



United States
Consumer Product Safety Commission

June 25, 2024

Via Electronic Mail

Secretary Alberta Mills
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

The Honorable Alexander Hoehn-Saric, Chair
The Honorable Richard L. Trumka, Jr., Commissioner
The Honorable Peter A. Feldman, Commissioner
The Honorable Mary T. Boyle, Commissioner
The Honorable Douglas Dziak, Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Re: *In the Matter of Amazon.com, Inc.*, CPSC Docket No. 21-2
Amazon.com, Inc. Counsel's May 21, 2024 Letter
Docket Entry No. 140

Secretary Mills, Chair Hoehn-Saric, and Commissioners Feldman, Trumka, Boyle, and Dziak:

We write as Complaint Counsel in the above-referenced matter in response to Amazon.com, Inc.'s ("Amazon's") May 21, 2024 letter filed as Docket Entry No. 140 in *In the Matter of Amazon.com, Inc.*, CPSC Docket No. 21-2. Specifically, we write to inform the Commission of two facts related to Amazon's letter. First, Amazon had "actual and timely notice" of all decisions cited in Complaint Counsel's filings. 5 U.S.C. § 552(a)(2)(E)(ii). Second, Amazon failed to raise any objection in the adjudicative phase of these proceedings before the Administrative Law Judges concerning the purported non-publication of prior opinions and orders issued by the U.S. Consumer Product Safety Commission ("CPSC").

Complaint Counsel cited eight prior Commission decisions in the above referenced administrative litigation. Seven of those eight decisions were and are available on Westlaw and/or at CPSC.gov. *See* Attachment A. In addition, Amazon had "actual and timely notice" of the lone decision that was not so available, because Complaint Counsel attached it as an exhibit to its Memorandum of Points and Authorities in Support of Motion for Summary Decision on September 23, 2022. *See* Docket No. 80 (Exhibit 1). Amazon therefore had "actual and timely notice" of all prior decisions cited by Complaint Counsel. *See* 5 U.S.C. § 552(a)(2)(E)(ii); *see*

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also Giles Lowery Stockyards, Inc. v. Dep't of Agric., 565 F.2d 321, 326 (5th Cir. 1977) (Department of Agriculture's disclosure to petitioner of rate-setting formula in advance of the hearing constituted "actual notice" and would preclude relying on the agency's purported failure to comply with FOIA's publication requirement even if required) (citing *Whelan v. Brinegar*, 538 F.2d 924, 927 (2d Cir. 1976); *Kessler v. FCC*, 117 U.S. App. D.C. 130, 147, 326 F.2d 673, 690 (1963)).

Furthermore, while Amazon filed a FOIA request on July 22, 2022, seeking prior orders or opinions of the Commission, it never specifically sought any such documents in discovery in this matter. When Amazon filed a Motion to Compel on August 1, 2022, it did not specifically seek production of any prior adjudicative decisions or mention the issue. Indeed, Amazon had not raised the issue when discovery closed on August 26, 2022.

Sincerely,



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Senior Trial Attorney

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Thomas J. Mendel, Trial Attorney
Serena Anand, Trial Attorney
Division of Enforcement and Litigation

