

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.**

and

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

**THIRD REPORT OF THE PROPOSAL TRUSTEE
ON THE STATE OF PETITIONERS' BUSINESS AND FINANCIAL AFFAIRS
March 23, 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**"). An order was rendered on January 31, 2020 approving the Liquidation Motion (the "**Liquidation Order**").

4. On January 27, 2020, the Proposal Trustee filed its First Report in support of the Liquidation Motion (“**First Report**”).
5. On February 17, 2020, the Debtors filed the First Motion for the Extension of the Delay to File a Proposal (the “**First Extension Motion**”). On February 17, 2020, the Proposal Trustee filed its Second Report in support of the First Extension Motion (“**Second Report**”). The First Extension Motion was granted on February 20, 2020, providing an extension until April 3, 2020.
6. On March 23, 2020, the Debtors filed the Motion for the Issuance of an Order Approving a Transaction and Ordering the Assignment of Agreements (the “**Transaction Motion**”).
7. In order to monitor the affairs and finances of the Debtors, the Proposal Trustee has been provided with access to the books, records and other important documents of the Debtors.

PURPOSE OF THIS REPORT

8. The purpose of this Third Report is to provide this Court with information pertaining to:
 - a) The background and operations of the Debtors;
 - b) The Debtors’ creditors;
 - c) Post-filing operations;
 - d) The Sale and Investment Solicitation Process;
 - e) The Purchase Offer and Proposed Transaction; and
 - f) The Trustee’s recommendation that this Court render an order approving the Transaction Motion.

TERMS OF REFERENCE

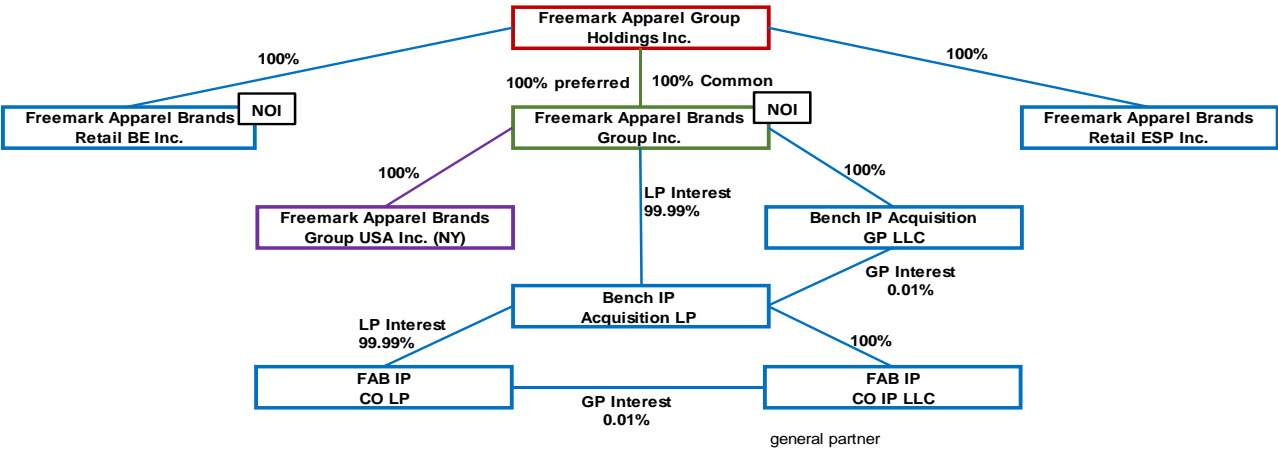
9. In preparing this Third Report, the Proposal Trustee has relied upon certain unaudited financial information prepared by the Debtors’ representatives, the Debtors’ books and records, and discussions with the Debtors’ representatives and legal counsel (the “**Information**”).
10. Except as otherwise described in this Third Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the Chartered Professional Accountant of Canada Handbook and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND AND OPERATIONS OF THE DEBTORS

12. The information concerning the background and operations was set out in the First Report but is being reproduced for ease of reference.

13. 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:



14. 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. As of the date of this report, all stores remain in operation.

15. 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.

16. 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. As noted below, the closure of the retail stores on March 19, 2020 will result in the termination of employment of the retail employees.

