

Department of Justice Fines Company \$550,000 for HSR Act Violation for Failure to Submit Item 4(c) Competition Documents

October 19, 2007

The Department of Justice (DOJ) fined Iconix Brand Group (Iconix) \$550,000 for violating the Hart-Scott-Rodino Act (HSR Act) by failing to submit to the Federal Trade Commission (FTC) and DOJ certain required documents in connection with its proposed acquisition of assets from Rocawear Licensing (Rocawear) earlier this year. The fine was levied even though the authorities had approved the proposed acquisition finding that it posed no threat to competition.

The HSR Act requires parties of a certain size involved in transactions valued above \$59.8 million to make a preclosing filing with the FTC and DOJ and to observe the applicable waiting period before closing. The parties are also required to submit any Item 4(c) documents, which are documents prepared in connection with the proposed transaction that address any aspect of competition, sales growth, or entry into new product or geographic markets if seen by an officer or director. Documents prepared by a third party such as an investment bank may also be responsive. Responsive documents may include formal presentations as well as emails or handwritten notes.

In connection with its proposed acquisition, however, Iconix submitted no Item 4(c) documents with its HSR filing. Shortly after receiving the HSR filing, the FTC contacted the company to confirm that no 4(c) documents existed. Counsel for Iconix confirmed that the company had duly searched for 4(c) documents and that no such documents existed. The FTC and DOJ subsequently granted the parties' request for early termination, and the acquisition closed on March 30, 2007.

Believing that it was unusual for there to be no 4(c) documents for a transaction that required more than \$200 million in financing, the DOJ opened an investigation shortly after the close of the acquisition. As part of its investigation, the DOJ issued a civil investigative demand (CID) to Iconix that sought documents concerning the Rocawear acquisition. In response to the CID, Iconix submitted several documents to the DOJ, including a presentation to its board of directors and an email that should have been included in the company's HSR filing as 4(c) documents.

By failing to submit the 4(c) documents as required under the HSR Act, the DOJ found that Iconix violated the HSR Act for 85 days; fines began to accrue from the date of closing. As the HSR Act sets fines at \$11,000 for each day of the violation, the maximum penalty could have been more than \$900,000. Although in this case no individual officer or director of the company was fined, individuals

