

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TEMPUR SEALY INTERNATIONAL, INC. and
MATTRESS FIRM GROUP, INC.

Plaintiffs,

vs.

THE FEDERAL TRADE COMMISSION

and

LINA M. KHAN, REBECCA KELLY
SLAUGHTER, ALVARO BEDOYA, MELISSA
HOLYOAK, and ANDREW N. FERGUSON,
in their official capacities as Commissioners of the
Federal Trade Commission

Defendants.

Civil Action No. 4:24-cv-03764

**PLAINTIFFS TEMPUR SEALY'S AND MATTRESS FIRM'S MOTION
FOR EXPEDITED BRIEFING FOR PRELIMINARY INJUNCTION**

Plaintiffs Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group, Inc. (“Mattress Firm”) (together, “Plaintiffs”) file this Motion for Expedited Briefing in conjunction with their Motion for Preliminary Injunction against Defendants¹ (“PI Motion”) so that full briefing may be completed prior to the unconstitutional and duplicative administrative proceeding set for final hearing on December 4, 2024 (“ALJ Hearing”).

¹ Namely, Federal Trade Commission (“FTC”), Lina M. Khan, Rebecca Kelly Slaughter, Alvaro Bedoya, Melissa Holyoak, and Andrew N. Ferguson.

BRIEF BACKGROUND

As detailed further in the PI Motion, the FTC has launched its own administrative proceeding before one of its Administrative Law Judges (“ALJ”). Consistent with the schedule adopted in that proceeding, the ALJ will hold an administrative hearing starting on December 4, 2024, to consider the merits of the merger. Though FTC staff is not opposed to a pending request by Plaintiffs to continue the administrative hearing until no earlier than February 9, 2025, the Parties await a ruling on that request by the full Commission.

To avoid expedited briefing while the Parties wait for a ruling, Plaintiffs requested that the FTC agree to a TRO enjoining the administrative hearing pending the outcome of Plaintiffs’ requested preliminary injunction. The FTC refused. Plaintiffs then proposed that the FTC agree to a hybrid schedule that would extend the FTC’s response deadline by thirty-six days if the request to continue the administrative proceeding is granted prior to the FTC’s expedited response deadline. The FTC again refused. Thus, Plaintiffs must seek this expedited briefing schedule in light of the currently scheduled December 4, 2024 ALJ Hearing.

As detailed further in their PI Motion, Plaintiffs have been suffering and will continue to suffer irreparable harm and unrecoverable costs should they be forced to prepare and litigate both the preliminary-injunction hearing in

Cause No. 4:24-cv-2508 scheduled to begin November 12, 2024, and then the ALJ Hearing days later. To avoid this unjust result, Plaintiffs request an expedited briefing schedule that requires the FTC to respond to Plaintiffs' PI Motion no later than November 26, 2024, so that the issues may be ripe for this Court prior to December 4, 2024. To the extent the ALJ grants the pending request for a continuance prior to November 26, 2024, Plaintiffs will promptly supplement this motion and work with the FTC to adjust the proposed briefing schedule to account for the proposed continuance.

Upon a final conference before filing this motion, the FTC requested that Plaintiffs note the FTC's position related to the requested relief as follows:

While Defendants dispute that any injunctive relief or expedited treatment of Plaintiffs' request for such relief is warranted, absent agreement otherwise, Defendants agree that they will file their opposition to Plaintiffs' motion for preliminary injunction in 21 days, on November 26, 2024, consistent with Local Civil Rule 7.4. Defendants' agreement is without prejudice to Defendants' ability to move for future scheduling relief if the underlying facts change.

Accordingly, Defendants appear unopposed to the actual relief requested in this Motion subject to the ability to move for future scheduling relief if the underlying facts change.

ARGUMENT & AUTHORITY

This Court may issue a “scheduling order setting cut-off dates for . . . motions” at the initial pretrial conference or later “as the need is identified.” LR 16.1; Fed. R. Civ. P. 16(b). A court has a duty to establish

“early and continuing control so that the case will not be protracted because of lack of management.” *Texas v. United States Dep’t of Homeland Sec.*, No. 6:24-cv-00306, 2024 U.S. Dist. LEXIS 153604, at *3, 11-12 (E.D. Tex. 2024) (quoting Fed. R. Civ. P. 16(a)(2)) (entering expedited schedule for preliminary injunctive relief). And courts have inherent “case-management authority to set deadlines,” which is often exercised where preliminary relief has been sought. *See, e.g., Chamber of Commerce of the United States v. FTC*, No. 6:24-cv-00148, 2024 U.S. Dist. LEXIS 81436, at *7 (E.D. Tex. 2024). For example, the FTC was recently required to file a response to a similar PI Motion in less than thirty days from the initial filing of the lawsuit pursuant to an expedited briefing schedule in *The Kroger Co. v. The Federal Trade Commission et al.*, 1:24-cv-004380-DRC, in the United States District Court for the Southern District of Ohio. Ex. 3.

Here the Court should similarly exercise its inherent case-management authority and order expedited briefing so that the PI Motion can be timely considered. To accomplish this, the FTC’s Response to the PI Motion should be due no later than November 26, 2024, so that the PI Motion can be fully briefed by the time the ALJ Hearing is set to begin on December 4, 2024.

As explained in the PI Motion, the public interest and balance of equities strongly favor a preliminary injunction preventing the FTC from proceeding with the unlawful administrative adjudication and from violating Tempur

Sealy's and Mattress Firm's constitutional rights. The PI Motion should be submitted before the ALJ Hearing so that a more efficient and just resolution may be reached.

CONCLUSION

For the reasons described above, Tempur Sealy and Mattress Firm respectfully request this Court grant its motion for expedited briefing.

Dated: November 5, 2024

/s/ Sara Y. Razi

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on the following counsel of record in this matter via CM/ECF on this 5th day of November, 2024.

/s/Alex B. Roberts
Alex B. Roberts

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Defendants' counsel related to the relief requested in this Motion. Defendants noted their position as follows: "While Defendants dispute that any injunctive relief or expedited treatment of Plaintiffs' request for such relief is warranted, absent agreement otherwise, Defendants agree that they will file their opposition to Plaintiffs' motion for preliminary injunction in 21 days, on November 26, 2024, consistent with Local Civil Rule 7.4. Defendants' agreement is without prejudice to Defendants' ability to move for future scheduling relief if the underlying facts change."

/s/Alex B. Roberts
Alex B. Roberts

CERTIFICATE OF WORD COUNT

Pursuant to Court Procedure 16(c), I certify that this motion contains less than 5,000 words.

/s/Alex B. Roberts
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