

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of	)	
	)	
ZEN MAGNETS, LLC,	)	CPSC DOCKET NO. 12-2
	)	
	)	Hon. Dean C. Metry
	)	Administrative Law Judge
	)	
	)	
Respondent.	)	

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**STIPULATED MOTION TO MODIFY THE JULY 18, 2014 PRE-HEARING  
SCHEDULING ORDER AND CERTAIN RULES OF PRACTICE  
FOR ADJUDICATIVE PROCEEDINGS**

David C. Japha, of the Law Offices of David C. Japha, P.C., on behalf of the Respondent, and Complaint Counsel respectfully request that the Presiding Officer modify the Memorandum and Order of Pre-Hearing Conference and Amended Scheduling Order entered on July 18, 2014, and modify certain Rules of Practice for Adjudicative Proceedings found at 16 C.F.R. §1025.1, et. seq., as requested below, and as grounds therefor state:

1. The hearing in this matter is set to commence on December 1, 2014, in the hearing room of the Consumer Product Safety Commission.
2. On July 18, 2014, the Presiding Officer, Dean C. Metry, issued a pre-hearing Order setting Friday, September 26, 2014, as the final day on which to file any motions related to the limit of witnesses, particularly to avoid duplicative witnesses.

3. In addition, the pre-hearing Order stated that all motions, including those for summary disposition, are to be filed by September 26, 2014, and all pre-hearing briefs are to be served on or before Friday, October 3, 2014.

4. 16 C.F.R. § 1025.1, gives the Presiding Officer broad discretion to alter time limits and other procedural aspects depending on the complexity of a matter.

5. Given the nature of this case, counsel for the parties believe that certain modifications are in order and have discussed various aspects of the Pre-Hearing Order and modifications to the Rules of Practice for Adjudicative Proceedings 16 C.F.R. § 1025 et. seq. Based on those discussions, counsel respectfully make the specific requests set forth below.

6. Counsel request that the deadline of September 26, 2014, for filing any motions limiting witnesses, particularly to avoid duplicative witnesses, be extended to October 20, 2014. Complaint Counsel and Respondent request this extension in order to discuss their witness and exhibit lists and resolve issues without motions. Responses to motions, if any, would be due on October 30, 2014 pursuant to 16 C.F.R. § 1025.23(c).

7. Counsel also request that the deadline for filing any pre-hearing briefs and motions *in limine* be extended from October 3, 2014, to November 10, 2014. This will allow counsel sufficient time to complete any briefing on motions to limit witnesses, if necessary, as well as motions for summary decision and responses thereto and will enable counsel to agree to and submit a jointly proposed final prehearing order as contemplated by 16 C.F.R. § 1025.21(e) prior to the hearing.

8. Counsel also request that the Court modify the Rules regarding the conduct of the hearing to allow lay witnesses to appear remotely via video conference.

This accommodation will reduce travel costs for out-of-town witnesses and will facilitate an orderly and efficient schedule for the hearing. This accommodation will also allow the parties to comply with 16 C.F.R. § 1025.41(b), which states that “hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties....”

9. Finally, 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. Counsel submit that such examination would be more efficient and will allow the Court to better evaluate the experts’ testimony.

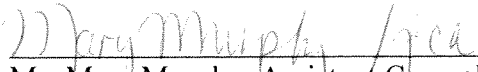
10. There appears to be no prejudice to either party and there will be no need to delay the hearing in this matter if these requests are granted.


WHEREFORE, Complaint Counsel and counsel for Respondent respectfully request that the Presiding Officer enter an amended prehearing scheduling order and a modified hearing order to:

- Allow the filing of motions limiting witnesses by October 20, 2014;
- Allow pre-hearing briefs and motions *in limine* to be filed by November 10, 2014;
- Allow lay witnesses to appear remotely via video; and
- Modify the requirements of 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.

DATED THIS 19<sup>th</sup> day of September, 2014

Respectfully submitted,

  
Ms. Mary Murphy, Assistant General Counsel  
Ms. Jennifer Argabright, Trial Attorney  
Mr. Ray Aragon, Trial Attorney Counsel  
Mr. Daniel Vice, Trial Attorney  
Complaint Counsel  
Division of Compliance  
Office of the General Counsel  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814

  
THE LAW OFFICES OF DAVID C. JAPHA, P.C.  
DAVID C. JAPHA, Colorado Bar #14434  
Attorney for Respondent Zen Magnets

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_____	)	

**PROPOSED ORDER**

This matter having come before this court on a Stipulated Motion to Modify the July 18, 2014 Pre-Hearing Scheduling Order and Certain Rules of Practice for Adjudicative Proceedings, the Motion is hereby GRANTED,

And it is further ORDERED that:

Any motions related to the limit of witnesses, particularly to avoid duplicative witnesses, shall be served no later than October 20, 2014.

All pre-hearing briefs and motions *in limine* shall be served on or before November 10, 2014.

Lay witnesses may appear at the hearing in this matter remotely via video.

The procedure relating to expert witness direct testimony at 16 C.F.R. § 1025.44(b) is modified such that expert witnesses may appear in person to testify, and the parties need not file pre-hearing written direct testimony.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Dean C. Metry  
Presiding Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2014, I served the foregoing Stipulated Motion to Modify the July 18, 2014 Pre-Hearing Scheduling Order and Certain Rules of Practice for Adjudicative Proceedings upon the Secretary, the Presiding Officer, and all parties and participants of record in these proceedings in the following manner:

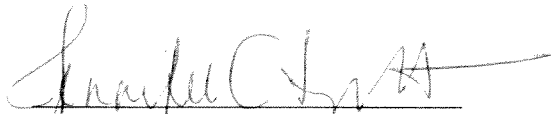
Original and three copies by hand delivery to the Secretary of the U.S. Consumer Product Safety Commission: Todd A. Stevenson.

One copy by electronic mail to the Presiding Officer:

The Honorable Dean C. Metry  
U.S. Coast Guard  
U.S. Courthouse  
601 25th St., Suite 508A Galveston, TX 77550  
Janice.M.Emig@uscg.mil

One copy by electronic mail to counsel for Respondent:

David C. Japha  
The Law Offices of David C. Japha, P.C.  
950 S. Cherry Street, Suite 912  
Denver, CO 80246  
davidjapha@japhalaw.com

A handwritten signature in black ink, appearing to read "Janice M. Emig", written over a horizontal line.

Complaint Counsel for  
U.S. Consumer Product Safety Commission