

UNITED STATES DISTRICT COURT

District of _____

Federal Trade Commission

SUMMONS IN A CIVIL ACTION

V.
Blockbuster Inc.

CASE NUMBER:

TO: (Name and address of Defendant)

Blockbuster Inc.
1201 Elm Street
Dallas, Texas 75270

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within _____ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Federal Trade Commission

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael J. Bloom, Esq. 600 Pennsylvania Ave., N.W.
Federal Trade Commission Washington, D.C. 20580 (202) 326-2475

DEFENDANTS

Blockbuster Inc.

County of Residence of First Listed Defendant Dallas County, Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Wayne Dale Collins, Esq. 599 Lexington Ave.
Shearman & Sterling New York, New York 10022-4000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Rega. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other SOCIAL SECURITY <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FEDERAL TAX SUITS <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 53(b); 15 U.S.C. Section 18A(g)(2)

Brief description of cause:
Plaintiff seeksTRO and Order enjoining acquisition and extending waiting period.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 03/04/2005 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTORNEYS ENTITLED TO NOTICE

Michael J. Bloom, Esq.
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(202) 326-2475

counsel for Federal Trade Commission

Wayne Dale Collins, Esq.
Shearman & Sterling
599 Lexington Avenue,
New York City, New York 10022-4000

counsel for Blockbuster Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Plaintiff,

v.

BLOCKBUSTER, INC.,

Defendant.

Civil No.

**COMPLAINT FOR INJUNCTIVE RELIEF PURSUANT
TO SECTION 7A(g)(2) OF THE CLAYTON ACT AND
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Pursuant to Section 7A(g)(2) of the Clayton Act, 15 U.S.C. § 18a(g)(2), and Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), the Federal Trade Commission ("Commission"), by its undersigned attorneys, seeks a temporary restraining order, injunction, and order pursuant to Section 7A(g)(2) enjoining the acquisition by defendant Blockbuster, Inc. ("Blockbuster") of any interest in Hollywood Entertainment Corporation ("Hollywood"), until Blockbuster has substantially complied with the premerger notification reporting requirements set forth in Section 7A of the Clayton Act.

Jurisdiction and Venue

1. This is a statutory cause of action against a party who failed to file a sufficient premerger submission in this district. This Court has jurisdiction over the defendants and over

the subject matter of this action pursuant to Section 7A(g)(2) of the Clayton Act, Section 13(b) of the FTC Act, and 28 U.S.C. §§ 1331, 1337, 1345.

2. Venue is proper pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b), and (c), because the cause of action arose in this district, where Blockbuster failed to make a complete response to the Commission's Request for Additional Information.

The Parties

3. The Commission is an administrative agency of the United States government with its principal offices at 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. The Commission is charged, *inter alia*, with administering the premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, and enforcing Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, by preventing acquisitions that may substantially lessen competition in any line of commerce in any section of the country. The Commission also is authorized to seek preliminary injunctions whenever it has reason to believe these laws are being violated (FTC Act § 13(b), 15 U.S.C. § 53), and to enforce the Hart-Scott-Rodino Antitrust Improvement Act's reporting and waiting period requirements (Clayton Act § 7A; 15 U.S.C. § 18a).

4. Blockbuster is incorporated in the State of Delaware with its principal place of business in Texas. Blockbuster is the largest movie and video game rental outlet in the United States. It operates approximately 4,600 company stores across the United States, and franchises approximately 1,800 additional store locations. Blockbuster estimates its U.S. revenues for fiscal year 2004 at \$4.2 billion.

The Cause of Action

5. On December 28, 2004, Blockbuster announced its intention to launch a cash tender offer to purchase all of the outstanding shares of Hollywood in a transaction valued at approximately \$1 billion (including Blockbuster's assumption of Hollywood debt outstanding).¹ Hollywood is a leading United States movie and video game rental outlet, second only to Blockbuster in revenues. Hollywood operates nearly 2,000 store locations in the United States, and estimates its U.S. revenues for fiscal 2004 at \$1.8 billion.

6. Section 7A(a) of the Clayton Act, as amended by Pub. L. 106-553, 114 Stat. 2762 ("2000 Amendments"), requires persons with more than \$100 million in total assets or net sales to file premerger notification reports with the Commission before acquiring, directly or indirectly, more than \$50 million in voting securities or assets of any person engaged in manufacturing with total assets or annual net sales of \$10 million. As part of the Notification and Report Form required by Section 7A, an officer of the filing party must certify that the filing is "true, correct, and complete in accordance with the statute and rules." See 16 C.F.R. § 803.6.

7. Section 7A(b) provides that upon filing a premerger notification report, a party wishing to make an acquisition must delay consummating the transaction for at least 30 days (15 in the case of a pure cash tender offer) in order to give the Commission an opportunity to review the transaction and determine whether to investigate the transaction further or challenge it.

