

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

In the Matter of Amazon.com, Inc.,

Respondent

CPSC Docket No. 21-2

MOTION TO SET BRIEFING SCHEDULE

Following the Presiding Officer’s Initial Decision of July 10, 2023, both Amazon.com, Inc. (“Amazon”) and Complaint Counsel (collectively, the “Parties”) filed parallel notices of appeal to the Commission on July 20, 2023. *See* Dkt. Nos. 120, 121. The Commission’s Rules of Practice for Adjudicative Proceedings assume a default deadline of 40 days from the date of the Initial Decision to submit opening briefs, *see* 16 C.F.R. § 1025.53, but the Commission may set a different briefing schedule based on good cause, *see* 16 C.F.R. § 1025.15. For the reasons set forth below, there is good cause to provide additional time for both Parties to brief the issues on appeal to the Commission, in accordance with the following proposed schedule:

	Default Period	Requested Period	Requested Due Date
Appeal Briefs	40 days	60 days	Sept. 8, 2023
Answering Briefs	30 days	45 days	Oct. 23, 2023
Reply Briefs	14 days	30 days	Nov. 22, 2023

This complex case involves a wide array of legal and factual issues for Commission consideration on appeal. The Initial Decision consolidates three separate orders issued by two different Presiding Officers resolving three separate rounds of summary decision briefing by the Parties. Each of those respective months-long rounds of briefing focused on discrete legal and factual issues. Several of the issues raised by Complaint Counsel’s suit are novel questions of law

with potentially-sweeping legal and regulatory policy implications not only for Amazon, but other online stores across the United States. The legal issues for final decision by the Commission involve significant questions relating to statutory and regulatory interpretation and the proper scope of the Commission's recall authority and enforcement discretion. As part of this adjudication, the Parties also have developed an extensive factual record based on the production of more than 10,000 pages of documents, dozens of hours of deposition testimony, and expert reports. The Parties stipulated to hazard issues, but litigated several discovery and expert issues related to notice and remedy before the Presiding Officer. The Commission will need to consider this extensive factual record in rendering a Final Decision, just as the Presiding Officers did for the Initial Decision and related orders.

To aid the Commission's final decision-making process and conserve agency resources, the Parties must now consolidate complex legal and factual issues decided by two different Presiding Officers in multiple decisions and orders into a single appeal. Accordingly, Amazon respectfully requests a reasonable extension of the default schedule to provide adequate time to brief these important issues in a manner most useful to the Commission.

Amazon has endeavored to accommodate Complaint Counsel's extension requests in this adjudication. In May 2022, for example, Complaint Counsel requested—and Amazon agreed to—a month-long extension of an expert discovery deadline to accommodate substitution of its anticipated rebuttal expert. Complaint Counsel agreed to a one week Amazon-requested extension of the discovery deadline to accommodate a COVID-related circumstance. Unfortunately, Complaint Counsel has declined to support Amazon's request for an extended briefing schedule. For the reasons set forth above, Amazon nonetheless requests this reasonable extension to the

appeal briefing schedule, and likewise consents to the same schedule for Complaint Counsel's parallel appeal.

Dated: July 26, 2023

Respectfully submitted,



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[PROPOSED] ORDER

This matter, having come before the Commission on Respondent-Appellant Amazon.com, Inc.'s Motion to Set Briefing Schedule dated July 26, 2023, it is hereby ORDERED that the Motion is GRANTED.

It is further ORDERED that there is good cause to set the following schedule for briefing in this matter:

September 8, 2023: Deadline for filing Appeal briefs

October 23, 2023: Deadline for filing Answering briefs

November 22, 2023: Deadline for filing Reply briefs

DATE:

BY THE COMMISSION:

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2023, a true and correct copy of the foregoing document was served by U.S. Mail, first-class and postage prepaid, on the Secretary of the U.S. Consumer Product Safety Commission and all parties and participants of record in these proceedings in the following manner:

Original and three copies by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills:

Alberta Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
(301) 504-7479
amills@cpsc.gov

One copy by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail to Complaint Counsel:

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