

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

In the Matter of

ZEN MAGNETS, LLC

Respondent.

CPSC Docket No: 12-2

HON. DEAN C. METRY

**ORDER GRANTING IN PART AND DENYING IN PART
THE PARTIES' STIPULATED MOTION**

On September 19, 2014, Respondent's Counsel and Complaint Counsel submitted a stipulated motion seeking to modify the undersigned's July 18, 2014 Memorandum and Order of Pre-Hearing Conference and Amended Scheduling Order. Specifically, the parties request the undersigned order the following:

1. Extend the September 26, 2014 deadline to file any motions limiting witnesses, particularly to avoid duplicative witnesses to October 20, 2014.
2. Extend the October 3, 2014 deadline for filing any pre-hearing briefs and motions *in-limine* to November 10, 2014.
3. Modify the Rules to allow lay witnesses to appear remotely via video conference.
4. Modify 16 C.F.R. § 1025.44(b) to allow direct examination of experts at the hearing in lieu of filing written direct testimony.

For the reasons set forth below, the undersigned grants this motion in part and denies this motion in part.

Concerning the parties' first request, the hearing is scheduled to commence on December 1, 2014; extending the deadline to file motions limiting witnesses to October 20, 2014 will not cause any delay to the proceedings. Therefore, the parties' first request is **GRANTED**.

The parties' second request seeks extensions for both pre-hearing briefs and motions *in-limine*. The undersigned's July 18, 2014 Amended Scheduling Order, which the parties' instant motion purports to modify, does not specifically mention motions *in-limine*. Further, motions *in-limine* are not specifically mentioned in the regulations regarding the Rules of Practice for Adjudicative Proceedings. The undersigned's July 18 Amended Scheduling Order provided a due date for "all motions"; however, the parties' instant motion did not seek to modify that date. Moreover, filing motions such as motions *in-limine* approximately three (3) weeks prior to the hearing date with accompanying response time gives the undersigned insufficient time to issue decisions for the same. In light of the foregoing, the parties' request to extend the date for filing pre-hearing briefs is **GRANTED**. The parties' request to file motions *in-limine* by November 10, 2014 is **DENIED**. For the purposes of remaining uniform with the July 18, 2014 Amended Scheduling Order, the undersigned will *sua sponte* extend the deadline to file all motions, including motions for summary decision, to October 20, 2014.

Concerning the parties' third request for lay witness testimony via video conference, the hearing will be held at the Commission's hearing room. Therefore, the undersigned does not have control over the available technology at the hearing site. To the extent the technology is available, the parties' request for lay witnesses to testify via video conference is **GRANTED**. However, if video conference is not available, lay witnesses will be expected to testify in person.

The parties' final request states "counsel request that the Court modify 16 C.F.R. § 1025.44(b) to allow the parties to conduct direct examination of experts at the hearing

in lieu of filing written direct testimony which would then be amplified by live testimony.” See Stipulated Motion, dated September 19, 2014 at ¶ 9. While 16 C.F.R. § 1025.44(b) allows departure from this regulation, the undersigned finds no compelling reason to do so. The regulations exist in their current form for a reason. The clearest purpose of 16 C.F.R. § 1025.44(b) is to make the hearing as expeditious as possible by eliminating hours, if not days, of expert direct testimony from the in-person hearing. Submission of the written direct expert testimony will allow the parties to eliminate objections and will also aid the parties by clearly setting forth expert qualifications and the basis and application of principles and methods, thereby preserving judicial economy. Although the parties “submit that such examination would be more efficient and will allow the Court to better evaluate the experts’ testimony,” the undersigned disagrees. The undersigned will have ample opportunity to evaluate the experts’ written direct testimony and cross, re-direct, and re-cross are all preserved for the hearing.

The parties’ request to conduct direct examination of expert witnesses at the hearing in lieu of filing written direct testimony in accordance with 16 C.F.R. § 1025.44(b) is **DENIED**.

The undersigned further notes that while the parties’ motion seems to presume the written direct testimony “would then be amplified by live testimony”; amplification of written testimony is not a foregone conclusion. The regulations require a showing of “good cause” to amplify written expert testimony.

SO ORDERED.

Done and dated this 26th day of September 2014, at
Galveston, TX



DEAN C. METRY
Administrative Law Judge