¹ Blockbuster has modified or supplemented its offer twice since its original announcement. On February 2, 2005, it announced that it was raising its initial offer of \$11.50 per share (payable in cash) to \$14.50 (payable in a combination of \$11.50 in cash and \$3.00 in Blockbuster stock). On February 11, 2005, it announced the commencement of a tender offer to purchase for cash \$225 million in debt previously issued by Hollywood.

8. Section 7A(e) provides that, during the initial waiting period, the Commission may request additional information or documentary material relevant to the proposed transaction (a "Second Request"). The effect of making such a request for additional information is to extend the waiting period for consummation of the acquisition until 30 days (10 days in the case of a cash tender offer) after the date on which the Commission receives a complete response to its request for additional information. *Id.*; 16 C.F.R. § 803.20(c). A complete response is one that either: (a) sets forth all the information and provides all the documentary material required to be submitted pursuant to the request; or (b) in the event a person is unable to provide a complete response, a detailed statement of reasons for non-compliance in accordance with 16 C.F.R. § 803.3. Section 7A(e)(2) further provides that if a proper submission is made under that Section, the thirty-day waiting period extension begins, although it may be further extended by a United States district court on application by the Commission pursuant to Section 7A(g)(2), if the acquiring person (in the case of a tender offer) has not substantially complied with the request for additional information. All submissions of additional information and documentary material must be filed where designated by the Commission or, if no designation is made, with the Commission's Pre-Merger Office in Washington, DC.

9. Blockbuster's proposed acquisition of Hollywood is a reportable transaction under Section 7A.

10. On December 28, 2004, Blockbuster filed a premerger Notification and Report Form in connection with its announced intention to launch a tender offer for the outstanding shares of Hollywood. As part of that filing, Edward B. Stead, Blockbuster's Executive Vice-President and General Counsel, certified that the filing was "true, correct, and complete."

The Commission's Second Request

11. On January 12, 2005, the Commission, pursuant to Section 7A(e)(1) of the Clayton Act, 15 U.S.C. § 18a(e)(1), and 16 C.F.R. § 803.20, issued to Blockbuster a Second Request. The first paragraph of the Commission's request informed Blockbuster that "[i]f the company believes that the required search or any other part of the Request can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified on the last page of this Request."

12. Included within this Second Request was Specification 17, which required Blockbuster to produce specific categories of data for each company store relating to, *inter alia*, each store's pricing, non-price terms, incentive programs, late fees, membership fees, discounts, and other benefits offered to customers.

13. The Second Request also contained Instruction W, which instructed Blockbuster to indicate for each question it is unable to answer fully, "why such answer is incomplete, the efforts made by the company to obtain the information, and the source from which the complete answer may be obtained." The purpose of Instruction W is to allow Blockbuster to explain why it did not provide certain information in response to the Second Request, in a way that the Commission staff reviewing the response can rely upon in assessing Blockbuster's compliance with the Second Request.

Blockbuster's Response to the Second Request

14. On February 4, 2004, Blockbuster, through its Vice-President and Senior Corporate Counsel, Judy C. Norris, certified under oath, pursuant to 16 C.F.R. § 803.6, that it

had substantially complied with the Commission's Second Request by submitting the information and materials specified in the Second Request.

15. In the course of reviewing Blockbuster's response to the Second Request, the Commission staff discovered that Blockbuster's response to the Second Request was incomplete in multiple respects. Most significant, in terms of its impact on the Commission's investigation, Blockbuster, in its response to Specification 17(a) of the Second Request, provided incorrect information relating to pricing, in the form of rental fees, at specific Blockbuster stores. As a result of a Blockbuster "programming error," more than 60,000 of the approximately 120,000 data points contained in Blockbuster's original dataset were inaccurate. The Commission's economics staff had relied on that data to try to use econometric analyses to assess the likely competitive effects of the acquisition in order to guide the Commission's decision-making process in connection with the proposed acquisition. However, all of the statistical analysis that Commission staff had performed using that pricing data was fatally flawed, and therefore useless to the Commission.

16. Commission staff identified to Blockbuster's counsel, in an oral conversation on February 16, the "discrepancies" in the data that Blockbuster had provided. Counsel for Blockbuster thereafter admitted, in an e-mail message dated February 22, 2005 that "a programming error was made in collecting the specification 17 data, so that it is inaccurate." Blockbuster counsel attached revised data responsive to specification 17(a) to that same e-mail message on February 22, 2005 – 18 days after certifying that it was in substantial compliance with the Second Request. While updating its response to now include the presumably correct

pricing data, Blockbuster did not re-certify its substantial compliance to reflect the date on which it had actually submitted accurate pricing data in response to Specification 17(a).

17. In addition to the deficiencies in response to Specification 17(a), Blockbuster failed to provide complete responses to several other Specifications of the Second Request. For example, subpart (e) of Specification 17 requires the production of data regarding “any late fees applied to late returns of rentals” for “each company store.” Blockbuster’s response to Specification 17(e), however, only provided data for approximately 400 of the approximately 4,600 company stores it operates in the United States. Only in a submission of late March 1, 2005, has Blockbuster provided what appears to be the complete data in response to Specification 17(e). The original data disk produced by Blockbuster contained 2.8 megabytes of data and had approximately 65,000 data rows. The disk submitted on March 1 contained 96 megabytes of data and approximately 873,000 data rows. The original data disk, therefore, was missing over 800,000 rows of responsive information.

