

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya
 Melissa Holyoak

In the Matter of

Tempur Sealy International, Inc.,
a corporation,

and

Mattress Firm Group Inc.
a corporation.

DOCKET NO. 9433

**RESPONDENTS' MOTION TO WITHDRAW THIS PROCEEDING
FROM ADJUDICATION**

Respondents Tempur Sealy International, Inc. (“Tempur Sealy”) and Mattress Firm Group Inc. (now known as Lima Deal Corporation LLC) (“Mattress Firm”) jointly move under FTC Rule 3.26 to remove this matter from adjudication, based on the District Court’s denial of the FTC’s request for a preliminary injunction under Section 13(b) and the FTC’s decision not to pursue relief pending appeal of the District Court’s ruling.¹ *See* 16 C.F.R. § 3.26.

Rule 3.26 sets forth procedures by which “respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest” “[a]fter a court has denied preliminary injunctive relief in a separate proceeding brought under section 13(b) of the Federal Trade Commission Act.” 16 C.F.R. § 3.26(a). Where, as here, a “district court has

¹ The FTC, Tempur Sealy, and Mattress Firm are referred to collectively as “Parties” throughout this motion.

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denied the Commission’s request for a preliminary injunction,” and “the Commission has not filed a motion for relief pending appeal with the court of appeals within 7 days following the district court’s denial of a preliminary injunction,” withdrawal of the matter from adjudication is mandatory. 16 C.F.R. § 3.26(b)(1); 16 C.F.R. § 3.26(c) (“[t]he Secretary *shall* issue an order withdrawing the matter from adjudication”) (emphasis added).

BACKGROUND

This matter concerns Tempur Sealy’s now completed acquisition of Mattress Firm. In July 2024, the FTC initiated an administrative proceeding to challenge this acquisition. Complaint, *In the Matter of Tempur Sealy Int’l Inc. and Mattress Firm Group Inc.*, No. 9433 (F.T.C. July 2, 2024). On the same day, the FTC filed another complaint in the United States District Court for the Southern District of Texas for a temporary restraining order and preliminary injunction under Section 13(b) of the FTC Act, seeking to prevent the acquisition’s closing until after administrative proceedings concluded. Complaint, *F.T.C. v. Tempur Sealy Int’l Inc.*, No. 4.24-cv-02508 (S.D. Tex July 2, 2024). Parties subsequently stipulated to a temporary restraining order and Respondents agreed not to close the acquisition until after the expected date by which the District Court would issue a decision on the FTC’s request for a preliminary injunction. Temporary Restraining Order, *F.T.C. v. Tempur Sealy Int’l Inc.*, No. 4.24-cv-02508 (S.D. Tex July 16, 2024); *see* Opinion and Order Denying Motion for Preliminary Injunction, *F.T.C. v. Tempur Sealy Int’l Inc.*, No. 4.24-cv-02508, at 20 (S.D. Tex Jan. 31, 2025) (“Opinion”).

The District Court for the Southern District of Texas held a seven-day preliminary injunction hearing during November 2024. On December 13, 2024, Parties submitted proposed findings of fact and conclusions of law to the Court, and on December 16, 2024, closing

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arguments took place. On January 31, 2025, in a 115-page opinion, the District Court denied the FTC's request for a preliminary injunction, based on its finding that the transaction's effect was "likely to be either neutral or procompetitive." Opinion at 1-2.² On February 3, 2025, the FTC informed Respondents that they would not file a motion for relief pending appeal. Subsequently, on February 5, 2025, Tempur Sealy completed its acquisition of Mattress Firm.

An evidentiary hearing in the Part 3 proceeding is currently scheduled to begin on March 12, 2025. Order, *In the Matter of Tempur Sealy Int'l Inc. and Mattress Firm Group Inc.*, No. 9433 (F.T.C. Feb. 4, 2025).

ARGUMENT

FTC Rule 3.26 mandates withdrawal of this matter from adjudication. Under Rule 3.26, following the denial of a preliminary injunction, "respondents may move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether the public interest warrants further litigation." 16 C.F.R. § 3.26(c); *see also* 16 C.F.R. § 3.26(b). Specifically, Respondents may file their motion when "[a] district court has denied the Commission's request for a preliminary injunction, if the Commission has not filed a motion for relief pending appeal with the court of appeals within 7 days following the district court's denial of a preliminary injunction." 16 C.F.R. § 3.26(b).

