UNITED STAT ES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman William E. Kovadc J. Thomas Rosb Edith Ramirez Julie Brill

In the Matter of

THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS

DOCKET NO. 9343

ORDER DENYING RESPONDENT'S EXPEDITED MOTION FOR Sainst the Federal TradeCommission in the United

States District Court for the Estern District of North Carolina (Wester Division), and on February 2, 2011, Respondent filed Mation for Temporary RestrainingOrder and Other Equitable Relief in that Court. One Eruary 9, 2011, the District Court issued and Or which, *inter alia*, denied that motion, stating in relevant part:

Upon cateful consideration of the issues raised, the dersigned concludes that plaintiff has failed to satisfy the requirements for a temporary restraining order. Among other things, plaintiff has failed to show that the threatened harm is sufficiently immediate so as to waant the extraordinary remedy of a temporary restraining order. . . . Substantive issue of refating to the likelihood of plaintiff's success on the mets looms large concerning whether plaintiff seeks this court improperly to enjoin ongoing administrative enforcement proceedings. The present showings not sufficient to warant atemporary restraining order. Plaintiff's request for temporary restraining order is DENED.¹

¹North Carolina State Board of Dental Examiners, Plaintiff, v. Federal Trade Commission, Defendant (Easten District of Noth Carolina, Western Division), No. 5:11-CV-49-FL, Order (February 9, 2011) (deying plaintiff's motion for a tempoary restraining order and directing filing of joint report and plan orace sbedulingmatters within fourtere days).

The District Court also quested abriefing scheduleon the request for a preliminary injunction within two weeks. The court thus dd not seek to prohibit or delay the evidentiary hearing in this administrative proceeding from beginning a

²This is Respondent's fourth motion to the Commission seeking a delay of these proceedings. On Novembre 15, 2010, the Commission denied Respondent's Motion ForoStay Proceeding. *Commission Order Denying Motion For Stay of Proceeding* (November 15, 2010). On Januay 19, 2011, Respondent filed Expedited Motion for a ter Hearing Date. On Januay 21, 2011, the Commisson issued an Orde("Januay Order") denying that motion. *Commission Order Denying Expedited Motion For A Later Hearing Date* (January 21, 2011). On Januay 24, 2011, Respondent filechaption for reonsideration of the anuary Order ("Respondet's Motion"), and on Ebruary 9, 2011, the Commisson issued an Orderlenying that motion as well.*Commission Order Denying Motion to Reconsider Respondent's Motion for A Later Hearing Date* (Feb. 9, 2011).

³Over the past few yeas, the Commission has denied similar motions whethe Commission was in fedral court under Setion 13(b) of the FFC Act to secue preliminary injunctions in nerger cases. See Whole Foods Markte Inc., Order Amending Scheduling Order and Denying Respondent's Motion to Stay Proceeding (Dec. 19, 2008); NOVA Health System Foundation, Order Denying Respondents' Motion to Stay Administrative Proceedings (May 29, 2008).

attempt to relitigate the temporary restraining order motion it filed in District Court, and the District Court refuse to grant that refer. Moreover, Responded's daims of undue burdering hollow, given that Respondent initiated the district court proceeding and waited to do so until three weeks before the administrative proceeding was scheduled to begin. To allow respondents to stayFTC proceedings based on the petency of collateral federal court actions that they themselves havin itiated would create peverse incentives to attempt to create duplicative proceedings, and would place respondents, ratine than the Commission, in control of the administrative proceeding schedule.

Neither the date on which the evidentiary hearing will begin nor the place at which it will be conduted has branged since the Complaint was issued more than estemonths agon June 17, 2010. The endenge of a collateral proceeding in federal district cour does not provide the requisite showing of good cause o change the evidentiary hearing date. In short, as the foregoing discussion establishes, Respondent has not made the requisite showing of good cause for the Commission to stay the administrative proceedings. Accordingly,

IT IS ORDERED THAT Respondent's Expedited Motion for Stay of Proceedings Pending the Outcome of a Motion for Preliminary and Permaent hjunction in U.S. Distict Court for the Eastern District of North Carolina beand it herby is, DENIED.

By the Commission, Commissioner Bill recused.

Donald S. Clark Secreary

SEAL: ISSUED: Februray 15, 2011