18. Timely submission of the pricing information required by Specification 17(a) and 17(e) is critical to the Commission’s economic analysis of the potential competitive effects of Blockbuster’s proposed acquisition. The type of econometric analyses that the Commission’s staff have applied in this investigation are complex, and require substantial Commission resources. The accurate pricing data that Blockbuster did not provide until February 22 is highly probative information to that analysis. The result of Blockbuster’s failure to provide the accurate data, combined with its theory that its initial submission constituted substantial compliance, would be to reduce, by over half, the statutory period that Congress has provided to the Commission to use the information it is entitled to obtain from Blockbuster.

19. During the time that the Commission would have had if Blockbuster's submission of data in response to Specification 17(a) and 17(e) had been timely, the Commission would be able to conduct the complex economic analyses that would help inform its decision making in connection with Blockbuster's proposed acquisition of Hollywood. Because of Blockbuster's serious errors, however, the Commission has not yet had a sufficient opportunity to complete these analyses.

The Commission's Two Notices of Deficiencies

20. After reviewing Blockbuster's response to the Second Request, Commission staff notified Blockbuster's counsel in two letters, both dated February 24, 2005, of the numerous deficiencies, including Blockbuster's failure to comply with Specification 17(a) and 17(e), that had been identified in the Second Request. Each of those letters clearly states that it constitutes a notice of deficiency under 16 C.F.R. 803.10(c)(2), and that therefore the statutory waiting periods specified in 16 C.F.R. §§ 803.10(b)(2)(i) has not begun.

Blockbuster's Response to the Two Notices

21. In response to the Commission's letters, Blockbuster counsel delivered to the Commission on February 28 a letter challenging the Commission's position that Blockbuster was not in substantial compliance with the Second Request. With respect to its untimely response to Specification 17(a), for example, Blockbuster took the position that the Commission had not been prejudiced by its failure to provide store pricing data on a timely basis, stating that it "defies imagination that the staff has been so impeded in the investigation that a court should find that Blockbuster was not in substantial compliance with its original February 4 response."

22. Blockbuster on March 2, 2005, filed an appeal with the Commission's General Counsel, pursuant to Section 2.20 of the Commission's Rules of Practice, 16 C.F.R. § 2.20, of the notices of deficiency that Blockbuster had received from the Commission's representatives. In its March 3, 2005 response to that appeal, the Commission's General Counsel stated that Blockbuster was not in substantial compliance at least until it had corrected its failures to submit accurate data.

Blockbuster Has Not Complied With Its Legal Obligations

23. By failing to provide complete and accurate information responsive to Commission Specification 17 (as well as other Specifications), Blockbuster has not complied with the premerger reporting obligations set out in Section 7A(e)(2) and 16 C.F.R. § 803.20.

24. Section 7A(g)(2) of the Clayton Act provides that if any person fails substantially to comply with the notification requirement of Section 7A(a) or any request for the submission of additional information or documentary material pursuant to Section 7A(e)(1), a United States district court, upon application of the Commission, "shall extend the waiting period ... until there has been substantial compliance." Section 7A(g)(2) further provides that, upon application, the district court "may order compliance" and "may grant such other equitable relief as the court in its discretion determines necessary or appropriate."

25. As noted above, Blockbuster has refused to recertify both its original Notification and Report Form and its substantial compliance with the Second Request. Moreover, counsel for Blockbuster has refused even to acknowledge the deficient character of its certification.

26. Blockbuster has stated in the press, and has stated to the Commission, its intention to effect its proposed acquisition of Hollywood as soon as possible, indicating that unless the

Commission takes action by mid-March Blockbuster will go ahead with its acquisition and force the Commission to bring suit to stop the transaction. This timing is based on Blockbuster's February 4 certification which, if unchallenged, would result in a termination of the statutory waiting period on March 7, 2005.

27. Thus, unless enjoined by this Court, Blockbuster may acquire Hollywood as early as March 8, 2005. Accordingly, a temporary restraining order and an injunction enjoining consummation are necessary to ensure compliance with the requirements of Section 7A of the Clayton Act and to give the Commission and its staff the time provided by Congress for evaluation of the proposed acquisition.

WHEREFORE, the Commission prays for an order:

- a. Enjoining Blockbuster from acquiring, directly or indirectly, any interest in Hollywood until Blockbuster has conducted a thorough search for responsive material and recertified its original Notification and Report Form, provided all responsive information sought by the Commission in the Second Request, recertified its substantial compliance with the Commission's Second Request, and complied with the statutory waiting period required by Section 7A of the Clayton Act; and
- b. Awarding such other relief as this Court shall deem just and appropriate.

