

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



MEAGHIN JORDAN, INDIVIDUALLY;
JONATHAN JORDAN, INDIVIDUALLY, AND
MEAGHIN AND JONATHAN JORDAN
ON BEHALF OF THEIR MINOR SON,
BRAYLON JORDAN

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:16-cv-643 CWR-FKB

CONSUMER PRODUCE SAFETY COMMISSION

DEFENDANT

COMPLAINT FOR RELIEF UNDER THE
FREEDOM OF INFORMATION ACT

COME NOW Plaintiffs, Meaghin Jordan, Individually; Jonathan Jordan, Individually; Meaghin and Jonathan Jordan, on behalf of their minor son, Braylon Jordan, and file their Complaint for Relief under the Freedom of Information Act against Defendant, Consumer Products Safety Commission, as follows:

I. NATURE OF THE ACTION

1. This is action under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") seeking an order of the Court requiring the Consumer Products Safety Commission ("CPSC") to fully and properly respond to the request under FOIA for agency records made by the Jordan Plaintiffs on March 26, 2015. The Jordan Plaintiffs seek an order of the Court compelling the CPSC to produce responsive documents which are being withheld.

II. PARTIES

2. The Plaintiffs in this case are Meaghin Jordan, individually, Jonathan Jordan, individually, and Meaghin and Jonathan Jordan on behalf of their minor son, Braylon Jordan

(“The Jordan Plaintiffs or Plaintiffs”). The Jordan Plaintiffs reside in Pelahatchie, Mississippi. The Jordan Plaintiffs are the requesters of the withheld Agency records.

3. Defendant is the United States Consumer Products Safety Commission, an agency of the United States within the definition of FOIA, and has possession of the records sought by The Jordan Plaintiffs. Defendant CPSC may be served with process of this Court by delivering a copy of the Summons and Complaint to the United States Attorney for the Southern District of Mississippi, or to an Assistant United States Attorney for the Southern District of Mississippi, or to a clerical employee whom the United States Attorney has designated in a writing filed with the United States District Court for the Southern District of Mississippi Court Clerk; and by serving a copy of the Summons and Complaint by certified mail on Elliott F. Kaye acting chairman of the CPSC, U.S. Consumer Products Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

III. JURISDICTION AND VENUE

4. Jurisdiction and venue are proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) in that Plaintiffs reside in Pelahatchie, Mississippi which is located within the Southern District of Mississippi.

IV. FACTS

5. By letter dated March 26, 2015, Plaintiffs, through authorized counsel, requested that CPSC produce copies of the following documents and/or other matters, whether they exist in their native format (electronic or other) or have been copied as an exact duplicate onto other readable material (e.g., paper, CD rom, zip driver, etc.):

a) All records, documents or other matters supporting any estimate by the CPSC that small, high powered magnet sets were associated with emergency room treated injuries between March 2009 and the present involving children under the age of 14.

b) All records, documents or other matters identified on the CPSC LIST AND SUMMARY OF DOCUMENTARY EVIDENCE, served on the parties on July 25, 2012, in CPSC Docket 12-1 .

c) A copy of Respondent's Answers and Objections to Complaint Counsel's First Set of Interrogatories to Respondent Craig Zucker, served on the parties on September 9, 2013, in CPSC Docket 12-1.

d) A copy of Respondent's Response to Complaint Counsel's First Set of Requests for Production of Documents and Things to Craig Zucker, served on the parties on September 9, 2013, in CPSC Docket 12-1.

e) Copies of all records, documents or other matters produced in response to Complaint Counsel's First Set of Requests for Production Documents and Things to Craig Zucker (No. 4 above), in CPSC Docket 12-1. This request includes all documents originally produced, and all documents subsequently produced as a result of Respondent's duty to supplement. This request includes, but is not limited to, all documents produced pursuant to any protective order. If the CPSC is unable to produce documents covered by a protective order, please specifically identify such documents by name, date, and brief description on an accompanying privilege log.

f) Copies of all settlement agreements, consent agreements, or other such documents relating to the termination and/or dismissal of all administrative and/or judicial proceedings

involving the CPSC, Craig Zucker, and/or Maxfield & Oberton Holdings, LLC.. This request includes, but is not limited to, all settlement documents relating to the termination and/or dismissal of CPSC Docket 12-1 and the case of: *Zucker v. US CPSC, et al.*, USDC Maryland, Case No. 8:13-cv-03355. If the CPSC is unable to produce the requested settlement documents, please specifically identify such documents by name, date, and brief description on an accompanying privilege log.

g) A copy of Respondent's Response to Complaint Counsel's First Set of Requests for Admissions to Craig Zucker, served on the parties on September 16, 2013, in CPSC Docket 12-1. **Exhibit "1"**.

