

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

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

In the Matter of

Tapestry, Inc.,
a corporation;

and

Capri Holdings Limited,
a corporation

Docket No. 9429

PUBLIC

RESPONDENTS' MOTION TO CONTINUE EVIDENTIARY HEARING

Pursuant to 16 C.F.R. §§ 3.21(c), 3.22(a), and 3.41(b), Respondents Tapestry, Inc. (“Tapestry”) and Capri Holdings Limited (“Capri”) request that the Federal Trade Commission (“FTC” or the “Commission”) continue the Part 3 Evidentiary Hearing and its prehearing events unrelated to discovery in the Administrative Action until 20 days after the date of the federal court’s decision on the FTC’s motion for a preliminary injunction in the Section 13(b) Action.¹ In the alternative, Respondents request that the Commission continue the Part 3 Evidentiary Hearing and its Prehearing Events for 60 days.

¹ For ease of reference, “Prehearing Events” refers to all non-expert-related deadlines after August 20, 2024 in the May 16, 2024, Scheduling Order. The “Administrative Action” refers to the FTC’s administrative action Docket 9429. The “Part 3 Evidentiary Hearing” refers to the Evidentiary Hearing under Part 3 of the FTC’s Rules, scheduled to begin on September 25. The “Section 13(b) Action” refers to the federal court proceedings that the FTC initiated on April 22, 2024, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The “Section 13(b) Evidentiary Hearing” refers to the hearing Judge Rochon scheduled to begin on September 9, 2024 (“the Section 13(b) Action”).

Under the current schedule, the Part 3 Evidentiary Hearing will begin one week after the FTC and parties complete the Section 13(b) Evidentiary Hearing. As a result, during the Section 13(b) Evidentiary Hearing, the Parties and Complaint Counsel will have several deadlines related to the Part 3 Evidentiary Hearing, including motions *in limine*, motions for *in camera* treatment, objections regarding admissibility of exhibits and witnesses, and Complaint Counsel’s pretrial brief. Likewise, the Parties’ preparation for and participation in the final Part 3 prehearing conference (September 24) and the Part 3 Evidentiary Hearing itself (which begins on September 25) will coincide with the same seven-day window following the Section 13(b) Evidentiary Hearing, during which the Parties will be finalizing their post-hearing proposed findings of fact and conclusions of law in the Section 13(b) Action (also likely due on September 25). These overlapping deadlines will create distractions for the Parties and third parties in the Section 13(b) Action, which FTC counsel agreed “take[s] precedence.” Section 13(b) Action Hr’g Tr. 22:23-25 (Apr. 29, 2024) (“I would just agree with [Capri’s counsel] that the federal court’s proceedings take precedence.”), Exhibit A.²

Not only is this crammed schedule unnecessarily burdensome, it is potentially quite wasteful. As the Commission has repeatedly recognized, and experience has repeatedly shown, the resolution of the Section 13(b) Action may obviate the need for the subsequent Part 3 Evidentiary Hearing. If the Parties do not prevail in defeating the Section 13(b) Action, they may

² During this hearing, counsel for Tapestry and Capri identified that the September 9th Section 13(b) Evidentiary Hearing date could be handled by the parties because the Part 3 Evidentiary Hearing date could be moved. Ex. A 15:20-23 (Tapestry counsel: “[W]e don’t see a need for the FTC trial to start until such time as you have a chance to assess [the need for a preliminary injunction] but if it does, we will take appropriate steps and I guess deal with that.”); *id.* 19:3-4 (Capri Counsel: “I will just note those Part 3 proceedings are often kicked. . . .”); *id.* 23:21-23 (Capri Counsel: “I don’t think that if we are in trial at the end of the day we are going to have dual proceedings in that Part 3 proceeding.”). FTC’s counsel agreed that “[t]he parties can move the date,” but the FTC was “not inclined to do so.” *Id.* 23:2-4.

determine not to continue with the proposed transaction. This means that at the same time the FTC is telling Congress that the FTC is resource-constrained and suffering from “pressure on staffing resources,”³ the FTC would be preparing to try—and trying—a multi-week evidentiary hearing that may very well be moot. Proceeding on this path also risks wasting the resources of (1) Administrative Law Judge Ayoubi and her staff and (2) the many third parties that the Parties expect will participate in the Part 3 Evidentiary Hearing (and Prehearing Events). Continuing the Part 3 Evidentiary Hearing and related Prehearing Events until 20 days after the federal court rules in the Section 13(b) Action alleviates these concerns, while still allowing the Part 3 Evidentiary Hearing to proceed in a timely manner.

To be clear, *Respondents do not seek to stay any discovery or expert deadlines in the Administrative Action.* Discovery has already begun and will proceed in parallel with discovery in the Section 13(b) Action. Rather, Respondents only seek to modestly postpone the Part 3 Evidentiary Hearing to maximize the likelihood that it is necessary.⁴ Consistent with the FTC’s position in similar circumstances, Respondents respectfully submit there is good cause here to continue the Part 3 Evidentiary Hearing and related prehearing dates until resolution of the Section 13(b) Action.

BACKGROUND

The FTC filed its administrative complaint in this matter on April 22, 2024 and scheduled an Evidentiary Hearing for September 25, 2024. That same day, the FTC filed an action in federal

³ See FTC, Fiscal Year 2025 Congressional Budget Justification – Budget Request dated March 11, 2024 at 11, https://www.ftc.gov/system/files/ftc_gov/pdf/fy25-cbj.pdf (discussing “pressure on staffing resources” among other issues).

⁴ The current Scheduling Order contemplates that the Prehearing Events will take 35 days. May 16, 2024 Scheduling Order at 2-4, Dkt. No. 9429 (“Administrative Scheduling Order”). With a 20-day continuance, the hearing would begin 55 days after resolution of the Section 13(b) Action.

court pursuant to Section 13(b) of the FTC Act seeking a preliminary injunction to prevent Tapestry from acquiring Capri pending the outcome of the Administrative Action. *See* Complaint, *Section 13(b) Action*, No. 1:24-cv-03109-JLR (S.D.N.Y. Apr. 23, 2024), ECF No. 1. On April 29, Judge Rochon held a hearing regarding scheduling and established that the Section 13(b) Evidentiary Hearing would start on September 9 and would “be around seven and a half days,” so, it will last “about a week and a half.” Exhibit A, Hr’g Tr. 22:18-20, 24:14-17. On May 1, Judge Rochon entered a Case Management and Scheduling Order (“CMO”) governing the Section 13(b) Action. *See* CMO at 18-19, *Section 13(b) Action*, ECF No. 71, Exhibit B. On May 16, Judge Ayoubi issued a scheduling order governing the Administrative Action. *See* Administrative Scheduling Order.

The table below identifies key overlapping events that are not related to discovery in both proceedings.⁵ *See* Ex. B, CMO at 18-19; Administrative Scheduling Order at 2-4. For ease of reference, we have highlighted the period in which the Section 13(b) Evidentiary Hearing will be ongoing.

Key Events	Date	Federal or Administrative
FTC serves witness list	Aug. 21	Both
FTC serves exhibit list	Aug. 21	Administrative
Respondents serve witness list	Aug. 21	Federal
FTC and Respondents serve exhibit list	Aug. 23	Federal
Parties notify non-parties of confidential material that they intend to use	Aug. 23	Federal

⁵ If an event is designated as “Federal,” then it is a deadline in the Section 13(b) Action. If an event is designated as “Administrative,” then it is a deadline in the Administrative Action. If an event is designated as “Both,” then it is the same deadline in both actions.

Key Events	Date	Federal or Administrative
Motions in limine and <i>Daubert</i> motions due	Aug. 26	Federal
Parties exchange objections to exhibit lists and deposition designations	Aug. 27	Federal
Respondents serve witness list and exhibit list	Aug. 28	Administrative
Parties file joint status report	Aug. 29	Administrative
Opposition to motions <i>in limine</i> and <i>Daubert</i> motions	Aug. 30	Federal
Proposed Findings of Fact & Conclusions of Law	Aug. 30	Federal
Parties notify non-parties of confidential information that they intend to use	Aug. 30	Administrative
Non-parties notify parties of objections to use of confidential information	Aug. 30	Federal
Parties meet and confer regarding confidentiality and admissibility	Aug. 30 (and as required after)	Federal
Joint submission regarding disputes about admissibility and confidentiality	Sept. 4	Federal
Complaint Counsel identify and serve rebuttal expert reports	Sept. 6	Administrative
<i>Federal Evidentiary Hearing Begins</i>	<i>Sept. 9</i>	<i>Federal</i>
Motions <i>in limine</i>	Sept. 10	Administrative
Motions for <i>in camera</i> treatment	Sept. 10	Administrative
Deadline to depose experts (including rebuttal expert witnesses)	Sept. 12	Administrative
Exchange expert-related proposed exhibits	Sept. 12	Administrative
Parties exchange objections to witness lists and exhibit lists	Sept. 12	Administrative

Key Events	Date	Federal or Administrative
Responses to motions <i>in limine</i>	Sept. 13	Administrative
Responses to <i>in camera</i> motions	Sept. 13	Administrative
Complaint Counsel files pretrial brief	Sept. 16	Administrative
<i>Federal Evidentiary Hearing Ends (anticipated)</i>	<i>Sept. 18</i>	<i>Federal</i>
Parties exchange proposed stipulations	Sept. 20	Administrative
Respondents file pretrial brief	Sept. 23	Administrative
Administrative Final Prehearing Conference	Sept. 24	Administrative
Post-Hearing Proposed Findings of Fact and Conclusions of Law Due (anticipated)	Sept. 25	Federal
Administrative Evidentiary Hearing Begins	Sept. 25	Administrative

On May 23, 2024, Respondent’s Counsel asked Complaint Counsel whether the FTC would oppose this Motion to Continue the Part 3 Evidentiary Hearing and its prehearing events unrelated to discovery. Exhibit C. Complaint Counsel confirmed it opposes this Motion. *Id.*

ARGUMENT

The Commission may continue or stay an evidentiary hearing for good cause. *See* 16 C.F.R. § 3.41(b) (permitting the Commission to “order a later date for the evidentiary hearing” for good cause); *see also id.* § 3.41(f)(1)–(2) (providing that the FTC may stay “[t]he pendency of a collateral federal court action” for good cause). The Commission has found good cause in two circumstances applicable here.

First, the Commission has found good cause for a continuance when the “resolution of the district court action” could “obviate the need for an evidentiary hearing,” and “the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary.”

