

802.51
802.51(c)

April 11, 1995

By Telecopy

Hy Rubenstein, Esq.
Federal Trade Commission
Premerger Notification Office
7th Street and Pennsylvania, N.W.
Washington, DC 20580

Dear Mr. Rubenstein:

Pursuant to our telephone conversation yesterday, I am writing to seek your advice concerning the following Hart-Scott-Rodino issues.

These issues relate to the exemption of acquisitions by foreign persons under HSR Rule § 802.51, in particular, the exemption set forth in subsection § 802.51(c) for an acquisition of less than \$15 million of assets located in the United States.

My first question relates to the location of accounts receivable. It appears to me that accounts receivable should be deemed to be located in the jurisdiction of the debtor. This result is consistent with Interpretation # 269 of the Premerger Notification Manual (ABA 1991). There, the Commentary states:

In the case of movable or intangible assets, the source of the revenues generated by the assets should be critical in determining where the assets

a/r are not movable or intangible assets

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are located for the purposes of § 802⁵1(b). The source of the revenues should give the best indication as to where the assets have competitive significance.

The source of revenue for accounts receivable is the location of the debtor, which appears to give "the best indication as to where the assets have competitive significance."

My second question relates to trademark licenses. Consider the transfer of an exclusive worldwide license to manufacture and sell particular products. You observed that the transfer of such an exclusive license would be regarded as the transfer of an asset. I believe you further observed that where there is a schedule of minimum Royalty payments the asset value of the license is best evaluated as the sum of such scheduled payments.

why not maximum?

There remains, however, the question as whether, or what portion of, the value of an exclusive worldwide license should be counted towards U.S. assets being acquired in a transaction. I suggested that the U.S. component of the worldwide license could valued by estimating the percentage of licensed sales that will take place in the U.S. and multiplying this percentage by the total license value. You said that you would need to confirm whether this analysis is accurate.

OK

I would appreciate your advice as to these issues at your earliest possible convenience, preferably by fax. Thank you for your attention to this matter.

Sincerely,

[Redacted signature]

Enclosure

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I handled this in Hy's absence. The location of the accounts receivable is not the jurisdiction of the debtor but the physical location of the AR (Census approach). The minimum royalty payment is not sufficient to calculate value - must also determine fair market value.