

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the matter of:)
)
MAXFIELD AND OBERTON)
HOLDINGS, LLC)
and)
ZEN MAGNETS, LLC)
) CPSC DOCKET NOS. 12-1
) & 12-2 (Consolidated)
)
Respondents.)
_____)

)
)
In the matter of)
)
STAR NETWORKS USA, LLC)
) CPSC DOCKET NO. 13-2
)
Respondent.) HON. PARLEN L. MCKENNA
_____)

STAR NETWORKS USA, LLC'S
RESPONSE TO MOTION TO CONSOLIDATE

Star Networks USA, LLC, the respondent in matter 13-2 (hereafter "Star"), through counsel, and pursuant to the Acting Chief Administrative Judge's December 28, 2012 Order, mailed on December 29, 2012, hereby objects to Complaint Counsel's Motion to Consolidate Proceedings and as grounds therefor states:

1. Complaint Counsel has moved to consolidate Docket 12-1 and Docket 12-2 with this matter and have the matters heard before this Court pursuant to Commission Regulations at 16 C.F.R. Part 1025.19 on the alleged grounds that the proceedings "involve similar issues" that can be resolved more consistently and efficiently in consolidated proceedings than in separate proceedings.

2. Star disagrees with Complaint Counsel and vehemently opposes consolidation of these matters.

3. The factual issues between 12-1 (Buckyballs) and 13-2 (Star) are not similar.

4. Specifically, the packaging of the products is completely different and the potential for danger to Zen Magnets and Star on the one is significantly less than that for Buckyballs, the alleged offending product in 12-1, on the other hand.

5. There are physical differences in the magnets. The Magnets sold by Star have much higher precision than those sold by Buckyballs, and Star has worked hard to gain the reputation of having magnets that have greater precision.

6. There are significant marketing and distribution differences between Star and Zen Magnets on the one hand and those sold by Maxfiled and Oberton Holdings, LLC, on the other hand.

7. The magnets sold by Star have never been sold as toys on shelves, nor have

they ever been referred to as any sort of toy.

8. Magnets sold by Star are only available online, and must be sought out by an adult buyer with a credit card or paypal account. There is no possibility for an underage person to purchase the magnets sold by Star without adult supervision or permission.

9. There is no record of any injury to any purchaser of magnets sold by Star.

10. As a result, in this matter, the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and available judicial resources are definitely overborne by the specific risk of prejudice to Star. There is most certainly confusion of the issues by allowing Complaint Counsel to present the same evidence and witnesses for all of the products at issue here. *Arnold v. Eastern Airlines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982).

11. Star recognizes that this Court has broad discretion in this matter. However, the facts of the two cases do not support Complaint Counsel's request for the reasons set forth above. Contrary to Complaint Counsel's allegations, the magnets distributed by the marketing of the magnets by Star is substantially different than the magnets distributed by and the marketing of Maxfield and Oberton Holdings, LLC. In such a case, consolidation would not be warranted. *See, In re: Consolidated Parlodel Litigation*, 182 F.R.D. 441, 447 (D.N.J. 1998)(District Court denied Motion

to Consolidate fourteen cases finding that considerations of judicial economy where claims involved differing issues and stating that “the benefits of efficiency cannot be purchased at the cost of fairness,” citing *Malcolm v. National Gypsum Co.*, 995 F.2d 346, 350 (2d Cir.1993)). Here, the circumstances of the distribution and marketing of the magnets in question by each of the respondents in the two cases sought to be consolidated is distinct and should not be considered together in the same proceeding.

WHEREFORE, Star Networks USA, LLC objects to Complaint Counsel’s Motion to Consolidate filed in 12-1, 12-2 and 13-2.

Date January 8, 2013

Respectfully Submitted,

THE LAW OFFICES OF DAVID C. JAPHA, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer on the following via email on this 8th day of January, 2013:

Mr. Todd Stevenson, via email to: tstephenson@scsc.gov
an original + 3 copies via US Mail to: The Secretariat – office of the Secretary
Consumer Product Safety Commission

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The Honorable Parlen L. McKenna
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