In re Hackensack Meridian Health, Inc., No. 9399, 2021 WL 2379546, at *2 (F.T.C. May 25, 2021). In this vein, the Commission has routinely granted a continuance when the Section 13(b) evidentiary hearing already occurred, but the parties were waiting for a decision from the district court. *E.g.*, *In re Meta Platforms, Inc.*, No. 9411, 2023 WL 621507, at *1-2 (F.T.C. Jan. 11, 2023); *In re RAG-Stiftung*, No. 9384, 2020 WL 91294, at *1-3 (F.T.C. Jan. 2, 2020); *In re Sanford Health*, No. 9376, 2017 WL 5845596, at *1-2 (F.T.C. Nov. 21, 2017); *In re Advocate Health Care Network*, No. 9369, 2016 WL 3182774, at *1 (F.T.C. June 2, 2016). Second, the Commission has granted a continuance where the Part 3 Evidentiary Hearing was set to occur soon after a Section 13(b) preliminary injunction hearing concluded. *In re Advocate Health Care Network*, No. 9369, 2016 WL 2997850, at *1 (F.T.C. May 6, 2016) (granting continuance when federal proceeding “could obviate the need for an administrative hearing”). Respondents respectfully request that, consistent with these prior decisions, the Commission alleviate the burden on the parties, third-parties, and Judge Ayoubi by resolving the identified scheduling conflicts now.

Here, absent a continuance, the Parties will have to meet at least seven key filing deadlines for the Administrative Action and otherwise prepare for the Part 3 Evidentiary Hearing, all while appearing in federal court daily and presenting their case during the Section 13(b) Evidentiary Hearing. For example:

- In the **Administrative Action**, witness lists and exhibit lists are due on August 21 and August 28. Administrative Scheduling Order at 2. Around this time, in the **Section 13(b) Action**, the parties will have to prepare motions *in limine*, *Daubert* motions, responses thereto, and proposed findings of fact and conclusion of law. Ex. B at 18-19.
- In the **Administrative Action**, motions *in limine*, motions for *in camera* treatment, and oppositions thereto are due on September 10 and September 13. Administrative

Scheduling Order at 3. Further, Complaint Counsel’s prehearing brief is due September 16. *Id.* The **Section 13(b) Evidentiary Hearing** will be ongoing during this time, meaning that the Administrative Action is certain to divert the attention and resources of both parties and non-parties during the Section 13(b) Evidentiary Hearing. *See* Ex. B at 19.

- In the **Administrative Action**, Respondents’ prehearing brief is due September 23, the final prehearing conference is on September 24, and the evidentiary hearing begins on September 25. Administrative Scheduling Order at 4. Administrative Scheduling Order at 4. At the same time, in the **Section 13(b) Action**, the parties will be preparing post-hearing proposed findings of fact and conclusions of law, which will be due seven days after the preliminary injunction trial concludes (*i.e.*, likely September 25). *See* Ex. B at 19.

The burden of simultaneously preparing for two separate hearings, in different locations, will be immense for all parties—and, especially, third parties who will have other priorities and will likely need to address confidentiality concerns related to their documents while potentially preparing to be witnesses in two trials in two different cities over the course of less than a month. Significant time also would be required of Judge Ayoubi and her judicial staff to resolve prehearing motions and otherwise prepare to preside over a weeks-long evidentiary hearing.

Each of these investments of time and resources by Complaint Counsel, Respondents, third parties, and the Administrative Court may prove unnecessary if the outcome of the Section 13(b) Action obviates the need to hold an evidentiary hearing in this proceeding. If the FTC wins a preliminary injunction in the Section 13(b) Action and Respondents are unable to promptly obtain relief from the appellate court, the Parties will be unable to close the deal. Moreover, due to the

deadlines prescribed by the Commission in the Part 3 Rules, the Administrative Action is certain not to conclude before the Parties' 18-month Outside Date hits. On the other hand, if the FTC proves unable to obtain a preliminary injunction in the federal court proceeding, the FTC may choose to abandon the Administrative Action as no longer in the public interest, consistent with the process laid out in its own Rules. *See* 16 C.F.R. § 3.26.

Finally, a continuance of the Administrative Action evidentiary hearing and prehearing events in this proceeding will neither unduly delay resolution of this matter nor prejudice any party or the public interest. The FTC has recognized that a “short delay in the start of the evidentiary hearing would not harm the Commission or the public interest should it be necessary for the administrative adjudication to go forward.” *In re Advocate Health Care Network*, No. 9369, 2016 WL 2997850, at *1 (F.T.C. May 6, 2016). The “short delay” Respondents request here is no different than those that the FTC has adopted in the past. It is narrowly tailored and limited in duration. If this motion is granted, discovery will move forward in both proceedings, and all parties will be ready to try this case before Judge Ayoubi, if necessary, upon expiration of the requested continuance.

CONCLUSION

Respondents respectfully move to continue the Part 3 Evidentiary Hearing and Prehearing Events until 20 days after the date of the federal court's decision on the FTC's motion for a preliminary injunction in the Section 13(b) Action. In the alternative, Respondents request that the Commission continue the Part 3 Evidentiary Hearing and its Prehearing Events for 60 days.

Dated: May 24, 2024

Respectfully submitted,

s/ Amanda P. Reeves

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

COMMISSIONERS: **Lina Khan, Chair**
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In the Matter of

Tapestry, Inc.,
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Docket No. 9429

PUBLIC

**[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION TO CONTINUE
EVIDENTIARY HEARING**

Having considered Respondents Tapestry, Inc. and Capri Holdings Limited's motion to continue the evidentiary hearing and its prehearing events pending a ruling on the Commission's motion for a preliminary in *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y. Apr. 22, 2022, 2024) and finding good cause for a continuance, the motion is GRANTED. The evidentiary hearing and its prehearing events—beginning with the non-expert-related August 21, 2024, deadline in the May 16, 2024, Scheduling Order—shall proceed 20 days after the date of the federal court's decision on the Commission's motion for a preliminary injunction.

By the Commission.

Secretary

Issued: _____

STATEMENT REGARDING CONFERRAL WITH COMPLAINT COUNSEL

Pursuant to paragraph 4 of the Scheduling Order, Respondents submit this statement representing that Counsel for Respondents have conferred with Complaint Counsel in a good faith effort to resolve the issues raised by this motion. As noted above, Complaint Counsel oppose this motion.

s/ Amanda P. Reeves
Amanda P. Reeves

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Acting Secretary Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to as of May 24, 2024:

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s/ Amanda P. Reeves

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EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 FEDERAL TRADE COMMISSION,

4 Plaintiff,

5 v.

24-CV-3109 (JLR)

6 TAPESTRY, INC., CAPRI HOLDINGS
7 LIMITED,

8 Defendants.

Conference

9 New York, N.Y.
10 April 29, 2024
2:30 p.m.

11 Before:

12 HON. JENNIFER L. ROCHON,

13 District Judge

14 APPEARANCES

15 FEDERAL TRADE COMMISSION

Attorneys for Plaintiff

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17 PEGGY FEMENELLA

18 LATHAM & WATKINS, LLP

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19 BY: ALFRED C. PFEIFFER, JR.

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20 IAN R. CONNER

LINDSEY CHAMPLIN

21 WACHTELL LIPTON ROSEN & KATZ

Attorneys for Defendant Capri

22 BY: JONATHAN M. MOSES

23 ELAINE P. GOLIN

04 INIAPC

1 (Case called)

2 THE COURT: Okay. Counsel, good afternoon. Thank you
3 for moving this conference up a couple of hours. I was
4 scheduled to be on trial which resolved, so I didn't need to
5 put you toward the end of the day and could see you earlier.

6 Why don't I take appearances please.

7 For the plaintiff?

8 MS. DENNIS: Good afternoon, your Honor, Abby Dennis,
9 for the Federal Trade Commission. With me I have my colleagues
10 Peggy Femenella, Laura Antonini and Danielle Quinn.

11 THE COURT: Good afternoon, everyone.

12 And for defense counsel?

13 MR. PFEIFFER: Good afternoon, your Honor, Alfred
14 Pfeiffer of Latham & Watkins on behalf of Tapestry. With me
15 are my partners Amanda Reeves, Lindsey Champlin and Ian conner.
16 We also have present with us, today, your Honor, general
17 counsel of Tapestry, David Howard.

18 THE COURT: Good afternoon.

19 And for Capri?

20 MR. MOSES: Good afternoon, your Honor. Jonathan
21 Moses from Wachtell, Lipton, Rosen & Katz and with me is my
22 partner Elaine Golin, my partner Damian Didden and our general
23 counsel Krista McDonough.

24 THE COURT: Good afternoon, everyone.

25 Okay. We are here sort of for an initial pretrial

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1 conference. This is on an expedited schedule, so I wanted to
2 get you in as soon as possible. I thank you for meeting and
3 conferring even before we met today and sending me the letter
4 that I received this morning at ECF No. 68 that gives me a
5 sense of a schedule. Thank you for getting started on that.

6 My intention this afternoon is to hear just a little
7 bit from the parties about the case from their clients'
8 perspective, which is what I normally do at an initial pretrial
9 conference. Then I am going to want to talk a bit about
10 scheduling.

11 In your presentation you may also want to give me
12 information about what is to come, when you need decisions. I
13 have looked at some earlier other cases that were brought by
14 the FTC to sort of figure out the timing that's generally in
15 place for some of those, but it will help me to hear directly
16 about what is anticipated in this particular case. We will
17 talk about scheduling and hopefully get some outlines about
18 what we can put in place there.

19 Then certainly I am happy to talk about anything else
20 the parties have in mind. I am especially curious about
21 whether there are any anticipated motions, like a motion to
22 dismiss, whether there's any motions regarding unsealing
23 anything and when to expect those.

24 I will want to work in prehearing briefs and
25 posthearing briefs to the preliminary injunction, so that is

1 something we should talk about as well.

2 But, again, I will hear from you first, and we can
3 talk a little bit more about that, but why don't we just set
4 the stage a bit and talk about why we are here.

5 I presume I will hear from you, Ms. Dennis.

6 MS. DENNIS: Yes, your Honor.

7 THE COURT: Thank you.

8 MS. DENNIS: I thought I would start first with
9 talking about the Section 13(b) proceeding here and how that
10 interplays with the administrative proceeding and then moving
11 on to our allegations.

