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 REPLY BRIEF IN SUPPORT OF ITS MOTION TO COMPEL DISCOVERY

Pursuant to 16 C.F.R. § 1025.23(c), and this Court's order dated April 19, 2022, Complaint Counsel respectfully submits its Reply Brief in Support of its Motion to Compel Discovery ("Reply"). Although Respondent's Memorandum in Opposition to Complaint Counsel's Motion to Compel Discovery ("Opposition"), filed on April 15, 2022, contained numerous factual and legal inaccuracies,[1] Complaint Counsel's Reply focuses solely on why it is entitled to the discovery requested in its Motion to Compel.

I. Respondent's Financial Status is Relevant to a Section 15 Adjudication

In its Opposition, Respondent argues that "to be relevant, the evidence must have something to do with a fact 'of consequence in determining the action,' and no issue about

[1] For example, Respondent continues to state that "CPSC approved" its homeSAFE customer outreach effort. *See, e.g.*, Opp. Br. at 2, 19. This is simply incorrect. As Complaint Counsel has noted to Respondent, the template letter provided by a former Compliance Officer states that the prior investigation was being closed "at this time" and that staff "acknowledges the corrective action measures [Respondent] has undertaken." Letter from J. Thron to J. Doyle at 1 (Jun. 19, 2014). It should go without saying that an acknowledgement is *not* an approval. Further, simply mentioning the existence of the outreach effort in a petition package that evaluated the landscape of the residential elevator industry and applicable standards does not amount to "approving terms." Opp. Br. at 2. Based on available information, CPSC has *never* approved any program of Respondent's. And the initial CPSC investigation repeatedly cited by Respondent was closed before two additional incidents occurred on Respondent's Elevators, including one child's death. Respondent's glowing commentary about its current outreach effort (Opp. Br. at 8–9) is also belied by the facts—Respondent is doing the bare minimum only, installing practically no space guards and again only reaching out to dealers and not individual consumers, despite producing an archive of more than 2.7 million pages of documents to Complaint Counsel with consumer contact information for thousands of its Elevator installations.

Respondent's finances or organization is of any consequence to any determination the CPSA calls upon the Presiding Officer to make pursuant to the statute." Opp. Br. at 15. This is incorrect. Financial status, corporate structure, and piercing the corporate veil are clearly relevant to an administrative litigation under Section 15. The Court needs adequate assurances that any remedy it orders will be able to be undertaken by Respondent, including any financial constraints. This is no different than any other type of litigation, administrative or otherwise. "Piercing the corporate veil, after all, is not itself an action; it is merely a procedural means of allowing liability on a substantive claim." *Int'l Fin. Servs. Corp. v. Chromas Techs. Canada, Inc.*, 356 F.3d 731, 736-37 (7th Cir. 2004) (concluding under Illinois law that piercing the corporate veil is an equitable remedy); *see also Bangor Punta Operations v. Bangor & A.R. Co.*, 417 U.S. 703, 713 (1974) (noting "courts of equity" decide whether to pierce the corporate veil).[2]

Absent from Respondent's Opposition is the fact that prior litigations under Section 15 have considered financial status or corporate structure to ensure that any relief ordered is properly funded to protect the public. Respondent cites the *Zen Magnets* matter, and with no support notes that "[e]ven though the years of litigation . . . could easily have depleted that small company's resources long before the issuance of a final order, there is no indication that this . . . company's finances were ever litigated before the Commission or any court." Opp. Br. at 18.

However, as Respondent has done in other filings,[3] it fails to cite and distinguish other cases that directly contradict its assertions. In another magnets matter, *In the Matter of Maxfield*

[2] *See also, e.g.*, *United States v. Andrews*, 146 F.3d 933, 940 (D.C. Cir. 1998) ("piercing the corporate veil is an equitable remedy"); *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 386 (4th Cir. 2018) (same, under Delaware law); *In re: Roth Mgmt. Corp.*, 670 F. App'x 597, 598 n.1 (9th Cir. 2016) (same, under California law); *In re Blatstein*, 192 F.3d 88, 100 (3d Cir. 1999) (same, under Pennsylvania law); *United States for use of Mgmt. & Constr. Servs., LLC v. Sayers Constr., LLC*, No. CV ELH-20-1232, 2021 WL 1516056, at *10 (D. Md. Apr. 15, 2021) (same, under Maryland law); *Sky Cable, LLC v. Coley*, No. 5:11CV00048, 2016 WL 3926492, at *11 (W.D. Va. July 18, 2016) (same, under Virginia law).

[3] *See* Complaint Counsel's Opp. To Resp't Mot. To Dismiss at 14, Dkt. No. 11 ("Respondent glaringly failed to cite another circuit court case that completely undercuts its argument.").

and Oberton Holdings, LLC, CPSC Docket No. 12-1—commenced in the *same exact year* and eventually consolidated with the *Zen Magnets* matter—financial status and corporate organization were key considerations in amending the complaint to ensure a properly funded remedy. In that matter, the Respondent named in the complaint dissolved as a corporate entity and Complaint Counsel sought to add the CEO as a responsible corporate officer.[4] The court in that matter properly granted the motion, allowing Complaint Counsel to file an amended complaint.[5]

Respondent may suggest that this matter does not involve a responsible corporate officer, but instead an argument for piercing the corporate veil. Even if that were the case, however, presiding officers in previous litigations under Section 15 have specifically ordered the production of discovery when Complaint Counsel is attempting to pierce the corporate veil. In one such litigation, *In the Matter of Chemtron Corp. f/k/a Chemtron Invest. Inc. et al.*, CPSC Docket 02-1, Complaint Counsel sought discovery to pierce the corporate veil where, as in this matter, Respondent was a subsidiary that maintained no active business operations and was "'enmeshed in a network of financial relationships with persons and entities controlled by, or otherwise related to, [a] parent.'"[6] In *Chemtron*, Complaint Counsel characterized its inquiries as exploring factual issues whether the "'corporate veil should be pierced,'" and the court noted that the "close relationship" between the companies guided its discovery determinations.[7] In that matter, the court granted the motion to compel for the corporate and financial documents. Thus,

[4] *See* Complaint Counsel's Memorandum in Support of Motion for Leave to File Second Amended Complaints in Docket Nos. 12-1 and 12-2, CPSC Docket Nos. 12-1 and 12-2 (Feb. 10, 2013) (Exhibit 1).
[5] *See* Order Granting Complaint Counsel's Motion for Leave to File Second Amended Complaints in Docket Nos. 12-1 and 12-2, CPSC Docket Nos. 12-1 and 12-2 (May 3, 2013) (Exhibit 2).
[6] ORDER on Complaint Counsel's Motions to Compel Production of Documents and Answers to Interrogatories at 2, 4, CPSC Docket No. 02-1 (July 7, 2002) (Exhibit 3).
[7] *Id.* at 2-3.

precedent under Section 15 supports inquiry into financial and corporate status and to pierce the corporate veil.

II. Respondent's Supplemental Productions after the filing of the Motion to Compel Provide Further Evidence for Granting Such Motion

Subsequent to Complaint Counsel's filing of its Motion to Compel on April 5, 2022, Respondent provided two additional supplemental productions which include documents that support granting the Motion to Compel. On April 6, Respondent provided a screenshot of its purported funding that showed [redacted] Although Respondent states that Complaint Counsel "mischaracterize[ed]" Mr. Carneiro's testimony during his deposition, *see* Opp. Br. at 30, the testimony speaks for itself; [redacted]

Further, on April 15, Respondent filed its First Supplemental Response to Complaint Counsel's Interrogatory No. 28. For the first time since this matter was commenced, Respondent admitted that its homeSAFE campaign [redacted] Respondent seems to admonish Complaint Counsel for "demanding

[8] TKAS_CPSC21-1_65382 (Exhibit 4).
[9] Carneiro Dep. 129:7-22 (Exhibit 5).
[10] *Id.* at 110:18-111:17 (Exhibit 6).
[11] Respondent's First Supplemental Response to Complaint Counsel's Interrogatory No. 28 to Respondent at 2-3 (Exhibit 7).

further details" about funding (Opp. Br. at 6); however, this new fact is conspicuously absent from its Opposition, despite representing in such Opposition—*on the same day it filed its supplemental response to Interrogatory No. 28*—that "[h]ere, by contrast, the Company[12] funded its homeSAFE Campaign . . . ." Opp. Br. at 22.

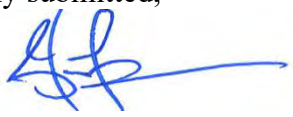
As has been the case for the entirety of this matter, continuing statements made by Respondent only serve to show that Respondent is a shell corporation, comingling funds with, and controlled by, other entities.

CONCLUSION

Based on the foregoing, Complaint Counsel respectfully requests that the Court grant Complaint Counsel's Motion to Compel Discovery.

Dated this April 20, 2022.

Respectfully submitted,



Gregory M. Reyes, Supervisory Attorney
Michael J. Rogal, Trial Attorney
Frederick C. Millett, Trial Attorney
Joseph E. Kessler, Trial Attorney
Nicholas J. Linn, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814

Complaint Counsel for
U.S. Consumer Product Safety Commission

[12] Company is defined by Respondent in its Opposition as "Respondent TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp. (hereinafter 'TKASC' or 'the Company')." Opp. Br. at 1.

EXHIBIT 1

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
MAXFIELD AND OBERTON HOLDINGS, LLC	)	CPSC DOCKET NO. 12-1
ZEN MAGNETS, LLC	)	CPSC DOCKET NO. 12-2
STAR NETWORKS USA, LLC	)	CPSC DOCKET NO. 13-2
	)	(Consolidated)
Respondents.	)	

COMPLAINT COUNSEL'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINTS IN DOCKET NOS. 12-1 AND 12-2

Complaint Counsel filed Amended Complaints against Respondent Maxfield and Oberton Holdings, LLC ("M&O") and Zen Magnets, LLC ("Zen") seeking a determination that that Respondents' products (the "Subject Products") present a substantial product hazard as that term is defined in sections 15(a)(1) and (2) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064(a)(1), (2). *See* Amended Complaints in CPSC Docket Nos. 12-1 and 12-2.