6. On March 26, 2015 the CPSC acknowledge receipt of the Plaintiffs' FOIA request by email. **Exhibit "2"**.

7. On April 2, 2015, the CPSC again confirmed receipt of the Plaintiffs' FOIA request and provided an update.

8. There has been no further contact from the CPSC and the requested Agency records have not been produced.

V. CLAIM UNDER FOIA

9. The Jordan Plaintiffs incorporate by reference all paragraphs contained in this Complaint.

10. Braylon Jordan (age 6) was severely injured at age 22 months after ingesting Buckyballs®, a product imported and distributed by Maxfield and Oberton Holdings, LLC ("M&O"). Authorized counsel has filed a lawsuit on behalf of the Jordan family in the United States District Court for the Southern District of Mississippi, Northern Division styled: *Meaghin*

Jordan, et al. vs. Maxfield & Oberton Holdings, LLC, et al.; 3:15-cv-00220-CWR-LRA. M&O is a defendant in the lawsuit along with M&O's CEO, Craig Zucker.

11. On July 25, 2012, the CPSC filed an Administrative Complaint against M&O after its discussions with the company and its owners failed to result in a voluntary recall plan and/or the termination of product sales of M&O's rare earth magnet products, including Buckyballs®. Such administrative action was styled: *In the Matter of Maxfield & Oberton Holdings, LLC*, CPSC Docket No. 12-1, United States of America Consumer Product Safety Commission. CPSC complaint counsel requested that Commission reach a determination that M&O's Buckyballs® and other rare earth magnet products presented a "substantial product hazard within the meaning of § 15 U.S.C. § 2064(a)(2)." CPSC complaint counsel requested that the Commission enter an order pursuant to § 15 U.S.C. § 2064(c) (§ 15(c)) of the CPSC requiring M&O to "cease importation and distribution of the product [Buckyballs® and Bucky Cubes®]."

12. The requested documents consist records, documents, and other matters relating to discovery conducted by the parties in CPSC Docket No. 12-1. The requested documents also include copies of settlement agreements, consent agreements, and other such documents relating to the termination and/or dismissal of administrative and/or judicial proceedings involving the CPSC, Zucker and/or M&O.

13. On December 27, 2012, M&O filed a Certificate of Cancellation with the Secretary of State of Delaware terminating its existence. On October 28, 2015, a Certificate of Revival of M&O was filed with the State of Delaware Secretary of State nullifying M&O's previously filed Certificate of Cancellation and reviving the company for a limited

purpose. Upon information and belief, between the 2012 termination of M&O and the 2015 revival of M&O, many of the documents previously delivered to the CPSC in Docket No. 12-1 have been misplaced, lost, or destroyed.

14. The CPSC is the best and most easily accessible repository of the requested documents.

15. There is no reasonable basis for the failure of the CPSC to timely produce the files and documents which are responsive to the Jordan Plaintiffs March 26, 2015 FOIA request. The Jordan Plaintiffs have a right of access to the requested information pursuant 5 U.S.C. § 552(a)(3), and there is no legal basis for the CPSC's failure to fully produce responsive documents and files which were produced and exist in Docket No. 12-1.

WHEREFORE, PREMISES CONSIDERED, The Jordan Plaintiffs request that this Court enter judgment in their favor as follows:

1. Order the CPSC to make the information available as requested;
2. Award the Jordan Plaintiffs their costs and reasonable attorneys' fees in this action, as provided under 5 U.S.C. § 552(a)(4)(E); and
3. Grant such other and further relief as this Court may deem just and proper.

DATED this the 18th day of August, 2016.

Respectfully submitted,

MEAGHIN, JONATHAN AND BRAYLON JORDAN

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