12 Under the FTC Act, the FTC has authority to adjudicate
13 the lawfulness of tapestry's proposed acquisition of Capri
14 under Section 7 of the Clayton Act and Section 5 of the FTC
15 Act.

16 Last Monday, in a bipartisan 5-0 vote, the FTC voted
17 to initiate an administrative proceeding where those issues
18 will be adjudicated on the merits. That's the merits trial.
19 You will also hear it referred to as the Part 3 trial.

20 Pursuant to the FTC rules, it will start in
21 approximately five months after issuance of the administrative
22 complaint, on September 25, 2024, in front of an administrative
23 law judge, who has already issued a protective order, with up
24 to 210 hours for the presentation of evidence.

25 Here, the FTC is proceeding under Section 13(b) Of the

1 FTC Act for a preliminary injunction to pause the consummation
2 of Tapestry's acquisition of Capri for a limited period pending
3 the outcome of the administrative proceeding.

4 This is not the merits proceeding or the trial.
5 Instead, in a Section 13(b) proceeding the district court must
6 do two things:

7 One, determine the FTC's likelihood of success on the
8 merits in the administrative proceeding, and the standard there
9 is a serious question standard. Has the FTC raised serious
10 questions about the antitrust merits that warrant thorough
11 investigation in the first instance by the FTC.

12 And, two, the district court must weigh the equities.

13 I will refer the Court to Judge Ramos' recent decision
14 in FTC v. IQVIA from just last December for articulation of the
15 standard -- that's 2024 WL 81232 -- and the good discussion of
16 the legal standard in Section 13(b) proceedings.

17 As far as the issues in this case, as detailed in our
18 complaint, we think there is ample evidence to establish that
19 the effect of the merger, in the words of Section 7 of the
20 Clayton Act, may be substantially to lessen competition or tend
21 to create a monopoly.

22 For one, it would eliminate fierce head-to-head
23 competition between Coach, Kate Spade and Michael Kors in
24 handbags. The evidence shows that these brands compete on
25 everything from prices, to discounting, to promotions, to

1 sustainability efforts, to brick-and-mortar experience, to
2 advertising, to even retail employee wages.

3 They monitor and copy each other on many facets of
4 competition, and this monitoring occurs at the highest level of
5 each company. Independently, a combination of these two firms
6 will lead to undue concentration in the market for accessible
7 luxury handbags.

8 So what is accessible luxury?

9 It is a term that was coined by Coach 20 years ago and
10 adopted by industry participants since to define handbags that
11 are made with quality but at an affordable price, which
12 distinguishes them from the true luxury handbags, like the
13 Chanel's of the world, that retail in the thousands of dollars
14 and are made in Europe, and the mass market bags made in China
15 that do not boast this quality and are cheaper.

16 These three brands are the biggest accessible luxury
17 handbags in the United States, and combining them would create
18 a firm with over 50 percent of that market.

19 Now, in response to that, you may hear a lot from the
20 defendants in this case about the large number of competitors
21 in that market. We don't dispute that there's a long tail of
22 very small competitors, but none of those competitors comes to
23 close to defendants' brands, which are all found throughout
24 this country and have been the dominant brands in the space for
25 a long time. No one will be able to scale to replace the loss

1 of competition if this merger proceeds.

2 In sum, we have ample evidence to demonstrate a loss
3 of head-to-head competition and an increase of undue
4 concentration on the merits, but again note that here the
5 district court need only find serious questions about one of
6 these two theories of harm for the FTC to be entitled to a
7 preliminary injunction.

8 Thank you, your Honor.

9 THE COURT: Before you sit, is discovery proceeding in
10 the administrative proceeding at the same time as it will
11 proceed here?

12 MS. DENNIS: Yes, your Honor. It will proceed
13 concurrently as part of the case management order that the
14 parties will negotiate. We will have provisions where
15 discovery in each can be used for the other.

16 THE COURT: Good. Okay.

17 Is the goal to get a decision from me prior to the
18 September 25 proceeding?

19 MS. DENNIS: The FTC's flexible on that, your Honor.
20 I don't want to speak to nonconfidential information in court
21 here about the merger agreement and the dates that are in that
22 for the parties. I am not sure that's public. But on our end
23 we have plenty of time. The FTC proceeding will occur
24 September 25, and we're flexible as to when your Honor provides
25 the preliminary injunction order.

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1 THE COURT: Okay. Thank you.

2 You said you anticipate the administrative proceeding
3 being about 210 hours?

4 MS. DENNIS: That's the cap on it by the rules and
5 regulations of the FTC. They normally last three to four
6 weeks.

7 THE COURT: Okay. Thank you.

8 MS. DENNIS: We have not met and conferred about that
9 yet.

10 THE COURT: That's fine.

11 Before I hear from your colleagues, I do have this
12 letter. Do you agree that the preliminary hearing injunction
13 hearing before me should take about 20 hours per side?

14 MS. DENNIS: Yes, your Honor.

15 THE COURT: Is that what's been agreed upon? By
16 "side" meaning both defendants would use a total of 20 hours.

17 MS. DENNIS: Correct, per side.

18 THE COURT: Okay.

19 It is your understanding that you would still continue
20 to meet and confer to come up with a proposed case management
21 plan for the internal dates by which discovery would be
22 exchanged, right? Here this is a broad "when discovery is
23 closing" proposal. Is that correct?

24 MS. DENNIS: Correct, your Honor, and certain other
25 items on the scope of discovery housekeeping issues. We intend

1 to meet and confer on those -- we have been -- and present the
2 proposed case management order to your Honor by this Friday at
3 5:00 p.m. along with the disputes we might still have.

4 THE COURT: Good. Would your timing change -- I
5 wanted to let you know for the preliminary injunction hearing
6 I'm leaning toward not having directs by affidavit, which is
7 typically what I do in nonjury proceedings, but I think it
8 might be helpful to hear the directs in this case instead of
9 having them by affidavit.

10 Would that still fall within your 20 hours per side?

11 MS. DENNIS: It will for the FTC, your Honor.

12 THE COURT: Okay. Good. Thank you. Thank you very
13 much, Ms. Dennis. I may come back.

14 MS. DENNIS: Thank you, your Honor.

15 THE COURT: Let me hear from Tapestry, please.

16 MR. PFEIFFER: Thank you, your Honor.

17 I guess I will start in the same place where counsel
18 for the FTC started, which is I guess on some level what this
19 process would look like, what is it is you are undertaking.

20 I want to rebut any notion that this is in any way
21 perfunctory or a rubber-stamp process. The IQVIA decision that
22 counsel cited to expressly rejects that and says this is not a
23 rubber-stamp process.

24 THE COURT: Rest assured I don't believe it is a
25 rubber-stamp process. You may proceed.

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1 MR. PFEIFFER: Thank you, your Honor. We hope so.

2 The other thing that plays into that is the timing of
3 the FTC's internal Part 3 proceedings, because they are quite
4 lengthy. Even if they don't take anywhere near 210 hours -- I
5 certainly hope not -- having been through that process before,
6 it goes on for months because there is an initial proceeding
7 before an administrative law judge. That's where the 210 hours
8 come in.

9 Then there is an extensive period for posttrial
10 proposed findings of fact and conclusions of law and then a
11 lengthy period where the administrative law judge has to issue
12 a recommended decision after that, which the ALJ has the power
13 to *sua sponte* extend for good cause, and which in the last Part
14 3 proceeding the ALJ took advantage of that opportunity and did
15 extend.

16 At that point it then gets reviewed *de novo* by the FTC
17 commissioners sitting at that point as judge in a case they've
18 already sat in as a prosecutor voting out the complaint among
19 other issues. That process is again quite lengthy. Without
20 getting into the specific case, I can tell you with assurance
21 that process, even if not extended, will outstrip the closing
22 outside date and kill the deal.

23 That's why from our perspective this is our one chance
24 for an actual clear-eyed, prompt, and impartial look at this
25 transaction. So we take this very seriously. That is not to

1 impugn the FTC. I am sure they do too. But from our
2 perspective, there is nothing lessened about the standard. I
3 think in IQVIA the decision actually looks quite closely at the
4 facts of that case in coming to its conclusion, as have all the
5 other 13(b) cases.

6 One big issue on the merits that also relates to the
7 process, you heard some allusion to relevant markets in this
8 case. IQVIA makes very clear that it is the FTC's burden to
9 prove that there is a harm in a specific relevant market. The
10 complaint as written is handicapping our ability at this point
11 to defend ourselves, because we literally cannot tell what the
12 parameters of the relevant market are.

13 There was a reference to an accessible luxury handbag
14 market, but that is nowhere in the complaint actually defined.
15 If were you to compare this to other cases, the FTC is way more
16 precise in their typical case in saying what the metes and
17 bounds of a market are.

18 We don't know, for example, whether the FTC believes
19 that this market is defined by a price bracket. They cite in
20 the complaint to some of our documents that talk about a price
21 bracket. But I will note as just one piece of evidence on this
22 point that they cite two different documents that address the
23 issue inconsistently with one another. They are not the same
24 price band even when they're citing us. So we are kind of
25 shooting in the dark as to what this accessible luxury handbag

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1 market is.

2 The labor market, again with respect, is even less
3 well defined. There is mention in the complaint about all of
4 the 33,000 combined-entity employees around the world being
5 adversely impacted by this merger. That would imply a labor
6 market in which we are supposed to have market power sufficient
7 to harm janitors up to C-suite employees worldwide. That
8 doesn't seem to make sense to us, and I assume that is not what
9 they intend. We literally don't know on the complaint.

10 So when you asked about pretrial motions, we prefer
11 not to do it, but if we can't get some commitment to a prompt,
12 defined statement of what markets we are actually supposedly
13 shooting at, we will have to bring and will seek to bring on an
14 expedited basis a motion for a more definite statement. I
15 think it really goes to the level of our ability to defend
16 ourselves.

17 THE COURT: Are you currently in discussions with the
18 FTC about obtaining that definition that you are seeking?

19 MR. PFEIFFER: We haven't made that part of this
20 meet-and-confer process. We have in meetings with staff and
21 with the commissioners precomplaint very much asked for that
22 and have not obtained it.

23 THE COURT: Thank you.

24 MR. PFEIFFER: One final point on that point, your
25 Honor. In some cases there can be the redress of "find out

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1 through discovery." That really won't work here for two
2 reasons. It is a very compressed schedule, and under the
3 Southern District's local rules we can't send contention
4 interrogatories until the end of the process. That's really
5 all we are saying is tell us what your markets are so we can
6 know what we are dealing with.