Respondent M&O has now purported to dissolve as a corporate entity, *see* Notice of Withdrawal of M&O's counsel at 1 (Dec. 27, 2012), and has not communicated with Complaint Counsel as to its status or intentions in this litigation.[2] Complaint Counsel has had limited communications with the Trustee for the Liquidating Trust that was

[2] *See also* www.getbuckyballs.com (last accessed Feb. 4, 2013) (Exhibit C) (stating that M&O stopped doing business on December 27, 2012). M&O has not provided evidence to Complaint Counsel to support its claims that it no longer exists. Further, M&O has not agreed to perform remedies that Complaint Counsel sought in the Amended Complaint, including but not limited to refunding the purchase price of the M&O Subject Products to consumers. Complaint Counsel continues to seek that relief in this proceeding.

established to wind down M&O's affairs, but she has indicated that the Trust will not appear in this litigation on M&O's behalf. *See* e-mail from Julie Beth Teicher to Complaint Counsel, with a copy to the Court (January 23, 2013, 10:38 AM) (Exhibit D). In light of this development, Complaint Counsel seeks leave to file a Second Amended Complaint against M&O to name its Chief Executive Officer ("CEO"), Craig Zucker ("Mr. Zucker"), as a Respondent, both individually and in his capacity as a responsible corporate officer.

Complaint Counsel also seeks leave to file a Second Amended Complaint against Zen to include allegations that since the filing of the Amended Complaint, Zen has been importing, distributing, and selling aggregated masses of high-powered, small rare earth magnets under the name Neoballs. The motion for amendment complies with the requirements of 16 C.F.R. § 1025.13 because the proposed Second Amended Complaints "do not unduly broaden the issues in the proceedings or cause undue delay." The Second Amended Complaints would not broaden the substantive issues in this litigation in any significant way, and any delay may not be characterized as "undue" because the amendments result directly from actions taken by Respondents after this proceeding commenced. Moreover, no discovery schedule has been set and a prehearing conference was recently scheduled for March 6, 2013.

I. Mr. Zucker is Appropriately Named as a Respondent in the Second Amended Complaint Individually and in his Capacity as CEO

Complaint Counsel moves to amend the Amended Complaint against M&O to name Mr. Zucker as a Respondent, both individually and in his capacity as CEO of

M&O, pursuant to Supreme Court precedent that permits the inclusion of an individual Respondent where, as here, the Respondent exercised personal control over the acts and practices of the corporation.

The facts in the instant case demonstrate amply that Mr. Zucker personally controlled the acts and practices of the corporation, including the importation and distribution of Buckyballs and Buckycubes, which the Second Amended Complaint alleges constitute substantial product hazards. Indeed, in Mr. Zucker's many communications with CPSC Commissioners and staff, he consistently identified himself as the CEO and principal decision maker of M&O. For example, on April 4, 2012, Mr. Zucker met personally with a CPSC Commissioner regarding the M&O Subject Products. *See* CPSC Public Calendar No. XXXIX, No. 26 at 3 (April 4, 2012) (Exhibit E). He held a subsequent meeting on April 10, 2012 with another CPSC Commissioner and then met separately that same day with CPSC staff to discuss the M&O Subject Products. *See* CPSC Public Calendar No. XXXIX, No. 27 at 2 (April 11, 2012) (Exhibit E). In addition, Mr. Zucker submitted formal information to the Commission on behalf of M&O. Specifically, on May 25, 2012, Mr. Zucker filed a report on the Subject Products in response to staff's requests for information pursuant to section 15(b) of the CPSA ("Full Report").[3] In the Full Report, Mr. Zucker identified himself as the author of the report and as the CEO of M&O. Full Report at 1 (on file with Complaint Counsel). He stated, "Craig Zucker is responsible for the development and enforcement of Maxfield

[3]Pursuant to Commission regulations at 16 C.F.R. § 1101.61(b)(1), Complaint Counsel may disclose information from the Full Report in this public filing because the Commission has issued a Complaint under sections 15(c) and (d) of the CPSA alleging that the Subject Products present a substantial product hazard.

and Oberton's compliance program." Full Report at 6.[4] Consistent with his stated responsibility for the development and enforcement of M&O's compliance program, Mr. Zucker communicated personally with CPSC compliance staff regarding CPSC actions in connection with the Subject Products. *See* e-mails from Craig Zucker to CPSC compliance officer Thomas Lee (June 19, 2012 1:58 p.m.; June 25, 2012 9:54 a.m.) (Exhibit E). Mr. Zucker also corresponded personally with other CPSC staff about CPSC actions connected to the filing of the Complaint. *See* e-mail from Craig Zucker to CPSC Spokesman Scott Wolfson (Sept. 11, 2012 1:06 p.m.) (Exhibit E) (referencing success of M&O's "Save our Balls" campaign).

In addition to his direct and repeated communications with CPSC staff and Commissioners about the very issue before this Court, Mr. Zucker also personally lobbied members of Congress and the President of the United States, again communicating on issues related directly, and solely, to the matter at issue here. *See* e-mail from Craig Zucker to staff of the U.S. Senate and U.S. House of Representatives, as well as CPSC Commissioners and CPSC staff (July 20, 2012 10:38 a.m.) (Exhibit G); open letter to President Obama, published in the *Washington Post* and other newspapers on August 2, 2012 (stating "In 2009, I started our business, creating a product called Buckyballs®") (Exhibit G).

---

[4]Mr. Zucker also submitted M&O's formal comment to CPSC's staff briefing package on the proposed Safety Standard for Magnet Sets. *See* Letter from Craig Zucker to CPSC Secretary Todd Stevenson, registered as a public comment on September 12, 2012, *available at* http://www.regulations.gov/#!documentDetail;D=CPSC-2012-0050-0023 (Exhibit F).

Similarly, in numerous interviews on television, in print, and in internet media, Mr. Zucker has responded to Complaint Counsel's allegations on behalf of M&O.[5] Those statements demonstrate that Mr. Zucker was integral to the design, manufacturing, and marketing of the M&O Subject Products, including the modifications to the design of the warnings and instructions that accompanied the products, and thus integral to the matter at issue in the current proceeding.

Indeed, M&O's own press releases identify Mr. Zucker as M&O's CEO and founder and Mr. Zucker, on numerous occasions, has presented himself as the face of Maxfield and Oberton. In "A Letter from Our CEO: The Real Story Behind Why We're Fighting," Mr. Zucker described at length and in detail M&O's interactions with CPSC staff, and concluded: "We are fighting the CPSC action because we believe they are wrong." Mr. Zucker's handwritten signature appears on the letter, and the signature block identifies him as "Co-founder, CEO, Maxfield and Oberton." *Previously available at* www.getbuckyballs.com/letter-from-ceo (last accessed October 18, 2012) (Exhibit I);[6] *see also* press release dated August 14, 2012 (*previously available at* www.getbuckyballs.com/cpsc-complaint-arbitrary-capricious-without-merit, last

---

[5] *See, e.g.*, *Power Lunch* (CNBC television broadcast Aug. 20, 2012) (http://www.youtube.com/watch?v=sjtAZNs-SCM) (Exhibit H); *Your World With Neil Cavuto* (Fox News television broadcast Aug. 3, 2012) (http://www.youtube.com/watch?v=aGjiZlkVBUA) (Exhibit H); *Nightline: Is Proposed Recall on Magnet Toys Unfair?* (ABC television broadcast Sept. 12, 2012) (video and transcript at http://abcnews.go.com/Health/proposed-recall-magnet-toys-unfair/story?id=17075289) (Exhibit H). In several other interviews, Mr. Zucker identified personally with the company's litigation goals. *See* "Andrew Martin, *For Buckyballs Toys, Child Safety is a Growing Issue*, N.Y. Times, Aug. 16, 2012, *available at* http://www.nytimes.com/2012/08/17/business/for-buckyballs-toys-child-safety-is-a-growing-issue.html?pagewanted=all&_r=0 (Exhibit H); *Buckyballs vs. The Consumer Products Safety Commission* (Reason.com internet broadcast Sept. 12, 2012) (video and transcript at http://reason.com/archives/2012/09/12/buckey-balls) (Exhibit H); *The Rush Limbaugh Show* (radio broadcast July 30, 2012) (transcript and audio at http://www.rushlimbaugh.com/daily/2012/07/30/ceo_of_buckyballs_save_our_balls) (Exhibit H).

[6] Some M&O press releases no longer appear on www.getbuckyballs.com. The press releases cited here are attached as exhibits.

accessed December 4, 2012) (Exhibit I) (also identifying Mr. Zucker as "Founder and CEO of Maxfield and Oberton").

Moreover, in unrelated litigation in Federal court, Mr. Zucker submitted a signed, sworn declaration in support of an M&O motion. *See* Declaration of Craig Zucker in support of Maxfield & Oberton Holdings, LLC's Request for Judicial Notice, *The Estate of Buckminster Fuller v. Maxfield & Oberton Holdings, LLC*, Case No. CV 12-2570 at Dkt. No. 13-1 (N.D. Cal. July 13, 2012) (Exhibit J). In the declaration, Mr. Zucker said "I am the Chief Executive Officer of Maxfield & Oberton Holdings, LLC . . . Unless otherwise stated, I have personal knowledge of the facts set forth herein and if called as a witness could competently testify thereto." Decl. at 1 (Exhibit J). Mr. Zucker attached as an exhibit "a true and correct copy of the October 24, 2011 non-exclusive license granted to [M&O] by Plaintiff." *Id.* Mr. Zucker counter-signed the Plaintiff's licensing letter on behalf of M&O. Decl. at Exhibit 2 (Exhibit J). Mr. Zucker's act of making a declaration on behalf of the company, as well as his demonstrated ability and practice of entering into a contract on behalf of M&O, constitute further evidence that he is responsible for M&O's acts and practices.

