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## Tiffany, LVMH showdown playing out in vicious counteracting press releases

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By MICKEY ALAM KHAN

French luxury conglomerate LVMH and U.S. jeweler Tiffany & Co. are heavily engaged in a war of words after the \$16.2 billion deal between the two fell apart Sept. 9.

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Tiffany sued LVMH for reneging on the deal and LVMH countersued. Several press releases have been issued since, with the latest one Sept. 17 from LVMH accusing Tiffany of "meritless allegations and aggressive misdirection campaign tactics."

"LVMH submitted to the Chancery Court of Delaware last night its conclusions, seeking that the Court dismiss Tiffany's request to issue a decision within a short timeframe that would be incompatible with a dispassionate ruling," LVMH said in its statement.

"There are no objective reasons why the upcoming trial should not take place within a normal timeframe.

"By asking the courts to rule urgently and by communicating feverishly and hastily Tiffany's executives are clearly seeking to avoid having to answer, notably to their shareholders, for their bad results and mismanagement and to see their arguments fall one after the other."

That offensive came a day after Tiffany's Sept. 16 press release that opposes LVMH's court request to delay the Delaware trial by six or seven months.

"LVMH's opposition to our motion to expedite is the latest attempt to run out the clock to avoid fulfilling its obligations under the Merger Agreement," said Tiffany chairman Roger Farah in a statement.

"If LVMH were confident in its legal position, it would have no reason to oppose an expedited trial schedule," he said. "We urge the Court to hold the trial on a timetable that will enable a decision before the November 24 termination date in the Merger Agreement."

*Here are the competing statements issued in almost back-to-back press releases, listed chronologically since LVMH backed out of the deal Sept. 9:*

*Sept. 17: LVMH press release*

LVMH Comments on Tiffany's meritless allegations and aggressive misdirection campaign tactics | LVMH trusts the American justice system to fairly judge its dispute with Tiffany

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seeking to avoid having to answer, notably to their shareholders, for their bad results and mismanagement and to see their arguments fall one after the other.

Indeed, they know full well, on the one hand, that the authorizations of the competition authorities will be obtained significantly before November 24, so their grievances against LVMH on this issue are groundless and, on the other hand, that the next Tiffany results will only confirm the occurrence of a "material adverse effect" and the mediocrity of their management during the crisis, which mainly consisted in creating losses and increasing debts to the detriment of the company's interest.

In this respect, the assertions by Tiffany's current management that *"the 4th quarter 2020 profits will be higher than those of the previous year"* are purely fanciful, even worrying. The only way to even come close to this target would be to strongly curtail all current investments, particularly in marketing and communications, which is obviously detrimental to the future of the brand and totally contrary to the normal course of business.

There is no reason for this case to be judged urgently. Given the legal and financial issues at stake in the context of a pandemic that obviously weighs on the ability of a European group to organize its defense in the United States it seems to LVMH that sound justice requires that a reasonable time be granted to rule on the matter.

Tiffany clearly fears a serene and fair rendering of justice. LVMH, for its part, has full confidence in the American justice system to demonstrate that the conditions necessary for the acquisition of Tiffany are no longer met and that the fallacious arguments put forward by Tiffany are unfounded.

It is up to the Delaware Court to determine who is in his right, and not the Chairman of Tiffany through the press.

*Sept. 16: Tiffany press release*

Tiffany responds to LVMH's request to delay Delaware trial for "six or seven months"

*Corrects inaccurate statements by LVMH regarding merger agreement*

NEW YORK Tiffany & Co. (NYSE: TIF) today responded to the opposition filed today by LVMH Mot Hennessy-Louis Vuitton SE ("LVMH") to Tiffany's motion to expedite its lawsuit in Delaware Chancery Court. LVMH asked the Court to hold the trial in six or seven months. Tiffany also corrected multiple inaccurate statements by LVMH regarding the Merger Agreement between the parties.

