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**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, June 01, 2010 6:42 PM  
**To:** Verne, B. Michael  
**Subject:** Informal HSR Advice - Confirmation

Mike,

Thank you for speaking with me today. I am writing to confirm the informal advice that you provided about the following proposed transaction.

Description of the Transaction

Buyer, a portfolio company controlled by a private equity fund intends to acquire the following from Target:

- 1) Contracts,
- 2) marketing materials, and
- 3) inventory from Target.

In addition, Buyer will receive:

- 1) a royalty-bearing exclusive license to use, market, distribute, offer for sale and sell the Products in the Territory (the U.S.),
- 2) a royalty-free nonexclusive license to make, have made, import and export the Products anywhere in the world, solely for sale in the Territory,
- 3) a royalty-free nonexclusive license under any IP rights owned or controlled by Target or its affiliates that are used, but not solely or primarily used, in connection with any of the products to use, make, have made, market, distribute, offer for sale and sell the Products in the Territory, and
- 4) a nonexclusive license of corporate marks.

Buyer will also receive an option to purchase the assets underlying the exclusive license after three years. Buyer intends to exercise the option and purchase the underlying assets.

In consideration for the transaction, Buyer will pay \$66 million, plus royalties, which are estimated to total \$4 to \$5 million over the three year period. The estimated value of the marketing materials and inventory is approximately \$6 million. Buyer may also assume some liabilities.

Question

While the manufacturing rights are technically included in a nonexclusive license, the seller is restricted from manufacturing the Products for anyone else to sell in the US and from licensing any third-party to make or have made the Products. Do these elements of exclusivity deem the license "exclusive" for HSR purposes and therefore an assets that need to be included in the transaction value?

Response

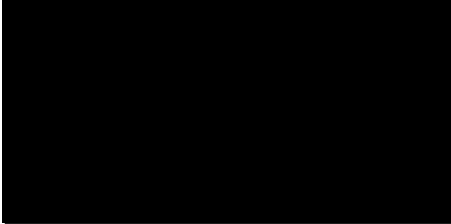
During our call you advised that the nonexclusive license to make, have made, import and export the Products anywhere in the world, solely for sale in the Territory, is considered nonexclusive and therefore not an asset for

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HSR purposes, even though the seller is restricted from manufacturing the Products for anyone else to sell in the US and from licensing any third-party to make or have made the Products.

Thank you for your time and assistance with this matter. I would be grateful if you could confirm that this email accurately summarizes the advice that you provided and the position of your office.

Kind regards,



ACLRZ  
B/  
6/3/10

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