



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

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Direct Dial
(202) 326-3775

November 29, 2001

BY HAND

The Honorable James P. Timony
Chief Administrative Law Judge
The Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: In Re Polygram Holding, et. al., Docket No. 9298

Dear Judge Timony:

Enclosed please find two (2) copies of the following documents: (1) a proposed Order memorializing the Court's orders issued during today's conference call; and (2) a proposed Revised Scheduling Order, incorporating the dates discussed during today's conference call. The proposed orders are based upon the joint motion of the parties made during today's conference call. I will file each of these documents and this letter with the Office of the Secretary today, and send a copy by email to Ms. Arthaud.

Respectfully,

John Roberti

cc: Bradley Phillips, Esq. (via facsimile)

enclosure

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

In the Matter of
POLYGRAM HOLDING, INC.,
a corporation,
DECCA MUSIC GROUP LIMITED,
a corporation,
UMG RECORDINGS, INC.,
a corporation,
and
UNIVERSAL MUSIC & VIDEO
DISTRIBUTION CORP.,
a corporation.

Docket No. 9298

REVISED SCHEDULING ORDER

- September 26, 2001 - Complaint Counsel provides witness list (not including experts), with description of proposed testimony.
- October 3, 2001 - Respondents' Counsel provides witness list (not including experts), with description of proposed testimony.
- October 17, 2001 - Complaint Counsel provides expert witness list.
- October 24, 2001 - Respondents' Counsel provides expert witness list.
- November 14, 2001 - Complaint Counsel provides expert reports.
- November 16, 2001 - Deadline for issuing document requests, requests for admission, interrogatories and subpoenas *duces tecum*.
- November 16, 2001 - Exchange revised witness lists, including preliminary rebuttal witnesses, with description of proposed testimony.

- November 27, 2001 - File status report and statement of the case (1) reporting on compliance with discovery and settlement negotiations, and (2) identifying the legal and factual matters to be decided by the Administrative Law Judge.

- November 29, 2001 - Status conference to report on discovery and settlement negotiations. The parties are also directed to meet and discuss contested issues of fact and simplification of the issues and the possibility of obtaining stipulations of fact.

- December 7, 2001 - Respondents' Counsel provides expert reports.

- December 21, 2001 - Complaint Counsel provides rebuttal expert reports.

- December 21, 2001 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4) and depositions of experts.

- January 9, 2002 - Deadline for depositions of experts.

- January 11, 2002 - Deadline for filing motions for summary decision.

- January 18, 2002 - Exchange final proposed witness list and exhibit list, including designated testimony to be presented by deposition, and a brief summary of the expected testimony of each witness. The final proposed witness list may not include additional witnesses not listed in the preliminary or revised witness lists previously exchanged unless good cause is shown.

- January 25, 2002 - Deadline for filing motions *in limine* and motions to strike.

- Exchange objections and counter-designations to any designated deposition testimony.

- Exchange copies of all documents listed on final exhibit lists.

- February 1, 2002 - Exchange proposed stipulations of law, facts, and authenticity.

- Deadline for filing responses to motions *in limine* and motions to strike.

- February 8, 2002 - Deadline for filing responses to motions for summary decision.

- February 13, 2002 - Exchange responses to proposed stipulations of law, facts, and authenticity.

- February 20, 2002 - File pretrial briefs, limited to 15 pages, identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge.
- File final stipulations of law, facts and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- February 27, 2002 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. All trial exhibits will be admitted or excluded.
- March 5, 2002 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

ADDITIONAL PROVISIONS

1. The parties shall serve the Administrative Law Judge with two courtesy copies of all papers filed with the Office of the Secretary.
2. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows: Both sides shall number their exhibits with a single series of consecutive numbers. Complaint counsel's exhibits shall bear the designation CX and respondents' exhibits shall bear the designation RX or some other appropriate designation. (For example, the first exhibit shall be marked CX-1 for complaint counsel.) When an exhibit consists of more than one piece of paper and each page of the exhibit bears a consecutive bates number or some other consecutive page number, counsel shall mark only the first page of the exhibit with the appropriate designation (*e.g.*, CX-1).

When an exhibit consists of more than one piece of paper and each page of the exhibit does not bear a consecutive bates number or some other consecutive page number, counsel shall mark each page and each back side of each page containing relevant matter with CX-1-A through CX-1-Z; items thereafter are numbered CX-1-Z-2, Z-3, Z-4, etc., as necessary.

