

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Court No : 500-11-057805-208,
500-11-057804-201
File No : 41-2607510,
41-2607508

SUPERIOR COURT
(Commercial Division)
Bankruptcy and Insolvency Act

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

**FREEMARK APPAREL BRANDS RETAIL BE
INC.**

FREEMARK APPAREL BRANDS GROUP INC.

legal persons duly incorporated under the laws of
Canada, having their principal places of business at
5640 Pare Street, Mount Royal, Quebec, H3B 1M1

Petitioners / Debtors

-and-

RICHTER ADVISORY GROUP INC.

Proposal Trustee

**FIRST REPORT OF THE PROPOSAL TRUSTEE
ON THE STATE OF PETITIONERS' BUSINESS AND FINANCIAL AFFAIRS
January 27, 2020**

INTRODUCTION

1. On January 21, 2020, each of Freemark Apparel Brands Retail BE Inc. ("**FAB Retail**") and Freemark Apparel Brands Group Inc. ("**FAB Wholesale**") (collectively with FAB Retail, the "**Debtors**") filed a Notice of Intention to Make a Proposal (the "**NOI**"). Richter Advisory Group Inc. ("**Richter**") was named Trustee.
2. Prior to filing the NOI, this Court authorized Richter to act as trustee to the NOI. Such an authorization was required as an entity related to Richter acts as the auditor for the Debtors.
3. On or around January 27, 2020, the Debtors filed a Motion for the Issuance of an Order Authorizing a Liquidation Sale and Approving Ancillary Relief ("**Liquidation Motion**").

PURPOSE OF THIS REPORT

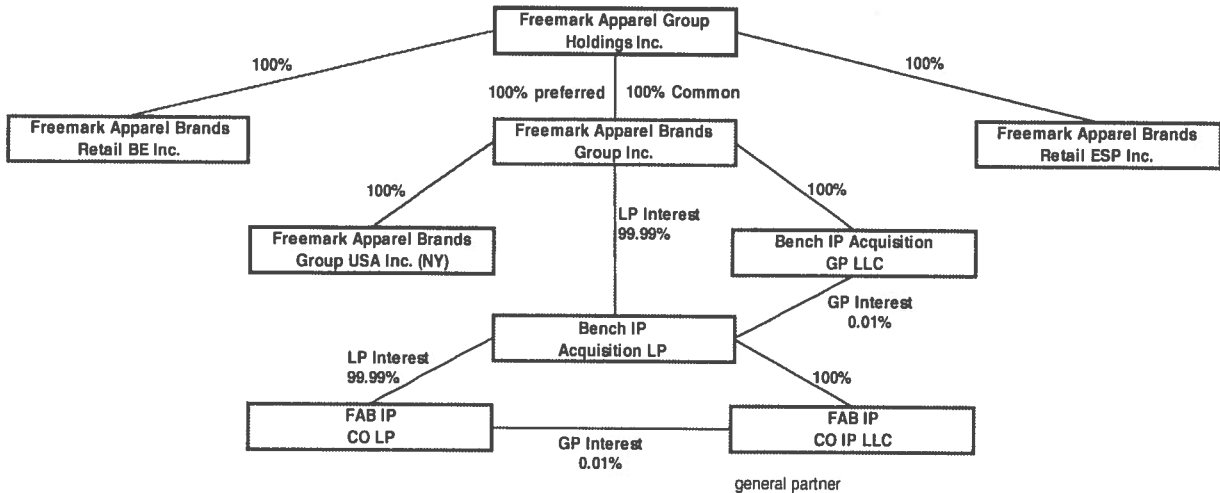
4. The purpose of this First Report is to provide this Court with information pertaining to:
 - a) The background and operations of the Debtors;
 - b) The Debtors' creditors;
 - c) The Liquidation Motion:
 - i. to procedurally consolidate the administration of the NOIs of FAB Retail and FAB Wholesale; and
 - ii. to allow FAB Retail to conduct a liquidation of its inventory in accordance with the sale guidelines as annexed to the Liquidation Motion.
 - d) The Trustee's recommendation that this Court render the following order(s), as requested by the Debtors;
 - i. approving the procedural consolidation; and
 - ii. approving the liquidation of FAB Retail, the whole in accordance with the sale guidelines.

TERMS OF REFERENCE

5. In preparing this First Report, the Trustee has relied upon unaudited financial information prepared by the Debtors' representatives, the Debtors' books and records, and discussions with the Debtors' representatives and legal counsel. The Trustee has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND AND OPERATIONS OF THE DEBTORS

7. The organizational chart for the FAB group of companies (the “**FAB Group**”), which includes the two Debtors subject to the NOI proceedings, can be represented as follows:



8. The FAB Group is a retailer of branded apparel. FAB Retail conducts its operations through a chain of 25 retail stores (throughout Canada) and through an e-commerce site. FAB Wholesale sells to a variety of customers including Costco, the Bay, Winners and other retailers.
9. The FAB Group's head office is located in Montreal as well as its warehouse and distribution center. All of the FAB Group's locations are leased from third parties.
10. Prior to the filing of the NOIs, the FAB Group employed approximately 340 people of which 25 were let go immediately prior to the filing.
11. The Debtors' recent financial results can be summarized as follows:

