

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 POLYGRAM HOLDING, INC., DECCA MUSIC GROUP, LTD., UMG
RECORDINGS, INC. AND UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP.'S
PROPOSED WITNESS LIST, DESIGNATIONS OF DEPOSITION TESTIMONY, AND
EXHIBIT LIST

In accordance with the scheduling order in this case and the Federal Trade Commission's Rules of Practice, Respondents PolyGram Holding, Inc. ("PolyGram Holding"), Decca Music Group Limited ("Decca"), UMG Recordings, Inc. ("UMG"), and Universal Music & Video Distribution Corp. ("UMVD") (collectively "Universal" or "Respondents") hereby provide their proposed lists of witnesses, designations of witness testimony, and trial exhibits for this action.

I. Witness List

Listed below are the persons whom Respondents presently intend to call as witnesses in this action, together with a general description of the proposed testimony of each witness and, where applicable, proposed designations of deposition testimony. Respondents reserve the right to revise or modify their witness list by adding or deleting any potential witness and/or by revising the description of the proposed testimony and/or by revising the proposed designation. Respondents further reserve the right to call as a witness any person identified as a witness by Complaint Counsel.

1. Bert Cloeckaert

Mr. Cloeckaert will testify concerning the relationship between PolyGram and its European operating companies and concerning PolyGram's and Universal's pricing and promotion of recorded music products, including Three Tenors products, in Europe. Mr. Cloeckaert will also testify concerning his communications with other PolyGram employees and executives regarding the joint venture between PolyGram and Warner Music Group. Respondents anticipate that Mr. Cloeckaert, who resides outside the United States, will testify live at trial; however, in the event that Mr. Cloeckaert is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: (Vol. I) 4:3-17:23, 18:22-20:6, 21:18-37:16, 38:4-44:9, 46:18-49:25, 51:5-60:21, 63:7-74:6, 75:9-76:11-112:9; (Vol. II) 121:19-144:4, 145:11-150:19, 152:19-159:13, 160:24-170:2, 171:14-182:15, 183:16-191:8.

2. Richard Constant

Mr. Constant will testify concerning PolyGram's business structure in 1998 and concerning PolyGram's decision not to implement any restriction on pricing and discounting of the 1990 and 1994 Three Tenors albums as part of its joint venture with Warner Music Group. Respondents anticipate that Mr. Constant, who resides outside the United States, will testify live at trial; however, in the event that Mr. Constant is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: 4:3-12:3, 13:9-17:8, 18:4-36:5, 36:12-14, 41:7-14, 41:24-42:12, 43:2-44:7, 44:13-45:18, 47:25-49:5, 49:17-50:11, 51:1-15, 54:25-57:2, 61:15-20, 64:3-6, 65:1-66:23.

3. Kevin Gore

Mr. Gore will testify concerning PolyGram's and Universal's pricing and promotion of recorded music products in the United States and other territories, including the pricing and promotion of the 1990 Three Tenors album in 1998.

4. Stephen Greene

Mr. Greene will testify concerning issues related to the joint venture between PolyGram and Warner Music Group and concerning his communications with other PolyGram employees regarding the pricing and promotion of Three Tenors products in the context of that joint venture. Respondents anticipate that Mr. Greene, who resides outside the United States, will testify live at trial; however, in the event that Mr. Greene is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: 6:3-16:23, 17:13-30:6, 31:8-32:3, 32:19-35:14, 38:18-40:6, 41:12-45:12, 46:6-57:23, 59:25-72:25, 73:12-74:9, 74:21-85:3, 85:9-23, 86:4-87:21, 88:7-19, 89:4-90:10, 96:18-103:16, 107:1-

123:18, 124:5-140:13, 146:6-47:18, 149:2-173:11, 174:20-183:1, 183:5-192:21, 204-213, 223:8-225:19.

