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ORIGINAL

The parallel proceedings in federal district court on the Commission's request for a preliminary injunction in *FTC v. Staples, Inc.* No. 1:15-cv-02115 (EGS) (D.D.C.) recently concluded, and the Parties are awaiting that court's ruling. The District Court has committed to issue its ruling before May 10, 2016, which is the same day that the administrative trial before this Court is currently scheduled to commence. See Exhibit B, PI Action Status Conf. Tr. 39:4-39:23 (Dec. 17, 2015). In light of the forthcoming ruling in the preliminary injunction proceeding, and the substantial likelihood that the ruling will cause these administrative proceedings to be suspended or rendered moot, the Parties filed a joint motion asking the Commission for a 21-day postponement of the start of the administrative trial until May 31, 2016.

The current scheduling order contemplates motions for in-camera treatment to be filed by non-parties on April 28. Amending the schedule as requested will move that date to May 3, reducing the risk that the more than 200 non-parties, who may have confidential information used or witnesses called at the administrative trial, will incur unnecessary expense and burden over the coming days and weeks on pre-trial preparation and commencing the administrative trial, only to have the trial permanently suspended shortly thereafter. Should the Commission grant the Parties' motion for a 21-day stay, the non-parties may never have to make their motions for in-camera treatment.

The Court entered the Scheduling Order in this matter on January 4, 2016 and previously ordered some deadlines modified on April 8, 2016. This is the second joint motion the Parties have made to modify the Scheduling Order. The parties hereby request the following amendments detailed below:

Event	Current Deadline
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Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.	May 10, 2016	May 10, 2016
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A Proposed Order is attached.

Dated: April 22, 2016

Respectfully Submitted,

 /s/ Carrie Mahan
Carrie Mahan
Jeffrey Perry
WEIL, GOTSHAL & MANGES LLP
1300 Eye Street NW
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Telephone: (202) 682-70000005

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

In the Matter of

STAPLES, INC.
a corporation,

and

OFFICE DEPOT, INC.
a corporation.

Docket No. 9367

**[PROPOSED] ORDER GRANTING JOINT MOTION
TO AMEND SCHEDULING ORDER**

Upon joint motion of Complaint Counsel and Respondents, and good cause existing,

IT IS HEREBY ORDERED THAT the Parties' Joint Motion to Amend Scheduling

Order is **GRANTED** and the Scheduling Order is amended as follows:

Event	Deadline

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES**

/s/ Matthew J. Reilly
Matthew J. Reilly
Andrew M. Lacy
Peter C. Herrick
SIMPSON THACHER & BARTLETT

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

Donald S. Clark, Secretary
Office of the Secretary
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Chief Administrative Law Judge
FEDERAL T

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the original filing, and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: April 22, 2016

/s/ S. Nicole Booth
S. Nicole Booth
Paralegal

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

STAPLES, INC.
a corporation,

and

OFFICE DEPOT, INC.
a corporation.

Docket No. 9367

JOINT EXPEDITED MOTION FOR A 21-DAY STAY
OF ADMINISTRATIVE PROCEEDINGS

Pursuant to Rule 3.41 of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, Complaint Counsel and Respondents Staples, Inc. ("Staples") and Office Depot, Inc. ("Office Depot") jointly move for a 21-day postponement of the commencement of the administrative trial currently scheduled to begin on May 10, 2016, to May 31, 2016, and for a corresponding stay of related pre-trial deadlines. This brief postponement will avoid significant expense and burden on more than 200 non-party whose confidential information has been designated for use in the administrative trial.

The requested relief will not prejudice the Commission's ability to discharge its duties. The parallel proceedings in federal district court on the Commission's motion for a preliminary injunction in *FTC v. Staples, Inc.* No. 1:15-cv-02115 (EGS) (D.D.C.) recently concluded. In that proceeding, the District Court committed to issue its order on the motion for preliminary injunction by May 10 at the request of Staples, because Staples' financing for the proposed

legal memoranda requesting camera treatment of those materials, and filing copies of all such materials with the Court. Additionally, the Parties have identified approximately 45 non-parties as witnesses that may be called live at the administrative trial. A brief stay will postpone the need for those witnesses to prepare to testify. Moreover, because the administrative trial may become moot, a temporary stay could save parties tens of thousands, if not hundreds of thousands, of dollars in legal fees alone.