Cc: VIA EMAIL
All Counsel of Record

ATTACHMENT A

CPSC Adjudication	Where Cited by Complaint Counsel	Availability
<p><i>In The Matter of Central Sprinkler Corp.</i> Consent Agreement</p> <p>CPSC Dkt. No. 98-2, 1998 WL 35166928 (CPSC 1998)</p>	<p>Dkt. No. 102 (CC’s Letter to Judge Patil)</p>	<p>Available on Westlaw</p>
<p><i>In re Dye and Dye</i> Opinion and Order</p> <p>CPSC Dkt. No. 88-1, 1989 WL 435534 (July 17, 1991)</p>	<p>Dkt. No. 53 (CC’s Opposition to Respondent Amazon’s Motion to Compel)</p> <p>Dkt. No. 86 (CC’s Opposition to Amazon’s Motion for Summary Decision)</p> <p>Dkt. No. 93 (CC’s Reply in Support of CC’s Motion for Summary Decision)</p> <p>Dkt. No. 102 (CC’s Letter to Judge Patil)</p> <p>Dkt. No. 129 (CC’s Answering Brief)</p>	<p>Available on Westlaw</p>
<p><i>In The Matter of Maxfield and Oberton Holdings, LLC, and Craig Zucker</i> Consent Agreement</p> <p>CPSC Dkt. No. 12-1, 2014 WL 12975552 (CPSC 2014)</p>	<p>Dkt. No. 102 (CC’s Letter to Judge Patil)</p>	<p>Available on Westlaw and CPSC.gov</p>
<p><i>In the Matter of Relco, Inc.</i></p> <p>CPSC Dkt. No. 74-4, Order (Oct. 27, 1976)</p>	<p>Dkt. No. 79 (CC’s Memorandum of Points and Authorities in Support of Motion for Summary Decision)</p> <p>Dkt. No. 86 (CC’s Opposition to Amazon’s Motion for Summary Decision)</p> <p>Dkt. No. 93 (CC’s Reply in Support of CC’s Motion for Summary Decision)</p> <p>Dkt. No. 102 (CC’s Letter to Judge Patil)</p> <p>Dkt. No. 125 (CC’s Appeal Brief)</p> <p>Dkt. No. 129 (CC’s Answering Brief)</p> <p>Dkt. No. 133 (CC’s Reply Brief)</p>	<p>Attached as Ex. EE to the Sept. 23, 2022 Declaration of John Eustice</p>

CPSC Adjudication	Where Cited by Complaint Counsel	Availability
<p><i>In re TK Access Solutions Corp.</i></p> <p>CPSC Dkt. No. 21-1, Order, Dkt. No. 121 (April 11, 2022)</p>	<p>Dkt. No. 53 (CC’s Opposition to Respondent Amazon’s Motion to Compel)</p> <p>Dkt. No. 79 (CC’s Memorandum of Points and Authorities in Support of Motion for Summary Decision)</p>	<p>Available on CPSC.gov – at time cited, there had not been final agency action.</p>
<p><i>In re Zen Magnets, LLC</i></p> <p>Opinion and Order Approving Public Notification and Action Plan</p> <p>CPSC Dkt. No. 12-2, 2017 WL 11672451</p>	<p>Dkt. No. 79 (CC’s Memorandum of Points and Authorities in Support of Motion for Summary Decision)</p> <p>Dkt. No. 86 (CC’s Opposition to Amazon’s Motion for Summary Decision)</p> <p>Dkt. No. 93 (CC’s Reply in Support of CC’s Motion for Summary Decision)</p> <p>Dkt. No. 102 (CC’s Letter to Judge Patil)</p> <p>Dkt. No. 117 (CC’s Reply Brief ISO Amended Proposed Order)</p> <p>Dkt. No. 129 (CC’s Answering Brief)</p>	<p>Available on Westlaw and CPSC.gov</p>
<p><i>In re Zen Magnets, LLC</i></p> <p>Final Decision and Order</p> <p>CPSC Dkt. No. 12-2, 2017 WL 11672449 (Oct. 26, 2017), <i>vacated on other grounds</i>, 2018 WL 2938326 (D. Colo June 12, 2018), <i>amended in part</i>, 2019 WL 9512983 (D. Colo. Mar. 6, 2019), <i>aff’d in part, rev’d in part</i>, 986 F.3d 1156 (10th Cir. 2020)</p>	<p>Dkt. No. 53 (CC’s Opposition to Respondent Amazon’s Motion to Compel)</p> <p>Dkt. No. 79 (CC’s Memorandum of Points and Authorities in Support of Motion for Summary Decision)</p> <p>Dkt. No. 86 (CC’s Opposition to Amazon’s Motion for Summary Decision)</p> <p>Dkt. No. 93 (CC’s Reply in Support of CC’s Motion for Summary Decision)</p> <p>Dkt. No. 125 (CC’s Appeal Brief)</p> <p>Dkt. No. 129 (CC’s Answering Brief)</p>	<p>Available on Westlaw and CPSC.gov</p>
<p><i>In re Zen Magnets, LLC</i></p> <p>Opinion and Order Denying Respondent’s Motion to Disqualify</p> <p>CPSC Dkt. No. 12-2, 2016 WL 11778211 (Sept. 1, 2016)</p>	<p>Dkt. No. 86 (CC’s Opposition to Amazon’s Motion for Summary Decision)</p> <p>Dkt. No. 129 (CC’s Answering Brief)</p>	<p>Available on Westlaw and CPSC.gov</p>