

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the matter of
MAXFIELD AND OBERTON HOLDINGS, LLC
ZEN MAGNETS, LLC
STAR NETWORKS USA, LLC

CPSC DOCKET NO. 12-1
CPSC DOCKET NO. 12-2
CPSC DOCKET NO. 13-2
(CONSOLIDATED)

Respondents.

**MEMORANDUM IN SUPPORT OF RESPONDENT ZEN MAGNETS, LLC'S AND
STAR NETWORKS USA, LLC'S APPLICATION FOR LEAVE TO TAKE
DEPOSITIONS**

Respondents Zen Magnets, LLC and Star Networks USA, LLC, through counsel and pursuant to 16 C.F.R. §1025.35(a), request from the Honorable Presiding Officer leave to take depositions upon oral examination in defense of Complaint Counsel's allegations against them in the above-styled action. In support of their application, Respondents present the following memorandum:

In December, 2013, Complaint Counsel and counsel for Respondents, including Respondent Zucker, undertook discussions to determine how best to conduct depositions in light of the number being sought by Mr. Zucker, Complaint Counsel and these Respondents. At the time, the parties attempted to enter into a discovery and scheduling agreement. Unfortunately, as concerns depositions, no resolution was ever reached. The goal was to be able to determine definite witnesses and dates by which the parties would undertake depositions. These discussions were reflected in a December 30, 2013 letter from Mr. Daniel Vice, Trial Attorney with Complaint Counsel, to Respondents' respective counsel. As noted, no informal schedule was agreed upon with which to approach the Presiding Officer with formal requests for leave to take depositions.

Filed herewith is Respondents Zen's and Star's Application for Leave to take depositions of specific individuals. Undersigned counsel is aware of the Presiding Officer's Order entered on April 24, 2014 granting Mr. Zucker's request for depositions and Respondents wish to proceed to take depositions as requested in their consistent with that Order.

Attached to the Application is Respondent Zen's and Star's Appendix A showing the topics they wish to explore. In light of the Presiding Officer's Order dated April 10, 2014, counsel for these respondents has not had an opportunity to discuss with Complaint Counsel the issues of depositions before filing the Request and this Memorandum. 16 C.F.R. §1025.31(c)(1) provides:

Parties may obtain discovery regarding any matter ,not privileged, which is within the Commission's statutory authority and is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The list of proposed deponents is similar to the list of proposed deponents included in Mr. Zucker's request with the difference being that Respondents have identified the specific experts to be deposed. These full list of individuals identified are 1) involved in making determinations regarding the information alleged in the complaints against the Respondents; and/or 2) have had positions of authority and decision making with the Consumer Products Safety Commission in regard to the complaints against the Respondents; or are 3) experts identified by Complaint Counsel. As such, the testimony of each of these persons is relevant to the subject matter involved in this proceeding and within the scope of permissible discovery or will "appear reasonably calculated to

lead to the discovery of admissible evidence” of the kind reasonable and necessary to support the Respondents’s defenses.

Respondents Zen and Star have responded to Complaint Counsel’s discovery requests and in so doing have provided numerous documents relevant to their own defenses. Counsel anticipates that some of the inquiry in depositions of a narrowed list of individuals, including Interim Chairman Adler, Dr. Midgett, Mr. Williams and Mr. Tarnoff, would be based on the discovery provided to date. In the meantime, Complaint Counsel have made further requests of these Respondents and Respondents have served discovery requests on Complaint Counsel.

WHEREFORE, the Respondents Zen Magnets, LLC and Star Networks USA, LLC request the Honorable Presiding Officer for leave to take depositions of the individuals and experts listed in the Application for Leave filed herewith consistent with the April 24, 2014 Order Granting Leave to Respondent Zucker and further to allow counsel for Respondents Zen and Star to join and participate in those depositions in preparation of their defense in these matters.

RESPECTFULLY SUBMITTED,

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



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of April, 2014, I served copies of **MEMORANDUM IN SUPPORT OF RESPONDENT ZEN MAGNETS, LLC'S AND STAR NETWORKS USA, LLC'S APPLICATION FOR LEAVE TO TAKE DEPOSITIONS** by the service method indicated:

Original and three copies by U.S. mail, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission:

Todd A. Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
tstevenson@cpsc.gov

One copy by U.S. mail and one copy by electronic mail to the Presiding Officer for *In the Matter of Maxfield and Oberton Holdings, LLC*, CPSC Docket No. 12-1; *In the Matter of Zen Magnets, LLC*, CPSC Docket No. 12-2, and *In the Matter Of Star Networks UA, LLC*, CPSC Docket No. 13-2:

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One copy by electronic mail (by agreement) to Complaint Counsel:

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