UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. NORMAN M. MORRIS CORPORATION, NORMAN M. MORRIS ASSOCIATES, INC., OMEGA LOUIS BRANDT ET FRERE S.A., CHS TISSOT ET FILS S.A., AND SOCIETE SUISSE POUR L'INDUSTRIE HORLOGERE MANAGEMENT SERVICES S.A. Defendants.	Civil Action No. Filed: January 30, 1976 Entered: COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. Sections 16(b)-(h), P.L. 93-528 (December 21, 1974)], the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The Department of Justice has filed a civil antitrust suit against the Swiss producers of Omega and Tissot watches and their United States distributors alleging an unlawful combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act as amended (15 U.S.C. §1). The complaint names as defendants, Norman M. Morris Corporation

and Norman M. Morris Associates, Inc. (Morris), the New York City based distributors of Omega and Tissot watches, and Omega Louis Brandt et Frere S.A. (Omega), CHS Tissot et Fils S.A. (Tissot) and Society Suisse Pour L'Industrie Horlogere Management Services S.A. (SSIH Management), the manufacturers of Omega and Tissot Watches and their management affiliate (the Manufacturers).

The substantial terms of the conspiracy alleged in the complaint are that:

(a) the defendants allocated customers in the sale of Omega and Tissot watches within the United States, with sales to duty free shops going to the Manufacturers and sales to all other United States outlets to Morris;

(b) the defendants agreed to and attempted to prevent the importation of Omega and Tissot watches into the United States by third parties; and

(c) to induce the Manufacturers to work toward elimination of importation by third parties into the United States, Morris agreed not to sell watches outside of the United States in competition with the Manufacturers or their foreign distributors.

II. Practices and Events Giving Rise to the Alleged Violations of the Antitrust Laws

The watches which are sold in the United States each year range in type from conventional jewel lever mechanisms to "non-conventional" solid-state, quartz or electronic mechanisms and range in price from inexpensive watches selling at retail from between 10 and 30 dollars to

luxury watches, encased in fine jewelry, which retail for over 1,000 dollars.

The United States is the largest consumer of watches in the world and is also one of the world's leading watch producing nations. However, for historical, economic and social reasons the people of the United States presently purchase and own more Swiss watches than American watches. In 1972, of the total number of watches sold in the United States, only 33% were manufactured in this country, while 55% were manufactured in Switzerland. Switzerland is both the world's largest manufacturer and the world's largest exporter of watches, traditionally exporting over 95% of its watch production.

Of the vast quantities of Swiss watches imported into the United States each year, (over 14 million units in 1972) a significant number bear the trademarks Omega and Tissot and are manufactured by these defendants. Omega and Tissot are two of the manufacturing arms of the large Swiss holding company Societe Suisse Pour L'Industrie Horologere S.A. (SSIH). The third Swiss defendant SSIH Management provides management services for several manufacturing subsidiaries of SSIH including Omega and Tissot.

Omega and Tissot watches are currently sold on a worldwide basis through a network of exclusive distributors each assigned to a specific territory. Morris is the exclusive

distributor of Omega and Tissot watches, movements and parts in the United States. Even before incorporation in 1946 Morris was the exclusive distributor in the United States for Omega watches. The relationship was formalized in exclusive distribution agreements (Agreements) executed in New York in 1973. It is these Agreements and conduct taken in accordance with them that make up the conspiracy in restraint of trade alleged in the Government's complaint.

Pursuant to the Agreements the Manufacturers sell Omega and Tissot watches to Morris. The parties then agreed that Morris would resell the watches only within the exclusive territory of the United States but that even within this territory the Virgin Islands and duty free shops would be allocated to the Manufacturers. In exchange for this concession Morris receives a monetary payment. The Agreements further provide that all parties will work toward an elimination of the importation of Omega and Tissot products by third parties and that to aid the Manufacturers in their worldwide distribution network Morris agreed to refrain from selling Omega and Tissot products outside of its exclusive territory, or for distribution outside such exclusive territory, in competition with Omega and Tissot watches sold in other parts of the world.

