

COPY

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

**ANSWER OF RESPONDENTS POLYGRAM HOLDING, INC., DECCA MUSIC
GROUP, LTD., UMG RECORDINGS, INC. AND UNIVERSAL MUSIC & VIDEO
DISTRIBUTION CORP. TO THE COMMISSION'S COMPLAINT**

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 answer the complaint in this matter as follows:

Neither the Universal respondents nor their predecessors have violated Section 5 of the Federal Trade Commission Act. The "moratorium" challenged in the Complaint was entirely lawful in the context of Polygram's and Warner's pro-competitive Three Tenors joint venture. In addition, the "moratorium" was never ultimately adopted or implemented by

respondents, and therefore no violation did occur or could have occurred. The relief sought in the Complaint is also inappropriate under the Federal Trade Commission Act, because the Complaint does not challenge any ongoing conduct by any of the respondents and because the past conduct challenged in the Complaint is not likely to recur.

Respondents respond to the specific allegations of the Complaint as follows:

1. Respondents admit the allegations of paragraph 1 of the Complaint.
2. Respondents admit the allegations of paragraph 2 of the Complaint.
3. Respondents admit the allegations of paragraph 3 of the Complaint.
4. Respondents admit the allegations of paragraph 4 of the complaint.
5. Respondents admit the allegations of paragraph 5 of the Complaint.
6. Respondents admit the allegations of paragraph 6 of the Complaint.
7. Respondents admit the allegations of paragraph 7 of the Complaint.
8. Respondents admit that Warner, PolyGram Holding, PolyGram Records, and PolyGram Distribution engage in, or engaged in, acts and practices that are in commerce or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, but deny the allegation that Decca Records engages in, or engaged in, such “commerce.” Respondents deny that any of the acts and practices alleged in the Complaint affected commerce in the United States or violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or any other provision of law within the jurisdiction of the Commission.

9. Respondents admit that the Three Tenors are comprised of Luciano Pavarotti, Placido Domingo, and Jose Carreras, and further admit that the Three Tenors participated in live concerts and recording sessions at the sites of the 1990, 1994 and 1998 World Cup soccer finals.

Respondents deny the remaining allegations of paragraph 9 of the Complaint.

10. Respondents admit the allegations of paragraph 10 of the Complaint.

11. In response to paragraph 11 of the Complaint, Respondents admit that, on or about December 19, 1997, Warner Music Group and PolyGram Music Group executed a contract relating to the next Three Tenors World Cup concert, which was scheduled for Paris on July 10, 1998. Respondents further admit that the contract, which speaks for itself, includes provisions substantially similar to the descriptions contained in subparagraphs 11(a)-(f) of the Complaint. Respondents deny the allegations that subparagraphs 11(a)-(f) of the Complaint describe “important undertakings” on the ground that the allegation is too vague to permit Respondents to form a belief as to its truth or falsity.

12. Respondents deny the allegations of paragraph 12 of the Complaint, except deny the allegations regarding Warner Music Group’s concerns on the ground that they are without knowledge or information sufficient to form a belief as to the truth of those allegations.

13. Respondents deny the allegations of paragraph 13 of the Complaint, except Respondents admit that in 1998 representatives of Warner Music Group and PolyGram Music Group, in the context of their development of the marketing plans for the 1998 Three Tenors album, discussed the possible need for certain restrictions on pricing and advertising of the 1990 and 1994 Albums during a period surrounding the release of the 1998 Album, and that these proposed restrictions were sometimes referred to as a “moratorium.”

14. Respondents admit the allegations of the first sentence of paragraph 14 of the Complaint. In response to the second sentence of paragraph 14 of the Complaint, Respondents admit that PolyGram Holding, Decca Records, PolyGram Records and/or PolyGram Distribution were involved in pricing decisions relating to the 1990 Three Tenors album, but deny the allegation that any of those entities refrained from discounting or advertising the 1990 album and video in the United States as a result of any "moratorium period." Respondents deny the allegation that Warner and Warner Music Group refrained from discounting or advertising the 1994 Album in the United States between August 1 and October 15, 1998 on the ground that they are without knowledge or information sufficient to form a belief as to the truth of that allegation. Respondents deny the remaining allegations of paragraph 14 of the Complaint.

15. Respondents deny the allegations of paragraph 15 of the Complaint.

16. Respondents deny the allegations of paragraph 16 of the Complaint.

Violations Alleged

17. Respondents deny the allegations of paragraph 17 of the Complaint.

18. Respondents deny the allegations of paragraph 18 of the Complaint.

19. Respondents deny the allegations of paragraph 19 of the Complaint.

To the extent that the Complaint can be read to make any other specific allegations that were not admitted or denied above, those allegations are denied.