A. Mr. Zucker Is a Responsible Corporate Officer Under the Doctrine Established by the Supreme Court

The facts set forth above demonstrate that Mr. Zucker is appropriately named as a Respondent in the Second Amended Complaint in his individual capacity and as a responsible corporate officer under the relevant Supreme Court precedent established in *United States v. Dotterweich*, 320 U.S. 277 (1943) and *United States v. Park*, 421 U.S. 658 (1975).

In *Park*, the Supreme Court upheld the conviction of the president of a food distributor on charges that he committed criminal violations of the Federal Food, Drug, and Cosmetic Act ("FDCA").[7] The charge stemmed from FDA inspections that uncovered rodent-infested food stored in the company's warehouse. The defendant conceded at trial that he was responsible for providing sanitary conditions for food offered for sale to the public, but claimed that he had delegated that task to "dependable subordinates," *id.* at 664, and that the company had an organizational structure that placed different individuals in charge of the company's operation. Although he conferred with legal counsel to determine an appropriate corrective action, he made no more efforts to ensure that the remedial steps were taken or to assess whether they were effective.

To establish the defendant's culpability, the government introduced bylaws that set forth the duties of the defendant as the CEO and presented evidence that while the defendant delegated normal operating duties, including sanitation, to others, he "retained 'certain things, which are the big, broad, principles of the operation of the company,' and had the 'responsibility of seeing that they all work together.'" *Id.* at 664. The jury convicted the defendant on the grounds that he was responsible for the sanitation efforts undertaken by the company. Although the Court of Appeals reversed, the Supreme Court reinstated the District Court's judgment on the verdict on appeal.

The *Park* Court relied on the reasoning in *United States v. Dotterweich*,[8] where it upheld the criminal conviction of an individual corporate officer for violations of the

---

[7] The government filed an Information charging both the individual defendant and the company, Acme Markets, Inc. The company entered a guilty plea prior to trial. *Park*, 421 U.S. at 661; *United States v. Park*, 499 F.2d 839, 840 (4th Cir. 1974).

[8] In *Dotterweich*, the Supreme Court upheld the conviction of the president and general manager of a

FDCA on the grounds that the "offense is committed . . . by all who have ... a responsible share in the furtherance of the transaction which the statute outlaws." *Id.* at 284. The *Park* Court affirmed the *Dotterweich* rationale—that individual corporate officers can be held liable under the FDCA if their "failure to exercise the authority and supervisory responsibility reposed in them by the business organization resulted in the violation complained of." *Park*, 421 U.S. at 671. This rationale has been confirmed in subsequent cases, both in criminal and civil contexts, and has been applied to officers of limited liability companies ("LLCs").[9]

Moreover, the Court observed, the reasoning of *Dotterweich* and subsequently decided cases imposes on "individuals who execute the corporate mission" a duty not just to seek out and remedy violations, "but also, and primarily, a duty to implement measures that will insure that violations will not occur." *Park*, 421 U.S. at 672. While "[t]he requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding," the Court reasoned, " . . . they are no more stringent than the public has the right to expect of those who voluntarily assume positions of authority

---

pharmaceutical company for criminal violations of the FDCA stemming from his company's shipment of misbranded and adulterated drugs. *Dotterweich*, 320 U.S. at 278. The Court upheld the conviction of the individual defendant despite the fact that a lower court had observed that "Dotterweich had no personal connection with either shipment, but he was in general charge of the corporation's business and had given general instructions to its employees to fill orders received from physicians." *United States v. Buffalo Pharmacal Co.*, 131 F.2d 500, 501 (2d Cir. 1942).

[9] *See, e.g.*, *United States v. Ming Hong*, 242 F.3d 528 (4th Cir. 2001) (owner of a wastewater treatment facility is criminally liable for the facility's clean water violations under *Park* and *Dotterweich* even though he had no formal title as a corporate officer, because he played a substantial role in the company's operations, including inspecting the treatment apparatus on at least one occasion); *United States v. Gel-Spice Co.*, 773 F.2d 427 (2d Cir. 1985) (president is individually criminally culpable for widespread rodent infestation at storage facility, even though another employee managed the facility on a day-to-day basis); *TMJ Implants, Inc. v. Dept. of Health and Human Serv's*, 584 F.3d 1290 (10th Cir. 2009) (president of a manufacturer of joint implants is individually liable for civil penalties for corporation's failure to file medical device reports with FDA); *United States v. Osborn*, 2012 WL 1096087 at *4 (N.D. Ohio 2012) (responsible corporate officer of an LLC is personally liable for the LLC's Clean Water Act violations).

in business enterprises whose services and products affect the health and well-being of the public that supports them." *Id.*

At the heart of *Park* and *Dotterweich* lies the rationale that individual liability is properly imposed on corporate officers where the failure to comply with regulatory schemes affects the health and safety of the public. "The purposes of [the Food and Drugs Act] touch phases of the lives and health of people which, in the circumstances of modern industrialism, are largely beyond self-protection," the *Dotterweich* Court held. *Dotterweich*, 320 U.S. at 280.

B. The Responsible Corporate Officer Doctrine Applies in Product Safety Cases and Cases Where a Corporation No Longer Exists

The rationale applies equally to statutes and regulations governing the Consumer Product Safety Commission. In *United States v. Shelton Wholesale, Inc.*, 34 F. Supp. 2d 1147 (W.D. Mo. 1999), the Commission sued two corporations that imported fireworks, alleging violations of the Federal Hazardous Substances Act ("FHSA"). After learning that "defendant corporations are closely held and run entirely by Mr. Shelton," the government moved to amend the complaint to name Mr. Shelton individually as a defendant. *See* Memo. in Supp. of Mot. to Amend at 1, *Shelton*, 34 F. Supp. 2d 1147 (W.D. Mo. 1999), No. 96-cv-06131, Dkt. No. 12, filed Feb. 20, 1997 (Exhibit K). In its successful motion, the government argued that

> Joining Mr. Shelton in his individual capacity is necessary to ensure the effectiveness of any injunctive relief that might be granted against the defendant corporations. The companies are closely held and principally operated by Mr. Shelton. If Mr. Shelton is not added as a defendant in his individual capacity, he could avoid any injunction entered against the

> defendant corporations by ***dissolving the companies*** and reincorporating them under a different name.

Id. at 3 (emphasis added). The court granted the motion. *Shelton*, Dkt. No. 20 (May 20, 1997) (Order "granting motion to amend complaint by adding Gregory P. Shelton as dft") (Exhibit K).

The *Shelton* court later granted the government's motion for summary judgment that Mr. Shelton had violated the FHSA in his individual capacity, citing *Park* and *Dotterweich*:

> Here, Mr. Shelton clearly bore a responsible relation to the activity prohibited—the importation of a banned or misbranded hazardous substance. It is undisputed that he was the sole shareholder, the chief corporate officer and that he made all the decisions for the defendant corporations relevant to the allegations in this case. Accordingly, under the reasoning of *Dotterweich* and *Park*, Mr. Shelton is liable for the importation of all eighteen products by virtue of his various corporate roles. No reasonable jury could conclude otherwise.

U.S. v. Shelton Wholesale, Inc., 1999 WL 825483 at *3 (unreported).[10] The Eighth Circuit affirmed. *Shelton v. Consumer Products Safety Comm'n*, 277 F.3d 998 (Eighth Cir. 2002), *cert. denied*, 123 S.Ct. 514 (2002).

Shelton provides further support for Complaint Counsel's position that Mr. Zucker is appropriately named as a Respondent in the Second Amended Complaint by virtue of his role as the CEO of M&O. His responsibility for ensuring that the firm complied with relevant statutes and regulations, including the Consumer Product Safety Act, as demonstrated through his own statements and actions, brings him squarely within

[10] Although the court's Order on summary judgment did not encompass a finding that the violations were knowing, *id.* at *5, the court enjoined Shelton in his individual capacity from "knowingly or recklessly importing products violative of the FHSA and/or the CPSC regulations." *Id.* The Eighth Circuit affirmed. *Shelton v. Consumer Product Safety Commission*, 277 F.3d 998 (8th Cir. 2002), *cert. denied*, 123 S.Ct. 514 (2002).

the scope of individuals contemplated by *Dotterweich*, *Park*, and *Shelton*. Thus, the proposed Second Amended Complaint comports with clear precedent, bringing Mr. Zucker appropriately before this Court.

The purported dissolution of M&O does not preclude an action against Mr. Zucker individually. Case law establishes that even if a person ceases to be a corporate officer after the violations have occurred, the individual can still be held responsible for the corporation's previous acts. In *United States v. Hodges X-Ray, Inc.*, 759 F.2d 557 (6th Cir. 1985), the Sixth Circuit held that the principal shareholder of an x-ray company was individually liable under *Park* and *Dotterweich* for violations of the Radiation Control for Health and Safety Act of 1968, even though the company's assets had been sold prior to the assessment of a civil penalty. The court specifically noted that the corporation no longer existed, but nonetheless held Mr. Hodges individually liable. *Id.* at 558 n.1 (stating that the defendant corporation is defunct). As in *Hodges,* Mr. Zucker should be held responsible for previous acts and practices of M&O regardless of M&O's purported dissolution.

Barrett Carpet Mills, Inc. v. CPSC, 635 F.2d 299 (4th Cir. 1980) does not compel a contrary conclusion. In that case, a court upheld a cease and desist order issued by the Commission against a company but refused to apply the order to the corporation's individual officer because, the court reasoned, "the violation complained of was inadvertent and not likely to recur . . . ." *Id.* at 304. In *Barrett*, the corporation's subcontractor had improperly applied fire-retardant chemicals to carpets during two production days during a sixteen-month period, which the court held was insufficient to

hold the president of the company responsible for the regulatory violations by the company. The court emphasized that the violations were "operational accidents which are not likely to occur, certainly not intentionally." *Id.*

The facts in the instant proceeding could not be more different from those in *Barrett*—M&O imported and distributed the M&O Subject Products intentionally and on a full time basis, and Mr. Zucker fully controlled M&O's day to day operations in importing and distributing the Subject Products. There was nothing inadvertent, rare, or unintentional in the sale and distribution by Mr. Zucker of the Subject Products at issue here. Mr. Zucker stands squarely within the definition of a responsible corporate officer set out in *Park* and *Dotterweich* and is therefore appropriately named as a Respondent in the Second Amended Complaint.