Respectfully Submitted,

John D. Graubert (D.C. Bar No. 370670)
Acting General Counsel

Susan Creighton, Director
Bureau of Competition

A handwritten signature in black ink, appearing to read "Michael Bloom", with a long horizontal flourish extending to the right.

Michael Bloom
Director of Litigation

Michael H. Knight
Assistant Director

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
(202) 326-2475

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
)	
FEDERAL TRADE COMMISSION,)	
Plaintiff,)	
)	
v.)	Civil No.
)	
)	
BLOCKBUSTER, INC.,)	
Defendant.)	
)	
)	

**PLAINTIFF'S MOTION FOR ORDER DIRECTING THE FILING UNDER
SEAL OF CERTAIN DOCUMENTS**

Plaintiff, the Federal Trade Commission, respectfully moves this Court for an order, pursuant to LCvR 5.1(j), directing the Clerk of the Court to file under seal, until further order, the following documents which this day plaintiff is filing in support of its motion:

- (1) Plaintiff's Statement of Points and Authorities in Support of Plaintiff's Motion for TRO and for an Order Pursuant to Section 7A(g)(2) of the Clayton Act; and
- (2) Attachments thereto; and
- (3) Exhibits in support thereof.

The purpose of this motion is to provide confidential treatment for the aforesaid documents until defendants and any third parties that supplied information disclosed in the documents have been notified of the Commission's filing and have had an opportunity to consider whether the

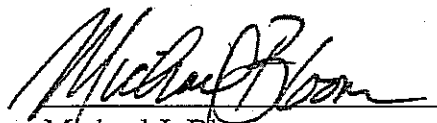
documents that were previously provided to the Commission as confidential are entitled to continued "under seal" protection.

This motion is supported by an accompanying statement of points and authorities and a proposed order.

Respectfully submitted,

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director

A handwritten signature in black ink, appearing to read "Michael Bloom", written over a horizontal line.

Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director

Bureau of Competition
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600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
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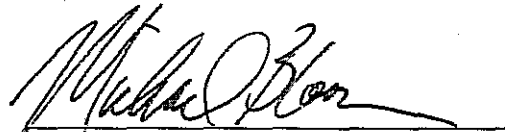
March 4, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
)	
FEDERAL TRADE COMMISSION,))	
	Plaintiff,)	
)	Civil No.
v.)	
)	
BLOCKBUSTER, INC.,)	
	Defendant.)	
_____)	

CERTIFICATE OF SERVICE

I, Michael Bloom, hereby certify that on March 4, 2005, I caused one copy of the Federal Trade Commission's Motion For Order Directing the Filing Under Seal of Certain Documents to be served via electronic mail on Counsel for Defendant Blockbuster, Inc., Wayne Dale Collins, Esq. at wcollins@shearman.com.



Michael Bloom
Director of Litigation
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D. C. 20580
(202) 326-2475

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)
)
FEDERAL TRADE COMMISSION,)
 Plaintiff,)
)
 v.) Civil No.
)
)
BLOCKBUSTER, INC.,)
 Defendant.)
)

**[PROPOSED]
ORDER DIRECTING THE FILING UNDER SEAL
OF CERTAIN DOCUMENTS**

Upon consideration of plaintiff's motion for an order, pursuant to LCvR 5.1(j), directing the filing of certain documents under seal,

IT IS HEREBY ORDERED that "Plaintiff's Statement of Points and Authorities in Support of Plaintiff's Motion for a TRO and for an Order Pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act" and Plaintiff's Attachments and Exhibits accompanied with said Statement be filed under seal until further order of the Court.

IT IS FURTHER ORDERED that plaintiff Federal Trade Commission may at any time file on the public record a duplicate copy of the Statement that does not reveal confidential material. Confidential material includes material and information contained therein that is defined or treated as confidential under Rule 26(c)(7) of the Federal Rules of Civil Procedure, Section 6(f), 21(b) or 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f), 57b-2(b),

57b-2(c), Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), or Section 7A(h) of the Clayton Act, 15 U.S.C. § 18a(h). The identity of a third party submitting such confidential material also shall be treated as confidential material for the purposes of this Order if the third party has requested such confidential treatment.

United States District Judge

Dated: _____

Presented by:

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director

Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director

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counsel for Federal Trade Commission

Wayne Dale Collins, Esq.
Shearman & Sterling
599 Lexington Avenue,
New York City, New York 10022-4000

counsel for Blockbuster Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
BLOCKBUSTER, INC.,
Defendant.

Civil No.