Chairman of the Board Roger Farah said, "LVMH's opposition to our motion to expedite is the latest attempt to run out the clock to avoid fulfilling its obligations under the Merger Agreement. If LVMH were confident in its legal position, it would have no reason to oppose an expedited trial schedule. We urge the Court to hold the trial on a timetable that will enable a decision before the November 24 termination date in the Merger Agreement."

*LVMH is continuing its blatant ongoing efforts to avoid paying the agreed-upon price for Tiffany*

Mr. Farah said, "Tiffany was not for sale, and agreed to be acquired only after LVMH increased its unsolicited bid five times to the ultimate \$135 per share and agreed to an ironclad contract. For many months, LVMH has been grasping at any opportunity to delay and avoid its obligations. This includes excuses for failing to make standard antitrust filings, complaints about the pandemic, and protests that LVMH previously agreed could not be considered as a valid reason to question the transaction. Then, LVMH produced a non-binding advisory letter from a French government official that requests further delay in closing. However, this letter does not change LVMH's obligations to close immediately upon receipt of the required regulatory approvals. LVMH's shifting explanations indicate bad faith in its dealings with Tiffany and are nothing more than distractions meant to hide its efforts to run out the clock and avoid fulfilling its obligations under the Merger Agreement."

*The terms of the agreement between Tiffany and LVMH are clear and were heavily negotiated*

Mr. Farah continued, "The terms of the Merger Agreement are crystal clear. LVMH simply does not have the unilateral right to walk away from the transaction or to reduce its price just because it is now suffering from a case of buyer's remorse. Tiffany has fulfilled all of its obligations and commitments under the Merger Agreement and expects LVMH to do the same. Tiffany's Board is unanimous in taking our duty to shareholders extremely seriously, and we will litigate this matter in the Delaware courts if LVMH refuses to fulfill its legal obligations."

*Tiffany's team has managed the business well during the pandemic*

The Tiffany leadership team has been a responsible steward of Tiffany's business throughout the pandemic, taking great care to protect and build the brand while safeguarding the health and well-being of customers and employees.

Tiffany has managed the business in a commercially reasonable way and in accordance with all requirements under the Merger Agreement. The Merger Agreement expressly permits Tiffany to continue to operate independently of LVMH and does not permit LVMH to dictate Tiffany's operations between signing and closing. As LVMH is very aware, to have done otherwise would have been a "gun jumping" violation of applicable competition laws. However, Tiffany has provided regular updates to LVMH which will have the right to manage Tiffany following closing of the transaction.

Chief Executive Officer Alessandro Bogliolo said, "LVMH's allegations regarding mismanagement are both untrue and legally irrelevant. We have already returned to profitability and expect to remain profitable for the balance of the year, with fourth quarter profits actually exceeding those of the fourth quarter of 2019. Tiffany's brand, style, sophistication, unparalleled design and unique heritage have inspired customers since 1837 and will continue to do so long after this pandemic is over. The only standard under the Merger Agreement is whether Tiffany has breached its covenants and we have not."

#### *LVMH's claim of "material adverse effect" is baseless*

The term Material Adverse Effect ("MAE") is very clearly defined in the Merger Agreement, so it is equally clear that no MAE has occurred. Any impact from the COVID-19 pandemic and U.S. social justice protests cannot even be considered in determining whether an MAE has occurred. LVMH's MAE claim is entirely without merit and without support in the text of the Merger Agreement or under Delaware law.

#### *Tiffany dividend payments are required by the Merger Agreement*

The payment of quarterly dividends is required by the Merger Agreement that was agreed by LVMH and approved by Tiffany's shareholders. Tiffany has paid a quarterly dividend for 131 consecutive quarters since shortly after its IPO and has never missed or reduced a dividend payment even during economic downturns. Tiffany is in a strong liquidity position with cash reserves of approximately \$1.1 billion and net debt of less than \$350 million, both as of August 31, 2020.