II. The Filing of the Second Amended Complaint Against Zen Is Appropriate In Order to Include All Subject Products Sold by the Company

The proposed Second Amended Complaint against Zen alleges that Zen recently began selling aggregated masses of small, high-powered magnets under the brand name "Neoballs." According to Zen's website, "Neoballs is a trademark of Zen Magnets LLC." *See* www.neoballs.com (last accessed Feb. 6, 2013) (Exhibit L). Upon information and belief, Neoballs are substantively identical, in both their physical properties and in the hazard presented, to other aggregated masses of small, high-powered magnets sold by Zen.

The Neoballs website purports to sell magnets individually instead of in sets, an ill-disguised attempt to circumvent the definition of the Subject Products as aggregated

masses of high-powered, small rare earth magnets. A message on the Neoballs website states, "Due to CPSC requests, we are selling the magnets individually. However, shipping is a flat rate no matter how many neoballs you purchase, whether you buy 216, or 21,600 magnet spheres." *See* http://neoballs.com/purchase-neoballs/# (last accessed February 6, 2013) (Exhibit L). CPSC staff has never requested that Zen sell magnets individually. A pop-up balloon over the words "CPSC requests" states "The CPSC is attempting to ban 'Aggregates of powerful magnets', and have requested all magnet sphere brands to stop selling. However, you can still purchase as many neoballs as you would like." *Id.* (screen shot of pop-up balloon included at Exhibit L). However, despite its stated intent to offer the magnets on an individual basis, the site, through various promotions, overtly encourages visitors to purchase the balls in aggregate. Neoballs fall squarely within the definition of the Subject Products set forth in the Complaint, notwithstanding the company's efforts to reclassify the product through a transparent sales strategy. The Amended Complaint seeks merely to ensure that any remedies that are applied to Respondent's Zen Magnets product line are also applied to Neoballs.

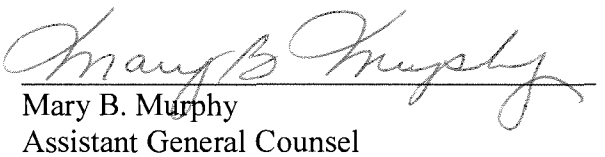
The addition of Neoballs, as well as the inclusion of some supplemental information from the Neoballs and Zen websites, are the only substantive amendments to the Second Amended Complaint against Zen. The amendment would not unduly broaden the issues because Neoballs are substantively identical to the Zen Subject Products that are already the subject of this proceeding. *See In re Wy. Tight Sands Antitrust Cases*, 121 F.R.D. 682, 685 (D. Kan. 1986) (granting plaintiff's motion to amend on the grounds that "the additional claims stem from the same basic transactions and factual allegations in

[plaintiff's] original complaint."). Similarly, the amendment would not unduly delay these proceedings because any delay may be attributed to Zen's decision to resume sale of Neoballs. Moreover, no discovery schedule has been set and a prehearing conference was recently scheduled for March 6, 2013. *See id.* at 684-85 (granting amendment when "only the first wave of discovery has been completed and the amendment to the complaint will not unduly delay the progress of said discovery"). Therefore amendment is proper under 16 C.F.R. §1025.13.

III. Conclusion

Wherefore, for the foregoing reasons, Complaint Counsel respectfully requests that the Presiding Officer permit Complaint Counsel to file the attached Second Amended Complaints and List and Summary of Documentary Evidence.

Respectfully submitted,



Mary B. Murphy
Assistant General Counsel
Division of Compliance
Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Jennifer Argabright, Trial Attorney
Richa Shyam Dasgupta, Trial Attorney
Leah Wade, Trial Attorney

Complaint Counsel
Division of Compliance

Office of the General Counsel
U.S. Consumer Product Safety Commission
Bethesda, MD 20814

EXHIBIT 2

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	**CPSC Docket No: 12-1**
	)	**CPSC Docket No: 12-2**
	)	**CPSC Docket No: 13-2**
MAXFIELD AND OBERTON HOLDINGS, LLC	)	
AND	)	**HON. DEAN C. METRY**
ZEN MAGNETS, LLC	)	
AND	)	
STAR NETWORKS USA, LLC	)	
	)	
	)	
Respondents.	)	
	)	

ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINTS IN DOCKET NOS. 12-1 AND 12-2

Summary

Counsel for the Consumer Product Safety Commission ("CPSC" or "Commission") seeks to amend two of three Complaints filed in the instant proceeding. Specifically, it seeks to add Craig Zucker as Respondent for Docket Number 12-1, and add a new product line of magnets for Docket Number 12-2.

Procedural Background

On February 11, 2013, CPSC filed Complaint Counsel's Motion for Leave to File Second Amended Complaints in Docket Nos. 12-1 and 12-2 ("Motion"). Complaint Counsel sought to add Craig Zucker as a Respondent in Docket No. 12-1, both in his individual capacity and as Chief Executive Officer. In Docket No. 12-2, Complaint Counsel sought to amend the Complaint against Zen Magnets, LLC to include a new product line of magnets sold under the name "Neoballs."

On February 20, 2013, Craig Zucker filed a Request to Participate in the Proceeding as Non-Party Participant and For Leave to File an Opposition to Complaint Counsel's Motion ("Request"). On February 25, 2013, the undersigned granted the Request, permitting Mr. Zucker to respond to the Motion without submitting to the jurisdiction of the court. Thereafter, on February 28, 2013, Craig Zucker filed his Opposition to Motion for Leave to Amend Complaint in CPSC Docket 12-1.

On March 1, 2013, CPSC filed Complaint Counsel's Motion for Leave to File a Reply to Mr. Zucker's Opposition to Complaint Counsel's Motion for Leave to Amend Complaint in CPSC Docket 12-1 ("Motion for Leave"). On March 4, 2013, the undersigned granted the Motion for Leave. On March 15, 2013, the Commission filed a Reply.

Subsequently, on March 20, 2013, Craig Zucker filed a Motion for Leave to file Surreply in Opposition to Complaint Counsel's Motion for Leave to Amend Complaint in CPSC Docket 12-1 ("Surreply Motion"). The undersigned issued an Order allowing Mr. Zucker to file his Surreply on April 2, 2013.

Discussion

1. The Amended Complaint in 12-1

a. CPSC's Position

Complaint Counsel explains that counsel for Respondent Maxfield and Oberton Holdings, LLC ("Maxfield") withdrew from the proceeding in December 2012, asserting Maxfield filed a Certificate of Dissolution on December 27, 2012.[1] Complaint Counsel

[1] The trustee for the liquidating trust has apparently indicated the trust will not partake in the instant litigation on behalf of Maxfield.

argues that, pursuant to the responsible corporate officer doctrine[2], it should now be permitted to add Craig Zucker as a Respondent, both in his capacity as CEO of Maxfield, and in his individual capacity.

Complaint Counsel argues Mr. Zucker "personally controlled the acts and practices of the corporation, including the importation and distribution of Buckyballs and Buckycubes, which the Second Amended Complaint alleges constitute substantial product hazards." The Commission further suggests that Mr. Zucker "...was integral to the design, manufacturing, and marketing of the [Maxfield] Subject Products, including the modifications to the design of the warnings and instructions that accompanied the products, and thus integral to the matter at issue in the current proceeding."

Citing United States v. Dotterweich, 320 U.S. 277 (1943) and United States v. Park, 421 U.S. 658 (1975), CPSC argues Mr. Zucker may be named in both his individual capacity and as a responsible corporate officer. CPSC suggests "[a]t the heart of Park and Dotterweich lies the rationale that individual liability is properly imposed on corporate officers where the failure to comply with regulatory schemes affects the health and safety of the public."

CPSC argues the rationale of Park and Dotterweich applies to the statutes and regulations governing the Consumer Product Safety Commission.[3] Further, Mr. Zucker's responsibility for ensuring compliance with relevant statutes and regulations, as

---

[2] The doctrine presents an alternate theory of liability wherein a corporate officer may be held liable if he or she has a responsible share in the furtherance of an illegal transaction. United States v. Park, 421 U.S. 658, 670 (1975). As discussed herein, the responsible corporate officer doctrine is distinct from "piercing the corporate veil." Comm'r, Dept. of Envtl. Mgmt v. RLG, Inc., 755 N.E.2d 556, 563 (Ind. 2001) (citing United States v. Dotterweich, 320 U.S. 277, 282 (1943)).

[3] In support of this position, Complaint Counsel also cites a 1976 CPSC Initial Decision wherein the Presiding Officer applied the reasoning of Dotterweich and Park.

evidenced by his own statements and actions, renders the responsible corporate officer doctrine applicable to the instant case.

The Commission further suggests that Maxfield's dissolution does not preclude an action against Mr. Zucker individually, suggesting that case law establishes that even if an individual ceases to be a corporate officer, said individual may still be held responsible for a corporation's previous acts.

CPSC further argues Section 15 of the Consumer Product Safety Act (CPSA) "provides for broad individual liability." 15 U.S.C. § 2052. 1 U.S.C. § 1. Contrary to Mr. Zucker's assertions, Sections 21 and 19 of the CPSA, which address criminal penalties and who may be liable for committing a prohibited act, respectively, are entirely consistent with Section 15.

b. Craig Zucker's Position

Mr. Zucker contends he should not be named as Respondent in the instant proceeding. Mr. Zucker asserts, inter alia, that Section 15 of the Consumer Product Safety Act does not authorize the Commission "to issue such an order against an individual officer or director of a corporation that manufactures consumer products." Mr. Zucker further suggests "bedrock principles of corporate law make clear that corporate officers such as Mr. Zucker are not liable for the company's obligations, even if the company has dissolved."