This brief postponement of the administrative trial will not prejudice the Commission. As Staples and Office Depot have represented repeatedly, if the District Court grants the preliminary injunction, the Respondents will abandon their demand and this administrative proceeding will be moot. See Exhibit A, Scheduling Conf. Tr. 6:12-18a(d) 4, 2016); Exhibit B, PI Hr'g Tr. 2901:14-19 (Apr. 5, 2016)d. at 3027:12-3028:24d. at 3647:2-3 ("if the government's application is granted, the merger will not be consummated"). If the District Court denies the motion for preliminary injunction, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the complaint Rule 3.26(b)-(d). Once a respondent files such a motion, "the new rule provides for an automatic withdrawal or automatic stay" of the administrative proceeding, depending on the type of motion. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015) (emphasis added); see also Rule 3.26(c); Rule 3.26(d)(2). Imposing a stay now avoids the inefficiency of beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court without prejudicing the Commission.

² Respondents also note that they face substantial and potentially unnecessary burdens—including legal fees—if a temporary stay is not granted.

³ Based on historical example, the D.C. Circuit may rule very quickly if the FTC seeks an injunction pending appeal. See Order, FTC v. Whole Foods, Inc. No. 07-5275 (D.C. Cir. Aug. 23, 2007 (denying injunction pending appeal within days of the district court denying the preliminary injunction).

RELIEF REQUESTED

For all of the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to postpone commencement of the administrative hearing by 21 days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-trial deadlines be stayed for 21 days.

Dated: April 22, 2016

Respectfully Submitted,

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/s/ Matthew J. Reilly
Matthew J. Reilly
Andrew M. Lacy

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

Donald S. Clark, Secretary
Office of the Secretary
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW Room H-113
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I also certify that I delivered, via electronic mail, a copy of the foregoing document to:

The Honorable D. Michael Chappell
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Tara Reinhart
Chief Trial Counsel
FEDERAL TRADE COMMISSION

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the original filing, and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: April 22, 2016

/s/ S. Nicole Booth
S. Nicole Booth
Paralegal

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)	
)	
et al.,)	Civil Action
)	No. 15-2115
Plaintiffs,)	
)	December 17, 2015
v.)	3:39 p.m.
)	
STAPLES INC., et al.,)	Washington, D.C.
)	
Defendants.)	

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1 MS. SULLIVAN: Thank you.

2 THE COURT: Hold on. Just one second.

3 (Brief pause in proceedings.)

4 THE COURT: All right. I'll give you whatever date you
5 want. You're asking for May 10th? Is that what you're asking?

6 MS. SULLIVAN: Yes, and I apologize for asking, Your
7 Honor, but -- because I know it puts pressure on your --

8 THE COURT: No, no, no, no. No, it's just -- but I will
9 tell you in all likelihood it'll be before then.

10 MS. SULLIVAN: Perfect, Your Honor.

11 THE COURT: Yeah.

12 MS. SULLIVAN: Thank you.

13 THE COURT: But at the very outside it'll be May the
14 10th --

15 MS. SULLIVAN: Appreciate it.

16 THE COURT: -- but I'd be shocked if we'd run up to May
17 the 10th.

18 MS. SULLIVAN: Thank you, Your Honor.

19 THE COURT: I'd be shocked.

20 MS. SULLIVAN: Thank you, Your Honor.

21 THE COURT: But that's what you've asked for, and you need
22 that for compelling reasons, and that's fine. We'll be happy to
23 do that.

24 MS. SULLIVAN: I appreciate it.

25 THE COURT: To the extent that -- and, actually, we were

Notice of Electronic Service

I hereby certify that on April 22, 2016, I filed an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, with:

D. Michael Chappell
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Washington, DC, 20580

Donald Clark
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I hereby certify that on April 22, 2016, I served via E-Service an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, upon:

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