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LEGAL

LVMH countersues Tiffany, escalating battle over US jeweler's soured acquisition deal

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LVMH hesitates to put the ring on the Tiffany finger. Image credit: Tiffany for T1

By LUXURY DAILY NEWS SERVICE

Only weeks after walking back its commitment to buy Tiffany & Co., French luxury conglomerate LVMH Mot Hennessy Louis Vuitton late Sept. 28 evening countersued on grounds that the U.S. jeweler's business was deeply damaged by the COVID-19 pandemic and mismanagement.

A 97-page court filing in the Delaware Chancery Court counters a lawsuit that New York-based Tiffany filed earlier this month against LVMH after the owner of brands such as Louis Vuitton, Bulgari and Givenchy said it was not going ahead with its $16.2 billion planned acquisition.

Cut and thrust

The LVMH lawsuit claimed Tiffany had suffered a material adverse change to its business, thus allowing LVMH to withdraw its offer.

LVMH excoriated Tiffany's decision to cut capital and marketing investments, add extra debt and pay out cash dividends in the midst of the pandemic.

The countersuit went further, claiming Tiffany was "ill-suited for the challenges ahead" and that "its performance has been catastrophic and its prospects remain dismal" after posting a loss of $45 million in the first half, per a Financial Times report.

"Tiffany's performance will continue to be poor...[and its] projections for the fourth quarter of 2020 are dubious given the ongoing and substantial impact of the pandemic, which continues to hamper Tiffany's sales and shows no signs of abating," FT quoted the LVMH suit as saying.

The Delaware court has set Jan. 5 as the next court hearing.

This battle between Tiffany and LVMH has played out publicly, with tit-for-tat press releases and now lawsuits against each other when only two seasons ago the two companies were enamored with each other.

So how are the two leading mainstream business publications covering the latest LVMH lawsuit?

Here is what The Wall Street Journal had to say in its late Sept. 28 evening filing:

LVMH Mot Hennessy Louis Vuitton SE sued Tiffany TIF 0.91% & Co over their soured merger deal, saying the U.S. jeweler's business has been so deeply damaged during the pandemic that their takeover agreement is invalidated.

The lawsuit, filed Monday in Delaware Chancery Court, counters a lawsuit that Tiffany filed this month against LVMH after the French conglomerateowner of Louis Vuitton, Dior and dozens of other luxury brandssaid it was backing out of its $16 billion acquisition of the jeweler.

LVMH's lawsuit says Tiffany has suffered a material adverse change to its business, triggering a standard provision in merger agreements that allows the buyer to walk away. Tiffany has been mismanaged during the pandemic and is particularly vulnerable to the disruption the industry is likely to suffer in the years to come, LVMH says.

The complaint says Tiffany's dependence on the U.S. market and foot traffic in malls means the jeweler's prospects are particularly grim compared with the broader luxury industry, which has been thrown into turmoil by the pandemic.

To escape from a merger contract, acquiring companies face the burden of showing that a target company's performance has been unusually bad relative to others in its industry, legal experts say.

"The pandemic's disruption to the luxury industry and to Tiffany in particular will persist well into 2021 at a bare minimum," LVMH's complaint says. "Tiffany is particularly ill-suited for the challenges ahead."

Tiffany "is a mismanaged business that over the first half of 2020 hemorrhaged cash for the first time in a quarter century, with no end to its problems in sight," according to the complaint.

Tiffany declined to comment.

The complaint repeats the claim that LVMH is legally barred from completing the deal because of a letter sent by the French foreign minister, Jean-Yves Le Drian, that said LVMH "should" delay the acquisition of Tiffany to early January, more than a month after the deadline for closing the deal.

"Should' is a translation of il conviendrait,' used in the original letter in French, which is understood to have a (polite) mandatory meaning under French law," LVMH said.

Before Mr. Le Drian sent his letter, LVMH representatives asked the French finance minister for help in backing out of its agreement to take over Tiffany, and was turned down, according to senior French officials.

Mr. Le Drian last week said he was responding to a request from LVMH for political advice when he wrote the letter to the luxury conglomerate.