5. Melchor Hidalgo

Mr. Hidalgo will testify concerning PolyGram's and Universal's pricing and promotion of recorded music products in Spain, including the pricing and promotion of the 1990 Three Tenors album in 1998. Respondents anticipate that Mr. Hidalgo, who resides outside the United States, will testify live at trial; however, in the event that Mr. Hidalgo is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: 5:3-24:3, 43:24-74:12, 75:18-110:5.

6. Rand Hoffman

Mr. Hoffman will testify concerning the negotiation of the written agreements underlying the joint venture between PolyGram and Warner Music Group and concerning his involvement in PolyGram's decisionmaking in connection with the 1998 Three Tenors album.

7. Stephen Kon

Mr. Kon will testify concerning his involvement in PolyGram's decision not to implement any restriction of pricing and promotion of Three Tenors products as part of the joint venture between PolyGram and Warner Music Group. Respondents anticipate that Mr. Kon, who resides outside the United States, will testify live at trial; however, in the event that Mr. Kon is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: 4:3-7:20, 9:1-13:25, 14:4-21, 15:17-25, 18:8-19:4, 19:24-21:14, 22:2-23:16-25:24, 26:9-34:9, 36:11-17, 37:-39:9.

8. Chris Roberts

Mr. Roberts will testify concerning PolyGram's and Universal's business strategy with respect to classical music products, concerning PolyGram's business considerations in

entering into the joint venture with Warner Music Group, and concerning his role in business decisions made by PolyGram in the context of that joint venture.

9. Paul Saintilan

Mr. Saintilan will testify concerning PolyGram's marketing strategy with respect to the joint venture between PolyGram and Warner Music Group and concerning his communications with other PolyGram Music Group employees and executives and representatives of Warner Music Group regarding the possibility of adopting certain restrictions on the pricing and promotion of the 1990 and 1994 albums as part of that joint venture.

Respondents anticipate that Mr. Saintilan, who resides outside the United States, will testify live at trial; however, in the event that Mr. Saintilan is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: 3:9-18:11, 19:23-24:4, 31:17-132:3, 133:7-171:25, 172:9-19, 174:5-175:1, 175:23-187:15, 188:9-189:25, 190:8-202:13, 204:6-207:7, 207:22-215:7, 216:6-23, 217:4-223, 226:15-227

10. Anthony O'Brien

Respondents anticipate that Mr. O'Brien, who is not employed by any party to this action and who resides outside the District of Columbia, will testify at trial; however, in the event that Mr. O'Brien is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcripts for use at trial: (1/5/01 Transcript) 4:4-14:13, 14:18-36:20, 37:7-68:13, 69:9-100:19, 101:25-110:13, 113:25-174:6, 175:11-177:4, 180:3-13, 181:15-187:12, 189:21-191:13; (December 6, 2001 Transcript) 6:3-13:3, 21:2-24:25, 26:10-40:3, 40:20-50:21, 51:25-54:25, 57:1-65:3, 65:10-67:15, 70:22-80:25, 81:18-84:14, 89:4-93:7, 98-122.

11. Janusz Ordover

Professor Ordover will provide expert testimony concerning the conduct alleged in the Complaint and Respondents' affirmative defenses. The subjects of Professor Ordover's testimony were set forth in Professor Ordover's expert report. Additionally, Professor Ordover will testify regarding the opinions offered by Complaint Counsel's expert witnesses regarding the conduct alleged in this case.

12. Dickon Stainer

Mr. Stainer will testify concerning PolyGram's and Universal's pricing and promotion of recorded music products in Spain, including the pricing and promotion of the 1990 Three Tenors album in 1998. Respondents anticipate that Mr. Stainer, who resides outside the United States, will testify live at trial; however, in the event that Mr. Stainer is unable to testify at trial, Respondents hereby designate the following portions of his deposition transcript for use at trial: 5:3-81:14.

13. Yoram ("Jerry") Wind

Professor Wind will provide expert testimony concerning the conduct alleged in the Complaint and Respondents' affirmative defenses. The subjects of Professor Wind's testimony were set forth in Professor Wind's expert report. Additionally, Professor Wind will testify regarding the opinions offered by Complaint Counsel's expert witnesses regarding the conduct alleged in this case.