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION DIRECTING THE FILING
UNDER SEAL OF CERTAIN DOCUMENTS**

The Federal Trade Commission ("Commission") is this day filing a motion for a TRO and an Order pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act to block the impending acquisition by defendant Blockbuster, Inc. of Hollywood Entertainment Corporation ("Hollywood"). Annexed to the Commission's moving papers are documents ("Plaintiff's Statement of Points and Authorities in Support of Plaintiff's Motion for a TRO and for an Order Pursuant to 7A(g)(2) of the Clayton Act" and attachments exhibits in support thereof) that contain information supplied to the Commission by defendants and third parties. This information was provided to the Commission in confidence and has thus far been protected from public disclosure during the Commission's investigation by virtue of various statutory provisions, e.g., 15 U.S.C. §§ 18a(h), 46(f), and 57(b)-2. In keeping with these statutory provisions, the Commission believes the appropriate course in any ensuing court proceeding is to file such documents under seal and to notify the submitters that their information

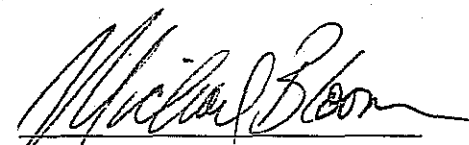
has been filed under seal, but should remain under seal only if, and to the extent that, it is confidential.

The Commission has notified defendants and the third parties of the filing and has informed them that the documents and information discussed above will be filed under seal for the time being, until further order of the Court. In addition, the Commission will advise defendants and third parties that such protection is warranted only for confidential material deserving of "under seal" treatment and that, if any of the documents and information they provided to the Commission are not entitled to such protection, that material should be promptly removed from under seal and placed in the public file.

Respectfully submitted,

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director


Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director,

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-2475

March 4, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil No.
)	
v.)	
)	
BLOCKBUSTER, INC.,)	
)	
Defendant.)	

**MOTION FOR AN ORDER TO SHOW CAUSE AND FOR A TEMPORARY
RESTRAINING ORDER**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys moves the Court, pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act for an Order To Show Cause and for a Temporary Restraining Order to preserve the status quo by enjoining the acquisition by Blockbuster, Inc. (“Blockbuster”) of any interest in Hollywood Entertainment Corporation (“Hollywood”), until further order of the court following a hearing on the Commission’s motion for an order pursuant to Section 7A(g)(2) of the Clayton Act. The Commission does not seek a ruling or relief at this time going to the merits of whether the proposed acquisition violates the antitrust laws.

A Temporary Restraining Order pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act enjoining the proposed acquisition until a hearing is conducted by the Court is needed to ensure Blockbuster’s compliance with the premerger reporting requirements and appropriate waiting period so that the Commission can obtain and analyze the data and documents necessary to evaluate and determine whether the

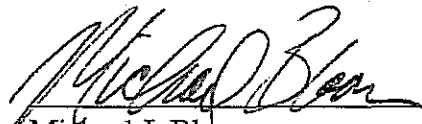
proposed acquisition will violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and if appropriate, to seek temporary relief for any substantial lessening of competition in the appropriate district court or permanent relief in an administrative adjudication of the merits. Unless a Temporary Restraining Order is issued, Blockbuster has indicated that it may begin acquiring shares of Hollywood as early as March 11, 2005.

This motion is supported by a statement of points and authorities filed with the motion.

Respectfully submitted,

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director



Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
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March 4, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil No.
)	
v.)	
)	
BLOCKBUSTER, INC.,)	
)	
Defendant.)	

**NOTICE OF FILING UNDER SEAL OF PLAINTIFF'S STATEMENT OF POINTS
AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTIONS FOR TRO
AND FOR AN ORDER PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT
AND SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

In accordance with LCvR 5.4(e)(1)-(2), notice is hereby given that, on March 4, 2005, plaintiff in the above-captioned case filed under seal its statement of points and authorities in support of its motion for a TRO and for an Order pursuant to Section 7A(g)(2) of the Clayton Act, and Section 13(b) of the Federal Trade Commission Act.

Respectfully submitted,



Michael J. Bloom, Esq.
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(202) 326-2475

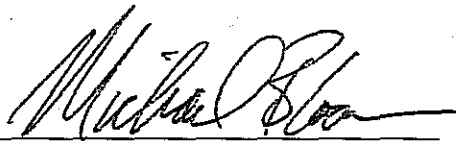
March 4, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
)	
FEDERAL TRADE COMMISSION,)	Civil No.
)	
	Plaintiff,)	
)	
v.)	
)	
BLOCKBUSTER, INC.,)	
	Defendant.)	
_____)	

**CERTIFICATE OF COUNSEL PURSUANT TO LCvR 65.1 OF NOTICE OF
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Pursuant to LCvR 65.1, I, Michael J. Bloom, hereby certify that on March 4, 2005, I notified counsel for Blockbuster, Inc. of the time and place of the filing of a motion seeking a Temporary Restraining Order and of the Commission's intention to seek an immediate hearing on the motion. I further certify that on March 4, 2005, I caused one copy of all the pleadings and papers filed by the Federal Trade Commission in this action on March 4, 2005 to be delivered to Wayne Dale Collins, Shearman & Sterling LLP, 599 Lexington Avenue, New York City, New York, 10022-4000 (wcollins@shearman.com).



