

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
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 S

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<sup>1</sup>*North Carolina State Board of Dental Examiners, Plaintiff, v. Federal Trade Commission, Defendant* (Eastern District of North Carolina, Western Division), No. 5:11-CV-49-FL, Order (February 9, 2011) (denying plaintiff's motion for a temporary restraining order and directing filing of joint report and plan on case scheduling matters within fourteen days).

The District Court also requested a briefing schedule on the request for a preliminary injunction within two weeks. The court thus did not seek to prohibit or delay the evidentiary hearing in this administrative proceeding from beginning a

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<sup>2</sup>This is Respondent's fourth motion to the Commission seeking a delay of these proceedings. On November 15, 2010, the Commission denied Respondent's Motion For Stay Proceeding. *Commission Order Denying Motion For Stay of Proceeding* (November 15, 2010). On January 19, 2011, Respondent filed an Expedited Motion for a Later Hearing Date. On January 21, 2011, the Commission issued an Order ("January Order") denying that motion. *Commission Order Denying Expedited Motion For A Later Hearing Date* (January 21, 2011). On January 24, 2011, Respondent filed a motion for reconsideration of the January Order ("Respondent's Motion"), and on February 9, 2011, the Commission issued an Order denying that motion as well. *Commission Order Denying Motion to Reconsider Respondent's Motion for A Later Hearing Date* (Feb. 9, 2011).

<sup>3</sup>Over the past few years, the Commission has denied similar motions where the Commission was in federal court under Section 13(b) of the FTC Act to secure preliminary injunctions in merger cases. See *Whole Foods Market 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 refused to grant that relief. Moreover, Respondent's claims of undue burdening 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 stay FTC proceedings based on the pendency of collateral federal court actions that they themselves have initiated would create perverse incentives to attempt to create duplicative proceedings, and would place respondents, rather than the Commission, in control of the administrative proceedings schedule.

Neither the date on which the evidentiary hearing will begin nor the place at which it will be conducted has changed since the Complaint was issued more than nine months ago on June 17, 2010. The pendency of a collateral proceeding in federal district court does not provide the requisite showing of good cause to 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 Permanent Injunction in U.S. District Court for the Eastern District of North Carolina be and it hereby is, DENIED.

By the Commission, Commissioner Bill recused.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: February 15, 2011