The Government contends that in order to carry out the above contractual provisions, both Morris

and the Manufacturers took affirmative steps to prevent importation of Omega and Tissot watches into the United States by parties other than Morris. The Department of Justice also would have been prepared to prove that the defendants harassed both third party importers of Omega and Tissot watches and those retail dealers who buy from such third parties. Furthermore, the Department contends that the defendants have conspired to trace and restrict the third parties' sources of supply in Europe. Finally, the Government would have been prepared to introduce evidence at trial to show that for several years Omega and Tissot Watches were sold at retail in United States markets at prices significantly in excess of retail prices in certain European markets, even assuming United States import duty is added in.

III. The Proposed Relief

The proposed consent judgment provides a number of measures to dissipate the anticompetitive effects of the conspiracy. The significant and material provisions of the consent judgment are outlined below:

(A) The decree would prohibit the defendants from allocating or dividing markets or customers. This provision is intended to help restore the operation of free market forces to the Virgin Islands and to other United States duty free shops by once again allowing Morris and other resale distributors to compete with the Manufacturers for these markets.

(B) The decree would also prohibit the defendants from agreeing to limit or restrict exports or imports of Omega

or Tissot watches. It is anticipated that this provision will permit greater competition in the sale of Omega and Tissot watches in the United States because such watches may be imported by parties other than Morris. This provision would also allow Morris freely to export Omega and Tissot watches from the United States to foreign markets.

(C) The proposed judgment would prohibit any of the defendants from attempting, by threats or coercion, either to cut off the supplies of Omega and Tissot watches from third parties attempting to compete with Morris or to discourage any retailer from purchasing Omega or Tissot watches from third parties attempting to compete with Morris.

(D) The decree would prohibit the Manufacturers from assigning their Omega or Tissot trademarks to a person or company in the United States for the purpose of preventing the importation of Omega or Tissot watches into the United States. Under regulations issued pursuant to the Tariff Act of 1930, 19 U.S.C. §1526 an independent owner of a trademark may record his mark registered under the Trademark Act, 15 U.S.C. §1505 et seq. with the Secretary of the Treasury and claim protection against the importation by unrelated third parties of foreign merchandise bearing the trademark. By assigning its trademark to Morris the Manufacturers might have improperly prevented any imports into the United States.

The Tariff Act, 19 U.S.C. § 1526, provides that it shall be unlawful to import into the United States merchandise of foreign manufacture bearing a trademark owned by a United States citizen, association or corporation if the trademark is properly registered with the Secretary of the Treasury. In the past this provision has been used by some foreign manufacturers to maintain an exclusive distribution system for their products in the United States market by assigning the trademark to a United States citizen or corporation who, in turn, registers the trademark for the purpose of preventing the competitive importation of products bearing those trademarks. Such a practice has been held to violate the antitrust laws. See United States v. Guerlain, Inc., 155 F. Supp 77 (S.D.N.Y. 1957), judgment vacated and remanded on Government's motion sub nom. Guerlain, Inc. v. United States, 358 U.S. 915 (1958), complaint dismissed, 172 F. Supp. 1455 (S.D.N.Y. 1958). The judgment would prohibit trademark assignments in all cases except in connection with a bona fide sale by the Manufacturers of the assets and business associated with their Omega and Tissot trademarks. Such a sale would be governed by general law.

(E) The proposed judgment would also prohibit defendants from refusing to honor guarantees given by any defendent on Omega and Tissot watches. The provision is directed toward preventing conduct which might perpetuate the prohibited activities and discourage imports of Omega and Tissot watches.

