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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

08 08 2017

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

587799

In the Matter of:

IMPAX LABORATORIES, INC.,
a corporation.

Docket No. 9373

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on August 7, 2017, Complaint Counsel's stated reason for refusing Impax's requested extension was that a deadline beyond August 21st would permit the Commission to decide the motion after the October 24, 2017 Hearing had begun, or to decide the motion too close in time to the hearing date requiring Complaint Counsel to prepare for trial without benefitting from a possible narrowing of the issues. Complaint Counsel's lack of confidence in the Commission's ability to decide its motion promptly does not reflect undue prejudice. Under the Second Revised Scheduling Order and Commission rules, Complaint Counsel could have filed their Summary Decision Motion as late as September 24, 2017, thirty days before the hearing date.

See

Effective Tool for Developing the Law or Rubber Stamp?” J. Competition L. & Econ. 623, 641 (2016), available at <https://academic.oup.com/jcle/article/12/4/623/2547756/ADMINISTRATIVE-INVESTIGATION-AT-THE-FTC-EFFECTIVE> (“The FTC’s Part 3 authority is a powerful tool for developing or clarifying the law.”); see also Maureen K. Ohlhausen, “Dollars, Doctrine, and Damage Control: How Disgorgement Affects the FTC’s Antitrust Mission” (April 2016) at 2 (“Part III is a fundamental institutional strength of the FTC and has allowed the agency to serve a critical function in emerging areas of competition law”), at 910 (suggesting Part III proceedings and the FTC are “optimally placed” to justify “an appropriate rule of reason inquiry” under *FTC v. Actavis*).

Given Complaint Counsel’s efforts to rewrite the rule of reason, the novelty of certain of the legal issues involved, the extensive factual record comprised in part of 22 depositions, six of which have been or will be taken after Complaint Counsel filed its motion and other pending deadlines—including an August 11th fact discovery deadline and a September 5th deadline for Respondent’s expert reports—Impax would be overburdened to meet the current August 18th deadline, even if it works diligently towards doing so. See *In re Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, *2 (2002) noting good cause exists when a deadline in a scheduling order cannot be met “despite the diligence of party seeking the extension.”

For these reasons, Impax respectfully requests the Commission extend the deadline for Impax’s Opposition to Complaint Counsel’s Motion for Summary Decision to August 31, 2017.

Public

Dated: August 8, 2017

O'MELVENY & MYERS LLP

By: /s/ Edward D. Hassi

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Terrell McSweeney

In the Matter of:

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a corporation.

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[PROPOSED] ORDER FOR EXTENSION OF TIME

Upon consideration of Respondent Impax Laboratories, Inc.'s Motion for an Extension of Deadline for Opposing Complaint Counsel's Motion for Summary Decision, it is hereby ORDERED that Respondent's Motion is GRANTED. Respondent is hereby granted until August 31, 2017, to file its response to the Motion for Summary Decision.

By the Commission.

ISSUED: _____

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-159
Washington, D.C. 20580

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2017, I emailed a copy of the foregoing to the following individuals:

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Notice of Electronic Service

I hereby certify that on August 08, 2017, I filed an electronic copy of the foregoing RESPONDENT IMPAX LABORATORIES, INC.'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXTENSION OF DEADLINE FOR OPPOSING COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on August 08, 2017, I served via E-Service an electronic copy of the foregoing RESPONDENT IMPAX LABORATORIES, INC.'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXTENSION OF DEADLINE FOR OPPOSING COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION, upon:

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I hereby certify that on August 08, 2017, I served via other means, as provided in 4.4(b) of the foregoing RESPONDENT IMPAX LABORATORIES, INC.'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXTENSION OF DEADLINE FOR OPPOSING COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION, upon:

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Eileen Brogan
Attorney