

**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 RESPONDENT’S MOTION TO DISMISS

Respondent moves to dismiss the above captioned matter for alleged violations of due process. Specifically, Respondent argues the Consumer Product Safety Commission (“CPSC”) Commissioners prejudged this matter. Respondent makes this assertion because the CPSC Commissioners promulgated a rule stating magnet sets, similar to the subject product in this case, present “an unreasonable risk of injury.” In response, the Agency contends the undersigned does not have jurisdiction and the motion is not ripe for decision; the undersigned agrees.

The jurisdiction delegated to this Administrative Law Judge (ALJ) is specific and limited. The CPSC brought the current action pursuant to 15 U.S.C. § 2064(c), (d), and (f) “for public notification and remedial action” and seeking a determination “that a product distributed in commerce presents a substantial product hazard.” Title 16 C.F.R. Part 1025 contains the governing rules for this proceeding. Title 16 C.F.R. § 1025.1 states in relevant part:

The rules in this part govern procedures in adjudicative proceedings relating to the provisions of section 15 (c), (d), and (f) and 17(b) of the Consumer Product Safety Act (15 U.S.C. 2064 (c), (d), (f); 2066 (b)), section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274), and sections 3 and 8(b) of the Flammable Fabrics Act (15 U.S.C. 1192,

1197(b)), which are required by statute to be determined on the record after opportunity for public hearing.

Thus, the ALJ is limited to only deciding matters under the above cited statutes.

The ALJ's authority to decide limited matters under 15 U.S.C. § 2064 does not extend to every matter under Title 15 United States Code. The Commission promulgated a product safety standard under the separate statutory authority found in 15 U.S.C. §§ 2054 and 2058. The relevant statutes and regulations do not give the ALJ authority to decide the propriety of the Commission's decisions under these statutes. To determine issues outside the authority delegated in 15 U.S.C. § 2064 would exceed the ALJ's jurisdiction and therefore Respondent's motion must be **DENIED**.

Even if the ALJ had authority to rule on Respondent's motion, the issue is not ripe for decision. The Agency points out that there may never be an appeal of this case if Respondent prevails at the hearing. This is due to the fact that if Respondent prevails, the regulations provide for three possibilities: (1) the Agency appeals the decision to the Commission; (2) the Commission decides to review the decision by virtue of 16 C.F.R. §§ 1025.51-54; or (3) no appeal is taken and no appellate review is had. If the case is not appealed and the Commission chooses not to review the issue, the Commission will never consider this matter at all. Thus, Respondent's motion is premised on "contingent future events that may not occur as anticipated, or indeed, may not occur at all" and is not ripe for adjudication. See Texas v. United States, 523 U.S. 296, 300 (1998).

In the event there is an appeal, this prejudgment issue is more appropriately raised to the Commission and, if need be, upon further appeal to the federal courts.

Respondent's Motion to Dismiss is therefore **DENIED**.

SO ORDERED.

Done and dated this 19th day of November 2014, at
Galveston, TX

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

DEAN C. METRY
Administrative Law Judge