Michael J. Bloom
Director of Litigation
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(202) 326-2475

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
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FEDERAL TRADE COMMISSION,)	
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Plaintiff,)	
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v.)	Civil No.
)	
BLOCKBUSTER, INC.,)	
Defendant.)	
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[PROPOSED] ORDER TO SHOW CAUSE

This Cause arising upon the application of Plaintiff, Federal Trade Commission, for an order to show cause why a temporary restraining order and an order pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act should not issue, and it appearing from the allegations of the complaint and from the exhibits submitted in support of the application, that Plaintiff is entitled to such relief unless good cause to the contrary be shown, it is hereby,

ORDERED, that Defendant Blockbuster appear before the Honorable _____, a judge of this court, in Courtroom _____ of the United States District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, D.C. 20001, on _____ at _____, or as soon thereafter as counsel can be heard, and show cause why an order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, 18 U.S.C. § 18A(g)(2), and

15 U.S.C. § 53(b), should not issue, temporarily restraining Blockbuster from acquiring any interest in Hollywood Entertainment Corporation, until a hearing can be held on the Commission's motion for an injunction requiring Blockbuster to comply with the premerger reporting requirements of Section 7A of the Clayton Act and the waiting periods mandated by that statute.

Service of this order upon Blockbuster by Plaintiff shall be effected on or before _____ am/pm on March __, 2005.

Entered this __ day of March 2005 at ____ a.m./p.m.

United States District Judge

Presented by:

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director

Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director

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March 4, 2005

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counsel for Federal Trade Commission

Wayne Dale Collins, Esq.
Shearman & Sterling
599 Lexington Avenue,
New York City, New York 10022-4000

counsel for Blockbuster Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
BLOCKBUSTER, INC.,)	
)	
Defendant.)	
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[PROPOSED] TEMPORARY RESTRAINING ORDER

This matter has arisen from the Federal Trade Commission's ("Commission") complaint and motion for a temporary restraining order pursuant to Section 7A(g)(2) of the Clayton Act, 15 U.S.C. § 18a(g)(2), and Fed. R. Civ. P. 65(b) and Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). The Court has considered the Commission's statement of points and authorities and attachments in support thereof as well as defendant's response to the motion, and concludes that the issuance of a temporary restraining order is required to maintain the status quo by preventing defendant Blockbuster, Inc. ("Blockbuster") from acquiring any interest in Hollywood Entertainment Corporation ("Hollywood"), until a hearing can be held on the Commission's motion for an injunction requiring Blockbuster to comply with the premerger reporting requirements of Section 7A of the Clayton Act and the waiting periods mandated by that statute.

THEREFORE, IT IS ORDERED

(1) that defendant Blockbuster, its officers, agents, servants, employees and attorneys and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are enjoined from acquiring by any means, on behalf of defendant or any subsidiary thereof, any interest in Hollywood until further order of the Court, and

(2) that a hearing shall be held at _____, on _____, regarding the Federal Trade Commission's emergency motion for an order pursuant to Section 7A(g)(2) of the Clayton Act seeking an injunction to require defendant to comply with the reporting and waiting period requirements of that Act before acquiring any interest in Hollywood.

Entered this ___ day of March, 2005 at _____ a.m./p.m.

United States District Judge

Presented by:

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director

Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director

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ATTORNEYS ENTITLED TO NOTICE

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counsel for Federal Trade Commission

Wayne Dale Collins, Esq.
Shearman & Sterling
599 Lexington Avenue,
New York City, New York 10022-4000

counsel for Blockbuster Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
BLOCKBUSTER, INC.,
Defendant.

Civil No.

**MOTION FOR ORDER PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT
AND SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys moves the Court, pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act for an Order enjoining the acquisition by Blockbuster, Inc. (“Blockbuster”) of any interest in Hollywood Entertainment Corporation (“Hollywood”), until an appropriate time after Blockbuster has substantially complied with the premerger notification reporting requirements set forth in Section 7A of the Clayton Act. The Commission does not seek a ruling or relief at this time going to the merits of whether the proposed acquisition violates the antitrust laws.

An Order pursuant to Section 7A(g)(2) enjoining the proposed acquisition until Blockbuster complies with the premerger reporting requirements and observes an appropriate waiting period is needed so that the Commission can obtain and analyze the data and documents necessary to evaluate and determine whether the proposed acquisition will violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C.

§ 18, and if appropriate, to seek temporary relief for any substantial lessening of competition in the appropriate district court or permanent relief in an administrative adjudication of the merits. Unless an Order pursuant to Section 7A(g)(2) is issued, Blockbuster has indicated that it may begin acquiring shares of Hollywood on March 11, 2005.

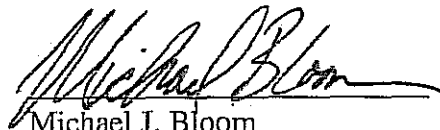
This motion is supported by a statement of points and authorities filed herewith.

The Commission respectfully requests the opportunity to present oral argument in support of this motion.