These conditions are satisfied. The District Court denied the FTC's motion for a preliminary injunction on January 31, 2025. More than seven days, as computed under Rule

² Separate from the federal proceedings initiated by the FTC, on October 4, 2024, Tempur Sealy and Mattress Firm filed a Complaint against the FTC and the five FTC Commissioners in the Southern District of Texas alleging that the Part 3 proceedings violated Article III by purporting to adjudicate Respondents' property and contract rights and that the FTC's purported ability to choose whether to sue in-house or in an Article III court violated the non-delegation doctrine. *Tempur Sealy Int'l, Inc. v. F.T.C.*, No. 4:24-cv-3764 (S.D. Tex. Oct. 24, 2024), ECF No. 1. In filing this Motion, Respondents do not concede that the Part 3 proceedings are proper or that the FTC may conduct the administrative hearing consistent with the Constitution. *See id.*

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4.3(a), have passed since, and the FTC has not filed a motion for relief pending appeal with the court of appeals. Rather, on February 3, 2025, the FTC informed Respondents that it does not plan to file for such relief. Further, Respondents file this motion “within 14 days after” the District Court’s denial of a preliminary injunction, as directed by Rule 3.26. 16 C.F.R. § 3.26(b); *see also* 16 C.F.R. § 4.3(a).

When respondents properly and timely file a Rule 3.26 motion, “[t]he Secretary *shall* issue an order withdrawing the matter from adjudication 2 days after such a motion is filed.” 16 C.F.R. § 3.26(c) (emphasis added). Because Rule 3.26’s conditions are satisfied here, withdrawing this matter from adjudication is mandatory.

CONCLUSION

For the reasons stated above, Respondents respectfully request that the Commission withdraw this matter from adjudication to consider whether its continuation is in the public interest.

Dated: February 13, 2025

Respectfully submitted,

By: /s/ D. Bruce Hoffman
D. Bruce Hoffman
Ryan A. Shores
Jacob M. Coate
CLEARY GOTTlieb STEEN &
HAMILTON LLP
2112 Pennsylvania Ave., NW Washington,
D.C. 20037
Telephone: (202) 974-1500
bhoffman@cgsh.com
rshores@cgsh.com
jcoate@cgsh.com
*Counsel for Respondents Tempur Sealy
International, Inc. and Mattress Firm Group
Inc., n/k/a Lima Deal Corporation LLC*

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[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION TO WITHDRAW

Having considered Respondents' Motion to Withdraw,

IT IS HEREBY ORDERED, that Respondents' Motion is GRANTED.

IT IS FURTHER ORDERED, pursuant to FTC Rule 3.26(c), that this matter in its entirety be, and hereby is, withdrawn from adjudication.

By the Commission.

Dated: _____

By: _____
April J. Tabor
Secretary

Certificate of Service

I hereby certify that, on February 13, 2025, I caused the foregoing 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 the following registered participants.

April J. Tabor
Secretary of the Federal Trade Commission
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, D.C. 20580
ElectronicFilings@ftc.gov

Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave., NW,
Washington, D.C. 20580

I also certify that I caused an unredacted copy of the foregoing document to be served via email to:

Allyson Maltas, amaltas@ftc.gov

Noel Miller, nmiller2@ftc.gov

Stephen Rodger, srodger@ftc.gov

Ethan Stevenson, estevenson1@ftc.gov

Adam Pergament, apergament@ftc.gov

Jeanette Pascale, jpascale@ftc.gov

Isiah Albright, ialbright@ftc.gov

Devon Allen, dallen1@ftc.gov

Counsel Supporting the Complaint

/s/ D. Bruce Hoffman

D. Bruce Hoffman

*Counsel for Respondents Tempur Sealy
International, Inc. and Mattress Firm Group Inc.,
n/k/a Lima Deal Corporation LLC*

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Certificate for Electronic Filing

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

February 13, 2025

/s/ D. Bruce Hoffman

D. Bruce Hoffman

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Statement Regarding Conferral

Pursuant to Paragraph 4 of the Scheduling Order, Respondents represent that Counsel for Respondents corresponded with Complaint Counsel in a good-faith effort to resolve the issues raised by this motion. Complaint Counsel takes no position on this motion.

February 13, 2025

/s/ D. Bruce Hoffman
D. Bruce Hoffman