SECURED LENDERS

17. The information concerning the secured lenders and the unsecured creditors was set out in the First Report and Second Report but is being reproduced for ease of reference and to provide up to date information.

18. 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. Accord has a first ranking security on substantially all of the Debtors' assets with the exception of the GBB collateral (as summarized below). As of the date of this Report, the operating loan advances are approximately \$10.2 million;
 - 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 which excludes Mexico and Brazil ("**Bench Americas IP**"); and
 - c) Freemark Apparel Holdings Inc. ("**FAHI**") – \$14.7 million in respect of shareholders loans.
19. 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, amongst other things, that FAB Retail liquidate all of its inventory which is in process.
20. As noted in the First Extension Motion, the Debtors had discussions with GBB regarding a potential forbearance agreement, but nothing was concluded. We refer to the Transaction Motion for a full summary of the negotiations with GBB since the filing of the NOI.
21. The Proposal 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

22. 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.
23. 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.

24. We further note that the actual amounts owing may vary once a claims process has been put in place, in particular as landlords will have claims in respect of damages relating to the disclaimer of the retail leases.

POST-FILING OPERATIONS

25. Subsequent to the filing of the NOIs, FAB Retail commenced the liquidation of inventory in all of its retail locations. The initial plan was for FAB Retail to complete the closure of all retail locations by the end of April 2020. However, as a result of the impact of the coronavirus, and similar to many other retailers, FAB Retail closed all of its locations effective March 19, 2020 and intends to return all retail inventory to its Montreal warehouse and the inventory will be liquidated at a later date still to be determined. Further, on March 20, 2020, FAB Retail issued notices of disclaimer for all of its retail locations.
26. FAB Wholesale has been servicing its customers in the ordinary course of business. The impact of the coronavirus may impact this.
27. The Debtors are current on their payroll although as a result of the current economic environment, they have not yet paid rent for the period March 16 to March 30, 2020.

SALE AND INVESTMENT SOLICITATION PROCESS

28. The Debtors, with the assistance of the Proposal Trustee, launched a sale and investment solicitation process (the “**SISP**”) on February 7, 2020 in respect of (i) the Bench Americas IP; (ii) the current wholesale order book owned by FAB Wholesale, and (iii) the rights held by FAB Wholesale to exercise an option to purchase certain intellectual property owned by an affiliate of GBB in respect of licenses relating to the Bench brand for those territories not included in the Bench Americas IP (the “**Bench ROW IP**”) as more fully described in the Transaction Motion.
29. In respect of the SISP, we comment as follows:
- a) The SISP was launched with the issuance of a teaser (**Exhibit “A”**) to approximately 62 interested parties consisting of strategic buyers and financial investors;
 - b) The Proposal Trustee created a virtual data room with the necessary information to enable interested parties to evaluate the intellectual property and the wholesale business.
30. A total of seventeen (17) parties signed a confidentiality agreement and were granted access to the digital data room.
31. The bid deadline to submit an offer was March 6, 2020, at noon eastern time. This was extended to March 13, 2020 to allow certain interested parties to continue their due diligence. Pursuant to the

SISP, one offer was received by the bid deadline from 11951432 Canada Inc. (the “**Purchaser**”). Following a review of this offer, the Proposal Trustee in consultation with Accord and without consulting the Debtors concluded that this offer represented the best solution for various reasons set out below. Following discussions between the various stakeholders including the Proposal Trustee, an amended and restated offer to purchase was submitted (annexed to the Transaction Motion as Exhibit R-5A).

32. We understand that the Purchaser may be deemed to be related to the Debtors in that certain shareholders of the Debtors are also shareholders of the Purchaser. As noted below, it is the opinion of the Proposal Trustee that the conditions of Section 65.13(5) of the *Bankruptcy and Insolvency Act* (“**BIA**”) have been met in that good faith efforts were made to sell the assets to parties not related to the Debtors and that the consideration received is superior to any other offer made in accordance with the process.
33. As detailed in the Transaction Motion, notwithstanding the SISP, on March 11, 2020, GBB advised that it had engaged Hilco Streambank to conduct a public sale of the Bench America IP on March 30, 2020.

