

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
)	
TK ACCESS SOLUTIONS CORP., f/k/a)	
THYSSENKRUPP ACCESS CORP.)	CPSC DOCKET NO.: 21-1
)	
)	
Respondent.)	
)	

**RESPONDENT’S MEMORANDUM IN OPPOSITION TO COMPLAINT COUNSEL’S
MOTION FOR LEAVE TO FILE REPLY BRIEF**

Pursuant to 16 C.F.R. § 1025.23(c), Respondent TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp. (hereinafter “Respondent” or “TKASC”), by and through undersigned counsel, hereby files this Memorandum in Opposition to Complaint Counsel’s Motion to for Leave to File Reply Brief (“Motion”) (filed April 18, 2022). In that Motion, Complaint Counsel represents that its reply “will not restate previous arguments raised in its Motion to Compel [but] instead will present the Court with new factual material and a prior order from a CPSA administrative litigation compelling discovery related to piercing the corporate veil.”

It is unclear what “new factual material” can plausibly have arisen between Respondent’s April 15, 2022, Memorandum in Opposition to Complaint Counsel’s Motion to Compel Discovery and Complaint Counsel’s current Motion. Moreover, Complaint Counsel, in its original Motion to Compel, had full opportunity to raise the “prior order from a CPSA administrative litigation compelling discovery related to piercing the corporate veil.” That

Complaint Counsel failed to do so does not merit further disruption¹ to the schedule for this litigation, a schedule that is already at risk of significant delays stemming from Complaint Counsel's blinkered pursuit of a corporate veil theory that, as articulated in Respondent's April 15 Memorandum,² would, even if merited,³ require further discovery from non-parties, some of them non-United States entities, which both Respondent and, Respondent presumes, those non-parties would oppose. As such, Complaint Counsel's Motion should be denied, and the ordinary

¹ See Dkt. No. 83, Complaint Counsel's Motion to Extend Certain Discovery Deadlines, CPSC Docket No. 21-1 (Mar. 3, 2022); see also Dkt. No. 84, Order on Complaint Counsel's Motion to Extend Certain Discovery Deadlines (Mar. 4, 2022).

² See Respondent's Memorandum in Opposition to Complaint Counsel's Motion to Compel Discovery, CPSC Docket No. 21-1, 5 (Apr. 15, 2022) (filed *in camera*); see also *id.* at 27-28; see also *id.* at Note 106.

³ As Respondent has made clear

- 1) TKASC exists as a legal, functioning entity that
- 2) CPSC has engaged with on the issue of excessive Gap Space for nearly a decade (without questioning TKASC's resources), and that
- 3) has launched two separate efforts to address the potential hazard associated with Gap Space (created by improper installation) that is the focus of the Complaint, including the prior homeSAFE Campaign (which CPSC approved without in 2014 asking about finances, even though the Company had ceased manufacturing and distributing residential elevator components in 2012) and
- 4) the ongoing Home Elevator Safety Program (which offers free inspections and, as needed, free installation of free Space Guards, in essence providing that portion of the remedies the Complaint seeks that are within CPSC's authority and offering as much as or more than four other manufacturers "recalls"), a Program that
- 5) TKASC has committed to continue operating through at least 2025, a commitment that TKASC is more than capable of fulfilling.

Moreover, as articulated in Respondent's April 15 Memorandum, the only operational entity to which TKASC reports (though TKASC retains full operational authority and financial resources to make all decisions necessary to the continuation of its Program) is a German company that, other than the Business Unit of which TKASC is the only domestic member, is primarily a manufacturer of elevators and other equipment for the *commercial* market and over which CPSC would not have jurisdiction even if the residential elevator components that are the subject of the Complaint were "consumer products" within the meaning of the CPSA. As such, there is no legal or factual basis to even permit Complaint Counsel to continue its fishing expedition, and, even if there were such basis, the only operational "bigger fish" in TKASC's corporate pond is one that is farther removed from the facts relevant to the potential hazard associated with excessive Gap Spaces and even farther removed from CPSC's lawful authority than TKASC is.

presumption in the U.S. Consumer Product Safety Commission’s (“CPSC”) Rules of Practice – that “there shall be no reply to the response expressing opposition to the motion” – should hold.

In the alternative, Respondent requests that, if the Presiding Officer grants Complaint Counsel’s Motion, the Presiding Officer concurrently order that Respondent shall have three working days in which to file a surreply of no more than five pages and limited to the allegations of fact and law reflected in Complaint Counsel’s reply. Permitting Complaint Counsel extraordinary leave to reply but not affording Respondent the opportunity to respond to “new factual material” and new (if tardy) reference to CPSC precedent would prejudice Respondent’s ability to defend against Complaint Counsel’s claims.

Dated: April 19, 2022



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ATTORNEYS FOR RESPONDENT,

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CERTIFICATE OF SERVICE

Pursuant to 16 C.F.R. § 1025.16, as adopted by the Presiding Officer in CPSC Docket No. 21-1, I hereby certify that on April 19, 2022, a true and correct copy of the foregoing Respondent's Notice of Intent to Respond was filed with the Secretary of the U.S. Consumer Product Safety Commission and served on all parties and participants of record in these proceedings in the following manner:

By electronic mail to the Secretary of the U.S. Consumer Product Safety Commission:

Alberta Mills
Secretary
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By electronic mail to the Presiding Officer:

The Honorable Mary Withum, Administrative Law Judge
c/o Alberta E. Mills
Secretary
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By electronic mail to Complaint Counsel:

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A handwritten signature in blue ink, appearing to read "Sheila A. Millar", is written over a horizontal line. The signature is enclosed in a thin rectangular border.

Sheila A. Millar