

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



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In the Matter of )  
 )  
Staples, Inc. )  
a corporation, )  
 )  
and )  
 )  
Office Depot, Inc. )  
a corporation, )  
 )  
Respondents. )  
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DOCKET NO. 9367

**ORDER GRANTING JOINT MOTION TO AMEND THE  
SCHEDULING ORDER AND REVISED SCHEDULING ORDER**

On April 22, 2016, Federal Trade Commission (“Commission”) Complaint Counsel and Respondents Staples, Inc. and Office Depot, Inc. (collectively, “Parties”) filed a Joint Motion to Amend the Scheduling Order (“Joint Motion”). The Parties filed this motion in conjunction with a Joint Expedited Motion for a 21-Day Stay of Administrative Proceedings, which was submitted to the Commission on April 22, 2016.<sup>1</sup> The Parties seek an order extending the imminent, remaining pre-trial deadlines in the Scheduling Order to the furthest extent possible, so as to avoid potentially unnecessary expense and burden on non-parties while the Parties’ joint expedited motion is pending before the Commission.

<sup>1</sup> The Parties state that 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 and that the District Court has committed to issue its ruling before May 10, 2016, which is the same day that the administrative trial is currently scheduled to begin. The Parties further state that, 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.

Under the current Scheduling Order, issued on January 4, 2016, and modified on April 8, 2016, the current deadline for motions for *in camera* treatment is April 28, 2016. The Parties state that 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 preparing for and commencing the administrative trial. The Parties contend that if the Commission grants their motion for a 21-day stay, the non-parties may never have to make their motions for *in camera* treatment. The Parties further state that if the Commission does not move the trial date, these amended pre-trial deadlines will still enable the Parties to commence the trial as scheduled, on May 10, 2016.

The Parties have demonstrated good cause for the requested extensions. Accordingly, the Joint Motion is GRANTED. The Scheduling Order is hereby revised as follows:

- April 28, 2016 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- April 28, 2016 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- May 3, 2016 - Complaint Counsel files pretrial brief supported by legal authority.
- May 4, 2016 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 4, 2016 - Exchange proposed stipulations of law, facts, and authenticity.
- May 6, 2016 - By 1:00 p.m., file final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- May 6, 2016 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 9, 2016 - Respondents' Counsel file pretrial brief supported by legal authority.
- May 9, 2016 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits.


To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party. (Do not include a signature line for the ALJ.)

May 10, 2016 - 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.

All the Additional Provisions in the January 4, 2016 Scheduling Order shall remain in effect.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: April 25, 2016