7 The final point I think procedurally, your Honor, is
8 there are, as counsel for the FTC mentioned, quite a number of
9 competitors, no matter how you slice this definition of an
10 accessible luxury handbag market, scores of competitors out
11 there.

12 The FTC has graciously and promptly turned over their
13 investigative file to us. They didn't actually get data from
14 very many of those folks. We are going to have to do that, but
15 again they can choose how they want to present their case, but
16 we don't have to live with their choice. We get to do our own.
17 We are going to have a quite of number of document subpoenas to
18 send third parties. It is part of why we are actually very
19 glad that we are able to work out an extended version of what
20 the FTC had initially proposed for the discovery cutoff so that
21 we would have more time. Because third parties you have to
22 sometimes fight with them to get their information.

23 That's a process that we would like to see start as
24 soon as we can and without any limitations other than those
25 imposed by the Federal Rules of Civil Procedure. I am hoping

1 we can leave here today with that approval, that we can start
2 those subpoenas.

3 We will obviously continue, as counsel for the FTC
4 said, to meet and confer and work out the rest of the details
5 of what discovery can take place, what the deadlines we have
6 worked out will look like, but that one I feel like we need to
7 start right away.

8 With all that said, I guess I have said some about the
9 merits, but from our perspective, your Honor, this is an
10 intensely competitive marketplace. I think there was a
11 citation from some outside observer in the complaint to the
12 notion that there was a duopoly in handbags. I mentioned that
13 to my wife and she just about spit at the notion. There are so
14 many competitors and there is so much ease of entry into this
15 marketplace that we believe on the merits, when all the
16 evidence is actually presented to you, you will join us in the
17 conclusion that this is not a market that any two competitors,
18 much less Tapestry and Capri, could dominate by combining.

19 It is more driven by consumers' needs than the typical
20 market. Our CEO likes to say that the consumer sets the price.
21 I think what's been happening in the marketplace with Michael
22 Kors, which has been seeing relatively hard times, proves that
23 case.

24 You can't dictate price. Combining, we would not be
25 able to dictate the price. And part of that is because there

1 is so much competition and so much innovation, including from
2 people who suddenly show up on the arms of a celebrity on
3 social media and become a brand.

4 We can't ignore that. We don't have the ability to
5 ignore that. We are constrained by forces above us and below
6 us and emerging all the time. We believe that when the case is
7 presented to your Honor you will join in that opinion.

8 THE COURT: One moment, Mr. Pfeiffer.

9 MR. PFEIFFER: Yes, your Honor.

10 THE COURT: What is your view toward appropriate
11 timing in this case and when you think a decision should be
12 rendered. I need to move backwards from that to figure out the
13 schedule.

14 MR. PFEIFFER: Yes, your Honor. We don't believe that
15 the date that is currently set for the FTC to start its trial
16 should be an artificial impediment to you taking the time that
17 you need to get it done. From our perspective, given the
18 outside date of the parties' transactions, you have
19 substantially more time to get a decision out.

20 Again, we don't see a need for the FTC trial to start
21 until such time as you have a chance to assess that, but if it
22 does, we will take appropriate steps and I guess deal with
23 that. But from our perspective we think you have the time well
24 beyond September to make your decision. We don't want to rush
25 you in your decision.

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1 THE COURT: Okay. I was looking at your schedule and
2 trying to determine when you needed a determination. That may
3 mean everyone's end of August is going to be a little safer
4 than it was when I first came in here this afternoon.

5 Thank you very much.

6 I know we didn't discuss this yet, but any thoughts to
7 how we are going to be dealing with unsealing eventually in
8 terms of the complaint?

9 MR. PFEIFFER: I don't think the parties have really
10 had a chance to discuss that yet, your Honor.

11 THE COURT: That is fine.

12 MR. PFEIFFER: The literal answer to your question is
13 I have not given that a thought, but we will do so.

14 THE COURT: That's fine.

15 Is it your view, again, that those 20 hours allotted
16 to your side for the hearing would still be sufficient if I
17 took direct examination not by affidavit but by actual
18 testimony?

19 MR. PFEIFFER: We had in fact been anticipating live
20 testimony, your Honor.

21 THE COURT: Perfect. Good. That's great.

22 All right. Okay. Thank you very much, Mr. Pfeiffer.

23 MR. PFEIFFER: Thank you, your Honor.

24 THE COURT: Ms. Golin or Mr. Moses.

25 MR. MOSES: Good afternoon, your Honor.

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1 THE COURT: Good afternoon.

2 MR. MOSES: It is an honor for me to be before the
3 Court.

4 I won't repeat everything Mr. Pfeiffer said obviously,
5 but I do want to just make two points, which is that the first
6 is that the standard. The decisions make clear, and the IQVIA
7 decision makes clear the Article III court brings its
8 independent judgment to bear on whether the FTC has shown that
9 there's substantial questions as to whether or not there is
10 anticompetitive effects from merger.

11 Only the Article III Court can enjoin a merger. The
12 FTC cannot enjoin a merger. The FTC after the lengthy process
13 that Mr. Pfeiffer set out and that process between the hearing
14 and the decision that the ALJ offers and the commission ruling
15 and then subject to circuit appeal and maybe even a Supreme
16 Court appeal can take a year or two.

17 That process can lead to divestiture, but it can't
18 enjoin the transaction. If we are left to the Part 3
19 proceeding, we will never complete by the outside date. That's
20 why these proceeding are so important. This is the show. This
21 is the case where it will be decided whether this merger goes
22 forward. So we need that opportunity to put on our case, and
23 we so far have been working well with the FTC in doing that.

24 The second thing I want to just emphasize, because it
25 was interesting to me, Ms. Dennis began with closeness of

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1 competition. The FTC has to begin with market. All the cases
2 make clear that the sine qua non of a trial like this,
3 including anticompetitive effects, is first defining a market.

4 Closeness of competition, when there are lots of other
5 competitors, when there's ease of entry, when there are
6 hundreds of bags if you just search online, dozens of bags if
7 you walk the floor of Herald Square's Macy's, that's not an
8 anticompetitive merger no matter how closely they compete.

9 So, your Honor, it was very interesting to me that the
10 FTC started there. We don't think they will be able to show a
11 market. We also don't think they are going to be able to show
12 any anticompetitive effects from this merger.

13 This merger, is going to give an opportunity, as
14 Mr. Pfeiffer said, for Tapestry to see if it can revive the
15 Michael Kors brand, and only if the consumers perceive that
16 value in the brand can the price rise. That is the truth of
17 the handbag market and that is the truth of brands.

18 So, your Honor, I second Mr. Pfeiffer and say we
19 believe when the full evidence is in both in terms of the
20 market participants the breadth of opportunities and the nature
21 of this market, you will conclude not to issue the injunction.

22 THE COURT: Thank you.

23 A couple just follow-up questions.

24 Do you agree with your colleagues -- it sounds like
25 it's unanimous -- that the date upon which you need a

1 determination from me is not prior to the September 24
2 administrative proceeding date?

3 MR. MOSES: Your Honor, we do agree. I will just note
4 those Part 3 proceedings are often kicked because people
5 realize -- the FTC's own rules provide that an Article III
6 proceeding, not surprisingly, should take precedence on its
7 administrative law proceeding. And your Honor -- and I hope we
8 never come to this -- has the power to stay the FTC Part 3
9 proceeding. I don't think it will ever come to this. I think
10 we tried to respect that date by having the trial before then,
11 but I think your Honor should not view that as some drop dead
12 date for yourself.

13 THE COURT: Thank you.

14 Also, do you agree with Mr. Pfeiffer that if I take
15 direct testimony live you would still fall within those 20
16 hours?

17 MR. MOSES: We do.

18 As Mr. Pfeiffer said, we look forward to presenting
19 the witnesses to the Court.

20 THE COURT: Good. I think that's the better process
21 for this particular procedure. Okay. Thank you very much.

22 Let's talk schedule then a bit.

23 You can guess that I was going to move things up a bit
24 if you were anticipating me getting you a decision
25 mid-September. Having a hearing that went until mid-September

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1 with a decision anticipated in mid-September was not a
2 realistic schedule on my side, so I was going to move you up.
3 But it also sounds to me like there's some significant
4 discovery that needs to take place, and I do want to make sure
5 that everyone has all the information that they need in order
6 to present this matter to me fully and fairly.

7 So the schedule that I have here then likely works for
8 the Court other than I don't see prehearing findings of fact
9 and posthearing findings of fact. I am trying to figure out
10 when that would fall in.

11 I would like to have them in advance of a hearing so
12 that I can really work with those even before the hearing
13 begins. So I am not sure if we should hash that out now or if
14 you want to talk about it and see.

15 Ms. Dennis, about how long would you need to do those?

16 Could you make the deadline for prehearing findings of
17 fact the same deadline as the plaintiff's reply to the PI
18 motion, or what's your view on that?

19 MS. DENNIS: Yes, your Honor.

20 We were considering -- we haven't had a chance to
21 discuss this with defendants yet -- simultaneous prehearing
22 finding of fact and conclusions of law exchange. We saw your
23 Honor's individual practices for bench proceedings that you
24 prefer those. We were thinking 50 pages per side due the same
25 day, and then we would have posthearing findings of fact and

1 conclusions of law, simultaneous exchange again, seven days
2 after the conclusion of the PI hearing, a hundred pages per
3 side. I have not mentioned that.

4 THE COURT: That's fair.

5 MS. DENNIS: We do not think there should be replies
6 to those if we have prehearing findings of fact and conclusions
7 of law.

8 THE COURT: I agree.

9 The prehearing findings of fact, in your view could
10 those be filed at the same time as plaintiff's reply to
11 defendant's opposition to the preliminary injunction motion?

12 MS. DENNIS: Yes, your Honor.

13 THE COURT: Okay.

14 Mr. Pfeiffer, what is your view on that.

15 MR. PFEIFFER: I think we are not far off, your Honor.
16 We would actually like to see their reply brief on their
17 preliminary injunction before we do our proposed findings
18 pretrial. Even if there is a gap in there of three days, I
19 think that would get us there.

20 THE COURT: Give me a moment. Thank you.

21 Mr. Moses, I presume you agree?

22 MR. MOSES: Yes.

23 THE COURT: Thank you. My goal is to get you a
24 preliminary injunction hearing date today so we can all work
25 backwards from that and know what to expect.

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1 I am just looking. One moment.

