

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

In the Matter of)	
)	CPSC Docket No: 12-2
ZEN MAGNETS, LLC)	
)	HON. DEAN C. METRY
Respondent.)	
)	

ORDER DENYING AGENCY’S MOTION FOR SUMMARY DECISION

Complaint Counsel moves for Summary Decision pursuant to 16 C.F.R. § 1025.25. Complaint Counsel claims “the undisputed facts demonstrate that the Subject Products contain a defect which creates a substantial risk of injury to the public and therefore present a substantial product hazard.” Thus, Complaint Counsel argues there are no genuine issues of material fact in dispute and the Agency is entitled to judgment as a matter of law.

In opposition, Respondent contends there are several genuine issues of material facts in dispute such that summary decision is inappropriate. Specifically, Respondent asserts there are disputes concerning, among other things, whether the subject products contain a design defect, the utility and necessity of the products, and the adequacy of warnings to assuage any risk of harm.

ANALYSIS

Pursuant to 16 C.F.R. § 1025.25, any party is entitled to Summary Decision “if the pleadings and any depositions, answers to interrogatories, admissions, or affidavits show that there is no genuine issue as to any material fact and that the moving party is

entitled to a Summary Decision and Order as a matter of law.” This regulation is similar to Rule 56(a) of the Federal Rules of Civil Procedure which states:

A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

“A factual dispute is material if it ‘affects the outcome of the litigation,’ and genuine if manifested by ‘substantial’ evidence ‘going beyond the allegations of the complaint.’” Pignons S.A. de Mecanique de Precision v. Polaroid Corp., 657 F.2d 482, 486 (1st Cir. 1981) (quoting Hahn v. Sargent, 523 F.2d 461, 464 (1st Cir. 1975), *cert denied*, 425 U.S. 904 (1976)). In ruling on a Motion for Summary Judgment, the court will never weigh the evidence or find the facts. Baranski v. Fifteen Unknown Agents of the Bureau of Alcohol, Tobacco and Firearms, 452 F.3d 433, 451 (6th Cir. 2006). All doubts will be resolved against the moving party, all evidence will be construed in light most favorable to the non-moving party and all reasonable inferences will be drawn in the non-moving party’s favor. Beard v. Banks, 548 U.S. 521, 530-1 (2006); Hunt v. Cromartie 526 U.S. 541, 550-5 (1999).

In the instant case, the fact that both parties have set forth cogent arguments supported by evidence for their respective positions demonstrates that there are indeed disputed genuine issues of material fact.¹ For example, one of the genuine issues in this

¹ This Order uses the “product utility factor” as an example which demonstrates at least one genuine issue of material fact in dispute. This is not the only genuine issue of material fact in dispute. Pursuant to the pleadings surrounding Summary Decision, there are disputes concerning: the utility of the product involved; the nature and risk of injury; the obviousness of such risk; the adequacy of warnings and instructions to mitigate the risk; the role of consumer misuse and the foreseeability of such misuse; and most if not all the other factors considered by the Commission when determining if a “risk of harm” constitutes a “defect”. See 16 C.F.R. § 1115.4; see also *Complaint Counsel’s Memorandum of Law in Support of Motion for Summary Decision, In Camera* and *Zen Magnets’ Response to Complaint Counsel’s Motion for Summary Decision, In Camera*.

case is whether the products have a “defect” either in the product’s design or warnings. See 16 C.F.R. § 1115.4. A design defect may exist if there is a risk of injury as a result of using the product. Id. A “risk of injury” includes “a risk of death, personal injury, or serious or frequent illness.” 15 U.S.C. § 2052(a)(15). To determine whether a “risk of injury” renders a product “defective” the Commission looks at several factors including, but not limited to, the utility of the product. See 16 C.F.R. § 1115.4. Here, each party presents conflicting evidence and interpretation to demonstrate the utility of the subject products. Therefore, the utility of those products, a genuine issue of material fact, is in dispute.

As stated above, in Summary Judgment all reasonable inferences must be made in favor of the non-moving party. Further, Summary Judgment is not the time to weigh evidence or determine the credibility of witnesses. As such, the undersigned finds that several genuine issues of material fact are in dispute.

WHEREFORE,

IT IS HEREBY ORDERED THAT Complaint Counsel’s Motion for Summary Decision is **DENIED**.

SO ORDERED.

Done and dated this 21st day of November 2014, at Galveston, TX



DEAN C. METRY
Administrative Law Judge