

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

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| _____) | |
| In the Matter of) | |
|) | |
| Tapestry Inc.,) | |
| a corporation, and) | Docket No. 9429 |
|) | |
| Capri Holdings Limited,) | |
| a corporation,) | |
|) | |
| Respondents.) | |
| _____) | |

JOINT STATUS REPORT #2

Pursuant to the Scheduling Order dated May 16, 2024, Complaint Counsel and Respondents Tapestry, Inc. (“Tapestry”) and Capri Holdings Limited (“Capri”) submit this Joint Status Report #2. The Parties provide an update on the Part 3 proceeding, the federal preliminary injunction proceeding, and pending motions in the federal preliminary injunction proceeding. The Parties are available to address these and any other issue the Court wishes to address at the Court’s convenience.

I. Part 3 Proceeding

Since filing Joint Status Report #1 on June 27, 2024, the Parties completed fact discovery, including written discovery and depositions, in accordance with the deadlines set forth in the Scheduling Order. Fact discovery closed on August 6, 2024.

On July 26, 2024, Complaint Counsel served its proposed expert witness list. On August 13, 2024, Complaint Counsel served the expert witness report of Loren Smith. On August 21, 2024, Complaint Counsel served its final proposed witness and exhibit lists, including deposition transcripts, copies of all proposed exhibits (except for demonstrative, illustrative or summary exhibits, and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel provided the Court with courtesy copies of its final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses. At this time, Complaint Counsel has no discovery disputes for the Court and does not anticipate any issues meeting the upcoming deadlines in the Scheduling Order.

On August 7, 2024, Respondents served their proposed expert witness list. On August 27, 2024, Respondents served the expert witness reports of Fiona Scott Morton, Karen Giberson, and Jeff Gennette. On August 28, 2024, Respondents served their final proposed witness and exhibit lists, including deposition transcripts, copies of all proposed exhibits (except for demonstrative, illustrative or summary exhibits, and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondents provided

the Court with courtesy copies of their final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

In its August 21, 2024 final witness list, Complaint Counsel included two witnesses that were not on either side's preliminary witness list and were not deposed. Respondents' position is that Complaint Counsel's listing of these two witnesses violates the Scheduling Order, which states that "[t]he final proposed witness lists may include up to fifteen witnesses not listed in the preliminary proposed witness lists, *provided that any witness not appearing on a preliminary proposed witness list must have been deposed.*" May 16, 2024 Scheduling Order ¶ 18 (emphasis added). Respondents informed Complaint Counsel of these improperly designated witnesses on August 22, 2024 and again on August 27, 2024. On August 27, 2024, Complaint Counsel directed Respondents to the September 12, 2024 deadline for witness list objections and the September 10, 2024 deadline for motions in limine. Respondents intend to seek relief from the Court at the appropriate time with respect to these two witnesses, and note the forthcoming dispute here so as to avoid any suggestion of waiver.

With respect to the issue identified by Respondents concerning hearing witness lists, as they acknowledge, the Scheduling Order provides a process for dealing with their objections. The two witnesses in question were both identified on Complaint Counsel's mandatory and supplemental disclosures, and Complaint Counsel produced to Respondents sworn declarations from each witness on May 31, 2024 and July 9, 2024. Despite these disclosures, Respondents decided not to depose them. And despite the Court Order that individuals not listed in preliminary witness lists must be deposed in order to be trial witnesses, Complaint Counsel chose not to depose them.

II. The Federal Proceeding

The Parties also completed discovery in the federal preliminary injunction proceeding, *Federal Trade Commission v. Tapestry, Inc., and Capri Holdings Limited*, No. 1:24-cv-03109-JLR (S.D.N.Y.), including written discovery and depositions of party and non-party witnesses. In the federal proceeding, fact discovery closed on July 26, 2024, with limited discovery continuing after that date due to deposition scheduling, and expert discovery closed on August 20, 2024, pursuant to the Case Management and Scheduling Order ("CMSO"), ECF No. 71.

On July 1, 2024, Defendant Tapestry filed a motion to compel non-party Cole Haan LLC to produce certain documents and data in response to Tapestry's subpoena *duces tecum*. On July 9, 2024, the Court held a hearing on Defendant's motion to compel Cole Haan LLC, and the Court granted the motion for reasons stated on the record. *See* Order Granting Letter Motion to Compel, ECF No. 117.

On July 26, 2024, Plaintiff served the initial expert report of Loren Smith. On August 7, 2024, Defendants served expert rebuttal reports of Fiona Scott Morton, Jeff Gennette, and Karen Giberson. Plaintiff served the expert reply report of Loren Smith on August 14, 2024. The Parties deposed these experts on August 16, 19, and 20, 2024.

The Parties exchanged final witness lists on August 21, 2024. On August 23, 2024, the Parties exchanged exhibit lists and deposition designations. On August 26, 2024, the Court entered the Parties' Stipulated Pre-Hearing Order, ECF No. 172. On August 27, 2024, the Parties

exchanged objections to the other side's exhibits and opening deposition designations, as well as deposition counter-designations. The CMSO deadline to exchange objections to the other side's deposition counter-designations and counter-counter-designations is August 29, 2024, and the Parties expect to meet this deadline.

There are several upcoming filing deadlines in the federal proceeding. The Parties must file prehearing proposed findings of fact and conclusions of law on August 30, 2024. On September 4, 2024, the Parties will make joint submissions regarding disputes about the admissibility of hearing exhibits and disputes about the confidentiality of party and non-party documents on hearing exhibit lists. The Parties expect to meet these deadlines in the federal proceeding before commencing the evidentiary hearing on September 9, 2024.

The following section addresses pending disputes in the preliminary injunction proceeding.

III. Pending Motions

There are no pending motions before this Court or the Commission. There are several pending motions before the federal court, as described below.

On August 6, 2024, Plaintiff filed its Memorandum of Law in Support of its Motion for Preliminary Injunction, ECF Nos. 120-126. Defendants filed their Opposition to Plaintiff's Preliminary Injunction Motion, ECF Nos. 155-161, on August 20, 2024. Plaintiff filed its Reply in Support of its Preliminary Injunction Motion, ECF No. 188-191, on August 27, 2024. The Court will hold an evidentiary hearing on this motion starting September 9, 2024.

On August 26, 2024, Plaintiff filed *Daubert* motions to exclude testimony of Defendants' industry experts Jeff Gennette and Karen Giberson, ECF Nos. 169-171, 173-178, 180-182, and Defendants filed a *Daubert* motion to exclude the testimony of Plaintiff's expert Loren Smith, ECF Nos. 183-187. Pursuant to the CMSO, the deadline to file oppositions to *Daubert* motions and motions *in limine* in the federal proceeding is August 30, 2024.

On August 28, 2024, Defendants filed their Letter Motion for Conference Seeking Guidance on Admissibility of Undesignated Transcripts and Documents Without Sponsoring Witnesses, ECF No. 195. The Court ordered Plaintiff to file a letter response by August 30, 2024, at 3 p.m.¹

There are no other pending motions before this Court, the Commission, or the federal court.

Respectfully submitted,

s/ Abby L. Dennis

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¹ In addition to the Parties' motions, over the past month, multiple non-parties filed letter motions to seal certain information and materials that they designated confidential in the federal proceeding.

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that I caused the foregoing document to be served via email to:

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