2 If I had prehearing findings of fact and conclusions
3 of law coming in on the 30th, that gives you three days with
4 it, Mr. Pfeiffer.

5 Would that work?

6 MR. PFEIFFER: Yes, your Honor. That is exactly what
7 I was hoping.

8 THE COURT: It is not long.

9 MR. PFEIFFER: It is a Friday?

10 THE COURT: It is.

11 Mr. Moses?

12 MR. MOSES: Yes, your Honor.

13 THE COURT: I am now looking at the appropriate
14 hearing date. I would like to have some time with those
15 documents before moving straight into hearing. I think it
16 would be a more productive hearing. I would be able to hear
17 the evidence better if I had all that information before me.

18 The way I calculate it is it's going to be about seven
19 and a half days, because I do about five and a half hour days
20 with a nonjury proceeding. So it's about a week and a half.

21 Is it too late, Ms. Dennis, if we hold the hearing on
22 the 16th of September instead of the 2nd?

23 MS. DENNIS: I believe, your Honor, that bumps up
24 against the Part 3 proceedings. I would just agree with
25 Mr. Moses that the federal court's proceedings take precedence.

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1 THE COURT: So you will be doing --

2 MS. DENNIS: They will be September 25. They will
3 start. The parties can move the date. We are not inclined to
4 do so.

5 I also disagree that there is precedent that says this
6 Court can stay that, but we think that we can avoid this
7 conflict by having -- we would be amenable to September 10 if
8 that gives your Honor enough time with the prehearing
9 submissions.

10 THE COURT: Understood. Thank you.

11 Let's do that to make sure we can handle it all at the
12 same time.

13 MS. DENNIS: Excuse me, your Honor. I believe
14 September 9 is the Monday.

15 THE COURT: Right. Okay. Why don't we start on
16 September 9.

17 Mr. Pfeiffer has something to add?

18 MR. PFEIFFER: Actually, I will let Mr. Moses.

19 THE COURT: Mr. Moses has something to add.

20 MR. MOSES: Your Honor, we want to do what is most
21 convenient for the Court. I don't think that if we are in
22 trial at the end of the day we are going to have dual
23 proceedings in that Part 3 proceeding.

24 So I put it out there. The truth is the average time
25 for these cases between filing and the actual PI proceeding,

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1 you know, you will struggle to find only but a handful that are
2 fewer than five months.

3 THE COURT: I looked.

4 MR. MOSES: So September 16 would I think literally be
5 five months. We are trying to do this quickly, but if your
6 Honor thinks September 16 is good for you, then I think we can
7 make that happen.

8 THE COURT: Thank you. I appreciate that.

9 Mr. Pfeiffer?

10 MR. PFEIFFER: Yes, your Honor. The only thing I was
11 going to say is we want to make sure the Court has adequate
12 time to do what it needs to get ready for an efficient and full
13 and fair trial. So we'll defer to you on that.

14 THE COURT: Thank you. I appreciate it. I think I
15 work in the 9th then. I can start on the 9th and we will go
16 that week and into the next week should we need it. I think we
17 likely will. So we will start on September 9.

18 And I agree with having the posthearing findings of
19 fact and conclusions of law seven days after the hearing.
20 Hopefully you can do those as we are going along and be
21 revising the prehearing submissions so that it's not a whole
22 new endeavor for you, but they will be updated with the
23 information that was relayed during the hearing and be more
24 helpful to the Court in that way.

25 I think the 50 pages and a hundred pages are fair.

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1 We will start September 9.

2 All right. The other days that I have here work for
3 me. Given this very compressed schedule, I'm sure everyone
4 understands that these deadlines are going to be important to
5 adhere to. I don't think that there's a lot of slack for
6 moving things around.

7 I am heartened by the fact that the parties are
8 talking about a proposed case management plan, and I would
9 encourage you to make that as detailed as possible so that
10 there are no misunderstandings about what should be done when
11 and when things are due just so that we can work toward this
12 date that I will keep on the calendar that you can then rely
13 upon.

14 Ms. Dennis, do you have any objection to the subpoenas
15 starting now that we can get the third-party discovery moving?

16 MS. DENNIS: Yes and no, your Honor. I don't think
17 the FTC has a problem with discovery commencing right now. I
18 do think there need to be caps on this. It can be very abusive
19 to third parties.

20 The data on which the FTC relies is the data that the
21 defendants rely on in the ordinary course. We are not entirely
22 sure there is this need for all this third-party discovery, but
23 would like time to talk with the defendants about it and raise
24 any disputes with your Honor by Friday and get this case
25 moving.

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1 THE COURT: So your proposal is Friday will be your
2 overall schedule. I saw Friday by 5:00 p.m.

3 MS. DENNIS: Yes, your Honor.

4 THE COURT: And you can let me know if there's any
5 issue how much third-party discovery, when you will start,
6 etc.?

7 You will have hashed all that out by then?

8 MS. DENNIS: Yes, your Honor.

9 THE COURT: That is only a few days from now. Thank
10 you.

11 Mr. Pfeiffer, will that work for you to work it all
12 out and then tell me if there's any issue by Friday?

13 MR. PFEIFFER: Your Honor, I guess so long as we are
14 actually able to launch on Friday, then yes. We were concerned
15 that the way it was currently structured we would be submitting
16 a proposal on Friday and then waiting for a clearance to go
17 after that.

18 THE COURT: No.

19 MR. PFEIFFER: We don't want this week to be lost,
20 given the discovery cutoff that already looms.

21 THE COURT: No. I want no time to be lost, which is
22 why I brought you in so quickly today.

23 MR. PFEIFFER: We appreciate that.

24 THE COURT: No.

25 I am even curious why you need an entire week to work

1 through this, but if that's what you would like --

2 MR. PFEIFFER: Not what I would like, your Honor. I
3 would love to have it resolved before Friday.

4 THE COURT: Is there a way to resolve the schedule
5 earlier than Friday, Ms. Dennis?

6 MR. PFEIFFER: We proposed a time to meet and confer
7 with them tomorrow at 1:30. I am not sure we have heard back
8 yet, but we are willing to move this along.

9 What I can say is if we don't reach an agreement on
10 any sort of cap on third-party discovery by Friday what we can
11 agree to do is, whatever cap we have at least proposed, the
12 FTC, the defendants can move forward within the construct of
13 that cap and then your Honor can decide any dispute.

14 THE COURT: I don't want anything delayed. I
15 appreciate, though, that the parties are going to discuss it.
16 It is always more fruitful for the parties to reach consensus
17 on what is the best approach here, because you are going to
18 know the case better and you are going to be able to work
19 through it.

20 What I would suggest then is you send me in a case
21 management plan, let's try by Thursday if we can then instead
22 of Friday.

23 And Mr. Pfeiffer has something to say.

24 MR. PFEIFFER: I was going to ask for Wednesday, your
25 Honor. I may have been in a cab at the time, but we will

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1 certainly meet and confer tomorrow with them at 10:30, or 1:30.

2 THE COURT: If you want to get it to me early, that is
3 great. If you want to get me something on Wednesday, that's
4 wonderful.

5 Ms. Dennis, can we try for Wednesday?

6 MS. DENNIS: Your Honor, the FTC certainly is willing
7 to work towards that. It is just normally when we send edits
8 back -- I am not trying to say that the defendants take too
9 long, but they obviously have two clients they have to talk
10 with, so there is a little bit of a lag. So we will certainly
11 confer in good faith tomorrow -- I believe the time was 1:30 --
12 and work towards trying to get to a resolution as soon as
13 possible.

14 THE COURT: Okay.

15 MR. PFEIFFER: I said 10:30 because I am on California
16 time.

17 Your Honor, maybe I can separate two issues.

18 THE COURT: Yes.

19 MR. PFEIFFER: There are other discovery issues that
20 the parties are still working out that would be part of the
21 CMO. The subpoenas, however, are a separate issue, and there
22 is no limit in the federal rules for the number of third-party
23 subpoenas. We do not believe there should be --

24 THE COURT: I am aware.

25 MR. PFEIFFER: -- an artificial limit here.

1 We can either get to an agreement or disagreement
2 about that I would think tomorrow.

3 THE COURT: Okay. Why don't we have you send in a
4 case management plan by 5:00 p.m. on Wednesday, May 1. In that
5 you will also include, if there is a joint letter that
6 highlights any discovery obstacle that you have, be it a cap on
7 third-party subpoenas or whatever it is, you'll let me know
8 right away can I get it resolved and we can go from there.

9 That's generally how I will handle discovery disputes
10 in this case. As you will see in my individual rules, I
11 require a joint letter -- not a joint letter. I require a
12 letter from one party and then a response from the other. It's
13 generally three pages.

14 In a case like this if you end up needing more pages,
15 you will tell me. But if you stick to that, you can usually
16 say what you need to say, because you can attach an exhibit.

17 So with respect to the issue of the third-party
18 subpoenas, I don't want you to have to wait for one letter and
19 then another letter three days later. So if there is an
20 ability to put a joint letter together on Wednesday that even
21 separates it -- this is the FTC's position, this is defendants'
22 position, and then it has it all laid out for me -- I can use
23 that as opposed to waiting for a back and forth in letters.

24 MR. PFEIFFER: Thank you, your Honor.

25 MS. DENNIS: We are amenable to that, your Honor.

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1 Thank you.

2 THE COURT: Okay. Good. That's great. Thank you.

3 That is the case generally for discovery disputes. If
4 you find that it's more expeditious to tee this up for me in a
5 joint letter as opposed to one letter and then three days later
6 another letter, you can feel free to do that. If you have the
7 discussions and you can exchange the information and put it in
8 a joint letter and send it in.

9 Or you can expedite the three-day period, you know,
10 you all agree we are going do it in a day and a day so you can
11 get to me more quickly, that is fine too, but you will see the
12 default rules in my individual rules.

13 So we will have a case management plan.

14 We've got a date for the PI hearing.

15 And Mr. Mr. Pfeiffer and Mr. Moses, you will be
16 talking with Ms. Dennis and her colleagues about whether you
17 have a need for a motion for a more definite statement or
18 whether you can work that out.

