

by the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21.

JURISDICTION AND VENUE

1. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

THE PARTIES

2. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 et seq., with its principal offices at Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, inter alia, Section 5 of the FTC Act and Section 7 of the Clayton Act.

3. Defendant Staples is a for-profit corporation existing under the laws of the State of Delaware, with its principal place of business at One Research Drive, Westborough, Massachusetts 01581. Staples owns and operates approximately 500 retail office supply superstores in 28 states and the District of Columbia under the "Staples - The Office Superstore" and "Staples Express" names.

4. Defendant Office Depot is a for-profit corporation existing under the laws of the State of Delaware, with its principal place of business at 2200 Old Germantown Road, Delray Beach, FL 33445. Office Depot owns and operates more than 500 retail office supply superstores in 38 states and the District of Columbia under the "Office Depot" name.

5. Staples and Office Depot are engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

6. Staples and Office Depot transact business within the District of Columbia.

SECTION 13(b) OF THE FTC ACT

7. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe--

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public--

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond

THE PROPOSED MERGER AND THE COMMISSION'S RESPONSE

8. On September 4, 1996, Staples and Office Depot entered into an agreement whereby Staples would acquire through a merger the stock and assets of Office Depot ("the merger") for approximately \$4 billion. Defendants' combined annual sales would exceed \$10 billion.

9. On March 10, 1997, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a temporary restraining order and a preliminary injunction barring the proposed merger during the pendency of administrative proceedings.

10. The defendants have advised the Commission that, in the absence of a court order to the contrary, they will consummate the proposed merger after 12:01 a.m., on Tuesday, April 15, 1997.

11. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the aforesaid proposed merger would violate Section 7 of the Clayton Act because it may substantially lessen competition and/or tend to create monopolies in the relevant markets.

LIKELIHOOD OF SUCCESS ON THE MERITS AND NEED FOR RELIEF

12. The Commission is likely ultimately to succeed in demonstrating, in administrative proceedings to adjudicate the legality of the proposed merger, that the proposed merger would violate Section 7 of the Clayton Act. In particular, the Commission is likely ultimately to succeed in demonstrating, *inter alia*, that:

a. One relevant product market or submarket in which the competitive effects of the proposed merger may be assessed is the retail sale of office supplies (sometimes called "consumable" office supplies) through office supply superstores.

b. Another relevant product market in which the competitive effects of the proposed merger may be assessed is the broader market consisting of the sale of office supplies (sometimes called "consumable" office supplies) through retail stores to small businesses and individuals with home offices.

c. The relevant geographic markets within which to assess the competitive effects of the proposed merger are the following metropolitan areas, and narrower markets contained therein: (1) Los Angeles, California; (2) Sacramento, California; (3) San Diego, California; (4) San Francisco-Oakland-San Jose, California; (5) Salinas, California; (6) Visalia-Tulare-Porterville, California; (7) Sarasota-Bradenton, Florida; (8) Lakeland-Winter Haven, Florida; (9) Ocala, Florida; (10) Orlando, Florida; (11) Tampa-St. Petersburg-Clearwater, Florida; (12) Fort Pierce-Port St. Lucie, Florida; (13) Champaign-Urbana, Illinois; (14) Springfield, Illinois; (15) Louisville, Kentucky; (16) Baltimore, Maryland; (17) Kalamazoo-Battle Creek, Michigan; (18) Detroit-Ann Arbor-Flint, Michigan; (19) Grand Rapids-Muskegon-Holland, Michigan; (20) Middlesex County, New Jersey; (21) Passaic County, New Jersey; (22) Nassau-Suffolk, New York; (23) Greensboro--Winston-Salem--High Point, North Carolina; (24) Greenville, North Carolina; (25) Raleigh-Durham, North Carolina; (26) Cincinnati-Hamilton, Ohio; (27) Portland-Vancouver, Oregon-Washington; (28) Pittsburgh, Pennsylvania; (29) Columbia, South Carolina; (30) Florence, South Carolina; (31) Chattanooga, Tennessee; (32) Nashville, Tennessee; (33) Charlottesville, Virginia; (34) Washington, D.C.; (35) Spokane, Washington; (36) Salt Lake City-Ogden, Utah; (37) Indianapolis, Indiana; (38) Cleveland, Ohio; (39) West Palm Beach-Boca Raton, Florida; (40) Evansville, Indiana; (41) South Bend, Indiana; and (42) Stockton-Lodi, California.

d. Staples and Office Depot are the only two office supply superstore firms in the following fifteen relevant geographic markets: San Diego, California; Salinas, California; Visalia-Tulare-Porterville, California; Lakeland-Winter Haven, Florida; Ocala, Florida; Tampa-St. Petersburg-Clearwater, Florida; Fort Pierce-Port St. Lucie, Florida; Champaign-Urbana, Illinois;

Louisville, Kentucky; Baltimore, Maryland; Greenville, North Carolina; Florence, South Carolina; Charlottesville, Virginia; Washington, D.C.; and Spokane, Washington. OfficeMax, Inc., the only other office supply superstore firm in the United States, operates office supply superstores in all the remaining relevant geographic markets.

e. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the relevant markets by, among other things, eliminating an effective competitor, eliminating or reducing substantial actual and potential competition between Staples and Office Depot, and providing the merged entity with the ability to exercise market power. In addition, the effect of the proposed merger, if consummated, may be substantially to lessen competition by eliminating actual potential competition between Staples and Office Depot in other metropolitan areas where they would compete in the future, including, but not limited to: (1) Bergen County, New Jersey; (2) Fayetteville, North Carolina; (3) Albany-Schenectady-Troy, New York; and (4) Fredericksburg, Virginia.

f. Substantial and effective entry into the relevant markets is difficult.

13. The reestablishment of Staples and Office Depot as independent viable competitive entities if they were to merge would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore the businesses as they originally existed. Furthermore, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

14. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

1. Preliminarily enjoin defendants Staples and Office Depot, and all affiliates of defendants, from taking any further steps to consummate, directly or indirectly, their proposed merger of their businesses, or any other acquisition of stock, assets, or other interest, either directly or indirectly;

2. Maintain the status quo pending the issuance of an administrative complaint by the Commission challenging such acquisition, and until such complaint is dismissed by the Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

Respectfully submitted,

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