

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary**

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.)	

FINAL ORDER

The Commission has heard this matter on Respondents' appeal from the Initial Decision and on briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying Opinion of the Commission, the Commission has determined to affirm the Initial Decision and enter the following order. Accordingly,

I.

IT IS ORDERED that, as used in this order, the following definitions shall apply:

1. “PolyGram Holding” means PolyGram Holding, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by PolyGram Holding, Inc.; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

2. “Decca Music” means Decca Music Group Limited, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Decca Music Group Limited; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

3. “UMG” means UMG Recordings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by UMG Recordings, Inc.; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. “UMVD” means Universal Music & Video Distribution Corp., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Universal Music & Video Distribution Corp.; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

5. “Respondents” means PolyGram Holding, Decca Music, UMG, and UMVD, individually and collectively.

6. “Commission” means the Federal Trade Commission.

7. “Audio Product” means any prerecorded music in any physical, electronic, or other form or format, now or hereafter known, including, but not limited to, any compact disc, magnetic recording tape, audio DVD, audio cassette,

album, audiotape, digital audio tape, phonograph record, electronic recording, or digital audio file (*i.e.*, digital files delivered to the consumer electronically to be stored on the consumer's hard drive or other storage device).

8. "Video Product" means any prerecorded visual or audiovisual product in any physical, electronic, or other form or format, now or hereafter known, including, but not limited to, any videocassette, videotape, videogram, videodisc, compact disc, electronic recording, or digital video file (*i.e.*, digital files delivered to the consumer electronically to be stored on the consumer's hard drive or other storage device).

9. "Seller" means any Person other than a Respondent that produces or sells at wholesale any Audio Product or Video Product.

10. "Joint Venture Agreement" means a written agreement between a Respondent and a Seller that provides that the parties to the agreement shall collaborate in the production or distribution of Audio Products or Video Products (including, without limitation, through the licensing of intellectual property).

11. An Audio Product or Video Product is "Jointly Produced" by a Respondent and a Seller when, pursuant to a written agreement between such Respondent and such Seller, each contributes significant assets to the production or distribution of the Audio Product or Video Product (including, without limitation, personal artistic services, intellectual property, technology, manufacturing facilities, or distribution networks) to achieve procompetitive benefits. For example and without limitation, an Audio Product or Video Product is "Jointly Produced" by a Respondent and a Seller when (1) such product is manufactured or packaged by such Seller and sold at wholesale by such Respondent, or (2) such product is manufactured or packaged by such Respondent and sold at wholesale by such Seller.

12. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.

13. "Officer, Director, or Employee" means any officer or director or management employee of any Respondent with responsibility for the pricing, marketing, or sale in the United States of Audio Products or Video Products.

14. “United States” means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and all territories, dependencies, and possessions of the United States of America.

II.

IT IS FURTHER ORDERED that Respondents shall cease and desist from, directly or indirectly or through any corporate or other device, in or affecting commerce (as “commerce” is defined in the Federal Trade Commission Act), soliciting, participating in, entering into, attempting to enter into, implementing, attempting to implement, continuing, attempting to continue, or otherwise facilitating or attempting to facilitate any combination, conspiracy, or agreement, either express or implied, with any Seller:

A. To fix, raise, or stabilize prices or price levels in connection with the sale in or into the United States of any Audio Product or any Video Product; or

B. To prohibit, restrict, regulate, or otherwise place any limitation on any truthful, nondeceptive advertising or promotion in the United States for any Audio Product or any Video Product.

III.

IT IS FURTHER ORDERED that:

A. It shall not, of itself, constitute a violation of Paragraph II.A. of this Order for a Respondent to enter into, attempt to enter into, or comply with a written agreement to set the prices or price levels for any Audio Product or Video Product when such written agreement is reasonably related to a lawful Joint Venture Agreement and reasonably necessary to achieve its procompetitive benefits.

B. It shall not, of itself, constitute a violation of Paragraph II.B. of this Order for a Respondent to enter into, attempt to enter into, or comply with a written agreement that regulates or restricts the advertising or promotion for any Audio Product or Video Product when such written agreement is reasonably related to a lawful Joint Venture Agreement and reasonably necessary to achieve

its procompetitive benefits.

C. It shall not, of itself, constitute a violation of Paragraph II.A. of this Order for a Respondent and a Seller to enter into, attempt to enter into, or comply with a written agreement to set the prices or price levels for any Audio Product or Video Product that is Jointly Produced by such Respondent and such Seller.

D. It shall not, of itself, constitute a violation of Paragraph II.B. of this Order for a Respondent and a Seller to enter into, attempt to enter into, or comply with a written agreement that regulates or restricts the advertising or promotion for any Audio Product or Video Product that is Jointly Produced by such Respondent and such Seller.

E. It shall not, of itself, constitute a violation of Paragraph II.B. of this Order for a Respondent to enter into, attempt to enter into, or comply with a written agreement, industry code, or industry ethical standard that is: (1) intended to prevent or discourage the advertising, marketing, promotion, or sale to children of Audio Products or Video Products labeled or rated with a parental advisory or cautionary statement as to content, and (2) reasonably tailored to such objective.

F. In any action by the Commission alleging violations of this Order, each Respondent shall bear the burden of proof in demonstrating that its conduct satisfies the conditions of Paragraph(s) III.A., III.B., III.C., III.D. and III.E. of this Order.

IV.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date this Order becomes final, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent has complied and is complying with this Order.

B. One (1) year after the date this Order becomes final, annually for the next four (4) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, each Respondent shall file with the

Commission a verified written report:

- (1) Setting forth in detail the manner and form in which it has complied and is complying with this Order; and
- (2) Identifying the title, date, parties, term, and subject matter of each agreement between any Respondent and any Seller, entered into or amended on or after the date this Order becomes final, that: (a) fixes, raises, or stabilizes prices or price levels in connection with the sale in or into the United States of any Audio Product or Video Product, or (b) prohibits, restricts, regulates, or otherwise places any limitation on any truthful, non-deceptive advertising or promotion in the United States for any Audio Product or any Video Product, other than those Audio Products and Video Products that are Jointly Produced.

PROVIDED, HOWEVER, that Respondents shall not be required to identify in their reports to the Commission any agreement that: (i) was previously identified to the Commission pursuant to Paragraph IV.B.2., and (ii) was not amended following such previous identification.

C. Each Respondent shall retain copies of all written agreements identified pursuant to Paragraph IV.B.2. above; and shall file with the Commission, within ten (10) days' notice to the Respondent, any such written agreements as the Commission may require.

V.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, each Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to the Respondent and without restraint or interference from it, to interview officers, directors, or employees of the Respondent.

VII.

IT IS FURTHER ORDERED that each Respondent shall:

A. Within thirty (30) days after the date on which this Order becomes final, send a copy of this Order by first class mail to each of its Officers, Directors, and Employees;

B. Mail a copy of this Order by first class mail to each person who becomes an Officer, Director, or Employee, no later than (30) days after the commencement of such person's employment or affiliation with the Respondent; and

C. Require each Officer, Director, or Employee to sign and submit to the Respondent within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the Order; (2) represents that the undersigned has read and understands the Order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject the Respondent to penalties for violation of the Order.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years after the date on which the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: July 24, 2003

ATTACHMENT: OPINION OF THE COMMISSION