(F) Finally, the decree would require the Manufacturers to make a significant number of Omega and Tissot watches, which conform to United States Customs labeling requirements, available through Omega's and Tissot's foreign channels of distribution so that such watches may be purchased abroad by those parties who may wish to import them into the United States in competition with Morris. The labeling requirements of the United States Customs Bureau make this provision appropriate. Because these regulations currently require that specified information be inscribed on a watch before it may be imported into the United States, information more extensive than is required in foreign markets, the Omega and Tissot factories operate a separate assembly line for watches which will be sold to Morris and only these watches are inscribed in accordance with United States Customs requirements. Parties which purchase Omega and Tissot watches abroad would be prohibited from importing into the United States such watches until they were labeled correctly. This provision would allow such third parties to purchase abroad, on the same terms and conditions as Morris, Omega and Tissot watches marked correctly for the United States market. Otherwise, third parties might be excluded or hindered from selling watches competitively into the United States.

For the purpose of determining compliance with the proposed judgment, provisions are included requiring Morris to make its books, records, and personnel available and to submit progress reports on steps taken to comply with the final judgment to representatives of the Department of Justice. These same provisions are applicable to the defendant Manufacturers

located in Switzerland except when such action is prohibited by Swiss law.

In evaluating the anticipated effects on competition of the proposed relief, it is intended that the above requirements not only put an end to the anticompetitive restrictions and practices set forth above, but also have the result of increasing intrabrand competition within the Omega and Tissot product lines both within the United States and in United States foreign commerce. Under these provisions third parties would now be free to import Omega and Tissot watches and offer them for resale in the United States in competition with Morris. Furthermore, Morris would be free to compete with the Manufacturers and other Omega distributors not only in the Virgin Islands and duty free shops but also anywhere throughout the world.

IV. Remedies Available to Potential Private Plaintiffs

Any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent decree not entered. However, pursuant to Section 5 (a) of the Clayton Act (15 U.S.C. Section 15 (a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

V. Procedures Available for Modification of the Proposed Consent Judgment

The proposed consent judgment is subject to a stipulation by and between the United States and the consenting defendants, which provides that the United States may withdraw its consent to the proposed judgment at any time until the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed consent judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit either of the parties thereto to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16(b)), any persons wishing to comment upon the proposed judgment may, for a sixty-day period prior to the effective date of the proposed judgment, submit written comments to the United States Department of Justice, Attention Joel Davidow, Chief, Foreign Commerce Section, Antitrust Division, Washington, D.C. 20530, which will file with the Court and publish in the Federal Register such comments and its response to them. The Department of Justice will evaluate any and all such comments and determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI. Determinative Documents

There are no materials or documents which the Government considered determinative in formulating this proposed consent judgment. Therefore, none is being filed along with this competitive impact statement.

VII. Alternatives to the Proposed Consent Judgment Considered by the United States

With the exception of the relatively minor provisions outlined below, the Department of Justice has not considered any significantly different form of relief than that which is proposed in this final judgment. The relief proposed here is similar to the relief which the Department would have requested had the case proceeded to a trial ending in a finding of a violation of Section 1 of the Sherman Act.

First, the Department considered a provision that would have prohibited the assignment of the Omega or Tissot trademarks to a United States person or corporation in order to prevent the importation into the United States of Omega or Tissot watches pursuant to the Tariff Act of 1930, 19 U.S.C. § 1526. Originally this was proposed in the form of an absolute prohibition. However, the Department later modified its position to allow such an assignment in connection with a bona fide sale of the assets and business associated with such a trademark to be, as noted above, governed by general law.

Second, a form of relief considered at one time would have required the defendant Manufacturers to inscribe on all Omega and Tissot watches produced for the entire world the markings and designations required by United States Customs. Such a requirement would have insured that potential third party importers have a supply of watches which complied with United States Customs regulations available to them. However, the provision included in the Proposed Final Judgment, which requires the Manufacturers to make Omega and Tissot watches available to potential third party importers, accomplishes the same result without creating any undue burden on the Omega and Tissot manufacturing and assembly process. rights under future governing import regulations.

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