

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

Altria Group, Inc.
a corporation;

and

JUUL Labs, Inc.
a corporation.

DOCKET NO. 9393

JOINT MOTION TO EXTEND DEADLINES FOR THE PARTIES' APPEAL BRIEFS

Pursuant to Rules 3.22 and 3.52, 16 C.F.R. §§ 3.22, 3.52, Complaint Counsel and Respondents Altria Group, Inc. and Juul Labs, Inc. (“Respondents”) hereby jointly move the Commission for an Order extending the deadlines by which the parties’ respective appeal briefs are due to be filed. Due to the complexity of the issues presented in this case, the size of the record, and the length of the Initial Decision, the parties jointly request that the Commission enter an order extending the briefing schedule, and thus the time to perfect any appeal or cross-appeal, as follows:

- Complaint Counsel’s Appeal Brief to be filed on or before March 31, 2022;
- Respondents’ Answering Brief to be filed within 45 days of the filing of Complaint Counsel’s Appeal Brief; and

- Complaint Counsel’s Reply Brief to be filed within 14 days of the filing of Respondents’ Answering Brief.

The parties do not seek an extension of the schedule with respect to the time to file a notice of appeal or any cross-appeal, or any of the other time limits set forth in 16 C.F.R §§ 3.51 and 3.52.

I. PROCEDURAL HISTORY

The Administrative Complaint in this case issued on April 1, 2020, alleging that Respondents violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the Clayton Act, 15 U.S.C. § 18. The evidentiary hearing in this matter began on June 2, 2021 and concluded on June 23, 2021 before the Honorable D. Michael Chappell, Administrative Law Judge. Following the hearing, the parties completed post-trial briefing on October 13, 2021.

On December 17, 2021, Judge Chappell filed an order extending the time period in which to file the Initial Decision by 30 days, citing the “extraordinarily high” amount of information involved, such as the 2,480 exhibits admitted into evidence, the 3,410 pages of trial transcript from live testimony, and the 4,067 pages of post-trial briefing and proposed findings.

On January 11, 2022, Judge Chappell requested that the Commission, pursuant to Rule 3.51(a), further extend the time period for issuing the Initial Decision until February 17, 2022, citing the “substantial record” in this case. Concluding that “[u]nder these circumstances, the extension of time requested by Judge Chappell is appropriate,” the Commission entered an order on January 19, 2022 extending the time for filing the Initial Decision to February 17, 2022.

Subsequently, on February 15, 2022, Judge Chappell issued a 263-page Initial Decision, and Complaint Counsel filed a Notice of Appeal on February 16, 2022.

II. REQUESTED RELIEF

Commission Rule 4.3(b) provides that the Commission may extend time limits “for good cause shown.” 16 C.F.R. § 4.3(b). The parties believe that good cause exists for an adjustment

to the briefing schedule, and thus to perfect any appeal or cross-appeal, due to the complexity of the issues presented in this case and the size of the record, which Judge Chappell recognized to be “extraordinar[y].” Order Extending Time for Filing Initial Decision Pursuant to Commission Rule 3.51 (Dec. 17, 2021), available at <https://www.ftc.gov/system/files/documents/cases/c4691dteenergymodifyingorder.pdf>. As a result, the parties respectfully request that the Commission adjust the current briefing deadlines as follows:

	Current Deadline	Proposed Deadline
Complaint Counsel’s Appeal Brief	March 17, 2022	March 31, 2022
Respondents’ Answering Brief	30 days after Appeal Brief filed	45 days after Appeal Brief filed
Complaint Counsel’s Reply Brief	7 days after Answering Brief filed	14 days after Answering Brief filed

The parties believe that the modest extensions requested would help provide sufficient time to fully vet the issues for appeal and prepare briefs helpful to the Commission.

In similar situations, the Commission has acknowledged that complex issues and a voluminous record may constitute “good cause” to make appropriate adjustments to the briefing schedule. *See, e.g.*, Order Granting Extensions of Time to File Appellate Briefs and Increases in Word Count Limits, *In the Matter of Rambus, Inc.*, Docket No. 9302 (Mar. 18, 2004), available at <https://www.ftc.gov/sites/default/files/documents/cases/2004/03/040318rogeotfab.pdf>. Thus, the requested adjustments in the briefing schedule are narrowly tailored, and the parties agree that these limited extensions will not result in undue delay in the adjudication of this case. The parties therefore respectfully request that the Commission grant this Joint Motion.

Dated: February 18, 2022

s/Stephen W. Rodger

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Respectfully submitted,

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**[PROPOSED] ORDER GRANTING JOINT MOTION TO EXTEND
DEADLINES FOR FILING BRIEFS ON APPEAL**

Complaint Counsel and Respondents have filed a Joint Motion to extend the deadlines to file appeal briefs, and to perfect any appeal or cross-appeal, in this matter. Under the Joint Motion's proposed schedule, Complaint Counsel would file its Appeal Brief on or before March 31, 2022; Respondents would file their Answering Brief within 45 days of the filing of the Appeal Brief; and Complaint Counsel would file its Reply Brief within 14 days of the filing of the Answering Brief. The parties do not seek an extension of any of the other time limits set forth in 16 C.F.R. §§ 3.51 and 3.52. The parties request these extensions as a result of the complex issues and voluminous record in this case. The parties further state that they do not believe these extensions will result in any undue delay in the adjudication of this case.

Pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), the Commission has determined, for good cause shown, to grant the Joint Motion. Accordingly,

IT IS ORDERED THAT Complaint Counsel must file its Appeal Brief on or before March 31, 2022, and if Complaint Counsel files its Appeal Brief by that date, its appeal from the Initial Decision will be treated as having been perfected in accordance with Commission Rules 3.51(a) and 3.52(b)(2), 16 C.F.R. §§ 3.51(a), 3.52(b)(2);

IT IS FURTHER ORDERED THAT Respondents must file their Answering Brief within 45 days of the filing of Complaint Counsel's Appeal Brief; and

IT IS FURTHER ORDERED THAT Complaint Counsel must file its Reply Brief within 14 days of the filing of Respondents' Answering Brief.

By the Commission

April J. Tabor
Secretary

SEAL:

ISSUED: _____

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April J. Tabor
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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I also certify that I caused the foregoing document to be served via email to:

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