II. Exhibit List

Respondents hereby identify the following documents as exhibits they intend to use at trial. This list does not include demonstrative exhibits. Respondents reserve the right to supplement this list to include any additional documents that may be necessary to respond to or clarify the exhibits identified by Complaint Counsel.

Exhibit Number	Bates Range	DATE	DESCRIPTION
RX1			CD of 1990 Three Tenors album
RX2			CD of 1994 Three Tenors album
RX3			CD of 1998 Three Tenors album
RX4	UMG000507-511	January 12, 1995	Memroandum from Stephen Greene to Distribution List
RX5	UMG001706	April 11, 1997	E-mail from Rand Hoffman to Pat Clancy
RX6	UMG001704-05	April 14, 1997	Memorandum to Eric Kronfeld from Rand Hoffman.
RX7	UMG001342-43	November 20, 1997	Memorandum from Rand Hoffman to Approvers
RX8	UMG001345-56	October 28, 1997	Memorandum from Pat Clancy to Jan Cook, Geoff Lawlan, Alain Rebillard & Rand Hoffman
RX9	UMG000393-410	October 14, 1997	Master Recording License Agreement" between Warner and Resorts Production Ltd. ("RPL")
RX10	3ten00002257	December 14, 1997	Memorandum from Tony O'Brien to Bob Daly
RX11	3ten00007334-35	December 15, 1997	Memorandum from Tony O'Brien to Bob Daly
RX12	UMG001069-79	December 19, 1997	"The Three Tenors/1998 Concert/License Agreement" (the "Concert/License Agreement") between PolyGram and Warner
RX13	UMG005601	January 1, 1998	Email from Paul Saintilan to distribution list
RX14	3ten00003592	January 27, 1998	Memorandum from Niall O'Rourke to Distribution List

RX15	UMG000371-03	February 9, 1998	Meeting Minutes
RX16	UMG001540-44	February 18, 1998	Meeting Minutes
RX17	UMG003728	March 6, 1998	Email from Ascension Hernandez
RX18	UMG00054-58	March 9, 1998	Email correspondence between Isabelle Marnier and Stephen Greene
RX19	UMG001523-29	March 10, 1998	Meeting Minutes
RX20	UMG003156	March 15, 1998	Email from Dickon Stainer to Paul Saintilan
RX21	UMG000068	March 16, 1998	Email from Pieter Strooker to Stephen Greene
RX22	3ten00003579	April 7, 1998	Memorandum from Jim Caradine to Tibor Rudas
RX23	UMG000079	April 8, 1998	Email from Paul Saintilan to various recipients
RX24	3ten00009929	April 9, 1998	Memorandum from Roger A. Sandau to Jim Caradine
RX25	UMG00008	April 9, 1998	Email from Stephen Greene to Bert Cloeckaert
RX26	UMG001508	April 10, 1998	Memorandum from Bert Cloeckaert to Classical MD's/Classical Marketing Managers
RX27	UMG000021-31	April 17, 1998	Letter from Paul Saintilan to Wayne Baruch re: Three Tenors in Paris - Marketing Plan
RX28	UMG001505	April 20, 1998	E-mail from Stephen Greene to Bert Cloeckaert
RX29	UMG000090	April 21, 1998	Memorandum from Bert Cloeckaert to Classical MD's/Classical Marketing Managers
RX30	UMG001504	April 21, 1998	E-mail from Paul Saintilan to Pat Clancy
RX31	UMG000106	April 24, 1998	E-mail from Roger Lewis to Chris Roberts and Bert Cloeckaert
RX32	UMG003760	April 27, 1998	E-mail from Dickon Stainer to Paul Saintilan
RX33	3ten00003565	April 28, 1998	Letter from Jim Caradine to Roger A. Sandau
RX34	UMG000480	April 29, 1998	Memorandum from Stephen Greene and Paul Saintilan to European Classical MDs/European Label Managers
RX35	UMG002673-74	April 29, 1998	Letter from Paul Saintilan to Pat Creed