19 Is that right?

20 MR. PFEIFFER: Yes, your Honor.

21 THE COURT: Okay. Good.

22 I think that's everything that I wanted to handle on
23 my side.

24 Ms. Dennis, is there anything else that we should talk
25 about here today?

04 INIAPC

1 MS. DENNIS: No, your Honor, from the FTC.

2 THE COURT: Okay. Thank you.

3 And Mr. Pfeiffer?

4 MR. PFEIFFER: No, your Honor.

5 THE COURT: Mr. Moses?

6 MR. MOSES: Nothing for us, your Honor.

7 THE COURT: Okay.

8 In terms of resolving disputes, I want to get a sense
9 a little bit because I am going to want to keep the case moving
10 very quickly. If a discovery dispute comes up, I usually
11 handle things in person, but I presume people are far away, so
12 maybe it's better to do videoconferences for any discovery
13 disputes.

14 Let me hear where people are.

15 Ms. Dennis, what is your preference, and where are
16 you?

17 MS. DENNIS: We would prefer video, your Honor. We're
18 certainly glad to come up here. We are in Washington, D.C.,
19 but we think that might be more efficient and better for
20 taxpayer money as well.

21 THE COURT: That's always a consideration.

22 Mr. Pfeiffer?

23 MR. PFEIFFER: Your Honor, as I alluded to, I actually
24 live in California.

25 THE COURT: Okay.

04 INIAPC

1 MR. PFEIFFER: I will be here whenever you want me to
2 be here, but when it is suitable for you to do it by video,
3 that's better for me.

4 THE COURT: Mr. Moses.

5 MR. MOSES: I am just on the 4 train, your Honor. But
6 we will obviously do what is most convenient for all the
7 parties.

8 THE COURT: We will do whatever we need to do to keep
9 things moving. When it's necessary and when it would be
10 helpful, I will call the parties in. Otherwise, I will try to
11 do things as conveniently for you. Rest assured there will be
12 listen-only lines for everyone to come in here, so don't worry
13 about that, all of you sitting back there. But hopefully that
14 will result in our being able to move things more quickly.

15 Okay. I think that's everything that we need.

16 Should anything change, please let me know, but
17 otherwise I expect to get a case management plan from you on
18 Wednesday.

19 Now let me say one thing. My case management plan
20 that I have in my individual rules and on my website I think
21 you are going to need much more than that. I think you are
22 going to need more internal deadlines about precisely when
23 things are going to be served, responded to, etc., similar to
24 what I have seen in some other cases. I think it would behoove
25 you all to do that as opposed to using my form.

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So please come up with a case management plan that captures that information in the best way that we can keep this case on track. It will have probably some dates for interrogatories, all those things will be built into it I think with more specificity than I generally have in my cases.

I think what we should all agree upon is that those dates are real dates, and if they move slightly, you'll determine, but we are not going to treat it like I do in my other case management plans, which is as long as you get fact discovery in at the end of fact discovery I don't really care what you do and the other things before that. I don't think we have the luxury of doing that in this case because we need to keep things on schedule.

So please be as specific as possible when you send that in. You will send in any issues on Wednesday that need my resolution, and I will then read everything that comes my way.

All right. If there's nothing further, then thank you all for being here this afternoon.

Court is adjourned.

(Adjourned)

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TAPESTRY, INC.,

and

CAPRI HOLDINGS LIMITED,

Defendants.

Case No. 1:24-cv-03109-JLR

~~PROPOSED~~ CASE
MANAGEMENT AND
SCHEDULING ORDER

Plaintiff Federal Trade Commission (“FTC” or “Commission”) and Defendants Tapestry, Inc. and Capri Holdings Limited (collectively, “Defendants”) respectively submit this Proposed Case Management and Scheduling Order.

A. TEMPORARY RESTRAINING ORDER. The FTC and Defendants stipulated to a temporary restraining order on April 22, 2024, which the Court so ordered on April 24, 2024. Under that temporary restraining order, the Defendants have agreed not to close their transaction until after 11:59 PM Eastern Time on the fifth business day after the Court rules on the Plaintiff’s request for a preliminary injunction pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), or until after the date set by the Court, whichever is later.

B. DISCOVERY

1. Initial Disclosures. The parties shall serve upon each other initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i) by May 7, 2024. The

- disclosures shall include the name and, if known, the address and telephone number of each individual likely to have discoverable information (or in the alternative, the relevant information for that individual's counsel, if known)—along with the subjects of that information—that the disclosing party may use to support its claim or defenses in this action. If the parties need to supplement or correct their disclosures during the pendency of this action, they will do so pursuant to Federal Rule of Civil Procedure 26(e).
2. Fact Discovery. The parties shall commence fact discovery upon the filing of this Joint Stipulated Case Management Order and complete it in accordance with Exhibit A.
 3. Discovery Conference. This stipulated Order relieves the parties of their duty under Federal Rule of Civil Procedure 26(f) to confer about scheduling and a discovery plan.
 4. Third-Party Discovery. The notice requirements of Federal Rule of Civil Procedure 45(a)(4) shall apply. No party issuing a third-party subpoena for the production of documents or electronically stored information shall request a return date sooner than seven (7) calendar days after service. Every documentary subpoena to a third party shall include a cover letter requesting that (1) the third party Bates-stamp each document with a production number and any applicable confidentiality designation prior to producing it and (2) the third party provide to the other parties copies of all productions at the same time as they are produced to the requesting party. If a third party fails to provide copies of productions to the other parties, the requesting party shall produce all materials received pursuant to the third-party subpoena, as well as all materials received voluntarily in lieu of a subpoena, including declarations or

affidavits obtained from a third party, to all other parties within three (3) business days of receiving those materials. Production shall occur in the format the materials were received, except that in the event a non-party produces documents or electronic information that are non-Bates-stamped, the party receiving the documents shall promptly Bates-stamp the documents or electronic information and produce them in an appropriate timeframe. The parties shall serve document requests to third parties by the deadlines in Exhibit A.

5. Limitations on Party and Third-Party Declarations or Letters. No party may submit as evidence a declaration, letter, or affidavit from a party or third-party fact witness if such declaration, letter, or affidavit was executed or served less than three (3) business days prior to his or her agreed-to deposition date. In any event, no party or third-party declaration, letter, or affidavit may be submitted as evidence if it was executed or served fewer than seven (7) calendar days before the close of fact discovery. Declarations, letters, or affidavits produced after this date shall not be admitted into evidence or used at the preliminary injunction hearing absent agreement of the parties or with leave of the Court for good cause shown.
6. Document Requests and Production. No more than 25 requests for production shall be served on any party. The parties agree to make good faith efforts to produce documents on a rolling basis, prioritizing data requests, and shall make a good-faith effort to substantially comply with requests for production no later than thirty (30) calendar days after the date of service. The parties shall serve any objections to requests for the production of documents no later than ten (10) calendar days after the date of service of the document requests to which they assert objections. Within three (3) calendar days of service of any such objections, the parties shall meet and confer

in a good faith attempt to resolve the objections. The parties also agree to make a good faith effort to substantially produce documents for a deponent three (3) calendar days before the deponent's deposition, provided the deposition is noticed for a date no fewer than thirty (30) calendar days after service of objections to the corresponding document requests. In response to any document requests, the parties need not produce to each other in discovery in this case any documents previously produced by Defendants to the FTC in the course of the investigation of Tapestry, Inc.'s proposed acquisition of Capri Holdings Limited, FTC File No. 231-0133.

a) Document Productions shall be sent to the attention of:

i. To the FTC:

Danielle Quinn (dquinn@ftc.gov)
Nicole Lindquist (nlindquist@ftc.gov)
Laura Antonini (lantonini@ftc.gov)
Peter Colwell (pcolwell@ftc.gov)
Andrew Lowdon (alowdon@ftc.gov)
Blake Risenmay (brisenmay@ftc.gov)
Tim Singer (tsinger@ftc.gov)
Steven Powell (spowell@ftc.gov)
Mary Karikari (mkarikari@ftc.gov)

ii. To Tapestry:

Andrew.Paik@lw.com
Mary.Casale@lw.com
Chris.Brown@lw.com
David.Johnson@lw.com
Kimon.Triantafyllou@lw.com
Ivy.Ziedrich@lw.com
Charlotte.Yeung@lw.com
Brian.Nowak@lw.com
Patrick.Dezil@lw.com
TLSPM_Latham_Sunrise@transperfect.com

iii. To Capri:

JMMoses@WLRK.com
EPGolin@WLRK.com

DGDidden@wlrk.com
ALGoodman@wlrk.com
KRHaigh@wlrk.com
BAFish@wlrk.com
JCKaplan@wlrk.com
MJSicilian@wlrk.com
caprismervice@wlrk.com

7. Requests for Admission. The parties shall serve no more than 20 requests for admission, including subparts, per side, not including those related solely to the authenticity of a document or the admissibility of documents, data, or other evidence.
8. Interrogatories. The parties shall serve no more than ten (10) interrogatories per side, only five (5) of which can be contention interrogatories, served later in the discovery period pursuant to Local Rule 33.3. The parties shall serve objections to interrogatories no later than ten (10) calendar days after the date of service. Within three (3) calendar days of service of any such objections, the parties shall meet and confer in a good faith attempt to resolve the objections. The parties shall serve substantive responses no later than fourteen (14) days after service of objections to the interrogatories.
9. Deadline to Issue Written Discovery to Parties. Document requests, requests for admission, and interrogatories must be served no later than the dates as set out in Exhibit A.
10. Expert Reports. Plaintiff and Defendants shall serve expert reports, rebuttal expert reports, and reply expert reports on the dates set forth in Exhibit A.
11. Expert Materials Not Subject to Discovery. Expert disclosures, including each side's expert reports, shall comply with the requirements of Federal Rule of Civil Procedure 26(a)(2), except as modified herein:

- a) Neither side must preserve or disclose, including in expert deposition testimony, the following documents or materials, and the Parties shall not be obligated to include such information on any privilege log:
- i. any form of communication or work product shared between any of the parties' counsel and their expert(s) or consultants, or between any of the experts themselves, unless such communications relate to assumptions that the party's counsel provided and that the expert relied on in forming the opinions to be expressed;
 - ii. any form of communication or work product shared between an expert(s) and persons assisting the expert(s);
 - iii. expert's notes, unless the expert expressly relies upon and/or cites such notes;
 - iv. drafts of expert reports, affidavit, declaration, exhibits, analyses, or other work product; or
 - v. data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report, except as set forth in 11(b).
- b) The parties agree that they will disclose the following materials with all expert reports:
- i. a list by Bates number of all documents relied upon by the testifying expert(s); and copies of any materials relied upon by the expert not previously produced that are not readily available publicly;

- ii. for any calculations appearing in the report, all data and programs underlying the calculation, including all programs and codes necessary to recreate the calculation from the initial or raw data.