Specifically, Mr. Zucker argues the CPSA is "very clear in specifying the entities against whom an order requiring public notice and a product refund...may be issue[d]," and Mr. Zucker does not fit any of these categories. 15 U.S.C. § 2064(c)-(d). Mr. Zucker suggests that overall statutory construction of the CPSA does not support his inclusion as

Respondent in the instant proceeding; unlike other health and safety statutes, the CPSA does not provide for individual officer or director responsibility.

Mr. Zucker further suggests that Park and Dotterweich are inapplicable in the instant case because they are "extraordinary exceptions" to established corporate law principles that an officer, director, or shareholder of a corporation is not responsible for the debts and obligations of a corporation. Mr. Zucker proffers that "limited individual liability for the obligations of a corporation is a hallmark of corporate law in the United States," asserting this principle of law should apply with full force to Maxfield, a company formed under Delaware's Limited Liability Company Act and now lawfully dissolved.

Mr. Zucker contends CPSC "...has cited no authority for what would be an unwarranted expansion of the Park line of cases to civil cases seeking to compel specific remedial actions by an individual formerly employed by a corporation against which such an order could issue." In support of this assertion, Mr. Zucker cites a litany of cases, including United States v. USX Corp., 68 F.3d 811 (3d Cir. 1995), suggesting case law demonstrates unsuccessful government attempts to "impose civil liability against an individual for actions taken by his corporate employer."

Further, in a recent case, Meyer v. Holley, 537 U.S. 280 (2003), the Supreme Court interpreted Park, Dotterweich, and their progeny to stand for the proposition that liability for regulatory violations may be imposed on corporate officers only when Congress has specifically indicated so. In the instant case, Congress has "...evinced no intent to authorize the CPSC to require [individuals such as Mr. Zucker] to conduct recalls."

Next, Mr. Zucker suggests his inclusion as Respondent in the instant proceeding will cause undue delay, noting that this issue "has never been litigated by the CPSC in the context of this statute, and the issue will introduce substantial controversy about the extent to which the CPSC can assert jurisdiction under Section 15 of the CPSA…". Further, CPSC's Amended Complaint will broaden and greatly complicate the proceeding, effectively doubling the number of issues; namely, CPSA will have to prove Mr. Zucker "took various actions relevant to this case," and that these actions render him liable under the CPSA.

Last, Mr. Zucker suggests that any amendment to the Complaint would be both futile and highly prejudicial to Mr. Zucker "…because this Court lacks jurisdiction over him and because he would suffer reputational harm if subjected to these proceedings."

c. Discussion as to the Amended Complaint in 12-1

i. Broaden the Issues or Cause Undue Delay

Pursuant to 16 C.F.R. § 1025.13, "Amendments and supplemental pleadings", the undersigned "…may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceedings or cause undue delay."

Mr. Zucker suggests "[t]he notion that an individual might be held responsible for the actions of a company for which he previously worked represents a very controversial proposition that will introduce undue delay into-and raises the potential to overwhelm-these proceedings."[4]

[4] Mr. Zucker nonetheless concedes that "[t]he overriding issues before this Court are whether certain products identified in the original Complaint present a substantial product hazard within the meaning of the Consumer Product Safety Act, and whether a remedial order for specific relief should be issued to the manufacturer of those products."

CPSC argues that the ultimate issue on which the undersigned must render a determination is whether the subject magnets present a substantial product hazard within the meaning of the Consumer Product Safety Act, and, if so what relief should be granted. The CPSC's position is reasonable. Fed. R. Civ. P. 15(a)(2) ("...a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."). See United States v. Shelton Wholesale, Inc. 34 F.Supp.2d 1147, 1155 (W.D. Mo. 1999) (explaining the CPSC is entitled to a substantial degree of deference in interpreting their regulations and implementing their objectives). See also Tcherepnin v. Knight, 389 U.S. 332, 336 (1967) (explaining remedial statutes and regulations should be construed liberally).

The inclusion of Mr. Zucker as a respondent in the instant proceeding does not unduly broaden the ultimate issue; rather, Mr. Zucker's inclusion or exclusion as a respondent is a threshold issue the undersigned must determine prior to the hearing, and, indeed, prior to the commencement of the discovery process. Whether CPSC's Motion is granted or denied, the underlying legal issue remains unchanged.

ii. The Language of the CPSA

Section 15 of the CPSA, under which the Commission seeks to require public notification and remedial action, is directed at manufacturers, distributors, and retailers. 15 U.S.C. § 2064(b). Title 15 U.S.C. § 2052 defines these three relevant terms as follows:

> The term 'manufacturer' means any person who manufactures or imports a consumer product.
> 15 U.S.C. § 2052(a)(11).
>
> The term 'distributor' means a person to whom a consumer product is delivered or sold for purposes of distribution in

> commerce, except that such term does not include a manufacturer or retailer of such product.
> 15 U.S.C. § 2052(a)(8).
>
> The term 'retailer' means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.
> 15 U.S.C. § 2052(a)(13).

Mr. Zucker essentially argues that although Section 15 is applicable to a "person", he nonetheless does not fall under the purview of the statute because he did not personally manufacture, import, deliver, or sell the subject magnets. Citing 1 U.S.C. § 1, he suggests, because the CPSA does not indicate otherwise, "person", necessarily includes "corporations, companies, associations, firms..." in addition to individuals. Because the definition of "person" includes corporate entities, Maxfield must therefore constitute the "person" for purposes of the instant proceeding, not Mr. Zucker.[5] Thus, per Mr. Zucker's interpretation of the CPSA, an individual could be held liable only when said individual "...conducted business without forming a corporation or partnership."

In United States v. Hodges X-Ray, Inc., 759 F.2d 557 (6th Cir. 1985), the Sixth Circuit examined whether the Radiation Control for Health and Safety Act of 1968 (RCHSA) permitted individual liability for corporate violations. Id. at 560. RCHSA rendered it unlawful for any "manufacturer" to engage in certain actions. Id. The president and major shareholder in Hodges X-Ray similarly argued he could not be held

[5] Citing 15 U.S.C. § 2070, Mr. Zucker also argues that "Congress explicitly provided for individual director, officer and agent liability in a different provision of the CPSA- namely Section 21(b)." Thus, Mr. Zucker suggests that when Congress intended for a CPSA provision to apply to corporate officers, it explicitly stated so. However, Section 21 ("Criminal penalties") enumerates criminal penalties that may result from a knowing or willful violation of 15 U.S.C. § 2068 (Section 19 of the CPSA). Thus, the underlying purpose of Section 21 is to explain the applicable penalties, not to list potentially liable parties. 15 U.S.C. § 2068(a). See also United States v. Hodges X-Ray, Inc., 759 F.2d 557, 560 (6th Cir. 1985).

individually liable for statutory violations because he, as an individual, was not a "manufacturer."[6] Id.

In finding the president/major shareholder civilly liable, the Sixth Circuit noted the statute defined "manufacturer" as "any person engaged in the business of manufacturing, assembling, or importing of electronic products." Id. Thus, the court reasoned it was "self-evident" that the president of the corporation could constitute a "manufacturer." Id. Based on relevant case law, the court concluded that, so long as the president had a "responsible relationship to the acts of a corporation that violate health and safety statutes," the president's individual civil liability was appropriate. Id. at 561.

As such, a linguistic dissection of the statutory construction of the CPSA does not answer the threshold question of whether Mr. Zucker can be named as Respondent in the instant proceeding.[7] While, as Mr. Zucker suggests, "person" for purposes of the CPSA can undoubtedly refer to a corporation, as explained by the Sixth Circuit in Hodges X-Ray, if a corporate officer has a "responsible relationship" to certain types of corporate transgressions, the individual may supplant the corporation as the "person" by virtue of the responsible corporate officer doctrine. Id.

---

[6] The relevant portions of the statute read as follows: "§ 263j. Prohibited acts (a) It shall be unlawful— (1) for any manufacturer to introduce, or to deliver for introduction, into commerce, or to import into the United States, any electronic product which does not comply with an applicable standard prescribed pursuant to section 263j of this title; ...
(5) for any person (A) to fail to issue a certification as required by section 263(h) of this title, or (B) to issue such a certification when such certification is not based upon a test or testing program meeting the requirements of section 263f(h) of this title or when the issue, in the exercise of due care, would have reason to know that such certification is false or misleading in a material respect." Hodges X-Ray, Inc., 759 F.2d at 560.

[7] Furthermore, CPSC statutes and regulations "...were enacted to protect the public's health and safety. Statues and regulations protecting the public health and safety are to be construed liberally." United States v. Shelton Wholesale, Inc. 34 F.Supp.2d 1147, 1155 (W.D. Mo. 1999) (explaining the court should give deference to "CPSC's chosen methods and procedures.").

Thus, the issue presently before the undersigned is whether, by virtue of his alleged actions and the nature of the statute, Mr. Zucker may be held individually responsible for the alleged CPSA transgressions. The statutory language does not answer this question; instead, the undersigned must examine the applicable case law.

iii. Dotterweich and Park

In Dotterweich, the president and general manager of a pharmaceutical company was charged with violating the Federal Food, Drug, and Cosmetic Act. Dotterweich, 320 U.S. at 278. In determining whether he could be held individually accountable for company transgressions, including the misbranding and adulteration of drugs, the Court opined the statute at issue was "...an exertion by Congress of its power to keep impure and adulterated foods and drugs out of the channels of commerce," noting the subject legislation touched "phases of the lives and health of people which, in the circumstances of modern industrialism, are largely beyond self-protection." Id. at 280. The Court explained:

> [b]alancing relative hardships, Congress has preferred to place [responsibility] upon those who have at least the opportunity of informing themselves of the existence of conditions imposed for the protection of consumers before sharing in illicit commerce, rather than to throw the hazard on the innocent public who are wholly helpless. Id. at 285.