RX36	3ten00003538	April 29, 1998	Memorandum from Pat Creed to Tony O'Brien and Margo Scott
RX37	UMG0003052	April 30, 1998	E-mail from Nigel Haywood to Bert Cloeckart
RX38	UMG0003639-64		Decca Campaign Overviews
RX39	UMG0003746-3749		Decca Campaign Overviews/U.K.
RX40	UMG000117	April 30, 1998	E-mail correspondence between Dave Tweed and Stephen Greene
RX41	UMG000121-22	April 30, 1998	E-mail correspondence between Dave Tweed and Stephen Greene
RX42	UMG000128	May 6, 1998	E-mail from Kjeld Stefanson to Stephen Greene
RX43	3ten00003560-61	May 13, 1998	Memorandum from Ray Still to Niall O'Rourke (plus attachment)
RX44	3ten00003539	May 15, 1998	Memorandum from Niall O'Rourke to Distribution List
RX45	UMG000144	May 18, 1998	E-mail from Stef Coninx to Stephen Greene
RX46	3ten00003537-38	May 19, 1998	Memorandum from Ray Still to Jim Caradine, <i>et al.</i> (plus attachment)
RX47	3ten0000027	June 11, 1998	Letter from Rand. Hoffman to Margo Scott of Atlantic Records
RX48	UMG000161	June 15, 1998	E-mail from Roger Lewis to Paul Saintilan
RX49	3ten00001498-1500	June 23, 1998	Memorandum from Artie Moorehead to Margo Scott (plus attachments)
RX50	3ten00003555	June 24, 1998	Memorandum from Fran Lichtman to Peter Ikin
RX51	3ten00000021-23	June 24, 1998	Memorandum from Phil Wild to Val Azzoli (plus attachments)
RX52	3ten00000020	June 25, 1998	Memorandum from Ian Maclaren to Ray

			Still
RX53	3ten00009910	June 26, 1998	Memorandum from Tibor Rudas to Ray Still
RX54	UMG004432-33	June 29, 1998	Email from Bert Cloeckeaert to Roger Lewis plus attachment
RX55	UMG002961	June 20, 1998	Email from Melchor Hidalgo
RX56	3ten00000017	July 1, 1998	Memorandum from Ramon Lopez to Val Azzoli
RX57	UMG001997-08	July 2, 1998	Letter from Paul Saintilan to Anthony O'Brien
RX58	3ten00010121	July 6, 1998	Memorandum from Ramon Lopez to Val Azzoli
RX59	3ten00003727	July 6, 1998	Memorandum from Niall O'Rourke to Distribution List
RX60	UMG000203	July 10, 1998	Email from Paul Saintilan to Chris Roberts
RX61	UMG000204-05	July 10, 1998	Letter from Paul Saintilan to Anthony O'Brien
RX62	3ten00011275	July 13, 1998	Anthony O'Brien's handwritten notes
RX63	UMG000206	July 13, 1998	E-mail from Paul Saintilan to Chris Roberts, Rand Hoffman, <i>et al</i>
RX64	UMG000207-08	July 14, 1998	E-mail from Paul Saintilan to Chris Roberts, Pat Clancy, <i>et al.</i>
RX65	UMG000209	July 14, 1998	E-mail from Bert Cloeckeaert to Distribution List
RX66	UMGSK0010-15	July 27, 1998	Fax from Paul Robinson to Stephen Kon transmitting draft correspondence
RX67	3ten00000010	July 29, 1998	Memorandum from Jim Caradine to Val Azzoli
RX68	UMG000213	July 30, 1998	Memorandum from Paul Saintilan to Distribution List

