

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

**IN THE MATTER OF**

**LEACHCO, INC.**

CPSC Docket No. 22-1

HON. MICHAEL G. YOUNG  
PRESIDING OFFICER

**LEACHCO, INC.'S MOTION *IN LIMINE*  
TO EXCLUDE (1) ALL POST-FACT-DISCOVERY EVIDENCE AND (2) TESTIMONY AND  
DOCUMENTS REGARDING ALLEGED DEFECTS IN THE PODSTER'S WARNINGS**

Pursuant to the Commission's Rules of Practice, 16 C.F.R. §§ 1025.23, 1025.43, and this Court's Order on Prehearing Schedule, Docket No. 35, Respondent Leachco Inc. moves to exclude (1) post-fact-discovery evidence including documents, exemplars, and expert testimony, and (2) any testimony or documents related to any alleged deficiencies, defects, or inadequacies in the Podster's warnings, instructions, and marketing materials.

1. As set forth in the accompanying Memorandum of Support, the Commission should not be permitted to introduce into evidence any documents or information that was produced after the fact-discovery deadline. This Court issued a stark warning to the parties that they would be precluded from using withheld discovery:

[A] sanction [] is always going to be there for either of you if materials are withheld from discovery and they show up at hearing in a context that is not some clear rebuttal context where the materials would not have normally been produced or should not have normally been produced. They show up at hearing[]—they're not going to be admitted. That's the sanction there, at a minimum.

Feb. 24, 2023 Hearing Transcript, 33:14–34:5.

2. The Commission did not allege that the Podster’s warnings were defective in any way. Its claim is that people would misuse the Podster—despite the warnings. Nonetheless, the Commission has belatedly attempted to introduce evidence of alleged defects in the Podster’s warnings. It should not be allowed to change its legal theories on the eve of trial.

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This Court should grant Leachco’s Motion *in Limine* and exclude all late-produced documents, exemplars never made available for inspection, all testimony relying on such information, and all testimony concerning the Podster’s allegedly defective warnings.

DATED: July 14, 2023.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2023, I served, by electronic mail, the foregoing upon all parties and participants of record:

<p><b>Honorable Michael G. Young</b> Federal Mine Safety and Health Review Commission Office of the Chief Administrative Law Judge 1331 Pennsylvania Ave., N.W., Suite 520N Washington, D.C. 20004-1710 myoung@fmshrc.gov cjannace@fmshrc.gov whodnett@fmshrc.gov</p>	<p><b>Mary B. Murphy</b> Director, Div. of Enforcement &amp; Litigation U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 mmurphy@cpsc.gov</p> <p><b>Robert Kaye</b> Assistant Executive Director Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 rkaye@cpsc.gov</p>
<p><b>Alberta Mills</b> Secretary of the U.S. Consumer Product Safety Commission U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 amills@cpsc.gov</p>	<p><b>Leah Ippolito</b>, Supervisory Attorney <b>Brett Ruff</b>, Trial Attorney <b>Rosalee Thomas</b>, Trial Attorney <b>Caitlin O'Donnell</b>, Trial Attorney <b>Michael Rogal</b>, Trial Attorney <b>Frederick C. Millett</b>, Trial Attorney <b>Gregory M. Reyes</b>, Supervisory Attorney Complaint Counsel Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n Bethesda, MD 20814 lippolito@cpsc.gov bruff@cpsc.gov rbthomas@cpsc.gov codonnell@cpsc.gov mrogal@cpsc.gov fmillett@cpsc.gov greyes@cpsc.gov</p>

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