Respectfully submitted,

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton
Director



Michael J. Bloom
Director of Litigation

Michael H. Knight
Assistant Director

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
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March 4, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION,)
)
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Plaintiff,)
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)
Civil No.)
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)
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v.)
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)
BLOCKBUSTER, INC.,)
)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

I, Michael Bloom, hereby certify that on March 4, 2005, I caused one copy of the Federal Trade Commission's Motion For Injunctive Relief Pursuant To Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act and attachments thereto to be served via electronic mail on Counsel for Defendant Blockbuster, Inc., Wayne Dale Collins, Esq. at wcollins@shearman.com.



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Federal Trade Commission
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION,)
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Plaintiff,) Civil No.
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v.)
)
BLOCKBUSTER, INC.,)
)
Defendant.)
_____)

**[PROPOSED]
ORDER PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT
AND SECTION 13(B) OF THE FEDERAL TRADE COMMISSION ACT**

This proceeding having come before the Court on the Federal Trade Commission's complaint and motion for an order pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act, and it appearing to the Court upon consideration of the complaint, supporting declarations and exhibits, other materials of record and the argument of counsel:

Findings of Fact

1. The Commission is an administrative agency of the United States government with its principal offices at 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. The Commission is charged, among other things, with administering the premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, and enforcing Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, by preventing acquisitions that may substantially lessen competition in any line of commerce in any

section of the country. The Commission is also authorized to seek preliminary injunctions whenever it has reason to believe these laws are being violated (FTC Act § 13(b), 15 U.S.C. § 53), and to enforce the Hart-Scott-Rodino Antitrust Improvement Act's reporting and waiting period requirements (Clayton Act § 7A; 15 U.S.C. § 18a).

2. Blockbuster is incorporated in the State of Delaware with its principal place of business in Texas. Blockbuster is the largest movie and video game rental outlet in the United States. It operates approximately 4,600 company stores across the United States, and franchises approximately 1,800 additional store locations. Blockbuster estimates its U.S. revenues for fiscal year 2004 at \$4.2 billion.

3. On December 28, 2004, Blockbuster announced its intention to launch a cash tender offer to purchase all of the outstanding shares of Hollywood in a transaction valued at approximately \$1 billion (including Blockbuster's assumption of Hollywood debt outstanding).¹ Hollywood is a leading United States movie and video game rental outlet, second only to Blockbuster in revenues. Hollywood operates nearly 2,000 store locations in the United States, and estimates its U.S. revenues for fiscal 2004 at \$1.8 billion.

4. On December 28, 2004, Blockbuster filed a premerger Notification and Report Form in connection with its announced intention to launch a tender offer for the outstanding shares of Hollywood. As part of that filing, Edward B. Stead, Blockbuster's Executive Vice President, General Counsel, and Executive Vice President Business Development, certified that the filing was "true, correct, and complete."

¹ Blockbuster has modified or supplemented its offer twice since its original announcement. On February 2, 2005, it announced that it was raising its initial offer of \$11.50 per share (payable in cash) to \$14.50 (payable in a combination of \$11.50 in cash and \$3.00 in Blockbuster stock). On February 11, 2005, it announced the commencement of a tender offer to purchase for cash \$225 million in debt previously issued by Hollywood.

5. On January 12, 2005, the Commission, pursuant to Section 7A(e)(1) of the Clayton Act, 15 U.S.C. § 18a(e)(1), and 16 C.F.R. § 803.20, issued to Blockbuster a request for additional information and documentary material relevant to the proposed acquisition (the "Second Request"). Included within this Second Request was Specification 17, which required Blockbuster to produce specific categories of data for each company store relating to, among other things, each store's pricing, non-price terms, incentive programs, late fees, membership fees, discounts, and other benefits offered to customers. The Second Request also contained Instruction W, which instructed Blockbuster to indicate for each question it is unable to answer fully, "why such answer is incomplete, the efforts made by the company to obtain the information, and the source from which the complete answer may be obtained."

6. On February 4, 2004, Blockbuster, through its Vice-President and Senior Corporate Counsel, Judy C. Norris, certified under oath, pursuant to 16 C.F.R. § 803.6, that it had substantially complied with the Commission's Second Request by submitting the information and materials specified in the Second Request.

7. Commission staff discovered that Blockbuster failed to provide a complete response to the Second Request. The certification of substantial compliance with the Commission's Second Request, filed by Blockbuster on February 4, 2005, was inaccurate because Blockbuster's response to the Second Request was deficient. Specifically, Blockbuster provided inaccurate data in response to the request in Specification 17(a) for pricing data, which information was actually used by the Commission's staff in statistical analysis that proved to be flawed and useless in the analysis of the proposed transaction. Moreover, Blockbuster's response to Specification 17(e) requesting information on "any late fees applied to late returns of rentals"

was incomplete, and Blockbuster failed to respond to Specification 20 of the Second Request, except to state that a response would be “impractical.”

8. Blockbuster’s Response to the Second Request, filed and certified as complete on February 4, 2005, was incomplete insofar as it failed to provide the data responsive to Specifications 17 and 20.