#### *LVMH's behavior forced Tiffany to file its complaint*

Tiffany was forced to turn to legal action by a counterparty seeking to renege on its commitments to Tiffany shareholders, but Tiffany remains committed to completing the transaction on the agreed terms and timing. Tiffany began to prepare for litigation once it became abundantly clear that LVMH was trying to run out the clock to avoid meeting its obligations under the Merger Agreement. Tiffany filed its lawsuit in Delaware only *after* LVMH put out a press release announcing it would not close due to a letter it said it had received from the French government. LVMH has still not provided a copy of the original letter to Tiffany and did not even inform Tiffany of the letter or share a purported translation of the letter for over a week after receiving it and did not consult with Tiffany about how to respond to the letter. Most importantly, the letter does not provide a basis for LVMH to refuse to close the transaction.

Mr. Farah concluded, "If LVMH had any contractual basis supporting its position not to close, it would not need to hide behind an unenforceable advisory letter from a French government official that is legally irrelevant to the transaction and inconsistent with EU law. Our Board and management hoped not to have to file the complaint, but preparation was prudent given the obvious delaying tactics LVMH has been employing for months."

#### *Sept. 10: LVMH press release*

LVMH intends to file a lawsuit against Tiffany as a result of crisis mismanagement

LVMH was surprised by the lawsuit filed by Tiffany against the Group in the Court of Chancery of the State of Delaware. LVMH considers that this action is totally unfounded. It has clearly been prepared by Tiffany a long time ago and communicated in a misleading way to shareholders and is defamatory. LVMH will defend itself vigorously. The long preparation of this assignment demonstrates the dishonesty of Tiffany in its relations with LVMH. This action is essentially based on the accusation by Tiffany that LVMH failed to take the reasonably necessary steps to obtain the various regulatory authorities' approvals in a timely way. This accusation has no substance and LVMH will demonstrate this to the Delaware Court. On this matter, the filing in Brussels will take place, as expected, in the following days and this is simply the result of the planning fixed by the European Commission, about which Tiffany is completely aware. It is legitimate to expect this authorization will be obtained in October.

The LVMH Board, besides the elements already raised, had the opportunity to examine the current economic situation of Tiffany and its management of the crisis. It noted that the first half results and its perspectives for 2020 are very disappointing, and significantly inferior to those of comparable brands of the LVMH Group during this period.

LVMH will be therefore led to challenge the handling of the crisis by Tiffany's management and its Board of Directors. LVMH considers, among other things, that this period is impacted by a Material Adverse Effect, that Tiffany did not follow an ordinary course of business, notably in distributing substantial dividends when the company was loss making and that the operation and organization of this company are not substantially intact.

LVMH therefore confirms that the necessary conditions for the conclusion of the acquisition of Tiffany are not fulfilled.

*Sept. 9: Tiffany press release*

Tiffany files lawsuit against LVMH to enforce merger agreement

*Asks Delaware court to require LVMH to abide by contractual obligation to complete transaction*

*Says French Government request that LVMH delay closing has no basis in French law*

Tiffany & Co. (NYSE:TIF) today announced that it has filed a lawsuit in the Court of Chancery of the State of Delaware against LVMH Mot Hennessy-Louis Vuitton SE and related entities ("LVMH").

The lawsuit relates to the November 24, 2019 Merger Agreement between Tiffany and LVMH providing for the acquisition of Tiffany by LVMH and seeks, among other things, an order requiring LVMH to abide by its contractual obligation under the Merger Agreement to complete the transaction on the agreed terms.

The lawsuit not only makes clear that LVMH is in breach of its obligations relating to obtaining antitrust clearance, but also refutes LVMH's suggestions that it can avoid completing the acquisition by claiming Tiffany has undergone a Material Adverse Effect ("MAE") or breached its obligations under the Merger Agreement, or that the transaction is in some way inconsistent with its patriotic duties as a French corporation.

Under the terms of the Merger Agreement, LVMH assumed all antitrust-clearance risk and all financial risk related to adverse industry trends or economic conditions. In addition, LVMH is required to do everything necessary to secure all required regulatory clearances as promptly as practicable.

The Merger Agreement provided for an initial outside date of August 24, 2020, which the parties agreed at signing would provide for more than sufficient time to obtain all the required regulatory clearances, because the transaction does not pose any substantive antitrust concerns. The Merger Agreement also gives either party the option to unilaterally extend the outside date to November 24, 2020 if antitrust clearances are the only remaining condition to closing at August 24, 2020.