Freemark Apparel Brands Group of Companies Combined Income Statement in \$000's	12 months ended	
	30-Jun-19 (Unaudited)	01-Jul-18 (Audited)
Net Sales	\$ 80,536	\$ 49,950
Gross Margin	27,530	22,120
Operating Expenses	(27,193)	(28,910)
Earnings (Loss) from Operations	337	(6,790)
Other Expenses	(4,265)	(1,317)
Net Loss	\$ (3,928)	\$ (8,108)

12. As noted above, the Debtors have suffered significant losses over the past two years attributed to a variety of factors including:
 - a) Extremely competitive retail market;
 - b) Lower than forecast margins with certain wholesale customers including as a result of unbudgeted chargebacks from certain customers;
 - c) Overhead structure not in line with the level of operations.
13. As a result of the above, the Debtors determined that they need to reorganize their operations. While the Debtors are still analyzing the future of the wholesale business, they have determined that it will be necessary to close all of their retail store locations.

SECURED LENDERS

14. At the time of the filing of the NOIs, the Debtors' books and records reflected amounts owing to the following secured creditors:
 - a) Accord Financial Inc. ("**Accord**") - \$15.1 million in respect of the operating loan advances;
 - b) Gordon Brothers Brands, LLC ("**GBB**") - \$5.9 million (~US\$4.5 million) in respect of the balance of sale owing on the purchase of the Bench intellectual property for the Americas;
and
 - c) Freemark Apparel Holdings Inc. ("**FAHI**") – \$14.7 million in respect of shareholders loans.
15. As noted in the Liquidation Motion, Accord and the Debtors entered into a forbearance agreement ("**Forbearance Agreement**") by which Accord will continue to provide financing during the NOI proceedings subject to the terms of the Forbearance Agreement which requires that FAB Retail liquidate all of their inventory.
16. The Trustee will be engaging independent legal counsel to provide the Trustee with an opinion regarding the validity and enforceability of the security granted by the Debtors to the secured creditors.

UNSECURED CREDITORS

17. Based on the books and records of the Debtors, unsecured creditors consisting of landlords, trade suppliers, service providers and others are owed the following amounts:
 - a) FAB Wholesale - \$5.2 million
 - b) FAB Retail - \$0.7 million.
18. It should be noted that many of the suppliers for FAB Retail actually invoice FAB Wholesale as they are supplying products to both companies, and as such, the debts of the two companies are to some extent co-mingled.
19. We further note that the actual amounts owing may vary once a claims process has been put in place.

PROCEDURAL CONSOLIDATION

20. While separate NOIs were filed for each of FAB Retail and FAB Wholesale, as noted in the Liquidation Motion, the operations of the Debtors are co-mingled inasmuch as they operate with the same management team, from the same head office and distribution center, supplier obligations for FAB Retail are recorded in the books of FAB Wholesale and they share a line of credit from Accord.
21. As such, in order to more efficiently and effectively manage the NOI proceedings of the Debtors, they are requesting the procedural consolidation of both estates into a single court file. The Proposal Trustee supports the relief requested.

LIQUIDATION ORDER AND SALE GUIDELINES

22. As noted above, FAB Retail has determined that its best course of action is to discontinue its brick-and-mortar retail operations and liquidate all of the retail inventory and store fixtures and furnishings located in its stores. Accord, as the first ranking secured creditor, has been consulted and is in agreement with this strategy. Richter, which has been reviewing the options available to the Debtors prior to the commencement of the NOI proceedings is also in agreement.
23. Attached as an exhibit to the Liquidation Motion are the sale guidelines that FAB Retail intends to follow in order to conduct its store closing sales. The Proposal Trustee has reviewed the sale guidelines and supports their adoption as they are consistent with established guidelines that have been approved by courts in Canada including in Quebec.

24. The guidelines reflect that FAB Retail will remain in charge of its store closing sales. However, FAB Retail will be using the assistance of Continental Retail Services, which is a division of Continental Capital Investments Inc. ("**Continental**"). Continental is a well-known Quebec based liquidator with extensive experience in retail liquidations in Quebec and Canada. A formal agreement has not yet been concluded but it is anticipated that Continental will charge a fixed weekly fee to advise FAB Retail on pricing and liquidation strategies while FAB Retail will remain in overall control of the liquidation. Continental may provide additional services although this has not yet been determined.
25. The adoption of the guidelines will provide certainty to the landlords as to the method of conduct of the liquidation sale while at the same time minimizing or preventing disputes with landlords throughout the liquidation.

CONCLUSION

26. For the reasons outlined above, the Proposal Trustee supports the issuance of the conclusions sought in paragraph 4(d) of this report.

Respectfully submitted at Montreal, this 27th day of January 2020.

Richter Advisory Group Inc.
Trustee



Andrew Adessky, CPA, CA, CIRP, LIT



Eric Barbieri, CPA, CA, CTP, CIRP, LIT