The Financial Times went into more detail:

A "catastrophic" performance since the outbreak of coronavirus has left Tiffany with "dismal" prospects for the future, according to the company that until recently wanted to buy the luxury US jeweler for $16.6bn.

LVMH, the conglomerate led by the French tycoon Bernard Arnault, made the stinging attack on Tiffany and its management in a lawsuit launched late on Monday, in which it is seeking a judge's blessing to walk away from the deal.

In a 97-page court filing in the US state of Delaware, LVMH argues that Tiffany's decisions to slash capital and marketing investments, take on additional debt and pay cash dividends despite the pandemic means that it is a different business than the one it had agreed to buy.

The filing is the latest salvo in the legal battle that will determine the fate of a deal struck last year to make the New York-based jeweler part of Mr. Arnault's empire that spans brands including Louis Vuitton, Christian Dior and Bulgari. Tiffany has already sued LVMH to try to hold it to the deal.

An expedited trial has been scheduled for early January, although the two companies could also seek a negotiated solution before then.

LVMH said in its filing that Tiffany was "ill-suited for the challenges ahead" and that "its performance has been catastrophic and its prospects remain dismal" after posting a loss of $45m in the first half.

"Tiffany's performance will continue to be poor...[and its] projections for the fourth quarter of 2020 are dubious given the ongoing and substantial impact of the pandemic, which continues to hamper Tiffany's sales and shows no signs of abating," the luxury goods group said.

LVMH also accused Tiffany's management of trying to force the deal through because its top executives stand to profit from the transaction being completed. LVMH said that Tiffany's chief executive, Alessandro Bogliolo, would pocket about $44m, adding that "his golden parachute is equivalent to Tiffany's losses in the first half of 2020".

Delaware courts have only once allowed a buyer to walk away from an agreed-upon merger agreement, and have been highly skeptical of "material adverse effect" arguments in which suitors claim external events allow them to scrap a deal. That has left LVMH also seeking to argue that Tiffany's management breached its obligations on running the business between the deal's signing and closing.

Tiffany has insisted that it acted in the best interest of shareholders.

As well as dramatically increasing the war of words between LVMH and Tiffany over the jeweller's management, Monday's filing also included a key legal argument from LVMH designed to persuade the Delaware court to invoke a material adverse effect: Tiffany did not include a pandemic in a list of catastrophic events specifically mentioned as risks that LVMH would have to bear.

Tiffany sought and received similar "carve-outs" for cyber attacks, protests in France and civil unrest in Hong Kong that disrupted retail operations, LVMH argued, showing that Tiffany and its lawyers understood the importance of such clauses in determining the circumstances in which LVMH would still have to complete the deal.

"Yet Tiffany did not obtain a carve-out for public health crises or pandemics," it said. "Against this backdrop, the decision by two sophisticated parties, represented by sophisticated advisers, to omit a pandemic carve-out is telling. The pandemic has caused a material adverse effect that allows LVMH to terminate."

LVMH has been maneuvering behind the scenes for months to pressure Tiffany to accept a lower price after Mr. Arnault became convinced that the $135-a-share price agreed in November made little sense given the darker outlook for luxury after the pandemic.

Tiffany has repeatedly refused to consider a price cut, saying the French group has to honor the original terms.

As the legal skirmishes continue, LVMH has faced a brewing backlash in France over whether it enlisted the French government's help in the battle. When LVMH said earlier this month that it could not complete the Tiffany deal as planned, it blamed a letter it received from the French foreign ministry asking it to delay closing the transaction until after January 6 so as to help the country in an ongoing trade spat with the US.

LVMH has repeatedly denied that it sought the letter, but said it believed it to be a legally binding order from France.

In questioning in the French parliament last week, however, foreign minister Jean-Yves Le Drian said he wrote the letter in response to a query from LVMH.

"My role is to apply, if necessary, the government's opinion on assessments of a political nature on the management of major international events to come," Mr. Le Drian said. "This is the reason why I answered a question from the LVMH group, totally in my role."

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More background on the Tiffany-LVMH legal skirmish:

What does LVMH and Tiffany's battle mean for the luxury industry?

Tiffany, LVMH showdown playing out in vicious counteracting press releases