All exhibit numbers must be accounted for, even if a particular number is not actually used at trial. If a party were to select certain, but not all, documents that had been designated as deposition exhibits to be designated as trial exhibits, the party must indicate that certain numbers were not used in the numbering process for trial exhibits. For example, if complaint counsel decided to not introduce at trial documents previously marked as exhibits CX-2, CX-4 and CX-6, its list of exhibits would begin CX-1, CX-3 and CX-5. This method of numbering exhibits for trial is acceptable, as long as the party also prepares a list of its exhibits indicating that CX-2, CX-4 and CX-6 were never designated as trial exhibits. Using this example, in preparing the set

of original exhibits to give to the court reporter, complaint counsel must indicate that CX-2, CX-4 and CX-6 were never designated as trial exhibits by inserting in their place a blank piece of paper, tab, or other method.

3. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will further be required to give the originals of exhibits to the court reporter, which the court reporter will keep. In addition to providing the original exhibits to the court reporter at the final pre-hearing conference, counsel must bring to the hearing one copy of their exhibits for each of the following: the court reporter, the Administrative Law Judge, the Administrative Law Judge's attorney advisor, and the witness. Counsel will present the copy of each of the above when using it, and then take back the copy when finished. Counsel may agree among themselves on the method by which they wish to exchange exhibits with each other.

4. Complaint counsel and Respondents' counsel shall produce to each other copies of all documents and data compilations identified or described in the party's initial disclosure, excluding documents that are privileged, pertain to hearing preparation, or pertain to experts, on or before September 30, 2001, subject to the entry of a Protective Order.

5. The parties shall serve all discovery requests on each other in both hard copy (paper) and electronic format (disk or e-mail). Each response and/or objection to each discovery request shall be preceded by the specific discovery request to which the answer pertains. The parties shall serve on each other in both hard copy (paper) and electronic format (disk or e-mail) the separate and concise statement of material facts required by Rule 3.24(a)(1) and (2).

6. Interrogatories will be limited to a total of 25 per side. When an interrogatory is served upon all respondents, respondents will answer with information available to each of them; such interrogatory will count as one interrogatory served by complaint counsel.

7. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify opposing counsel that a deposition has been scheduled.

The party issuing the subpoena *duces tecum* is responsible for sending copies of all documents and materials received in response to the subpoena to all other parties within three (3) business days.

8. At the time an expert is first listed as a witness by a party, the listing party shall provide to the other parties materials fully describing or identifying the background and qualifications of the expert, lists of publications, and all prior cases in which the expert has testified or has been deposed.

In addition to the materials specified in Rule 3.31(b)(3), at the time an expert report is produced, the listing party shall provide to the other parties, to the extent not previously produced, all documents and other written materials relied upon or reviewed by the expert in

formulating an opinion in this case. Each side may list (rather than produce) materials relied upon or reviewed by an expert, to the extent those materials have previously been produced. Written communications exchanged between counsel and the expert (including drafts of expert reports) need not be produced unless the expert is relying upon any aspect of, or information included in, such communication.

9. Service of all papers on opposing counsel may be accomplished by fax as follows. If such document must be filed with the Commission or requires a response by a certain deadline, then such document must be received by opposing counsel by 5:00 p.m. Eastern time on the designated date. If no response is required, then such document must be received by opposing counsel by 5:00 p.m. Pacific time on the designated date. Parties may provide attachments or exhibits to the paper the next calendar day following service via hand delivery or overnight express mail (as long as delivery is accomplished by 1:00 p.m. Eastern time that day). It shall be the obligation of the serving party to ensure that service by facsimile and/or by overnight express mail has been effected. All deliveries by facsimile shall be followed promptly by delivery of an original by overnight courier.

ORDERED:

James P. Timony
Administrative Law Judge

Dated: November _____, 2001

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

_____)	
In the Matter of)	
)	
POLYGRAM HOLDING, INC.,)	
a corporation,)	
)	
DECCA MUSIC GROUP LIMITED,)	
a corporation,)	
)	Docket No. 9298
UMG RECORDINGS, INC.,)	
a corporation,)	
)	
and)	
)	
UNIVERSAL MUSIC & VIDEO)	
DISTRIBUTION CORP.,)	
a corporation.)	
_____)	

ORDER

Upon the joint motion of the parties, the arguments of the parties during the telephone conference before the Court on November 29, 2001, and for good cause shown, **IT IS HEREBY**

ORDERED that:

1. The Scheduling Order entered in this matter on September 10, 2001 is modified in accordance with the attached Revised Scheduling Order;
2. The trial of this matter shall be completed on or before March 29, 2001;
3. No further extensions of the Schedule will be granted; and

4. Briefs submitted regarding summary decision motions shall be limited to 25 double-spaced pages, unless the parties stipulate to the contrary or the Court so orders for good cause shown.

ORDERED:

James P. Timony
Chief Administrative Law Judge

Date: _____