

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

SYSCO CORPORATION,

and

USF HOLDING CORP.,

and

US FOODS, INC.,

Defendants.

Civil Action No. 15-cv-256 (APM)

FILED UNDER SEAL

(PUBLIC VERSION)

**PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, the Federal Trade Commission (the "Commission"), by its designated attorneys, moves this Court pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), for a temporary restraining order and a preliminary injunction enjoining the proposed merger of Defendants Sysco Corporation ("Sysco") and USF Holding Corp. ("US Foods"), until the completion of the administrative proceedings evaluating the transaction now ongoing before the Commission. Absent injunctive relief, Defendants will be able to consummate the merger after 11:59 p.m. on March 2, 2015.

The Commission has determined that it has "reason to believe" that the proposed merger of Defendants would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. The Commission voted to authorize the administrative complaint in

this matter on February 19, 2015, and scheduled the administrative trial to begin on July 21, 2015.

Under Section 13(b) of the Federal Trade Commission Act, a temporary restraining order and a preliminary injunction should issue when “such action would be in the public interest—as determined by a weighing of the equities and a consideration of the Commission’s likelihood of success on the merits.” *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714 (D.C. Cir. 2001). Here, as explained in detail in the accompanying Memorandum in Support, a temporary restraining order and a preliminary injunction are in the public interest because the Commission’s complaint counsel is likely to succeed on the merits in the ongoing administrative proceeding and strong public equities favor effective enforcement of the antitrust laws and preserving the status quo pending the completion of that proceeding. *Id.* at 726 (“The principal public equity weighing in favor of preliminary injunctive relief is the public interest in effective enforcement of the antitrust laws.”). Furthermore, without provisional relief, Defendants can “scramble the eggs”—that is, merge their operations and make it extremely difficult, if not impossible, for competition to be restored to its previous state if the merger is subsequently found to be illegal.

Thus, as more fully set forth in the attached Memorandum in Support, injunctive relief is necessary to preserve the Court’s and the Commission’s ability to enter effective relief. A temporary restraining order is necessary to preserve the Court’s ability to evaluate and to enter effective relief after consideration of the Commission’s motion for a preliminary injunction. A preliminary injunction is necessary to preserve the ability of the Commission to conduct its administrative proceedings and to enter effective relief upon the completion of its administrative hearing.

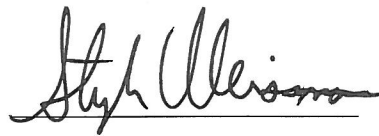
Pursuant to Local Civil R. 65.1(a), counsel for Plaintiff certifies that, prior to filing this motion, they gave counsel for Defendants notice of the making of this motion, and offered to provide counsel with copies of the Complaint and other moving papers upon the entry of a Protective Order. Entry of a Protective Order is necessary to protect confidential and competitively sensitive information of third parties.

Proposed orders for a temporary restraining order and a preliminary injunction are attached.

Dated: February 19, 2015

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Stephen Weissman", written over a horizontal line.

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[PROPOSED] TEMPORARY RESTRAINING ORDER

Pursuant to the authority conferred by Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), Plaintiff, the Federal Trade Commission (the “Commission”), having reason to believe that Defendants Sysco Corporation (“Sysco”) and USF Holding Corp. (“US Foods”) are violating or are about to violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, in that Defendants are about to merge, and the Court having considered, after due notice to Defendants, the Commission’s complaint and motion for a temporary restraining order pursuant to Section 13(b) of the Federal Trade Commission Act, and the papers filed in support thereof, and it appearing that:

(a) In the absence of temporary relief, Defendants will be able to consummate the proposed merger between Defendants after 11:59 p.m. on March 2, 2015;

(b) Plaintiff has made a sufficient showing of a likelihood of success on the merits of its complaint for preliminary injunctive relief to warrant the relief afforded by this Order;

(c) The equities favor the issuance of this Order because the consummation of the transaction would hinder the ability of the Court to afford effective injunctive relief upon completion of the hearing on Plaintiff's motion for preliminary injunction; and

(d) Entry of a temporary restraining order preventing the proposed merger is in the public interest;

NOW, THEREFORE, IT IS

ORDERED, that sufficient reason having been shown, that Defendant Sysco and Defendant US Foods are temporarily enjoined from consummating the proposed merger or otherwise effecting a combination of Defendant Sysco and Defendant US Foods; and it is further

ORDERED, that Defendants shall take any and all necessary steps to prevent any of their officers, directors, domestic or foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures from consummating, directly or indirectly, any such merger, or otherwise effecting any combination between Defendant Sysco and Defendant US Foods; and it is further

ORDERED, that the parties shall appear before this Court at Courtroom No. ___, on the ___ day of ___, 2015, at ___ a.m./p.m. for a status conference.

ISSUED this ___ day of ___, 2015, at ___ a.m./p.m.

ORDERED:

United States District Court Judge

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[PROPOSED] PRELIMINARY INJUNCTION ORDER

Upon consideration of the motion of Plaintiff Federal Trade Commission (the “Commission”) for a preliminary injunction, and having considered the pleadings, memoranda, declarations, exhibits, and other evidence presented by the Commission and by Defendants Sysco Corp. (“Sysco”) and USF Holding Corp. (“US Foods”), the Court finds as follows:

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over the parties;
2. Venue and service of process are proper;
3. The Commission has pending an administrative proceeding in which it is evaluating the legality of the merger between Sysco and US Foods;

4. In the absence of preliminary relief, Sysco and US Foods will be able to consummate the merger before the completion of the administrative proceeding now pending before the Commission;

5. The Commission has made a sufficient showing of the likelihood of success on the merits of its complaint to warrant preliminarily enjoining the merger between Sysco and US Foods;

6. Defendants will not be substantially injured if the merger between Sysco and US Foods is enjoined pending the completion of the administrative proceedings pending before the Commission;

7. If preliminary relief is not granted and Defendants consummate the transaction, Plaintiff and the public will be injured because the consummation of the transaction will deprive the Commission of its ability to order relief that fully restores competition should the acquisition be found to violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18;

8. Entry of a preliminary injunction is in the public interest and necessary to maintain the status quo pending the completion of the administrative litigation;

NOW, THEREFORE, IT IS

ORDERED, that the Commission's motion for a preliminary injunction enjoining the merger between Sysco and US Foods is granted; and it is further

ORDERED, that Defendants Sysco and US Foods are hereby enjoined and restrained, pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), from consummating the proposed merger, or otherwise effecting a combination of Defendants Sysco

and US Foods until the completion of the administrative proceedings evaluating the proposed transaction now pending before the Commission; and it is further

ORDERED, that Defendants shall take any and all necessary steps to prevent any of their officers, directors, domestic or foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures from consummating, directly or indirectly, any such merger, or otherwise effecting any combination between Defendant Sysco and Defendant US Foods; and it is further

ORDERED, that Defendants are directed to maintain the status quo until either: (1) the completion of all legal proceedings by the Commission challenging the transaction, including all appeals, or (2) further order of the Court, including upon the request of the Commission, before completion of such legal proceedings; and it is further

ORDERED, that this Court shall retain jurisdiction of this matter for all purposes and for the full duration of this Order, as provided in the previous paragraph.

ISSUED this ____ day of _____, 2015, at _____ a.m./p.m.

ORDERED:

United States District Court Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of February, 2015, I served the foregoing on the following counsel via electronic mail:

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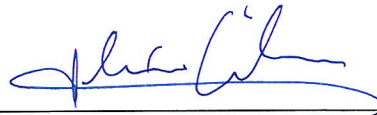
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