

**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**

**RESPONDENTS' STATUS REPORT**

Respondents respectfully submit this status report in connection with the status conference scheduled for Thursday, November 29, at 2:00 p.m.

**I. Status of Discovery and Settlement Negotiations**

The parties are proceeding with fact discovery. Although document production and travel arrangements for depositions have been complicated by recent events, the parties are endeavoring to complete discovery within the discovery period set by the Court. Respondents have made a good faith effort to comply with Complaint Counsel's discovery requests, have gathered and produced documents from numerous locations throughout the world, and believe that their document production is substantially complete. Depositions of seven witnesses

(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.

There have been no settlement discussions since the filing of the complaint.

## II. Legal and Factual Matters to Be Decided

At present, Respondents believe that the principal legal and factual matters to be decided in this matter will be:

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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By: \_\_\_\_\_  
Stephen E. Morrissey

Attorneys for Respondents

**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  
600 Pennsylvania Ave., N.W.  
Washington , D.C. 20580

Hon. James P. Timony  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington , D.C. 20580

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STEPHEN E. MORRISSEY