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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Tempur Sealy International, Inc.,
a corporation,

and

Mattress Firm Group Inc.
a corporation.

DOCKET NO. 9433

JOINT EXPEDITED MOTION TO SUSPEND SCHEDULING ORDER DEADLINES

The Commission is currently considering Respondents’ unopposed request to continue the evidentiary hearing in this matter to February 9, 2025. In the upcoming weeks, this Court’s Scheduling Order has deadlines impacting the parties to this litigation and third parties alike. To alleviate this burden, Complaint Counsel and Respondents Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group Inc. (“Mattress Firm”; collectively, “Respondents”) jointly move to suspend all pre-hearing deadlines while the motion before the Commission is pending.

ARGUMENT

On July 2, 2024, the FTC filed an administrative complaint challenging Tempur Sealy’s acquisition of Mattress Firm. That same day, the FTC filed a complaint in federal court seeking a preliminary injunction. Compl., *Federal Trade Commission v. Tempur Sealy Int’l, Inc.*, No. 4:24-cv-02508 (S.D. Tex.), ECF No. 1. The preliminary injunction hearing is set to begin in Houston, Texas on November 12, 2024 and end no later than November 27, 2024. The evidentiary hearing in this administrative proceeding is currently set to begin December 4, 2024. On October 3,

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2024, Respondents moved the Commission under Rule 3.41 to continue the evidentiary hearing in the case at bar until February 9, 2025. Respondents' Corrected Motion to Continue Evidentiary Hearing (Oct. 3, 2024). Complaint Counsel did not oppose continuing the hearing until after February 9, 2025, but asked the Commission to defer setting a date for the evidentiary hearing and instead require an interim status report from the parties. Complaint Counsel's Response to Respondents' Motion to Continue Evidentiary Hearing (Oct. 15, 2024). To date, the Commission has yet to rule on Respondents' Corrected Motion to Continue Evidentiary Hearing.

The Scheduling Order provides several deadlines in the upcoming weeks that impose significant burden on all parties. For example, in the near term, Complaint Counsel must serve rebuttal expert reports, and both sides must provide third parties with notice of their intent to admit confidential materials into evidence. Each of these deadlines imposes significant burden on the parties which is exacerbated by the need to simultaneously prepare for a preliminary injunction hearing. These deadlines also impact third parties. Under the Scheduling Order, third parties must prepare and submit motions for in camera treatment of proposed trial exhibits by November 18, 2024.

In the event the Commission grants Respondents' unopposed motion, these deadlines should be delayed until closer to the date of the administrative hearing. Suspending these deadlines now will allow the parties to focus on the upcoming preliminary injunction hearing while minimizing the burden to third parties.¹

¹ If the Commission denies Respondents' unopposed motion, the parties would work together to propose a schedule that nonetheless provides this Court with ample time to resolve issues in advance of any hearing.

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CONCLUSION

For the reasons contained herein, the parties respectfully request that this Court suspend all pre-hearing deadlines contained in the Scheduling Order entered in this proceeding.

Dated: November 6, 2024

Respectfully submitted,

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[PROPOSED] ORDER GRANTING MOTION TO SUSPEND DEADLINES

Having considered the Parties' Joint Expedited Motion to Suspend Scheduling Order Deadlines, it is hereby ORDERED that all pre-hearing deadlines contained in the Scheduling Order in this matter are hereby suspended. In the event Respondents' Corrected Motion to Continue Evidentiary Hearing is denied, the Parties shall submit a joint proposal amending the current Scheduling Order within two business days. In the event the Respondents' Corrected Motion to Continue Evidentiary Hearing is granted, within ten business days after the completion of the preliminary injunction hearing in *Federal Trade Commission v. Tempur Sealy Int'l, Inc.*, No. 4:24-cv-02508 (S.D. Tex.), the Parties shall submit a joint status report advising this Court on their position regarding whether and how to amend the Scheduling Order.

ORDERED:

Jay L. Himes
Administrative Law Judge

Dated: _____

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2024, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I further certify that I caused the foregoing document to be served via email to:

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