As of August 24, 2020, LVMH had not even filed for antitrust approval in three of the required jurisdictions. Because all other conditions to closing were met on that date, Tiffany elected to extend the outside date to November 24, 2020. However, this extended outside date is now less than three months away, and LVMH still has not filed formal requests for antitrust approval in the European Union or Taiwan, and applications are still outstanding in Japan and Mexico, all due to LVMH's concerted efforts to delay or avoid receipt of regulatory approvals in those jurisdictions in breach of the Merger Agreement.

Roger N. Farah, Chairman of the Board, said, "We regret having to take this action but LVMH has left us no choice but to commence litigation to protect our company and our shareholders. Tiffany is confident it has complied with all of its obligations under the Merger Agreement and is committed to completing the transaction on the terms agreed to last year. Tiffany expects the same of LVMH."

Chief Executive Officer Alessandro Bogliolo said, "The fundamental strength of Tiffany's business is clear. The company has already returned to profitability after just one quarter of losses, and we expect our earnings in the fourth quarter of 2020 will actually exceed the same period in 2019."

The COVID-19 pandemic has not prevented other parties from making antitrust filings on a timely schedule. Among the ten largest transactions announced since the beginning of the fourth quarter of 2019, this is the only transaction that has not yet formally filed for antitrust approval in the European Union. All nine other transactions filed formal notifications with the EU between March 27 and July 7.

In response to Tiffany's valid extension of the outside date, LVMH claimed to reserve its rights to challenge Tiffany's extension. Yesterday, LVMH for the first time advised Tiffany of the existence of a letter, dated August 31, 2020, that LVMH purportedly received from the *Ministre de l'Europe et des Affaires Etrangères*. LVMH has not provided Tiffany with a copy of the letter, but an English translation provided by LVMH states that "the American government has decided to implement an additional customs duty on the import of certain French goods, in particular goods in the luxury sector" and that LVMH "should defer the closing of the pending Tiffany transaction until January 6, 2021" in order to support the French Foreign Affairs Minister's stated intent to "take measures in order to dissuade the American authorities from putting these tariff sanctions into effect."

Roger Farah stated, "We believe that LVMH will seek to use any available means in an attempt to avoid closing the transaction on the agreed terms. But the simple facts are that there is no basis under French law for the Foreign Affairs Minister to order a company to breach a valid and binding agreement, and LVMH's unilateral discussions with the French government without notifying or consulting with Tiffany and its counsel were a further breach of LVMH's obligations under the Merger Agreement. Moreover, this supposed official French effort to retaliate against the U.S. for proposed new tariffs has never been announced or discussed publicly; how could it possibly then be an effort to pressure the U.S. into revoking the tariffs? Furthermore, as we are not aware of any other French company receiving such a request, it is all the more clear that LVMH has unclean hands."

Despite having no contractual basis to do so, LVMH has advised Tiffany that it intends to honor this request from the French government to refuse to close the transaction until January 6, 2021, while also informing Tiffany that LVMH will not extend the outside date under the Merger Agreement beyond November 24, 2020, effectively stating that LVMH no longer intends to complete the transaction. In addition, LVMH has asserted there has been a Material Adverse Effect and a breach by Tiffany of the Merger Agreement, which LVMH suggested could give it the option to seek to terminate the Merger Agreement. LVMH did not provide any basis for these assertions.

The Merger Agreement does not excuse LVMH from completing the merger merely because a government minister has requested that LVMH breach the Merger Agreement. Further, Tiffany believes this latest development represents nothing more than LVMH's most recent effort to avoid its obligation to complete the transaction on the agreed terms, not dissimilar from LVMH's baseless, opportunistic attempts to use the U.S. social justice protests and the COVID-19 pandemic to avoid paying the agreed price for Tiffany shares. The Material Adverse Effect clause in the Merger Agreement is narrowly defined and, notwithstanding LVMH's focus on the COVID-19 pandemic and the U.S. social justice protests, the impact of these events cannot even be taken into account in determining whether an MAE has occurred under the Merger Agreement. In fact, during the pandemic, Tiffany's financial results compare favorably with those of other firms in the luxury goods industry, including LVMH itself. Tiffany has been a responsible steward of its business, all the while taking great care to protect the health and safety of its customers and employees.

