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Verne, B. Michael

From: [REDACTED]
Sent: Saturday, April 01, 2006 6:05 PM
To: Verne, B. Michael
Subject: HSR inquiry re: exclusive licenses/option contracts

Dear Michael:

This email follows up on our conversation on Thursday. Please let me know if you agree with this analysis.

The Licensor will license to Licensee a trademark to use on a line of products for this Licensee.

Largely the license is exclusive to the Licensee, save for reservations by the Licensor to also sell the products via an on-line or other retail outlet. The exclusive products will be manufactured by the Licensee or a third party on behalf of the Licensee. However, in the case of sales by the Licensor, consumers are either referred to the Licensee or the Licensor "purchases" product from the Licensee for 20% above the landed cost. You indicated that this was an exclusive license for the purpose of HSR, and that the transaction may be potentially reportable if it meets the thresholds.

Assuming an exclusive license, the fair market value of the royalty contract is below \$50 million. The term of the agreement is 5 years with the option of a renewal of the agreement at the discretion of the Licensee. The purpose of the option is to allow the Licensee to renew the agreement if it is profitable or to cease the arrangement if it is not working.

You indicated that if the length of the contract is not a sham but is based on good business reasons, that the value of the transaction is below the "size of the parties" test and no filing is required. Further, upon exercise of the option, there would be no aggregation with prior royalties, but that the parties would have to value the next term going forward to determine if the then current HSR thresholds are met by the renewed contract.

Thanks for your assistance with this.
ooo



AGREE
B. Michael
4/1/06
NO OTHER CONCERNS.