Additional Grounds for Defense

Pursuant to 16 C.F.R. § 3.12(b)(1), Respondents further state that, in addition to the denials of the allegations of the complaint set forth above, their additional grounds for defense in this action are as follows:

First Additional Defense

The Complaint fails to state a claim for violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the Commission because it fails to allege any anticompetitive effect within any relevant market arising from the alleged conduct that serves as the basis for the Complaint.

Second Additional Defense

The Complaint fails to comply with the requirements of 15 U.S.C. § 45 because the Commission has no reason to believe that Respondents have violated the Federal Trade Commission Act or any other provision of law within the jurisdiction of the Commission.

Third Additional Defense

The restrictions on the pricing and promotion of the 1990 and 1994 Albums discussed by representatives of Warner Music Group, Decca Records, and PolyGram Records in developing their marketing plans for the 1998 Three Tenors Album, if implemented, were or would have been reasonably related to and reasonably necessary for the formation and/or efficient operation of a pro-competitive joint venture, and were or would have been legitimate and not

anticompetitive, and thus would not and did not constitute a violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the Commission.

Fourth Additional Defense

The restrictions on the pricing and promotion of the 1990 and 1994 Albums discussed by representatives of Warner Music Group and PolyGram Music Group in developing their marketing plans for the 1998 Three Tenors Album, if implemented, were or would have been a legitimate and procompetitive effort, *inter alia*, to prevent free riding and opportunistic behavior and to protect the parties' investment in the venture, and were or would have allowed for far *more* competition than any other reasonable alternative measure for addressing these concerns, and thus would not and did not constitute a violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the Commission.

Fifth Additional Defense

The "moratorium" agreement alleged in Paragraph 13 of the complaint ultimately was not adopted or implemented by any Respondent (or the predecessor of any Respondent) and thus did not constitute a violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the Commission.

Sixth Additional Defense

The "moratorium" agreement alleged in Paragraph 13 of the complaint would not have affected and did not affect commerce in the United States and thus did not constitute a violation of 15 U.S.C. § 45 or any other provision of law.

Seventh Additional Defense

The “moratorium” agreement alleged in Paragraph 13 of the complaint, which would have applied only to two catalogue classical music compact discs during a ten-week period, did not have the purpose or effect of restricting competition within any relevant market and thus did not constitute a violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the Commission.

Eighth Additional Defense

The relief sought by the complaint is contrary to public policy and not in the public interest in that it would limit, and interfere with, the formation and efficient operation of pro-competitive joint ventures.

Ninth Additional Defense

Neither PolyGram Records nor PolyGram Distribution participated in any way in the conduct alleged to constitute a violation of Section 5 of the Federal Trade Commission Act, and did not direct or control any such conduct, and therefore Respondents UMG Recordings, Inc. and Universal Music and Video Distribution Corp. are not subject to the jurisdiction of the Commission.

Tenth Additional Defense

Because Respondents are not engaged in any ongoing conduct that is challenged by the complaint, and conduct such as that alleged by the complaint to constitute a violation is not

reasonably likely to recur, this action does not satisfy the jurisdictional requirements of 15 U.S.C. § 45.

Respondents' investigation of and discovery relating to of the issues raised by the complaint is ongoing. Respondents reserve the right to assert any additional grounds for defense that may be applicable.

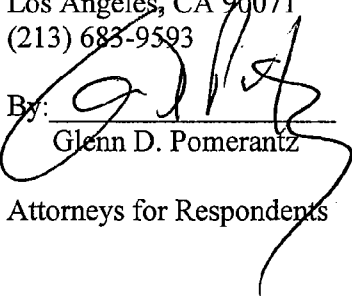
WHEREFORE, Respondents demand judgment dismissing the complaint with prejudice and costs and such other and further relief as is deemed just and proper.

Dated: August 22, 2001

Respectfully submitted,

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By:


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CERTIFICATE OF SERVICE

I, Stephen E. Morrissey, hereby certify that on August 22, 2001, I caused a copy of the attached **ANSWER OF RESPONDENTS POLYGRAM HOLDING, INC., DECCA MUSIC GROUP, LTD., UMG RECORDINGS, INC. AND UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP. TO THE COMMISSION'S COMPLAINT** 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.
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Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Hon. James P. Timony
Chief Administrative Law Judge
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