With regards to the question of who precisely should share the liability, the Court explained:

> [i]t would be too treacherous to define or even to indicate by way of illustration the class of employees which stands in such a responsible relation. To attempt a formula embracing the variety of conduct whereby persons may responsibly contribute in furthering a transaction forbidden by an Act of Congress, to wit, to send illicit goods across state lines, would be mischievous futility. In such matters

> the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted...[f]or present purpose it suffices to say that in what the defense characterized as 'a very fair charge' the District Court properly left the question of the responsibility of Dotterweich for the shipment to the jury, and there was sufficient evidence to support its verdict. Id. at 285.

While, to a certain degree, Dotterweich left the determination of responsibility to prosecutorial and judicial discretion, the decision made clear this discretion was not unfettered. The Court specifically explained that corporate officer liability is limited to officers with "a responsible share in the furtherance of the transaction which the statute outlaws." Id. at 284.

Notably, in Dotterweich, the statute at issue prescribed that "any person" who violated a particular provision would be guilty of a misdemeanor. Id. at 287. The statute defined person to include "an individual, partnership, corporation and association," but made no specific reference to any of the corporate officers, and the Court specifically noted there was "...no evidence...of any personal guilt on the part of the respondent." Id. at 285-87.

Approximately thirty years later, the Supreme Court revisited the responsible corporate officer doctrine in Park. In Park, the president of Acme Markets, Inc., a large national food chain, was similarly charged with violations of the Federal Food, Drug, and Cosmetic Act. Park 421 U.S. at 660-61. The Court specifically noted that the issue before it was "whether 'the manager of a corporation, as well as the corporation itself, may be prosecuted under the Federal Food, Drug, and Cosmetic Act of 1938 for the introduction of misbranded and adulterated articles into interstate commerce." Id. at 667.

In finding the president responsible for corporate transgressions, the Court quoted extensively from the Dotterweich decision. See Id. at 668-69. The Court explained Dotterweich, "looked to the purposes of the Act and noted that they 'touch phases of the lives and health of the people which, in the circumstances of modern industrialism, are largely beyond self-protection,'" reemphasizing that "'the only way...a corporation can act is through the individuals who act on its behalf.'" Id. at 668 (quoting Dotterweich, 320 U.S. at 280-81).

The Court noted Dotterweich found individual liability in the absence of consciousness of wrongdoing, ultimately concluding that the question of responsibility depends "'on the evidence produced at the trial...'". Id. at 669 (quoting Dotterweich, 320 U.S. at 280-81). Thus, Dotterweich and its progeny provide "...sanctions which reach and touch the individuals who execute the corporate mission." Id. at 672. While these requirements are undoubtedly demanding, "...they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them." Id.

As in Dotterweich, the Court specifically articulated that "...the charge [of the alleged violations] did not permit the jury to find guilt solely on the basis of respondent's position in the corporation; rather, it fairly advised the jury that to find guilt it must find respondent 'had a reasonable relation to the situation,' and 'by virtue of his position...had...authority and responsibility' to deal with the situation." Id. at 674. See also United States v. Ming Hong, 242 F.3d 528, 531 (4th Cir. 2001) ("[t]he gravamen of liability as a responsible corporate officer is not one's corporate title or lack thereof;

rather, the pertinent question is whether the defendant bore such a relationship to the corporation that it is appropriate to hold him criminally liable for failing to prevent the charged violations...".).[8]

iv. Relevant Case Law

In cases subsequent to Dotterweich and Park, courts have continued to apply the responsible corporate officer doctrine to statutes involving public health, safety, and welfare. See United States v. Osborne, 2012 WL 4483823 (N.D. Ohio 2012) (denying a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) on the grounds that an individual defendant could be found civilly liable for violations of the Clean Water Act (CWA). In so finding, the court specifically noted the CWA was a "public welfare statute."). See also United States v. Gel Spice Co., 773 F.2d 427 (2d Cir. 1985) (upholding a company president's individual liability for violations of the Federal Food, Drug, and Cosmetic Act).[9]

In United States v. USX Corp., 68 F.3d 811 (3d Cir. 1995), a case relied upon by Mr. Zucker, the Third Circuit determined the standard of liability for principal shareholders and officers of a closely held company under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Id. at 820-21. Although Congress did not directly address the issue in the statute itself, the court

[8] Dottereich and Park dealt with criminal liability; however, the responsible corporate officer doctrine extends to civil liability. City of Newburgh v. Sarna, 690 F.Supp.2d 136, 160-61 (S.D.N.Y. 2010) ("[t]he fact that a corporate officer could be subjected to criminal punishment upon a showing of a responsible relationship to the acts of a corporation that violate health and safety statutes renders civil liability appropriate as well.") (citing United States v. Hodges X-Ray, Inc., 759 F.2d 557, 561 (6th Cir. 1985) (emphasis in original)).

[9] Additionally, in Hodges X-Ray, discussed supra, the Sixth Circuit determined the RCHSA constituted a public welfare statute. Hodges X-Ray, 759 F.2d at 559. In simplified terms, the RCHSA helped control the general public's exposure to radiation. Id. at 562.

reasoned that, as written, the statute "...does not immunize officers and directors who personally participate in liability-creating conflict." Id. at 824.

The court explained, for liability against an individual "...there must be a showing that the person sought to be held liable actually participated in the liability-creating conduct." Id. at 825. Thus, the court concluded liability could be imposed in situations where "...the officer is aware of the acceptance of materials for transport and of his company's substantial participation in the selection of the disposal facility."[10] Id. at 825.

Thus, USX Corp., cited by Mr. Zucker, seemingly supports the Commission's argument. Here, CPSC has alleged Mr. Zucker was responsible for ensuring Maxfield's compliance with applicable statutes and regulations. CPSC has further alleged Mr. Zucker personally controlled the acts and practices of Maxfield, including the importation of Buckyballs and Buckycubes. The Commission did not allege that by virtue of his corporate position Mr. Zucker was automatically liable; on the contrary, CPSC specifically alleged that he assumed responsibility. See Dotterweich, 320 U.S. at 674.

Notably, some of the cases cited by Mr. Zucker do not relate to public health or safety. For instance, Mr. Zucker relies heavily on Meyer v. Holly, 537 U.S. 280 (2003) for the proposition that liability for regulatory violations may be imposed against individuals "only where Congress has specified that such was its intent." Meyer, 537 U.S. at 287.

However, Meyer dealt with discrimination under the Fair Housing Act, a statute unrelated to public health, safety, or welfare. Id. at 282. Additionally, the Court's

[10] Thus, USX Corp. is consistent with Park, wherein the Court explained a corporate officer is not automatically liable by virtue of his corporate position. Park, 421 U.S. at 674.

discussion and reasoning hinged on the principle of vicarious liability, not the responsible corporate officer doctrine. See Id. at 283. Last, Mr. Zucker references no subsequent cases reflective of his interpretation of Meyer.

The CPSA, like the statute at issue in Dotterweich and Park, relates to the public's health and safety. United States v. Shelton Wholesale, Inc., 34 F.Supp.2d 1147, 1155 (W.D. Mo.1999) ("...the statues and regulations interpreted by the CPSC were enacted to protect the public's health and safety"). 15 U.S.C. § 2051(b)(1) (explaining one purpose of the CPSA is "to protect the public against unreasonable risks of injury associated with consumer products"). Accordingly, the rationale in Dotterweich and Park is both legally relevant and persuasive.

v. "Extraordinary Exceptions"

In his various filings, Mr. Zucker suggests that Dotterweich and Park are "extraordinary exceptions" to bedrock corporate law principles. However, a review of relevant case law suggests the responsible corporate officer doctrine has been applied throughout the federal circuits, especially in the context of public health, safety, and welfare statutes. See United States v. USX Corp., 68 F.3d 811 (3d Cir. 1995) (the Comprehensive Environmental Response, Compensation and Liability Act); United States v. Ming Hong, 242 F.3d 528 (4th Cir. 2001) (the Clean Water Act); United States v. Jorgensen, 144 F.3d 550 (8th Cir. 1998) (the Federal Meat Inspection Act); United States v. Iverson, 162 F.3d 1015 (9th Cir. 1998) (the Clean Water Act); United States v. Cattle King Packing Co. Inc., 793 F.2d 232 (10th Cir. 1986) (the Federal Meat Inspection Act); United States v. Hodges X-Ray, Inc., 759 F.2d 557 (6th Cir. 1985) (the Radiation

Control for Health and Safety Act of 1968); United States v. Poulin, 926 F.Supp. 246 (D. Mass. 1996) (the Comprehensive Drug Abuse Prevention and Control Act of 1970).

At times, the doctrine transcends what would typically be categorized as health, safety, or welfare statutes. For example, in United States v. Rachal, 473 F.2d 1338 (5th Cir. 1973), the Fifth Circuit found corporate officers individually liable for violations of the Securities Act of 1933. Id. at 1340. In Rachal, the defendants argued they should not be individually liable for securities violations, suggesting that "person" as used in the Act referred to a corporate body and not a natural person. Id. at 1341.

In rejecting defendants' contentions, the Fifth Circuit noted a similar argument had been presented and dismissed in Dotterweich. Id. at 1341. The court opined that reading the statute as suggested by defendants would construe the Securities Act with a narrow and illusory scope. Id. at 1341-42. Accordingly, the court upheld defendants' convictions for securities fraud, mail fraud, and the sale of unregistered securities pursuant to the responsible corporate officer doctrine. Id. at 1340.

The doctrine has been similarly applied to other federal statutes outside the realm of public safety. See United States v. Gulf Oil Corp., 408 F.Supp. 450 (W.D.Pa. 1975) (denying the motion of corporate president to dismiss indictments against him individually for failure of a company to pay competitors entitlements under the Federal Energy Administration program); United States v. Freed, 189 Fed. Appx. 888 (11th Cir. 2006) (upholding an individual's conviction for misdemeanor offenses in violation of Forest Service regulations).[11]

[11] Although by no means controlling for purposes of the instant proceeding, in 1991, the Iowa Supreme Court upheld shareholder liability for consumer fraud under Iowa's consumer fraud statute. State ex. rel. Miller v. Santa Rosa Sales and Mktg., Inc., 475 N.W. 2d 210 (Iowa 1991). In dismissing the shareholder's claim that the trial court should have applied the more stringent "piercing the corporate veil" analysis, the

vi. Sufficiency of the Complaint

The undersigned has not yet determined whether some, or any, sanction is warranted in the matter. At this stage in the proceeding, the undersigned need only determine whether, based on the allegations as set forth in the Complaint, Mr. Zucker is a proper respondent.

