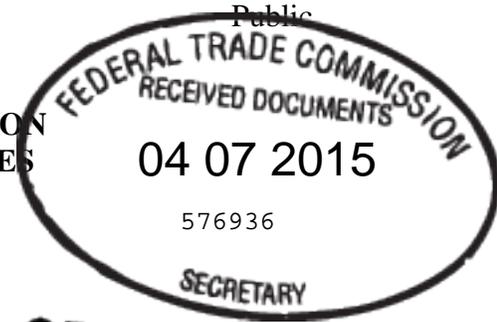


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

DOCKET NO. 9364

----- X
:
:
In the Matter of :
:
Sysco Corporation, :
a corporation, :
:
USF Holding Corp., :
a corporation, and :
:
US Foods Inc., :
a corporation, :
Respondents. :
----- X

**RESPONDENTS COUNSEL’S FIRST REQUEST FOR ADMISSION TO
COMPLAINT COUNSEL**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.32, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on March 16, 2015, Respondent Counsel hereby requests that the Federal Trade Commission (“FTC”) respond within 10 (ten) days to the following Requests for Admission in accordance with the Definitions and Instructions set forth below:

1. Admit that certain multi-unit foodservice operators presently each contract with more than one foodservice distributor, including more than one broadline foodservice distributor.
2. Admit that certain multi-unit foodservice operators—including restaurants, hotels, hospitality group purchasing organizations, healthcare group purchasing organizations and government organizations—presently each contract with more than one foodservice distributor, including more than one broadline foodservice distributor.
3. Admit that when a particular multi-unit foodservice operators presently uses more than one foodservice distributor, such multi-unit foodservice operator does not have product consistency across all of its customer locations.
4. Admit that when a particular multi-unit foodservice operator presently uses more than one foodservice distributor, such multi-unit foodservice operator does not have a single point of contact for its foodservice distribution.

5. Admit that when a particular multi-unit foodservice operator presently uses more than one foodservice distributor, such multi-unit foodservice operator does not have one centralized ordering platform for all foodservice distributors used by that multi-unit foodservice operator.
6. Admit that when a particular multi-unit foodservice operator presently uses more than one foodservice distributor, such multi-unit foodservice operator does not have uniform pricing and contract terms across all of its customer locations.

DEFINITIONS

- A. The term “multi-unit customer” means a foodservice operator that operates more than one location.
- B. The term “group purchasing organization” means an organization that aggregates the purchases of a group of members or customers and contracts on their behalf or for their benefit.
- C. The term “foodservice distributor” means a provider of the sale or distribution of food and foodservice-related non-food items, or contracted pricing thereof, to foodservice operators or their purchasing agents.
- D. The term “broadline foodservice distributor” means a provider of a broad line of food and foodservice-related non-food items, or contracted pricing thereof, to foodservice operators of their purchasing agents as described in the Complaint in this action

INSTRUCTIONS

- A. These RFAs call for the FTC to make a reasonable inquiry into the information available to answer each RFA.
- B. Each RFA will be deemed admitted unless, within 10 days of service of this request, FTC serves a sworn written answer to reach RFA.
- C. Each answer to these RFAs shall specifically admit or deny the statement or set forth in detail the reasons why FTC cannot truthfully admit or deny the statement.
- D. If FTC cannot admit or deny the entire RFA, it shall specify what portion of the statement is true and qualify or deny the remainder. When qualifying an answer, provide all facts and bases that Complainant contends support its refusal to admit to the statement.
- E. FTC shall not give lack of information or knowledge as a reason for failure to admit or deny unless after a reasonable inquiry the information available to FTC does not provide sufficient basis for admitting or denying the RFA. In such instances, Respondents shall describe the unavailable information and its efforts to obtain this information.

- F. If FTC objects to a RFA, it shall set forth the basis for its objection. Any ground not stated in an objection shall be waived. All objections must be made with particularity and must set forth all information upon which FTC intends to rely in response to any motion to compel.
- G. Whenever necessary to bring within the scope of a RFA a response that might otherwise be construed to be outside its scope, the following constructions should be applied:
 - 1. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the RFA more inclusive;
 - 2. Construing the singular form of any word to include the plural and the plural form to include the singular; and
 - 3. Construing the past tense of the verb to include the present tense and the present tense to include the past tense.
- H. An answer should not be supplied by reference to an answer to another RFA unless the information provided is intended to be identical in all respects.
- I. If FTC claims any ambiguity in interpreting a RFA or a definition or instruction applicable thereto, FTC shall set forth as part of its response the language deemed to be ambiguous and the interpretation used in responding to the RFA, and shall respond to the RFA as FTC interprets it.
- J. If FTC cannot find in the Definition section or in the body of the RFAs the definition for a word that is otherwise ambiguous, FTC shall interpret the word according to its usage by FTC and state in the answer to the RFA FTC’s definition of the word.
- K. If any privilege is claimed as a ground for not responding to a RFA, provide a privilege log describing the basis for the claim of privilege and all information necessary for the Court to assess the claim of privilege. The privilege log shall include the following:
 - 1. Specific grounds for the claim of privilege;
 - 2. The date of the privileged communication;
 - 3. The persons involved in the privileged communication;
 - 4. A description of the subject matter of the privileged communication in sufficient detail to assess the claim of privilege; and
 - 5. The specific RFA to which the privileged information is responsive.
- L. All questions relating to the RFAs should be directed to Joseph F. Tringali at (212) 455-3840.

