

(including two witnesses who traveled to the United States from Europe, and one who traveled to the United States from Australia) have been completed, and additional depositions are scheduled for the coming weeks. However, Respondents believe that a slight modification to the current schedule may be needed, and hope to present a joint proposal in that regard at the status conference.

On November 14, 2001, Complaint Counsel served its expert reports, including the report of an economist, Stephen Stockum, and a professor of music business, Catherine Moore. Neither report addresses in any respect the two pivotal allegations of the complaint and central issues in this case – (1) whether the alleged “moratorium agreement” on discounting and advertising of the 1990 and 1994 Three Tenors albums was implemented (Complaint ¶¶ 13, 14), and (2) if so, whether that moratorium agreement was “reasonably necessary to the formation or to the efficient operation of the joint venture between Warner Music Group and Polygram Music Group” (Complaint § 15). Instead, Professor Moore’s report merely purports to describe various aspects of the music business without addressing the facts of this case, and Dr. Stockum’s report addresses a hypothetical and irrelevant circumstance in which two competing firms agree not to discount or advertise competing products in the absence of any joint venture or other collaboration between the two firms. Respondents submit that Complaint Counsel should be precluded from offering expert testimony on these subjects at summary judgment or trial.

1. Whether Respondents entered into or implemented any agreement with the Warner Music Group not to discount and not to advertise the 1990 and 1994 Three Tenors albums.

2. Whether, if such an agreement was entered into and implemented, it constituted a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, under the standards set forth in, *inter alia*, *California Dental Assn. v. Federal Trade Comm'n*, 526 U.S. 756 (1999).

3. Whether, if such an agreement was entered into and implemented, it was reasonably related to and/or reasonably necessary to either the formation or the efficient operation of the joint venture between Warner Music Group and Polygram Music Group.

4. Whether, if such an agreement was entered into and implemented, it constituted a legitimate and procompetitive effort to prevent free riding and opportunistic behavior and to protect the parties' respective investments in their joint venture.

5. Whether Respondents are engaged in any ongoing conduct that is challenged in the complaint and whether such conduct is reasonably likely to recur, and therefore whether the jurisdictional requirements of 15 U.S.C. § 45 are satisfied.

6. Whether Polygram Records and Polygram Distribution participated in any way in or directed or controlled the conduct alleged to constitute a violation of Section 5, and therefore whether they are subject to the jurisdiction of the Commission.

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7. Whether Decca Records engages in or engaged in “commerce” as defined in Section 4 of the Federal Trade Commission Act, 14 U.S.C. § 44.

Dated: November 27, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen E. Morrissey, hereby certify that on November __, 2001, I caused a copy of the attached RESPONDENTS' STATUS REPORT to be served upon the following persons by Federal Express:

Geoffrey M. Green
John Roberti
Cary Zuk
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Washington , D.C. 20580

Donald S. Clark, Secretary
Federal Trade Commission
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Washington , D.C. 20580

Hon. James P. Timony
Chief Administrative Law Judge
Federal Trade Commission
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STEPHEN E. MORRISSEY