The Complaint states its basis in "Section 15 of the Consumer Product Safety Act ("CPSC"), as amended, 15 U.S.C. § 2064", a public health statute. United States v. Shelton Wholesale, Inc., 34 F.Supp.2d 1147, 1155 (W.D. Mo 1999). Additionally, the Complaint alleges, inter alia, that Mr. Zucker "is responsible for ensuring Maxfield's compliance with the CPSA...". Thus, the undersigned finds the allegations sufficient such that Mr. Zucker is a proper party to the proceeding. See United States v. MacDonald & Watson Waste Oil Co., 933 F.2d 35, 52-53 (1st Cir. 1991) (mere allegations that a defendant is a responsible corporate officer is insufficient to satisfy the knowledge requirement under the Resource Conservation and Recovery Act).

If, at the conclusion of the Commission's case, Mr. Zucker feels as though CPSC has failed to demonstrate that his responsibility or actions were significant enough to render him liable under the CPSA, nothing precludes Mr. Zucker from presenting a legal argument regarding the same at that juncture. However, based on the controlling legal precedent discussed above, and the allegations set forth in the Amended Complaint, the undersigned finds Mr. Zucker may properly be included as a respondent in the instant proceeding.

---

court reasoned the shareholder's liability "...arose from [the shareholder's] complete control...and his over personal acts in perpetrating consumer fraud." Id. at 220 (citing United States v. Cattle King Packing Co., 793 F.2d 232, 240 (10th Cir. 1986)).

The undersigned is not unaware, and would be remiss not to note, that at the start of the instant litigation there existed a responsible corporation in Maxfield. However, for reasons unknown, the corporation apparently opted to dissolve after the CPSC filed its Complaint. Thus, this is not a case of individual and corporate liability, but rather a case of individual liability in the face of a voluntary corporate dissolution after said corporation has been charged with introducing hazardous products into the stream of commerce.[12]

2. The Amended Complaint in 12-2

CPSC also sought to amend the Complaint against Respondent Zen Magnets, LLC (Docket Number 12-2) to include a new line of magnets sold under the brand name Neoballs. The Commission suggested Neoballs are substantively identical to the high-powered, small rare earth magnets referenced in the October 15, 2012 Amended Complaint. CPSC argued that while Zen Magnets, LLC purports to sell Neoballs individually, Respondent "overtly encourages [customers] to purchase the balls in aggregate."

Pursuant to 16 C.F.R. § 1025.13, the undersigned may allow amendments which do not unduly broaden the issues in the proceeding, or cause undue delay. Zen Magnets, LLC did not respond to CPSC's Motion to Leave to File Second Amended Complaint.

[12] See Bufco Corp. v. NLRB, 147 F.3d 964, 969 (C.A.D.C. 1998) (explaining the federal common law test for piercing the corporate veil is (1) whether the shareholder and the corporation have maintained separate identities and (2) whether adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations). Here, the undersigned is not unmindful the CPSC has indirectly alleged the latter prong; namely, that Maxfield's voluntary dissolution allows it to evade potential remedial action. Notably, "[t]he responsible corporate officer doctrine is distinct from piercing the corporate veil, and explicitly expands liability beyond veil piercing." Comm'r, Dept. of Envtl. Mgmt. v. RLG, Inc., 755 N.E.2d 556, 563 (Ind. 2001) (citing United States v. Dotterweich, 320 U.S. 277, 282 (1943)). See also Kelley v. Thomas Solvent Co., 727 F.Supp. 1532, 1544 (W.D. Mich. 1989).

Finding that the Second Amended Complaint for Docket Number 12-2 does not unduly broaden the issues and will not cause undue delay, and in the absence of any objection by Zen Magnets, LLC, the undersigned hereby grants CPSC's Motion as to the Second Amended Complaint for Docket Number 12-2. See 16 C.F.R. § 1025.13

WHEREFORE,

IT IS HEREBY ORDERED THAT Complaint Counsel's Motion for Leave to File Second Amended Complaints in Docket Nos. 12-1 and 12-2 is **GRANTED.** Respondents shall file Answers to the Amended Complaints within twenty (20) days in accordance with 16 C.F.R. § 1025.12. Thereafter, the undersigned will schedule a pre-hearing conference call so that the matter may proceed.

SO ORDERED.

Done and dated this 3rd day of May, 2013, at
Galveston, TX

DEAN C. METRY
Administrative Law Judge

EXHIBIT 3

Sgl a

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

July 10, 2002

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

FACSIMILE AND REGULAR MAIL
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, Maryland 20814

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Ms. Hammond:

Enclosed is my Order, which was also sent via facsimile to you this date. Please transmit this Order via facsimile to all parties.

Sincerely,

William B. Moran

William B. Moran
United States Administrative Law Judge

Enclosure

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
Chemetron Corporation,	)	
f/k/a Chemetron Investments, Inc.	)	
	)	CPSC Docket No. : 02-1
Chemetron Investments, Inc.,	)	
f/k/a Chemetron Corporation	)	
	)	
Sunbeam Corporation	)	
	)	
Sprinkler Corporation of Milwaukee, Inc.,	)	
f/k/a Star Sprinkler Corporation, f/k/a	)	
Grunau Sprinkler Manufacturing Company, Inc.	)	
	)	
and	)	
	)	
Grucon Corporation	)	

ORDER on Complaint Counsel's Motions to Compel Production of Documents and Answers to Interrogatories

I. Complaint Counsel's Motion to Compel Production of Documents[1] by Respondents Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation

Complaint Counsel has filed a motion to compel Respondents Sprinkler Corporation of Milwaukee, Inc. ("SCM") and Grucon Corporation ("Grucon") to provide "full and complete

[1]In response to the Motion, Sprinkler Corporation of Milwaukee and Grucon Corporation, Inc. filed a Brief in Opposition. The same document also addressed Complaint Counsel's Motion to Compel Interrogatory Answers. Along with the Brief in Opposition, Sprinkler and Grucon filed an unopposed Motion for leave to combine their responses together with a request to permit filing a late response to the motions. The motion to combine and file a late response is GRANTED. Thereafter, Complaint Counsel filed a Motion for Leave to File a Reply Brief, pursuant to 16 C.F.R. § 1025.23(c), which Motion was accompanied by the substantive Reply. The section referred to provides that no reply is permitted, unless allowed by the Court. In this instance the Court has decided to grant the motion for a reply brief and consequently it accepts and considers the Reply Brief. However the parties are advised that henceforth only the motion seeking permission to file a reply will be allowed. No Brief in Support is to be submitted until after such a motion is granted.

responses to [its] Second Set of Requests for Production of Documents."

Complaint Counsel also seeks an order directing respondents to provide a privilege log (or an equivalent description) where privileges to withhold documents have been asserted. Last, Complaint Counsel objects to respondent's refusal to produce documents responsive to Document Request No. 1. This request involves the production of "documents evidencing or otherwise supporting certain of the allegations [Grucon] raised ... in *Grucon Corp. v. Consumer Product Safety Commission*, Civ. Action No. 01-C-0157." In that action Grucon sought, but was denied, a declaratory judgment that it and SCM were distinct corporations. Complaint Counsel seeks the documents relied upon by Grucon in support of that claim.

In its twenty-two page Brief in Opposition, after relating background and general information in the first eleven pages, Grucon and SCM point out that discovery may not descend into a mere fishing expedition, nor may it be over broad or unduly burdensome when compared with relevance of the requested information. However, Grucon admits that SCM is its "defunct subsidiary" and does not take issue with Complaint Counsel's assertion that Grucon is a private holding company which owns a number of family-run businesses, nor with the assertion that SCM is "enmeshed in a network of financial relationships with persons and entities controlled by, or otherwise related to [Grucon]." The admitted close relationship between Grucon and SCM guides the Court's discovery determinations here.

Respondents also assert that requiring them to answer Request number 1, which relates to its earlier Complaint for Declaratory Relief against the CPSC, would turn the burden of proof on its head.[2] They further maintain that answering Request number 1 would be responsive, at a minimum, to Request numbers 2 - 8, 10, 14 -15, 21 -24, 28, 32 -40, 43, 45, 50, 56.[3]

The Court agrees that the standard under 16 C.F.R. § 1025.33, Production of documents and things, is to "produce and permit ... to inspect and copy ... designated documents ... or ... things ... which are in the possession, custody, or control of the party upon whom the request is served ..."[4] Thus, the proposition that production is limited to documents that are "reasonably available" is rejected. Although Grucon and SCM have objected generally to questions as overbroad and unduly burdensome, they relate that still have responded with nearly 10,000 pages

---

[2]Respondents have confused the burden of proof with discovery. It is true that the burden of proof rests and remains with Complaint Counsel. However to suggest that one cannot gather information in support of meeting that burden through discovery is incorrect.

[3]This does not create an additional burden. Where a previous answer provides a *complete* and direct response to a subsequent question, the party responding to the discovery may simply direct the discoverer to that earlier answer.

[4]Such requests must be within the Commission's statutory authority, relevant, and not privileged. *See* 16 C.F.R § 1025.31(c).

of materials and that their discovery efforts are continuing and would be supplemented for those documents "reasonably available." This strikes the Court as evidencing some vacillation or at least selectivity in its stance in response to the motions to compel. While discovery may not be a fishing expedition, it appears that Grucon and SCM have, by virtue of the 10,000 pages it has willingly produced, effectively selected certain fishing spots for Complaint Counsel while keeping other locations off-limits.