Tiffany is seeking to expedite the Delaware proceedings to obtain a ruling prior to November 24, 2020 ordering LVMH to comply with its obligations and complete the transaction on the agreed terms.

*Sept. 9: LVMH press release*

Press release

After a succession of events which undermine the acquisition of Tiffany & Co, the Board of LVMH met to review the situation relating to the contemplated investment in light of these recent developments.

The Board learned of a letter from the French European and Foreign Affairs Minister which, in reaction to the threat of taxes on French products by the US, directed the Group to differ the acquisition of Tiffany until after January 6th, 2021. Furthermore, the Board noted Tiffany & Co.'s requested to extend the "Outside Date" in the Merger Agreement from November 24th to December 31st, 2020.

As a results of these elements, and knowledge of the first legal analysis led by the advisors and the LVMH teams, the Board decided to comply with the Merger Agreement signed in November 2019 which provides, in any event for a closing deadline no later than November 24<sup>th</sup>, 2020 and officially records that, as it stands, the Group LVMH will therefore not be able to complete the acquisition of Tiffany & Co.

*Sept. 9: Luxury Daily article*

LVMH backs out of \$16.2B Tiffany deal, leading to lawsuit meant to enforce merger

The \$16.2 billion deal to acquire jeweler Tiffany & Co. fell through Sept. 9 when potential acquirer, luxury

conglomerate LVMH, backed out after citing threats of taxes on French products by the United States.

The withdrawal of the offer, based on a French ministerial letter to defer the acquisition, has led to an immediate lawsuit filed by New York-based Tiffany against LVMH to enforce the merger agreement. Tiffany claims the French government request that Paris-based LVMH delay the closing has no basis in French law.

"We believe that LVMH will seek to use any available means in an attempt to avoid closing the transaction on the agreed terms," said Roger Farah, chairman of the Tiffany board of directors, in a statement.

"But the simple facts are that there is no basis under French law for the Foreign Affairs Minister to order a company to breach a valid and binding agreement, and LVMH's unilateral discussions with the French government without notifying or consulting with Tiffany and its counsel were a further breach of LVMH's obligations under the Merger Agreement," he said.

"Moreover, this supposed official French effort to retaliate against the U.S. for proposed new tariffs has never been announced or discussed publicly; how could it possibly then be an effort to pressure the U.S. into revoking the tariffs? Furthermore, as we are not aware of any other French company receiving such a request, it is all the more clear that LVMH has unclean hands."

The acquisition of Tiffany would have been LVMH's biggest, coming nine years after its \$5.2 billion purchase of Italian jeweler Bulgari. LVMH's portfolio includes some of the leading luxury brands worldwide, including Louis Vuitton and Christian Dior.

LVMH defended its actions to walk out of the **Tiffany** deal in a brief statement, which, it seems, was hurriedly drafted.

"The [LVMH] Board learned of a letter from the French European and Foreign Affairs Minister which, in reaction to the threat of taxes on French products by the US, directed the Group to differ *[sic]* the acquisition of Tiffany until after January 6<sup>th</sup>, 2021," LVMH said in a statement.

"Furthermore, the Board noted Tiffany & Co.'s requested to extend the "Outside Date" in the Merger Agreement from November 24<sup>th</sup> to December 31<sup>st</sup>, 2020.

"As a results *[sic]* of these elements, and knowledge of the first legal analysis led by the advisors and the LVMH teams, the Board decided to comply with the Merger Agreement signed in November 2019 which provides, in any event for a closing deadline no later than November 24<sup>th</sup>, 2020 and officially records that, as it stands, the Group LVMH will therefore not be able to complete the acquisition of Tiffany & Co."