

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of

**Tempur Sealy International, Inc.,
a corporation;**

and

**Mattress Firm Group Inc.,
a corporation.**

Docket No. 9433

ORDER GRANTING CONTINUANCE OF EVIDENTIARY HEARING

On July 2, 2024, the Commission issued an administrative complaint alleging that Respondents Tempur Sealy International, Inc. and Mattress Firm Group Inc entered into a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. At the same time, the FTC filed a complaint for a temporary restraining order and preliminary injunction in the United States District Court for the Southern District of Texas pursuant to Section 13(b) of the FTC Act. *See FTC v. Tempur Sealy Int'l, Inc.*, No. 4:24-cv-02508 (S.D. Tex). The preliminary injunction hearing is scheduled to begin on November 12, 2024, and should end no later than November 26, 2024. The administrative hearing is scheduled to begin on December 4, 2024.

On October 3, 2024, Respondents filed a Corrected Motion to Continue Evidentiary Hearing (“Motion”) asking the Commission to continue the administrative evidentiary hearing to February 9, 2025 (which falls on a Sunday). Respondents argue that the later hearing date would give the federal court time to decide whether to issue a preliminary injunction before the administrative hearing begins and would reduce burdens on the parties, third parties and counsel arising from concurrent litigation activities. Respondents assert that a continuance would facilitate “streamlining” of the administrative presentations after submission of proposed findings of fact to the court following the preliminary injunction hearing. Motion at 3.

Respondents also observe that a preliminary injunction decision “almost always obviates the need” for the administrative hearing, *id.* at 3-4, but make no commitments regarding their plans. Complaint Counsel do not oppose the Motion. They agree that the administrative hearing should not start sooner than February 9, 2025, and ask the Commission to order a joint status report on January 13, 2025, updating the Commission on the status of the court proceeding and its impact on whether (and when) an administrative hearing may be necessary. Complaint Counsel’s Response to Respondents’ Motion to Continue Evidentiary Hearing (Oct. 15, 2024).

Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding . . . [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs[.]” 16 C.F.R. 3.41(f). Nonetheless, Rule 3.41(b) authorizes the Commission to delay an evidentiary hearing date upon a showing of good cause. 16 C.F.R. § 3.41(b). Under the circumstances presented, we find good cause exists for the continuance requested and that a status report would be useful. Accordingly,

IT IS HEREBY ORDERED THAT the Respondents’ Corrected Motion to Continue Evidentiary Hearing is **GRANTED** and that the evidentiary hearing in this proceeding shall commence at 10:00 am on February 10, 2025; and

IT IS FURTHER ORDERED THAT Respondents and Complaint Counsel are directed to submit a joint status report or separate status reports on January 13, 2025, regarding the status of the federal court proceeding and its impact on whether (and when) an administrative evidentiary hearing may be necessary.

By the Commission.

April J. Tabor
Secretary



SEAL:
ISSUED: November 7, 2024