Luxury Daily®

The News and Intelligence You Need on Luxury

LEGAL

LVMH, post-countersuit against Tiffany, issues statement that "conditions to close the acquisition are not met"

September 29, 2020

By LUXURY DAILY NEWS SERVICE

LVMH issued a statement Sept. 29 morning only hours after the French luxury conglomerate countersued Tiffany & Co. to claim that conditions to close the planned $16.2 billion acquisition of the U.S. jeweler were not met.

The 97-page filing in the Delaware Chancery Court claims that Tiffany was deeply damaged by the COVID-19 pandemic and mismanagement.

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

Here is what LVMH said in its statement Sept. 29 morning:

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.

Please click here for more background on the Tiffany-LVMH legal battle