

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

IN RE:

CPSC DOCKET NO.: 21-1

THYSSENKRUPP ACCESS CORP.

Respondent.

RESPONDENT'S MOTION TO DISMISS

Respondent TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp. (“the Company”), hereby moves to dismiss the Complaint filed by the U.S. Consumer Product Safety Commission (“CPSC” or “the Commission”) on the following grounds:

1. The CPSC lacks jurisdiction over the Company as the elevator components (“Components”) that the Company manufactured and distributed at the selection of and for on-site installation as improvements to realty by professionals in the trade are not “consumer products” within the meaning of Section 2(a)(5) of the Consumer Product Safety Act (“CPSA” or “the Act”), 15 U.S.C. § 2052(a)(5).
2. This action is moot as the Company is already taking all of the actions the Complaint seeks to compel, except those actions that are beyond the Commission’s authority to order.
3. This action is moot as the CPSC already took final agency action in 2014 and again in 2017 addressing the same issues raised in this action and has failed to adequately explain why that final agency action should be revisited.
4. This action violates due process as no fair notice was provided to the Company that CPSC would seek to apply retroactively the voluntary standard that is the basis of the Complaint’s theory of “defect.”

5. This action violates both the CPSA's prohibition on retroactive mandatory rules and the presumption against retroactive application of a standard that was adopted years after the Company exited the residential elevator market.

A supporting memorandum is attached.

July 27, 2021

Respectfully submitted,



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TK Access Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, true and correct copies of the foregoing RESPONDENT'S MOTION TO DISMISS were served via U.S. Mail and/or electronic mail on the Secretary of the U.S. Consumer Product Safety Commission and all parties and participants of record in these proceedings in the following manner:

Original and three copies by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta

Mills:

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

As no Presiding Officer has been appointed as of this date, one copy by U.S. Mail, first-class and postage-prepaid, to the Presiding Officer in the care of the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at the above address.

One copy by electronic mail to:

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Assistant Executive Director
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One copy by electronic mail to Complaint Counsel:

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