

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
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)	
)	
LEACHCO, INC.)	CPSC DOCKET NO. 22-1
)	
)	Hon. Michael G. Young
)	Presiding Officer
Respondent.)	
)	

LEACHCO, INC.’S OBJECTIONS TO NOTICES OF DEPOSITION

Pursuant to 16 C.F.R. § 1025.35, Respondent Leachco, Inc. (“Leachco”) hereby objects to Complaint Counsel’s five Notices of Deposition, and in support states:

1. On August 4, 2022, Complaint Counsel served Leachco with five deposition notices for Leachco owners Clyde Leach (President/Chief Executive Officer) and Jamie Leach (Vice President/Chief of Product Development), as well as officer Alex Leach (Chief of Operations/Chief Marketing Strategist), Mabry Ballard (Executive Assistant to the Vice President/Customer Service Supervisor), and Tonya Barrett (Office Manager/New Accounts/Compliance Coordinator) (“the Deposition Notices”). *See* Attached Exhibit A.

2. Complaint Counsel unilaterally noticed the deposition dates without first consulting with Leachco’s counsel or even discussing the possibility of initiating depositions. The Deposition Notices were a complete surprise.

3. The parties have been corresponding regularly about written discovery disputes and not once did Complaint Counsel suggest depositions should commence or request availability for counsel or their clients or officers. Complaint Counsel completely ignored the

usual courtesies of working cooperatively in discovery and the Presiding Officer's directive to do so.

4. Pursuant to 16 C.F.R. §§ 1025.35(a) & (b), leave of the Presiding Officer is required before a party may take depositions or serve written notice of depositions. At the April 22, 2022 Prehearing Conference in this matter, the parties agreed to Complaint Counsel's proposal that the parties proceed "without obtaining leave of this Court for noticing depositions for the first ten depositions requested by each party *unless there is an objection.*" See Dkt. No. 13, Joint Initial Proposed Prehearing Schedules and Statement on Prehearing Conference Matters at 5 (emphasis added).¹

5. This proposal could fairly be understood to mean the parties would agree upon the deponents as well as the logistics of the depositions such as mutually convenient dates. It is nullified by objections. Counsel for Leachco advised Complaint Counsel that it had objections to the notices, both substantive and procedural, since counsel have multiple conflicts for the dates unilaterally noticed. As such, counsel for Leachco drafted a proposed Joint Stipulation to allow the parties to discuss the notices to attempt to reach agreement. Complaint Counsel rejected that proposal.²

6. Inasmuch as Leachco's counsel has objected to the depositions, 16 C.F.R. §§ 1025.35 (a) & (b) require Complaint Counsel to seek leave in order to take depositions.

7. Leachco objects to the Deposition Notices on the following additional grounds:³

¹ The docket reflects no order has been entered officially adopting this proposal, though the Presiding Officer indicated his intent to enter certain of the parties' proposals.

² Complaint counsel would only agree to a 2-day extension of the notice period for the limited purpose of scheduling adjusting the dates the depositions within 2 weeks of the noticed dates, rejecting any discussion of the substantive objections.

³ Leachco may have other objections to these depositions if proper notices are served and leave is granted.

A. Complaint Counsel has not provided any information regarding the specific topics upon which it intends to question Leachco, instead merely stating in each notice that the deposition is noticed “concerning all matters related to CPSC Docket No. 22-1, as well as all matters related to the Complaint, the Answer, and any responses by Respondent Leachco, Inc. to any of Complaint Counsel’s Discovery Requests.” *See* Ex. A. This violates 16 C.F.R. § 1025.35(b)(iii), which requires a deposition notice to include “[t]he subject matter of the expected testimony.” The Deposition Notices do not provide the information required by 16 C.F.R. § 1025.35(b)(iii), and are a continuation of the litigation by ambush approach taken in this matter by Complaint Counsel.

B. Depositions of these witnesses are premature because Complaint Counsel has failed to provide even the basic information sought in discovery about the case against Leachco. Complaint Counsel has objected to all of Leachco’s 38 interrogatories and all but one of Leachco’s 51 requests for production, and raises broad sweeping privilege objections to the majority of those requests. Despite that fact, and that Complaint Counsel’s May 13, 2022 responses promise to provide the required privilege log, nearly 3 months later no log has been provided nor any identification of the number or nature of the documents withheld. Leachco has engaged in numerous efforts to convince Complaint Counsel to provide even some of the information withheld and redacted, but to no avail. Leachco cannot begin to evaluate or address the claims of privilege, nor address this case against it, without adequate and appropriate disclosure. Leachco will be forced to file a motion to compel. Depositions should not commence under these circumstances because it would be an abuse of the process.

C. These depositions will be duplicative and, as such, unnecessary and harassing. First, they are each noticed for the same overbroad and non-specified topics, as discussed above, second, Complaint counsel already possesses deposition transcripts of four of these five witnesses, such that its scattershot approach to sending notices is overbroad, unnecessary, and burdensome. Third, not all of these persons are involved in the issue of whether there is a defect in the product because misuse can lead to suffocation. Clyde Leach, for example, has had nearly no involvement with the Podster, yet no offer has been made as to why each of these persons has been noticed. This is a small family company that relies on the efforts of each of the persons noticed in order to maintain the business. Noticing all of these people over a short period of time without any information about the scope or nature of the material sought, as required by the regulations, is oppressive and harassing.

D. Complaint Counsel has requested multiple depositions of high-level Leachco executives—including Leachco’s President/CEO (Clyde Leach), Leachco’s Vice President/Chief of Product Development (Jamie Leach), and Leachco’s Chief of Operations/Chief Marketing Strategist (Alex Leach)—who may be entitled to a protective order, and for whom there is a high potential for abuse and harassment with depositions of the type sought by Complaint Counsel.

WHEREFORE, for the foregoing reasons, Leachco respectfully requests that the Presiding Officer issue an order sustaining Leachco’s objections to Complaint Counsel’s deposition notices pursuant to 16 C.F.R. §§ 1025.35 and striking the deposition notices in their entirety.

Dated: August 11, 2022

/s/ Bettina J. Strauss

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2022, a true and correct copy of the foregoing Joint Motion for Extension of Time was served by e-mail on the following:

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