

LVMH

LVMH files countersuit against Tiffany *The conditions to close the acquisition are not met*

September 29th, 2020

LVMH filed yesterday its countersuit against Tiffany in Delaware Chancery Court. LVMH continues to have full confidence in its position that the conditions necessary to close the acquisition of Tiffany have not been met and that the spurious arguments put forward by Tiffany are completely unfounded. LVMH's filing details the Company's position on these matters and, among other things, outlines:

- **A Material Adverse Effect has occurred.** The notable absence of a pandemic carveout in the definition of a Material Adverse Effect in the Tiffany Merger Agreement is clear. It was common before COVID-19 for transactions to contain a pandemic carveout. In the course of the negotiation, Tiffany sought and received carveouts for highly specific events, such as “cyberattacks”, the “Yellow Vest” movement and the “Hong-Kong Protests”. Yet Tiffany did not obtain a carveout for public health crises or pandemics. In contrast, hundreds of other merger agreements executed in the decade preceding the Merger Agreement contained express pandemic or epidemic carveouts. The pandemic, whose effects are devastating and lasting on Tiffany, has irrefutably caused a Material Adverse Effect. This clause alone would be enough to prevent the closing, but there are other arguments included below that reinforce LVMH's position.
- **Tiffany breached its covenants to operate in the Ordinary Course of Business and to preserve its business organizations substantially intact.** Tiffany's mismanagement of its business constitutes a blatant breach of its obligation to operate in the ordinary course. For instance, Tiffany paid the highest possible dividends while the company was burning cash and reporting losses. No other luxury company in the world did so during this crisis. There are many examples of mismanagement detailed in the filing, including slashing capital and marketing investments and taking on additional debt.
- **A letter LVMH received from the Minister of Europe and Foreign Affairs in France makes it impossible to close the transaction with Tiffany before the Outside Date.**
- **Finally, LVMH confirms it has fully met its obligations under the Merger Agreement, including upholding its commitment to use its reasonable best efforts to obtain all regulatory clearances as transparently and promptly as practicable.** Eight of the 10 requisite antitrust clearances have already been obtained and LVMH expects to receive approval from the European Commission in October and Taiwan well before the Outside Date.

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LVMH Moët Hennessy Louis Vuitton is represented in Wines and Spirits by a portfolio of brands that includes Moët & Chandon, Dom Pérignon, Veuve Clicquot Ponsardin, Krug, Ruinart, Mercier, Château d'Yquem, Domaine du Clos des Lambrays, Château Cheval Blanc, Colgin Cellars, Hennessy, Glenmorangie, Ardbeg, Belvedere, Woodinville, Volcán de Mi Tierra, Chandon, Cloudy Bay, Terrazas de los Andes, Cheval des Andes, Cape Mentelle, Newton, Bodega Numanthia, Ao Yun, Château d'Esclans and Château du Galoupet. Its Fashion and Leather Goods division includes Louis Vuitton, Christian Dior Couture, Celine, Loewe, Kenzo, Givenchy, Pink Shirtmaker, Fendi, Emilio Pucci, Marc Jacobs, Berluti, Nicholas Kirkwood, Loro Piana, RIMOWA, Patou and Fenty. LVMH is present in the Perfumes and Cosmetics sector with Parfums Christian Dior, Guerlain, Parfums Givenchy, Kenzo Parfums, Perfumes Loewe, Benefit Cosmetics, Make Up For Ever, Acqua di Parma, Fresh, Fenty Beauty by Rihanna and Maison Francis Kurkdjian. LVMH's Watches and Jewelry division comprises Bvlgari, TAG Heuer, Chaumet, Dior Watches, Zenith, Fred and Hublot. LVMH is also active in selective retailing as well as in other activities through DFS, Sephora, Le Bon Marché, La Samaritaine, Groupe Les Echos, Cova, Le Jardin d'Acclimatation, Royal Van Lent, Belmond and Cheval Blanc hotels.

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