9. After reviewing Blockbuster’s response to the Second Request, Commission staff notified Blockbuster’s counsel in two letters, both dated February 24, 2005, of the deficiencies that had been identified in that submission. Each of those letters clearly states that it constitutes a notice of deficiency under 16 C.F.R. § 803.10(c)(2), and that therefore the statutory waiting periods specified in 16 C.F.R. §§ 803.10(b)(2)(i) and 803.10(b)(2)(ii) have not begun.

10. By failing to supply a complete and accurate response to Specifications 17(a) and 17(e), Blockbuster has failed to comply with the premerger notification requirements set out in Section 7A(e)(2) of the Clayton Act and 16 C.F.R. § 803.10(c)(2). The statutory waiting period has not begun, and will not begin, unless and until Blockbuster substantially complies with the Commission’s request for additional information by providing complete responses as mandated by Section 7A(e)(2) and 16 C.F.R. § 803.10(c)(2).

Conclusions of Law

11. This is a statutory cause of action against a party who failed to file a sufficient premerger submission in this district. This Court has jurisdiction over the defendants and over the subject matter of this action pursuant to Section 7A(g)(2) of the Clayton Act, Section 13(b) of the FTC Act, and 28 U.S.C. §§ 1331, 1337, 1345.

12. Venue is proper pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b), and (c), because the cause of action arose in this district, where Blockbuster was required, but failed, to file a sufficient premerger filing.

13. Section 7A(a) of the Clayton Act, as amended by Pub. L. 106-553, 114 Stat. 2762 (“2000 Amendments”), requires persons with more than \$100 million in total assets or net sales to file premerger notification reports with the Commission before acquiring, directly or indirectly, more than \$50 million in voting securities or assets of any person engaged in manufacturing with total assets or annual net sales of \$10 million.

14. The premerger Notification and Report Form requires filing parties to submit “all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) ... for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.”

15. Section 7A(b) provides that upon filing a premerger notification report, a party wishing to make an acquisition must delay consummating the transaction for at least 30 days (15 in the case of a cash tender offer) in order to give the Commission an opportunity to review the transaction and determine whether to investigate the transaction further or challenge it.

16. Section 7A(e) provides that, during the 15-day waiting period in the case of cash tender offers, the Commission may request additional information or documentary material relevant to the proposed transaction. The effect of making such a request for additional information is to extend the waiting period for consummation of the acquisition until 10 days (in the case of a cash tender offer) after the date on which the Commission receives a complete response to its request for additional information. *Id.*; 16 C.F.R. § 803.20(c). A complete response

is one that either: (a) sets forth all the information and provides all the documentary material required to be submitted pursuant to the request; or (b) in the event a person is unable to provide a complete response, a detailed statement of reasons for non-compliance in accordance with 16 C.F.R. § 803.3. Section 7A(e)(2) further provides that if a proper submission is made under that Section, the ten-day (in the case of a cash tender offer) waiting period extension begins, although it may be further extended by a United States district court on application by the Commission pursuant to Section 7A(g)(2), if the acquiring person (in the case of a cash tender offer) has not substantially complied with the request for additional information.

17. Section 7A(g)(2) of the Clayton Act provides that if any person fails substantially to comply with the notification requirement or with any request for the submission of additional information or documentary material pursuant to Section 7A(e)(1), a United States district court, upon application of the Commission, "shall extend the waiting period ... until there has been substantial compliance." Section 7A(g)(2) further provides that, upon application, the district court "may order compliance" and "may grant such other equitable relief as the court in its discretion determines necessary or appropriate."

18. Blockbuster failed substantially to comply with the with the request for submission of additional information or documentary material pursuant to Section 7A(e)(1).

19. Unless enjoined by this Court, Blockbuster has indicated its intention to consummate the transaction as early as March 11, 2005. Accordingly, an order pursuant to 7A(g)(2) and an injunction enjoining consummation are necessary to ensure compliance with the requirements of Section 18A of the Clayton Act and to give the Commission and its staff the time provided by Congress for evaluation of the proposed acquisition.

NOW THEREFORE, IT IS ORDERED that defendant Blockbuster, its officers, agents, servants, employees and attorneys and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are enjoined from acquiring by any means, on behalf of defendant or any subsidiary thereof, any assets of the Hollywood, or any subsidiary, predecessor or successor thereof until the expiration of until the date on which (1) Blockbuster has substantially complied with the Commission's Second Request for additional information to Blockbuster concerning the proposed acquisition sent pursuant to the Hart-Scott-Rodino Amendments to the Clayton Act ("HSR"), 15 U.S.C. §7a; (2) Blockbuster has recertified its substantial compliance with the Second Request; and (3) the 30 day post-certification waiting period provided by the HSR has run its course, which in no event shall be deemed to occur prior to April 2, 2005, or a court has enjoined the proposed transaction on the merits.

Entered this ____ day of _____, 2005

United States District Judge

Presented by:

John D. Graubert (DC Bar # 370670)
Acting General Counsel

Susan A. Creighton, Director
Michael J. Bloom, Director of Litigation
Michael H. Knight, Assistant Director
Bureau of Competition

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