In an area of apparent agreement, Grucon and SCM agree to provide Complaint Counsel with a privilege log, describing those documents being withheld under a claim of privilege. The Court presumes that Grucon and SCM already have begun the process of preparing such a log in anticipation of the Court's Order. Consequently, they are directed to provide the privilege log to Complaint Counsel within ten days of this Order.

Upon consideration of the Motion to Compel production of documents by SCM and Grucon, the Court orders that those Respondents produce, within 14 days of this Order, all documents in their possession, custody or control that are responsive to Complaint Counsel's Second Request for Production of Documents, *except* for Request Nos. 11, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 45, 46, 47 and 48. *Except further* that to the extent those (just enumerated) excepted responses would be included in responding to Request No. 1, they *shall* be answered. Further, Request Nos. 16, 17, and 18 are limited in their approval to the enumerated filings in those requests (i.e. No.16 (a) through (h) and No.17 (a) and (b).

II. Complaint Counsel's Motion to Compel Interrogatory Answers[5] by Respondents Sprinkler Corp. of Milwaukee, Inc. and Grucon Corporation

In seeking "full and complete responses" to its second set of interrogatories, Complaint Counsel characterizes its questions as "largely explor[ing] factual issues relevant to [its] claim that SCM's corporate veil should be pierced." As with its Motion for document production, Complaint Counsel notes the earlier federal district court action filed by Grucon against the Commission, and requests that there be a full response to Interrogatories 1 through 14.

Complaint Counsel also requests that respondents be directed to specify the particular documents from which answers to certain listed interrogatories may be determined, either by Bates number or some other detailed description to accomplish the purpose of readily locating

[5]As noted at footnote No.1, Sprinkler and Grucon's Brief in Opposition was combined with its response to the motion to compel production of documents.

the documents.[6] A third grouping of questions,[7] relating to SCM's financial and business relationships with Grucon, Grucon subsidiaries and immediate family members of officers, directors and shareholders, is based on the fact that Grucon is a private holding company which owns a number of family run businesses. Given this, Complaint Counsel contends that such inquiries are proper where SCM is "enmeshed in a network of financial relationships with persons and entities controlled by, or otherwise related to, that parent." In support of its contention that such discovery is appropriate to explore whether the financial dealings between these various entities were arm's-length arrangements, Complaint Counsel notes that SCM admitted that it leased office space from a trust, which members, it believes, were also members of SCM's Board of Directors and that intercorporate transfers occurred between SCM and other Grucon-controlled entities.

Last, Complaint Counsel requests that respondents be compelled to provide a full and complete answer to interrogatory No. 25 and No. 66. The former, inquires about the extent of consultation that occurred between Grucon and SCM regarding SCM personnel issues.

As with its objections to the document discovery requests, Respondents object generally that the requests are over broad and would upend the burden of proof.[8] As set forth at footnote 3, the Court has rejected the contention that answering interrogatories Nos. 1 - 14, relating to Respondents Complaint for Declaratory Relief, would reverse the burden of proof. However, Respondents also contend that those questions would be responsive to interrogatories Nos. 15 - 18, 25, 31-32, 36, 42 -44, 50 -51, 68 -73 and 76.[9]

Consistent with the foregoing directions of the Court regarding the Motion to Compel Interrogatory Answers by these Respondents, the Court GRANTS the Motion and ORDERS that Respondents SCM and Grucon, within 14 days of this Order, produce full and complete answers to Complaint Counsel's Second Set of Interrogatories *except* that Interrogatory numbers 23, 24,

---

[6]In particular Complaint Counsel seeks specification of such documents for SCM Interrogatories 15 through 22, 30, 32 through 37, 39 through 41, 49, 50, 53, 54, 56, 57, 61, 63, 64, 68, 69, 70 & 74 and Grucon Interrogatories 23, 24, & 32.

[7]These questions are identified as Interrogatories 26, 28, 29, 30, 32 through 35, 45, 47, 48, 53, and 66.

[8]In its opposition, Grucon and SCM agrees to provide more specific identification where it cited to documents in lieu of answers, if the Court so directs. The Court does so. **Grucon and SCM are directed to identify, by Bates number, the records responsive to particular interrogatories.**

[9]See footnote No. 3.

27, 42, 43, and 45 need not be answered.

Because of the delay in the Court's ruling on these motions, it has decided to extend the August 9, 2002 date for the close of discovery on this matter hjto August 23rd. This extension applies only to the subject of these Motions to Compel regarding SCM and Grucon.

So Ordered.

William B. Moran
William B. Moran
United States Administrative Law Judge

Dated: July 7, 2002

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2002, I served the attached **Order** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Karyn A. Temple, Esquire
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael J.Gidding, Esquire
Mark Porter, Esquire
Alan H. Schoem, Esquire
Eric L.Stone, Esquire
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Room 613
Bethesda, Maryland 20814

Michael A. Brown, Esquire
Margaret A.Freeston, Esquire
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom, LLP
Four Times Square
New York, NY 10037

Ralph A. Weber, Esquire
Michael T. Flynn, Esquire
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Mr. Todd Stevenson, Secretary
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, MD 20814

Nelida Torres
Legal Staff Assistant

Dated: July 10, 2002
Washington, D.C.

EXHIBIT 4

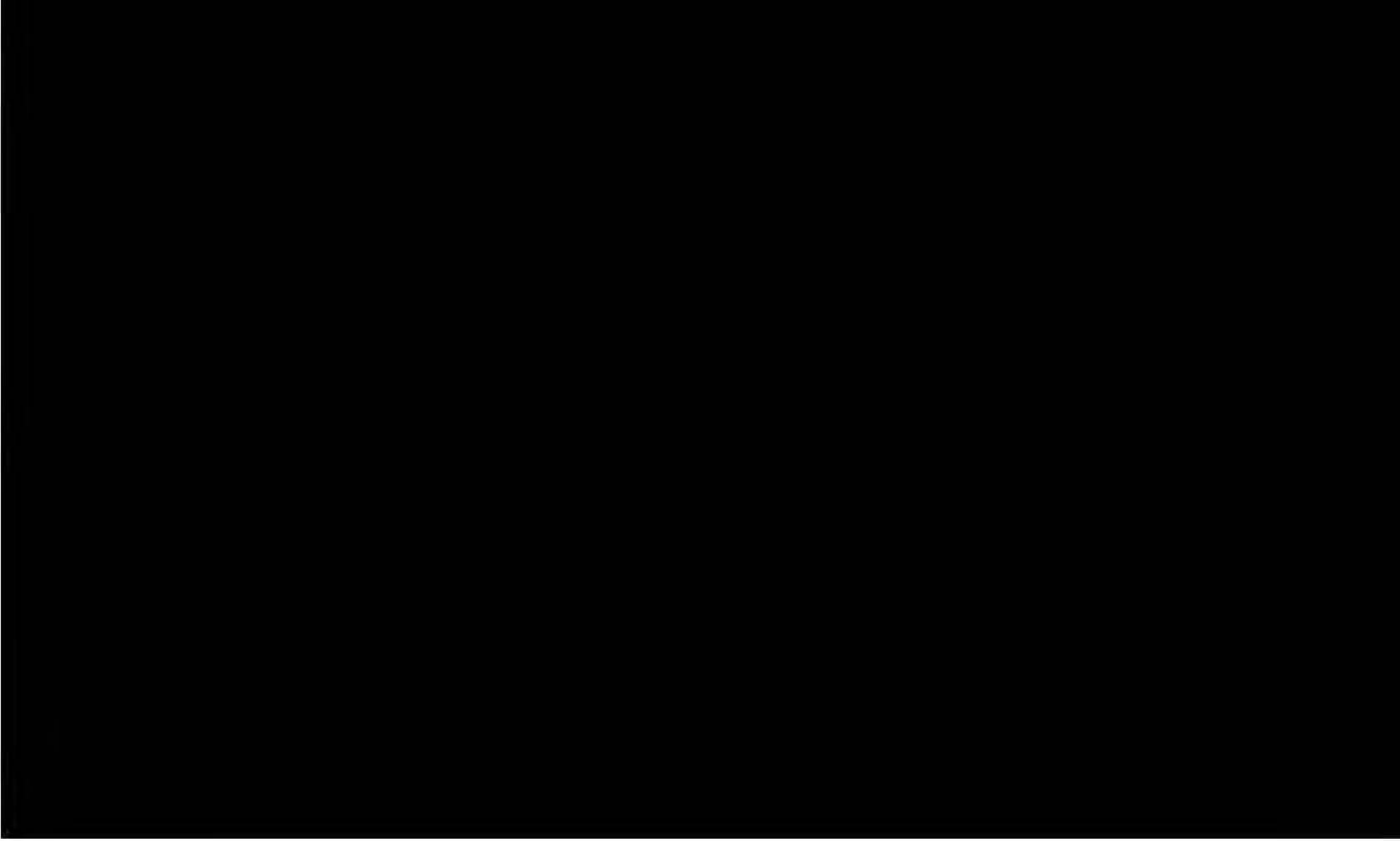


EXHIBIT 5

EXHIBIT 6

EXHIBIT 7

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2022, I served Complaint Counsel's Reply Brief in Support of its Motion to Compel Discovery as follows:

By email to the Secretary:

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

By email to the Presiding Officer:

Hon. Mary F. Withum, Administrative Law Judge
c/o Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

By email to Counsel for Respondent:

Sheila A. Millar
Steven Michael Gentine
Eric P. Gotting
Taylor D. Johnson
Anushka N. Rahman
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001

Email: millar@khlaw.com
gentine@khlaw.com
gotting@khlaw.com
johnsont@khlaw.com
rahman@khlaw.com

Michael J. Garnier
Garnier & Garnier, P.C.
2579 John Milton Drive
Suite 200
Herndon, VA 20171

Email: mjgarnier@garnierlaw.com

Meredith M. Causey
Quattlebaum, Grooms & Tull PLLC
111 Center Street
Suite 1900
Little Rock, AR 72201

Email: mcausey@qgtlaw.com

Gregory M. Reyes
Complaint Counsel for
U.S. Consumer Product Safety Commission