

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of

**Tapestry, Inc.,
a corporation;**

and

**Capri Holdings Limited,
a corporation.**

Docket No. 9429

ORDER DENYING MOTION TO CONTINUE EVIDENTIARY HEARING

On April 22, 2024, the Commission issued an administrative complaint alleging that Respondents Tapestry, Inc. and Capri Holdings Limited entered into a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. The next day the FTC filed a complaint seeking a preliminary injunction in the United States District Court for the Southern District of New York pursuant to Section 13(b) of the FTC Act. *See FTC v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.). The administrative hearing is scheduled to begin on September 25, 2024. The hearing in federal court regarding the preliminary injunction is scheduled to begin on September 9, 2024, and is expected to last about seven and a half days.

On May 24, 2024, Respondents filed a Motion to Continue Evidentiary Hearing (“Motion”), which asks the Commission (i) to delay the administrative proceeding’s prehearing events (other than events related to discovery or to expert witnesses) currently scheduled after August 20, 2024, until a period commencing 20 days after the date of the federal court’s decision on the preliminary injunction and (ii) to defer commencement of the evidentiary hearing until 55 days after the federal court’s decision. Alternatively, Respondents ask the Commission to delay the administrative hearing and prehearing events for 60 days. Complaint Counsel oppose the Motion.

Under Commission rules, the Commission is committed to the expeditious conduct of its administrative proceedings, 16 C.F.R. § 3.1, and “[t]he pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding.” 16 C.F.R. § 3.41(f). However, “upon a showing of good cause” the Commission “may order a later date for the evidentiary hearing to commence.” 16 C.F.R. § 3.41(b). For the reasons described below, we deny Respondents’ Motion.

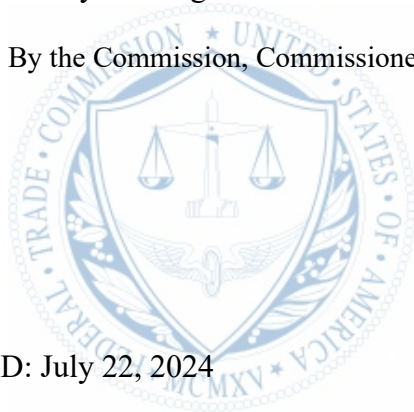
Here, Respondents argue that delaying the administrative hearing may obviate the need for the hearing based upon the district court’s decision, but they make no commitment to drop their merger if a preliminary injunction is granted. Respondents assert that they “may determine not to continue with the proposed transaction” if they do not prevail on the preliminary injunction, but their Transaction Agreement as written requires joint action to terminate the transaction.¹ Although Respondents are free to take the required steps, they have not done so, nor have they committed to doing so pending the outcome of the preliminary injunction hearing. In short, Respondents have not demonstrated that a district court loss would in fact obviate the need for the administrative hearing, even though they could do so.

Respondents also argue that delaying the administrative hearing would reduce the burden on Complaint Counsel, Respondents, and third parties by eliminating overlapping deadlines in the administrative and federal court proceedings. Respondents do not contend that the administrative and court hearings will overlap, but rather argue that existing procedural deadlines in the two proceedings “will create distractions” for those involved in them. Motion at 2. Procedural deadlines, however, frequently shift, potential motions are not always filed, and in any case, competing demands on litigators’ time are not uncommon. The mere possibility that separate sets of filings may have to be prepared in overlapping time frames does not persuade us that the requested continuance, running some two months (or longer), is necessary.

Under these circumstances, Respondents have not demonstrated good cause for delaying the administrative proceeding and its evidentiary hearing. Accordingly,

IT IS HEREBY ORDERED that Respondents’ May 24, 2024, Motion for Continuance of Evidentiary Hearing is **DENIED**.²

By the Commission, Commissioners Holyoak and Ferguson dissenting.



April J. Tabor
Secretary

SEAL:
ISSUED: July 22, 2024

¹ See Complaint Counsel Opp. At 5 (citing Ex. 1 at § 8.1(a), (d), (f)).

² Here, as in all past cases, the Commission’s denial of the Motion for Continuance of Evidentiary Hearing is without prejudice.