12. Notwithstanding anything to the contrary, the testifying expert may be presented at deposition or the hearing with documents, testimony, or other materials not contained in his or her expert report(s) and questioned about whether the testifying expert saw or considered such documents, testimony, or other materials; the reasons why the testifying expert did or did not consider or rely on such documents, testimony, or other materials in forming his or her opinions; and whether such documents, testimony, or other materials cause the testifying expert to alter his or her opinions in any respect.

13. Exchange of Lists of Fact Witnesses to Appear at Hearing.

- a) *Preliminary Fact Witness Lists:* The parties shall exchange preliminary fact witness lists in accordance with Exhibit A. Preliminary fact witness lists shall be limited to twenty-five (25) per side and summarize the general topics of each witness's anticipated testimony. The preliminary witness list shall include the name of the employer of each witness and a description of the responsibilities of any third-party witness. Only a witness who appears on a party's preliminary witness list may be included on that party's final witness list, unless opposing party was provided a reasonable opportunity to take the witness's deposition prior to the close of fact discovery, absent agreement of the parties or with leave of the Court for good cause shown.
- b) *Final Fact Witness Lists:* Final fact witness lists shall be exchanged in accordance with Exhibit A. The final fact witness list shall identify all fact

witnesses the producing party expects that it may present at the evidentiary hearing. Final fact witness lists shall be limited to twenty (20) per side and shall summarize the general topics of each witness's anticipated testimony. Each side's final fact witness list shall be limited to witnesses who appeared on either side's preliminary fact witness list and up to ten (10) others, provided that any witness not appearing on a preliminary fact witness list must have otherwise been deposed or the opposing party was provided a reasonable opportunity to take the witness's deposition prior to the close of fact discovery in connection with this federal court preliminary injunction proceeding absent agreement of the parties or with leave of the Court for good cause shown. Additional witnesses may be added to either side's final fact witness list after the date identified in Exhibit A only by agreement of the parties or with leave of the Court for good cause shown.

14. Depositions.

- a) Number of Fact Depositions. The parties agree that relief from the limitation on the number of depositions set forth in Federal Rule of Civil Procedure 30(a)(2) is necessary and appropriate. Each side may depose a witness who (i) is listed on either side's preliminary fact witness list or (2) provides a declaration, note of support or opposition, or affidavit in connection with this matter. In addition, each side may take a maximum of twenty-five (25) depositions of individuals beyond those listed on either side's preliminary fact witness lists and/or who provide a declaration, note of support or opposition, or affidavit. Each 30(b)(6) deposition notice counts as one deposition for purposes of this paragraph even if the noticed

entity designates multiple individuals to provide testimony. Cross-notices of depositions will not count against the above totals. To the extent a deposition involves a non-party and is not cross-noticed, the party who did not notice the deposition will have 30 minutes available to them and the party seeking the deposition will have 6 hours and 30 minutes. Additional depositions of fact witnesses shall be permitted only by agreement of the parties or by leave of the Court for good cause shown. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the deposition. The parties shall use reasonable efforts to reduce the burden on witnesses noticed for depositions and to accommodate the witness's schedule.

- b) Allocation of time. All depositions, including depositions of individual fact and expert witnesses, shall last no more than seven hours. For the avoidance of doubt, one deposition notice issued pursuant to Rule 30(b)(6) shall last no more than seven hours even if more than one individual is designated to provide testimony. If both Plaintiff and Defendants issue a subpoena to depose the same third-party fact witness, they shall allocate the time evenly between them. For purposes of this Order, former employees, consultants, agents, contractors, or representatives of the parties are considered party witnesses. Unused time in any side's allocation of deposition time shall not transfer to the other side.
- c) Notice. The parties may not serve a deposition notice with fewer than seven (7) calendar days' notice. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the

deposition. The parties shall use reasonable efforts to reduce the burden on witnesses noticed for depositions and to accommodate the witness's schedule. If a party serves a non-party subpoena for the production of documents or electronically stored information and a subpoena commanding attendance at a deposition, the deposition date must be at least seven (7) calendar days after the original return date for the document subpoena.

- d) Deposition Designations. The parties agree to work in good faith to reach agreement regarding the need, and, if appropriate, a procedure for deposition designations by the close of fact discovery.
- e) Remote Depositions. All party and non-party depositions in this matter shall be conducted remotely, except that expert witness depositions may be conducted in-person at deposing counsel's option. The parties agree to meet and confer regarding remote depositions and the protocol that would govern any such depositions.

15. Expert Depositions. Each side may take one deposition of each of the other side's testifying experts. Unless the parties agree or the Court orders otherwise, expert depositions must be completed before the close of expert discovery, as set forth in Exhibit A.

16. Discovery Uses. All discovery taken in the above-captioned litigation can be used in connection with any Part 3 administrative proceeding. Only discovery obtained by a party in any Part 3 administrative proceeding before the close of fact discovery in this proceeding may be used as part of this litigation, except by agreement of the parties or by leave of the Court for good cause shown.

C. MOTIONS AND BRIEFING SCHEDULE

1. Plaintiff will file its memorandum in support of its motion for a preliminary injunction by the date set in Exhibit A. This brief is not to exceed 35 pages.
2. Defendants will file their opposition to the Plaintiff's motion for a preliminary injunction by the date set in Exhibit A. This brief is not to exceed 40 pages.
3. Plaintiff will file its reply memorandum in further support of its motion for a preliminary injunction by the date set in Exhibit A. This brief is not to exceed 20 pages.
4. Any motions *in limine* or *Daubert* motions, shall be filed by the date set in Exhibit A. Any responses to any such motions shall be filed by the date set in Exhibit A. Any briefs in support of, or in opposition to, *motions in limine* shall not exceed 5 pages. Any briefs in support of, or in opposition to, *Daubert* motions shall not exceed 15 pages.
5. Each side's prehearing proposed findings of fact and conclusions of law will be filed by the date in Exhibit A and shall not exceed 50 pages. Each side's post-hearing proposed findings of fact and conclusions of law will be filed by the date in Exhibit A and shall not exceed 100 pages.

D. PRELIMINARY INJUNCTION EVIDENTIARY HEARING

1. The parties propose an evidentiary hearing of twenty (20) hours per side on the date set in Exhibit A. Time spent conducting a direct examination shall count against the side conducting that direct examination; time spent conducting a cross-examination shall count against the side conducting that cross-examination. Time spent arguing an objection shall count against the side that loses the objection. Plaintiff and Defendants will each tally the time consumed by each side and confer on a daily basis

on the total time each side has consumed. Plaintiff may reserve a portion of their time for rebuttal. Unused time does not transfer to the other side.

E. OTHER MATTERS

1. Service. Service of any documents not filed via ECF, including pleadings, discovery requests, Rule 45 subpoenas for testimony or documents, expert disclosure, and delivery of all correspondence, whether under seal or otherwise, shall be by electronic mail to the following individuals designated by each party:

- i. For FTC:

Abby Dennis (adennis@ftc.gov)
Peggy Bayer Femenella (pbayerfemenella@ftc.gov)
Danielle Quinn (dquinn@ftc.gov)
Nicole Lindquist (nlindquist@ftc.gov)
Laura Antonini (lantonini@ftc.gov)
Peter Colwell (pcolwell@ftc.gov)
Andrew Lowdon (alowdon@ftc.gov)
Blake Risenmay (brisenmay@ftc.gov)
Tim Singer (tsinger@ftc.gov)
Steven Powell (spowell@ftc.gov)
Mary Karikari (mkarikari@ftc.gov)

- ii. For Tapestry:

Sean.Berkowitz@lw.com
Chris.Brown@lw.com
Lawrence.Buterman@lw.com
Mary.Casale@lw.com
Lindsey.Champlin@lw.com
Ian.Conner@lw.com
Jennifer.Giordano@lw.com
David.Johnson@lw.com
Andrew.Paik@lw.com
Al.Pfeiffer@lw.com
Amanda.Reeves@lw.com
Chris.Yates@lw.com
Brian.Nowak@lw.com
Patrick.Dezil@lw.com

iii. For Capri:

JMMoses@wlrk.com
EPGolin@wlrk.com
DGDidden@wlrk.com
ALGoodman@wlrk.com
KRHaigh@wlrk.com
BAFish@wlrk.com
JCKaplan@wlrk.com
MJSicilian@wlrk.com
capriservice@wlrk.com

In the event the volume of served materials is too large for email and requires electronic data transfer by file transfer protocol or a similar technology, or overnight delivery if agreed by the parties, the serving party will telephone or email the other side's principal designee when the materials are sent to provide notice that the materials are being served. For purposes of calculating discovery response times under the Federal Rules of Civil Procedure, electronic delivery shall be treated the same as hand delivery.

2. Response to Complaint. Defendants shall answer the complaint or file another response pursuant to the Federal Rules on or before the date set in Exhibit A.
3. Nationwide Service of Process. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the parties will be allowed nationwide service of process of discovery and evidentiary hearing subpoenas pursuant to Federal Rule of Civil Procedure 45 and 15 U.S.C. § 23, to issue from this Court that may run into any other federal district requiring witnesses to attend this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise "unavailable" for purposes of Federal Rule of Civil Procedure 32 and Federal Rule of Evidence 804 available under these rules regarding the use at the evidentiary hearing of a deposition taken in this action.

4. Protective Order Concerning Confidentiality. The parties anticipate requesting entry of a Protective Order Concerning Confidentiality.
5. Privilege Logs. The parties agree to suspend the obligations of Federal Rule of Civil Procedure 26(b)(5)(A) to produce a log of materials withheld from discovery in this case (excluding Defendants' productions made during the course of the FTC's pre-complaint investigation) for the following categories of documents:
 - a) Documents or communications sent solely between or among external counsel for the Defendants, including any persons employed by counsel or acting on their behalf, on the one hand, and employees or agents of the Defendants, on the other hand;
 - b) Documents or communications sent solely between or among counsel for Plaintiff, including any persons employed by counsel or acting on their behalf, on the one hand, and employees or agents of Plaintiff, on the other hand;
 - c) Documents or communications sent solely between outside counsel for Defendants (or persons employed by or acting on behalf of such counsel) or solely between counsel for Plaintiff (or persons employed by or acting on behalf of such counsel);
 - d) Documents or communications sent solely within Plaintiff's organization (including persons employed by or acting on behalf of the Plaintiff);
 - e) Documents or communications sent solely between or among experts retained for purposes of this matter (including the Federal Trade Commission's investigation of this matter), on the one hand, and counsel for any Party or Parties, employees of the parties, the experts themselves, or persons acting

under the supervision of or on behalf of those experts in connection with the expert's work on this matter, on the other; and

- a) Materials exempted from disclosure under the Expert Materials provision of Paragraph 11 of this Order.

