

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
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THYSSENKRUPP ACCESS CORP.)	CPSC DOCKET NO.: 21-1
)	
)	
Respondent.)	
)	

**COMPLAINT COUNSEL’S MOTION TO TRANSMIT PROPOSED
AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT OF
COMPLAINT COUNSEL’S AMENDED COMPLAINT TO THE COMMISSION**

Pursuant to 16 C.F.R. §§ 1025.13 and 1025.23, Complaint Counsel respectfully requests that the Presiding Officer transmit the attached proposed Amended Complaint and Memorandum in Support of Complaint Counsel’s Amended Complaint (“Memorandum”) to the Commission for consideration on whether to authorize the Amended Complaint to update the name of Respondent thyssenkrupp Access Corp. (“TKA” or “Respondent”), now known as TK Access Solutions Corp. (“TKAS”), and to add TK Elevator Corp. (“TKE”) as a respondent.

Under the Commission’s Rules of Practice for Adjudicative Proceedings (“Rules”), the Presiding Officer “may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceedings or cause undue delay.” 16 C.F.R. § 1025.13. However, the Rules also note that proceedings are commenced by the issuance of a complaint “authorized by the Commission.” *Id.* § 1025.11(a).

Because of the potential inconsistency between 16 C.F.R. §§ 1025.11 and 1025.13, Complaint Counsel believes that it is appropriate to submit this issue to the Presiding Officer with a request that the Commission authorize the Amended Complaint. Although, as detailed in

the Memorandum, the addition of TKE as a respondent will not unduly broaden the issues or cause undue delay, adding another respondent to this action arguably expands on the authority granted by the Commission in the original Complaint. *See* 81 Fed. Reg. 21,787 (Apr. 13, 2016) (soliciting comment on proposed amendment to 16 C.F.R. § 1025.13 to require Commission approval for any amended complaint that would “have the effect of adding or removing any persons as a respondent to the complaint” or would “broaden the authority granted staff in a complaint”). Thus, Complaint Counsel is requesting that the proposed Amended Complaint be transmitted to the Commission for authorization.

As detailed in the attached Memorandum, the Amended Complaint is appropriate for the following reasons: (1) Respondent TKA changed its name effective February 2021 to TKAS and TKA does not contest that its name should be changed in this proceeding; and, (2) TKAS is a corporate shell with limited assets and no business operations, which is controlled and financed by TKE through the actions of a shared director who asserts common control over both entities and affiliated personnel who act on behalf of both entities.

Adding TKE, the real party in interest, is vital, as it will preserve judicial and Commission resources and ensure that an appropriate and responsible corporate entity is held liable if a Substantial Product Hazard is found. Further, it will ensure that any and all appropriate relief can be granted and will prevent the need to commence a new proceeding against the real party in interest, to address the same products, defect, and hazard. Thus, TKE should be named to ensure any corrective action ordered in this matter is funded and effectual.

A proposed Order, Amended Complaint, and a Memorandum in Support of Complaint Counsel’s Amended Complaint are attached to this Motion.

Dated this 14th day of February, 2022

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'GR' followed by a long horizontal stroke.

Gregory M. Reyes, Supervisory Attorney
Michael J. Rogal, Trial Attorney
Frederick C. Millett, Trial Attorney
Joseph E. Kessler, Trial Attorney
Nicholas J. Linn, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Complaint Counsel for
U.S. Consumer Product Safety Commission

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2022, I served Complaint Counsel's Motion to Transmit Proposed Amended Complaint and Memorandum in Support of Complaint Counsel's Amended Complaint to the Commission, Amended Complaint, List and Summary of Documentary Evidence, Memorandum in Support of Complaint Counsel's Amended Complaint, and a Proposed Order as follows:

By email to the Secretary:

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

By email to the Presiding Officer:

Hon. Mary F. Withum, Administrative Law Judge
c/o Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

By email to Counsel for Respondent:

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Gregory M. Reyes
Complaint Counsel for
U.S. Consumer Product Safety Commission

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**[PROPOSED] ORDER ON COMPLAINT COUNSEL’S MOTION TO TRANSMIT
PROPOSED AMENDED COMPLAINT AND MEMORANDUM
IN SUPPORT OF THE AMENDED COMPLAINT TO THE COMMISSION**

This matter, having come before the Presiding Officer on Complaint Counsel’s Motion to Transmit Proposed Amended Complaint and Memorandum in Support of Complaint Counsel’s Amended Complaint to the Commission dated February 14, 2022, it is hereby ORDERED that the Motion is GRANTED.

The proposed Amended Complaint and the Memorandum in Support of Complaint Counsel’s Amended Complaint shall be transmitted to the Commission for consideration on whether to authorize the Amended Complaint.

If the Commission authorizes the proposed Amended Complaint, it shall be further ORDERED:

(1) the name of the Respondent shall be changed from thyssenkrupp Access Corp. to TK Access Solutions Corp.;

and,

(2) TK Elevator Corporation (“TKE”) shall be added as a Respondent.

Complaint Counsel may file and serve the Amended Complaint. Respondents shall answer the Amended Complaint pursuant to 16 C.F.R. § 1025.12.

Done and dated February ___ 2022

Arlington, VA

Mary F. Withum
Administrative Law Judge