." Complaint Counsel received responses from Respondent to its February 9 discovery requests on March 11, 2022, and Mr. Carneiro's deposition was completed on April 5, 2022. Thus, the deadline for additional briefing is currently April 15, 2022.

However, for the reasons detailed in Complaint Counsel's Motion to Compel Discovery and Memorandum in Support of its Motion to Compel Discovery (collectively, "Motion to Compel"), filed on April 5, 2022, concurrently with this Motion, Respondent has failed to provide crucial discovery that is necessary for any additional briefing that would be submitted by Complaint Counsel. Respondent's failure to provide the requested discovery is prejudicing

Complaint Counsel's ability to determine whether TK Elevator Corp., or some other related TK entity, is the proper party to add to this matter. Complaint Counsel wants to ensure that its Motion to Amend is directed to the proper "TK" entity that is controlling and financing Respondent, which is the purpose behind the Motion to Compel. Thus, supplemental briefing on Complaint Counsel's current Motion to Amend cannot be completed until additional discovery is received from Respondent. As such, there is good cause for the granting of this extension.

Complaint Counsel requests an Order that, if this Court grants the Motion to Compel, the deadline for additional briefing regarding the Motion to Amend Complaint be extended to twenty (20) days after Respondent's production of documents and information pursuant to the granting of the Motion to Compel. Alternatively, if the Court denies the Motion to Compel, Complaint Counsel requests that supplemental briefing be due ten (10) days after any such denial.

I. THERE IS GOOD CAUSE TO EXTEND THE DEADLINE FOR ADDITIONAL BRIEFING ON THE MOTION TO AMEND COMPLAINT.

The Commission's Rules of Practice for Adjudicative Proceedings ("Rules"), at 16 C.F.R. Part 1025, vest this Court with broad discretion to alter time limits and other procedural aspects of this proceeding. *See* 16 C.F.R. § 1025.1 ("[B]road discretion has been vested in the Presiding Officer who will hear a matter being adjudicated to allow him/her to alter time limitations and other procedural aspects of a case, as required by the complexity of the particular matter involved."); *see also* 16 C.F.R. § 1025.42(a) (noting that the Presiding Officer shall have all powers necessary to "conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order"). Further, the Rules allow the Presiding Officer to "extend any time limit prescribed or allowed by these rules or by order of the Commission or the Presiding Officer," "for good cause shown," and to "issue

any just and appropriate order," for controlling discovery and ensuring timely completion. 16 C.F.R. §§ 1025.15(c), 1025.31(i).

As thoroughly detailed in the Motion to Compel, Respondent has either refused to provide discovery that is highly relevant to Complaint Counsel's Motion to Amend Complaint or has provided inconsistent or contradictory discovery regarding Respondent's finances and the corporate structure of the various "TK" entities. Complaint Counsel has held several meet and confers and attempted to avoid judicial intervention to obtain such discovery; however, Respondent has continuously refused to provide meaningful and substantive responses, as highlighted in the Motion to Compel. Since the discovery requested by Complaint Counsel relates directly to the issues raised in the Motion to Amend Complaint, Complaint Counsel is being prejudiced by Respondent's unsupported refusal to provide complete responses. As such, Complaint Counsel respectfully requests that, if this Court grants the Motion to Compel, the deadline for additional briefing regarding the Motion to Amend Complaint be extended to twenty (20) days after Respondent's production of documents and information pursuant to the granting of the Motion to Compel. Alternatively, if the Court denies the Motion to Compel, Complaint Counsel requests that supplemental briefing be due ten (10) days after any such denial.

Extending the additional briefing deadline as suggested does not impact other deadlines in the Court's October 26, 2021 Scheduling Order, and is sufficiently in advance of the scheduled hearing date of September 12, 2022. Further, Complaint Counsel is only requesting an extension because of Respondent's unfounded refusal to provide this highly relevant discovery, which is preventing Complaint Counsel from obtaining key information necessary for its additional briefing. Thus, Respondent's refusal to provide the requested discovery, which is

crucial to any additional legal briefing on the Motion to Amend Complaint, creates good cause for the requested extension of time.

II. CONCLUSION

Accordingly, and having shown good cause, Complaint Counsel respectfully requests that the Presiding Officer issue a just and appropriate Order extending the deadline for additional briefing on the Motion to Amend Complaint, as set forth above.

Dated April 5, 2022

Respectfully submitted,

Michael J. Rogal

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[PROPOSED] ORDER ON COMPLAINT COUNSEL'S MOTION FOR EXTENSION OF TIME TO SUBMIT ADDITIONAL BRIEFING ON THE MOTION TO AMEND COMPLAINT

This matter, having come before the Presiding Officer on Complaint Counsel's Motion for Extension of Time to Submit Additional Briefing on the Motion to Amend Complaint, dated April 5, 2022, it is hereby ORDERED that the Motion is GRANTED.

It shall be further ORDERED:

For good cause shown, the timeframe within the Court's February 18, 2022 Order is extended. If Complaint Counsel's Motion to Compel Discovery, filed on April 5, 2022, is granted, the deadline for additional briefing regarding the Motion to Amend Complaint shall be extended to twenty (20) days after Respondent's production of documents and information pursuant to the granting of the Motion to Compel. Alternatively, if the Court denies the Motion to Compel, the deadline for additional briefing regarding the Motion to Amend Complaint shall be extended to ten (10) days after any such denial.

Done and dated April ___, 2022

Arlington, VA

_____
Mary F. Withum
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2022, I served Complaint Counsel's Motion for Extension of Time to Submit Additional Briefing on the Motion to Amend Complaint as follows:

By email to the Secretary:

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U.S. Consumer Product Safety Commission
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By email to the Presiding Officer:

Hon. Mary F. Withum, Administrative Law Judge
c/o Alberta E. Mills
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