Defendants may provide a metadata only privilege log for documents or communications sent solely between or among in-house counsel for the Defendants, including any persons employed by counsel or acting on their behalf, on the one hand, and employees or agents of the Defendants, on the other. This Paragraph shall not alter either party's right to challenge any privilege claims made by either party.

6. Inadvertent Production of Privileged Material. In accordance with Federal Rule of Civil Procedure 16(b)(3)(B)(iv) and Federal Rule of Evidence 502(d), inadvertent production of documents or communications containing privileged information or attorney work product shall not be a basis for loss of privilege or work product of the inadvertently produced material, provided that the producing party notifies the receiving party within a reasonable period of time of learning of the inadvertent production. When a party determines that it has inadvertently produced such material, it will notify other parties, who will promptly return, sequester, or delete the protected material from their document management systems. Within two (2) business days of identifying inadvertently produced information or documents(s), the party seeking claw-back of such materials shall provide a privilege log entry for the identified information or documents.
7. Attorney Work-Product. The parties will neither request nor seek to compel the production of any interview notes, interview memoranda, or recitation of information contained in such notes or memoranda, or recitation of information contained in such

notes or memoranda, created by any party's Counsel, except as specified in Paragraph

11. Nothing in this Order requires the production of any party's attorney work-product; confidential attorney-client communications; communications with or information provided to any potentially or actually retained expert; communications between counsel for the FTC, its Commissioners, and/or persons employed by the FTC; or materials subject to the deliberative-process privilege or any other privilege.

8. Electronically Stored Information. The parties agree as follows regarding the preservation and production of electronically stored information ("ESI"):
- a) All Parties have established litigation holds to preserve ESI that may be relevant to the expected claims and defenses in this case. In addition, the Parties have taken steps to ensure that automatic deletion systems will not destroy any potentially relevant information.
 - b) All Parties agree that the use of Technology Assisted Review tools may assist in the efficient production of ESI. However, if a party desires to use such technologies that materially differ from the technologies used in connection with Defendants' response to the Second Request, it shall meet and confer with the other side and negotiate in good faith on the reasonable use of such technology.
 - c) All parties will request ESI in the form or forms that facilitate efficient review of ESI. In general, the parties shall produce ESI according to the same ESI technical specifications used by Defendants in the FTC's pre-complaint investigation. However, the parties need not produce color images of documents during production. If a party requests color images of specific

documents, then the receiving party shall provide it within three (3) business days.

9. Evidentiary Presumptions.

- a) All documents produced by a Defendant either in response to document requests in this litigation or in the course of the FTC's pre-complaint investigation of the proposed acquisition, FTC File No. 231-0133, are presumed to be authentic. All documents produced by non-parties from their files shall be presumed to be authentic within the meaning of Federal Rule of Evidence 901. If a party serves a specific written objection to a document's authenticity, the presumption of authenticity shall no longer apply to that document, and the parties shall promptly meet and confer to attempt to resolve the objection. The Court will resolve any objections that are not resolved through this means or through the discovery process.
- b) Any party may challenge the authenticity or admissibility of a document, and if necessary may take discovery related solely to authenticity or admissibility of documents.

10. Modification of Scheduling and Case Management Order. Any party may seek modification of this Order for good cause, except that the parties may also modify discovery and expert disclosure deadlines by agreement.

EXHIBIT A - PROPOSED SCHEDULE

Event	Date(s)
Discovery Commences	Upon filing of this Proposed Joint Stipulated Case Management Order with the Court
Response to Complaint	May 6, 2024
Parties Serve Initial Disclosures	May 7, 2024
Plaintiff Serves Preliminary Fact Witness Lists	May 10, 2024 at 5 p.m. ET
Defendants Serve Preliminary Fact Witness List	May 15, 2024, at 5 p.m. ET
Deadline to Serve Written Discovery, excluding Contention Interrogatories	May 17, 2024
Deadline to Serve Contention Interrogatories	June 26, 2024
Good-faith Commitment to Complete Party Depositions	July 19, 2024
Close of Fact Discovery	July 26, 2024
Plaintiff Serves Initial Expert Report(s)	July 26, 2024
Plaintiff's Memorandum of Law in Support of Preliminary Injunction Motion	August 6, 2024
Defendants Serve Rebuttal Expert Report(s)	August 7, 2024
Plaintiff Serves Expert Rebuttal/Reply Report(s)	August 14, 2024
Defendants' Opposition to Preliminary Injunction Motion	August 20, 2024
Close of Expert Discovery	August 20, 2024
Exchange of Final Witness Lists	August 21, 2024 at 5 p.m. ET
Exchange of Exhibit Lists and Deposition Designations (to the extent necessary)	August 23, 2024 at 5 p.m. ET

Event	Date(s)
Each Party informs each non-party of all documents produced by that non-party that are on that Party's exhibit list and all depositions of that non-party that have been designated by any Party (to the extent necessary)	August 23, 2024
Deadline for Motions <i>In Limine</i> and Daubert Motions	August 26, 2024
Plaintiff's Reply to Defendants' Opposition to Preliminary Injunction Motion	August 27, 2024
Each side exchanges its objections to the other side's exhibits and opening deposition designations and provides its deposition counter-designations (to the extent necessary)	August 27, 2024
Each side exchanges its objections to the other side's deposition counter-designations and its counter-counter-designations (to the extent necessary)	August 29, 2024
Deadline for Oppositions to Motions <i>In Limine</i> and Daubert Motions	August 30, 2024
Proposed Findings of Fact and Conclusions of Law	August 30, 2024
Non-parties provide notice whether they object to the potential public disclosure at hearing of any non-party documents and depositions, explain the basis for any such objections, and propose redactions where possible	August 30, 2024
Parties meet and confer regarding disputes about confidentiality of Party documents on hearing exhibit lists and deposition designations (to the extent necessary)	August 30, 2024 (and as required thereafter)
Parties meet and confer regarding admissibility of hearing exhibits	August 30, 2024 (and as required thereafter)
Joint submission regarding disputes about admissibility of hearing exhibits	September 4, 2024
Joint submission regarding disputes about confidentiality of Party and non-party documents on hearing exhibit lists to be filed	September 4, 2024
Evidentiary Hearing Begins	September 9, 2024
Post-Hearing Proposed Findings of Fact and Conclusions of Law	7 days after the evidentiary hearing concludes

STIPULATED AND AGREED:

S/ Abby Dennis
Counsel for Federal Trade Commission

May 1, 2024
Date

S/ Alfred C. Pfeiffer
Counsel for Tapestry, Inc.

May 1, 2024
Date

S/ Elaine P. Golin
Counsel for Capri Holdings Limited

May 1, 2024
Date

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED, this 1st day of May, 2024.



UNITED STATES DISTRICT JUDGE
The Honorable Jennifer L. Rochon

EXHIBIT C

From: Dennis, Abby <adennis@ftc.gov>
Sent: Friday, May 24, 2024 9:24 AM
To: Brown, Chris (DC); Antonini, Laura; Bayer Femenella, Peggy; Lindquist, Nicole; Risenmay, Blake; Colwell, Peter; Quinn, Danielle
Cc: Paik, Andrew (DC); Champlin, Lindsey (DC); Buterman, Larry (NY-DC); Giordano, Jennifer (DC); DamienDidden-contact; KRHaigh@wlrk.com; JCKaplan@wlrk.com; Johnson, David (DC); Adam Goodman -Contact; EPGolin@wlrk.com; Jonathan Moses -Contact; Pfeiffer, Al (Bay Area); Reeves, Mandy (DC); bafish@wlrk.com; MJSicilian@wlrk.com; Conner, Ian (DC); Casale, Mary (DC)
Subject: RE: Docket 9429 Tapestry/Capri - Continuance Request

Chris –

Good morning – thank you for your email and update on Respondents’ forthcoming motion. Complaint Counsel will oppose.

Best regards,
 Abby

From: Chris.Brown@lw.com <Chris.Brown@lw.com>
Sent: Thursday, May 23, 2024 9:17 PM
To: Antonini, Laura <lantonini@ftc.gov>; Dennis, Abby <adennis@ftc.gov>; Bayer Femenella, Peggy <PBAYERFEMENELLA@ftc.gov>; Lindquist, Nicole <nllindquist@ftc.gov>; Risenmay, Blake <brisenmay@ftc.gov>; Colwell, Peter <pcolwell@ftc.gov>; Quinn, Danielle <dquinn@ftc.gov>
Cc: Andrew.Paik@lw.com; Lindsey.Champlin@lw.com; Lawrence.Buterman@lw.com; Jennifer.Giordano@lw.com; DamienDidden-contact <DGDidden@wlrk.com>; KRHaigh@wlrk.com; JCKaplan@wlrk.com; DavidL.Johnson-contact <david.johnson@lw.com>; Adam Goodman -Contact <algoodman@wlrk.com>; EPGolin@wlrk.com; Jonathan Moses - Contact <jmmoses@wlrk.com>; AlfredC.Pfeiffer-contact <al.pfeiffer@lw.com>; AmandaReeves-contact <Amanda.Reeves@lw.com>; bafish@wlrk.com; MJSicilian@wlrk.com; Ian.Conner@lw.com; Mary.Casale@lw.com
Subject: Docket 9429 Tapestry/Capri - Continuance Request

Counsel –

We plan to file a motion to continue the administrative evidentiary hearing and its prehearing events unrelated to discovery. Specifically, we plan to request that the evidentiary hearing and its prehearing events unrelated to discovery be continued until 20 days after the date of the federal court’s decision on the FTC’s motion for a preliminary injunction in *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.). In the alternative, we will seek that the evidentiary hearing and its prehearing events be continued for 60 days.

We discussed this with you during an earlier meet and confer and understood that you opposed this motion. We wanted to confirm that Complaint Counsel still opposes the request to continue the hearing and prehearing events.

As we previously discussed, we believe that a continuance would help address the overlapping schedules of the administrative hearing and the federal hearing. It would also reduce burden on the parties and third parties. We are available to further confer tomorrow if you would like to further discuss.

Best,
 CB

Chris Brown

LATHAM & WATKINS LLP

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