RX69	UMG5909-5910	July 30, 1998	Memorandum from Melchor Hidalgo to Paul Saintilan
RX70	UMG005869	July 31, 1998	E-mail from Melchor Hidalgo to Javier Pouso
RX71	UMG002956-67	August 3, 1998	E-mail from Paul Saintilan to Melchor Hidalgo
RX72	UMG003065-55	August 4, 1998	Email from Paul Saintilan to Melchor Hidalgo
RX73	UMGSK0018-24	August 6, 1998	Fax from Paul Robinson to Stephen Kon plus attachments
RX74	3ten00000006	August 10, 1998	Letter from Anthony J. O'Brien to Paul Saintilan
RX75	UMGSK0025-27	August 10, 1998	Fax from Paul Robinson to Stephen Kon plus attachment
RX76	UMGSK0029-30	August 11, 1998	Fax from Paul Robinson to Stephen Kon plus attachment
RX77	UMG006235-80		All-in-Fee Index
RX78	UMG003008-23	1998	1998 AIF Data
RX79	UMG005069-6362		1990 Album AIF Data
RX80	UMG004958-94		1998 Album Sales Data (Excluding France)
RX81	UMG004919		1998 Album France Sales Data
RX82	UMG004883-4906		United States sales data
RX83	UMG006407-08		United States co-operative advertising and classical music sales data

RX84	Stainer Exhibit 7		Promotional Flyer for 1998 Album U.K. Campaign
RX85	-----	1998	Promotional Flyer for 1990 Album U.K. campaign
RX86	-----	-----	Ordover summary exhibit regarding 311 CD Gross and Effective Wholesale Prices in U.S.
RX87		November 14, 2001	Expert Report of Catherine Moore
RX88		November 14, 2001	Expert Report of Stephen Stockum
RX89		December 7, 2001	Expert Report of Janusz Ordover
RX90		December 7, 2001	Expert Report of Yoram Wind
RX91		December 21, 2001	Rebuttal Expert Report of Catherine Moore
RX92		December 21, 2001	Rebuttal Expert Report of Stephen Stockum
RX93		January 31, 2001	Rand Hoffman investigative hearing transcript
RX94		January 5, 2001	Anthony O'Brien investigative hearing transcript
RX95		December 6, 2001	Anthony O'Brien Deposition transcript
RX96		November 28, 2001	Bert Cloockaert Deposition transcript (Vol I.)
RX97		November 29, 2001	Bert Cloockaert Deposition transcript (Vol. II)
RX98		November 6, 2001	Paul Saintilan Deposition transcript
RX99		October 31, 2001	Christopher Roberts Deposition transcript (Vol. 1)
RX100		November 1, 2001	Christopher Roberts Deposition transcript (Vol. 2)

RX101		December 21, 2001	Dickon Stainer Deposition transcript
RX102		October 30, 2001	Kevin Gore Deposition transcript
RX103		December 20, 2001	Melchor Hidalgo Deposition transcript
RX104		November 29, 2001	Rand Hoffman Deposition transcript
RX105		November 28, 2001	Richard Constant Deposition transcript
RX106		November 19, 2001	Stephen Greene Deposition transcript
RX107		November 20, 2001	Stephen Kon Deposition transcript
RX108		January 10, 2002	Jerry Wind Deposition transcript
RX109		January 7, 2002	Janusz Ordover Deposition transcript
RX110		January 8, 2002	Stephen Stockum Deposition transcript
RX111		January 8, 2002	Catherine Moore Deposition transcript

Dated: January 18, 2002

Respectfully submitted,

BRADLEY S. PHILLIPS
GLENN D. POMERANTZ
STEPHEN E. MORRISSEY
MUNGER, TOLLES & OLSON LLP
355 S. Grand Ave., 35th Floor
Los Angeles, CA 90071
(213) 683-9593


By: 
Stephen E. Morrissey

Attorneys for Respondents

CERTIFICATE OF SERVICE

I, Stephen E. Morrissey, hereby certify that on January 16, 2002, I caused a copy of the attached **RESPONDENTS POLYGRAM HOLDING, INC., DECCA MUSIC GROUP, LTD., UMG RECORDINGS, INC. AND UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP.'S PROPOSED WITNESS LIST, DESIGNATIONS OF DEPOSITION TESTIMONY, AND EXHIBIT LIST** to be served upon the following persons by facsimile and Federal Express:

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



STEPHEN E. MORRISSEY