

UNITED STATES OF AMERICA
BEFORE THE 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

MOTION FOR EXTENSION TO FILE EXPERT REPORT

Complaint counsel moves pursuant to the Federal Trade Commission's Rules of Practice § 3.21(c)(2) to extend the time by which complaint counsel must file its expert report by two weeks.

Complaint counsel makes this motion because, within the last two weeks, it has had to replace its economic expert twice. Roberti Declaration ¶¶ 3,4,8. This expert report is due to be served today. See Scheduling Order p. 1.

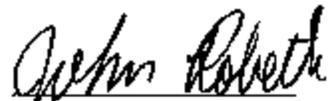
Some time ago, complaint counsel hired an economic expert to provide testimony in this case. Roberti Declaration ¶ 3. Unfortunately, it became apparent only in the last two weeks that complaint counsel needed to replace this expert. Roberti Declaration ¶ 4. Complaint counsel then hired a second expert. However, due to a previously unknown conflict, the second expert had to withdraw yesterday afternoon. Roberti Declaration ¶5, 8. Despite these setbacks, complaint counsel will endeavor to retain an expert and file a complete report within two weeks.

This motion is being submitted today because the expert report is due today. Complaint counsel and Respondents' counsel have discussed these issues, and have not been able to reach an agreement on the scheduling order.¹ Roberti Declaration ¶11.

¹ Complaint counsel will continue to confer with Respondents' counsel between now and the time that Respondents' response to this motion is due, and will make every effort to resolve any disputes so that any of Respondents' concerns can be addressed through agreements or joint motion.

Complaint counsel's proposed modifications herein will not affect the timing of the close of discovery, the deadlines for the submission of papers related to summary decision or the trial date. There have been no formal extensions of dates on the scheduling order, although complaint counsel has granted Respondents a number of extensions on Complaint Counsel's initial set of document requests, first set of interrogatories and the submission of material identified as part of the initial disclosures. Roberti Declaration ¶12.

Respectfully submitted,



Geoffrey M. Green
John Roberti
Complaint Counsel

Of counsel: Melissa Westman-Cherry
(bar admission pending)

Dated: October 31, 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,)	
)	
UMG RECORDINGS, INC.,)	Docket No. 9298
a corporation,)	
)	
and)	
)	
UNIVERSAL MUSIC & VIDEO)	
DISTRIBUTION CORP.,)	
a corporation.)	
_____)	

ORDER

Upon the motion of complaint counsel, and for good cause shown, **IT IS HEREBY ORDERED** that the Scheduling Order entered in this matter on September 10, 2001 is modified as follows:

1. The deadline for the submission of complaint counsel's expert report will be extended through November 14, 2001;
2. The deadline for the submission of Respondents' expert report will be extended through November 28, 2001; and

3. The deadline for the submission of complaint counsel's rebuttal report, if any, will be extended through December 12, 2001.

ORDERED:

James P. Timony
Chief Administrative Law Judge

Date: _____

**UNITED STATES OF AMERICA
BEFORE THE 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

DECLARATION OF JOHN ROBERTI

1. I am an attorney employed by the Federal Trade Commission, and complaint counsel in the above-captioned matter.
2. I submit this declaration to bring before this Court facts pertinent to Complaint Counsel's Motion for Extension to File Expert Report.
3. At the initiation of this litigation, complaint counsel hired an economic expert, Professor F.M. Scherer, to provide testimony in this case.
4. Unfortunately, less than two weeks ago, due primarily to Professor Scherer's personal circumstances, it became necessary for complaint counsel to seek a replacement expert.
5. Complaint counsel quickly sought a replacement, and hired James Langenfeld to replace Professor Scherer.

6. In addition, I contacted counsel for Respondents, informed them of the circumstances, and requested a short extension to file Dr. Langenfeld's expert report.
7. There were a number of discussions among counsel about the length of the extension. Respondents' counsel informed us that they would provide some appropriate extension, going at least through November 5, 2001.
8. At approximately 4:15 p.m. yesterday, Dr. Langenfeld called to inform us that he would not be able to serve as an expert in our case. He told us that although he had run a conflicts check and there was no ethical conflict, one of Dr. Langenfeld's other clients had objected to him working on this case.
9. Complaint Counsel is seeking a new expert to replace Dr. Langenfeld.
10. Given the nature of this case, we expect the initial expert report to address a narrow set of issues. Therefore, we believe that we can serve this report in two weeks.
11. We have informed Respondents' counsel that these issues have arisen. Given the fact that the most recent developments occurred late yesterday afternoon, we have only been able to have a brief discussion. Therefore, we have not been able to reach an agreement on the ultimate schedule.
12. There have been no formal extensions of dates on the scheduling order, although complaint counsel has granted Respondents a number of extensions on complaint counsel's initial set of document requests, first set of interrogatories and the submission of material identified as part of the initial disclosures.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 31, 2001



John Roberti

CERTIFICATE OF SERVICE

I, Stephanie Langley, hereby certify that on October 31, 2001, I caused a copy of the following documents to be served upon the persons listed below by facsimile and U.S. Mail or Hand delivered:

- (1) Complaint Counsel's Motion for Extension to File Expert Report;
- (2) Proposed Order; and
- (3) Declaration of John Roberti.

Glenn D. Pomcrantz
Bradley S. Phillips
Stephen E. Morrissey
Munger Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071
Fax: (213) 678-3702
Counsel for Respondents

George S. Cary
Tanya Dunne
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
Fax: (202) 974-1999
Counsel for Warner Communications Inc.

James P. Timony
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 112
Washington, DC 20580


Stephanie Langley