

LEGAL

Tiffany, in mounting war of public statements, responds to "baseless and misleading counterclaims filed by LVMH"

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By LUXURY DAILY NEWS SERVICE

The legal tussle between French conglomerate LVMH and U.S. jeweler gets more vicious by the minute as it is fought out as much in the court of public opinion as it is in law courts.

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Now, in back-to-back statements, LVMH and Tiffany have hurled accusations against each other. At the core of this is a simple driver: Tiffany wants LVMH to live up to its deal that the owner of Louis Vuitton and Dior would go through with the \$16.2 billion transaction to buy the U.S. jeweler.

Tiffany on the morning of Sept. 29 issued a statement to respond to LVMH's public note a few hours earlier. Here is the Tiffany statement in its entirety:

Tiffany & Co. Sept. 29 morning responded to baseless and misleading counterclaims finally filed yesterday by LVMH Mot Hennessy-Louis Vuitton SE ("LVMH") in Delaware Chancery Court – 18 days after LVMH said it intended to assert claims.

Chairman of the Board Roger Farah said, "LVMH's specious arguments are yet another blatant attempt to evade its contractual obligation to pay the agreed-upon price for Tiffany. Tiffany has acted in full compliance with the Merger Agreement, and we are confident the Court will agree at trial and require specific performance by LVMH. Had LVMH actually believed the allegations made in its complaint, there would have been no need for LVMH to procure the letter from the French Foreign Minister as an excuse for its refusal to close."

Chief Executive Officer Alessandro Bogliolo said, "I am so proud of how Tiffany has gone above and beyond during the pandemic to deliver our brand mission and keep delighting our customers, even in the most uncertain of times. I want to thank the entire Tiffany team for their continued professionalism and dedication in the face of baseless accusations and misinformation."

In response to LVMH's allegations, Tiffany reiterated several key points:

More Evidence of LVMH's Bad Faith Continues to Come to Light

In early September, LVMH stated publicly that it would be unable to complete its acquisition of Tiffany because it had received a directive from a French government official that prohibits the acquisition prior to the outside date under the Merger Agreement. LVMH subsequently asserted publicly that the letter was not solicited by LVMH. However, on the floor of the French parliament last week, the Minister who signed the letter admitted that he only sent the letter in response to an inquiry from LVMH. Despite Tiffany's many requests, LVMH still has not provided Tiffany or the Court with a copy of the letter. LVMH's seeking this letter was a clear violation of its obligations under the Merger Agreement, and Tiffany anticipates that more of LVMH's duplicity will come to light during the trial.

LVMH's Claim of a Material Adverse Effect Is Baseless

LVMH's claim of a Material Adverse Effect (MAE) is baseless and still has no factual, contractual or legal support. As previously stated, Tiffany experienced a single quarter of losses before returning to profitability and projects fourth-quarter earnings in 2020 greater than those in the same period in 2019 the exact opposite of LVMH's unsupported claims that the "Pandemic has devastated Tiffany's business" and that "Tiffany's recent woes are just the beginning of its troubles." Nothing alleged by LVMH has come close to meeting the MAE definition in the Merger Agreement, which excludes all "changes or conditions generally affecting the industries in which [Tiffany] operate[s]" and "general economic or political conditions."

Tiffany Has Operated in the Ordinary Course

LVMH has still offered no support for its claim that Tiffany breached its obligation to conduct its business in the ordinary course. LVMH's criticism of Tiffany's payment of dividends continues to ignore the fact that those payments were not just "technically permitted"; they were expressly authorized by the Merger Agreement and excluded from any "ordinary course" limitations. In any event, dating back to shortly after its 1987 IPO, Tiffany has never missed or reduced a dividend payment, even during recessions, financial crises and the September 11 attacks, spanning 131 consecutive quarters. As of September 25, 2020, Tiffany has more than \$1.2 billion in cash and has no liquidity constraints. The real reason LVMH complains about the dividend payments is that it wanted the cash left in the company for its benefit rather than paid to Tiffany shareholders as negotiated in the Merger Agreement.

LVMH also criticizes Tiffany for closing its stores in Arizona, Florida and Texas "five days to over two weeks" before the closures were mandated by law in those states. LVMH cannot show that the steps Tiffany took to protect the health and welfare of its employees and customers during the pandemic violated the Merger Agreement. Tiffany took swift action around the world to protect the safety of its stakeholders during the pandemic, and those actions were entirely consistent with its legal obligations, its Code of Business and Ethical Conduct, and its brand and corporate identity. The fact that LVMH felt compelled to even suggest that Tiffany's decision to close a limited number of stores "five days to over two weeks" early in order to protect employees and customers provides adequate grounds to walk away from its contractual obligations underscores the obvious weakness of its case.

Tiffany Was Not At Risk of Breaching Debt Covenants

LVMH's suggestion that Tiffany secretly negotiated amendments to credit facilities to avoid breaching debt covenants and "improperly" drew down additional debt is misleading. In reality, Tiffany proactively and prudently sought to gain additional flexibility under its credit facilities in the face of uncertainty related to the pandemic, similar to the actions taken by numerous other businesses in many industries. Moreover, these actions were permitted under the Merger Agreement, and not a penny of the money that was drawn down out of an abundance of caution has yet to be spent.

LVMH's Efforts to Deny its Interference in the Regulatory Approvals Process are Shameless

LVMH's efforts to shift the blame for foot-dragging in the regulatory process cannot hide the fact that LVMH took almost 10 months even to submit its notification to start the clock on the European Commission's merger clearance process and only did so after Tiffany filed a lawsuit against it. LVMH's breach has resulted in a delay in closing the merger that should have occurred at the end of June so the harm to Tiffany and its shareholders is significant and ongoing.

Here is the LVMH statement, as reported earlier this morning in *Luxury Daily*:

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

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](#)

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