- M. All responses to the RFAs must conform with FTC Rule § 3.32 (b).
- N. Each RFA is continuing and requires prompt amendment of any prior response if FTC learns or becomes aware, after acquiring additional information or otherwise, that the response is in some material respect incomplete or incorrect.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Request for Admissions has been prepared by me or under my personal supervision from the records of the Federal Trade Commission and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Respondents use such copies in any court or administrative proceeding, Federal Trade Commission will not object based upon Respondents not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

Dated: April 6, 2015

Respectfully submitted,

By: /s/ Joseph F. Tringali
Joseph F. Tringali

Joseph F. Tringali
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
jtringali@stblaw.com
Telephone: (212) 455-3840
Facsimile: (212) 455-2502
Peter C. Thomas
Peter Herrick
Simpson Thacher & Bartlett LLP
1155 F Street, NW
Washington, D.C. 20004
pthomas@stblaw.com
peter.herrick@stblaw.com
Telephone: 202-636-5535
Facsimile: 202-636-5502

*Counsel for Defendants USF
Holding Corp. and US Foods, Inc.*

By: /s/ Richard G. Parker
Richard G. Parker

Richard Parker
Ian Simmons
Edward D. Hassi
Katrina Robson
O'Melveny & Myers LLP
1625 Eye Street, NW
rparker@omm.com
isimmons@omm.com
ehassi@omm.com
krobson@omm.com
Washington, DC 20006
Telephone: (202) 383-5336
Facsimile: (202) 383-5414

Counsel for Defendant Sysco Corporation

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2015, I filed the foregoing document electronically using FTC e-file, which will send electronic notification of such filing to:

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Rm. H-159
Washington, D.C. 20580
secretary@ftc.gov

I also certify that I caused to be delivered via electronic mail and U.S. mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
oalj@ftc.gov

I further certify that I caused to be delivered via electronic mail a copy of the foregoing document to:

Stephen Weissman, Esq.
Federal Trade Commission Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
sweissman@ftc.gov

David J. Laing
Federal Trade Commission Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
dlaing@ftc.gov

Complaint Counsel

Dated: April 6, 2015

/s/ Joseph F. Tringali
Joseph F. Tringali, Esq.

Notice of Electronic Service

I hereby certify that on April 06, 2015, I filed via hand a paper original and electronic copy of the foregoing Respondents Counsel's First Request for Admission to Complaint Counsel, 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 April 06, 2015, I filed via E-Service of the foregoing Respondents Counsel's First Request for Admission to Complaint Counsel, with:

Joseph F. Tringali
Simpson Thacher & Bartlett LLP
jtringali@stblaw.com

Peter C. Thomas
Simpson Thacher & Bartlett LLP
pthomas@stblaw.com

Peter C. Herrick
Simpson Thacher & Bartlett LLP
peter.herrick@stblaw.com

Philip A. Mirrer-Singer
Simpson Thacher & Bartlett LLP
pmirrer-singer@stblaw.com

Andrea B. Levine
Simpson Thacher & Bartlett LLP
alevine@stblaw.com

Stephen Weissman
Federal Trade Commission
sweissman@ftc.gov

Alexis Gilman
Federal Trade Commission
agilman@ftc.gov

Mark Seidman
Federal Trade Commission
mseidman@ftc.gov

Christopher Abbott
Federal Trade Commission
cabbott@ftc.gov

Thomas Brock
Federal Trade Commission
TBrock@ftc.gov

Krishna Cerilli
Federal Trade Commission
kcerilli@ftc.gov

Melissa Davenport
Federal Trade Commission
mdavenport@ftc.gov

Michael DeRita
Federal Trade Commission
mderita@ftc.gov

David Laing
Federal Trade Commission
dlaing@ftc.gov

Matthew McDonald
Federal Trade Commission
mmcdonald@ftc.gov

Stephen Mohr
Federal Trade Commission
smohr@ftc.gov

Jeanne Liu Nichols
Federal Trade Commission
jnichols@ftc.gov

Ryan Quillian
Federal Trade Commission
rquillian@ftc.gov

Kristian Rogers
Federal Trade Commission
krogers@ftc.gov

Catherine Sanchez
Federal Trade Commission
csanchez@ftc.gov

Sophia Vandergrift
Federal Trade Commission
svandergrift@ftc.gov

Richard Parker
Partner
OMelveny and Myers LLP
rparker@omm.com

Edward Hassi
Partner
OMelveny and Myers LLP
ehassi@omm.com

Ian Simmons
Partner
OMelveny and Myers LLP
isimmons@omm.com

Katrina Robson
Partner
OMelveny and Myers LLP
krobson@omm.com

Jonathan Porter
Simpson Thacher & Bartlett LLP
jporter@stblaw.com

Abram Ellis
Simpson Thacher & Bartlett LLP
aellis@stblaw.com

I hereby certify that on April 06, 2015, I filed via other means, as provided in 4.4(b) of the foregoing Respondents Counsel's First Request for Admission to Complaint Counsel, with:

Haidee Schwartz
Counsel
OMelveny and Myers LLP
hschwartz@omm.com

Stephen Weissman
Counsel
Federal Trade Commission
sweissman@ftc.gov
Complaint

Richard Parker
Counsel
O'Melveny & Myers LLP
rparker@omm.com

Respondent

Marc Wolinsky

Counsel

Wachtell, Lipton, Rosen & Katz

mwolinsky@wlrk.com

Respondent

Joseph Tringali

Attorney