PURCHASE OFFER AND TRANSACTION

34. The proposed transaction can be summarized as follows:
 - a) Assets being purchased:
 - The Bench Americas IP;
 - The right to cause FAB Wholesale to nominate Wraith Holdings International Limited (“**Wraith**”) as the Purchaser’s designee to acquire the Bench ROW IP;
 - The wholesale order book as relates to orders for Costco to be shipped post-April 26, 2020; and
 - Certain other assets in Schedule B consisting of trademarks and designs, certain computer equipment, domain names, sample library, and the like.
 - b) As the offer is filed under seal, we summarize below the allocation of purchase price, and refer to the Transaction Motion for further details:
 - Payment in full to GBB in respect of Indebtedness owing by FAB Wholesale;
 - Payment to Accord (consisting of a cash payment and assumption of debt). Accord will not be paid in full; and
 - The right (but not the obligation) to assume up to \$12.5 million of the FAHI debt.

- c) Other terms and conditions, are summarized in the Transaction Motion and include:
- Assets are being purchased on an “as is where is” basis with no warranty whatsoever;
 - Assets must be free and clear of all liens;
 - Issuance by the Court of an acceptable Order;
 - Exercise of the special call option.

35. In supporting this proposed transaction, the Proposal Trustee considered the following:

- a) A full and complete sale process was launched and overseen by the Proposal Trustee and numerous interested parties performed due diligence on the assets thus ensuring that a good faith effort was made to sell the assets to parties not related to the Debtors;
- b) The transaction, if approved by the Court and completed, will allow for the payment in full of the GBB indebtedness, a substantial payment of the Accord indebtedness, and is supported by both Accord and FAHI;
- c) If the transaction is not completed, GBB will proceed to sell the Bench Americas IP by public sale on March 30, 2020, and it is uncertain if this will yield any amounts over and above the amount owed to GBB;
- d) This maximizes the recovery for both Accord and FAHI under the circumstances and provides for the payment in full of GBB; and
- e) The creation of a new business which will also preserve some jobs, albeit on a smaller scale.

CONCLUSION

36. For the reasons outlined above, the Proposal Trustee supports the issuance of the conclusions sought in paragraph 8(f) of this report.

Respectfully submitted at Montreal, this 23rd day of March 2020

Richter Advisory Group Inc.

Trustee



Andrew Adessky, CPA, CA, CIRP, LIT



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

Exhibit A

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

Brand Overview

Bench.



“From humble beginnings to global status...”

- Inspired by an active 24hr lifestyle, Bench is a brand that designs, sources, and markets clothing and accessories for men, women and kids. Born in the heart of Manchester, England, it originated in the late 80s as a niche t-shirt brand.
- The brand direction today is inspired by multipurpose city clothing. The hoodie is an iconic piece of Bench heritage and has become a staple in each season’s collection. Bench offers two core categories of products: athleisure and streetwear.
- These categories are rooted in the brand DNA and sustained by a contemporary and functional approach to product design. From humble beginnings to global status, Bench has become renowned for offering fashionable, comfortable, and timeless pieces.

Bench is an ideal fit for multi-brand licensing groups and/or wholesaler-distributors wishing to expand their brand portfolio, as well as for North American or European retailers seeking a competitive edge by securing exclusive rights to a world class athleisure street brand.

BRAND ACQUISITION OPPORTUNITY

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Key Investment Considerations



Multi-channel distribution network and strong licensees

The brand has a multi-channel distribution network, including wholesale and ecommerce, with annual sales exceeding 5 million units in Canada.

Canadian wholesale distribution: Costco, Mark's, Saks Off 5th, Winners & other major wholesale accounts.

Canadian specialty products licensees: Multiple well-established licensees in various product categories.

European distribution:

- Main licensee is a major UK brand distributor, which has been a mainstay at the forefront of the fast fashion sector within the UK and worldwide for more than 20 years.
- Specialty Bench products are also distributed in Germany and other European markets via several additional licensees.

Significant growth potential

Bench is positioned for major growth in multiple channels:

- U.S. wholesale & licensing: *significant opportunity to expand brand awareness in US market.*
- Licensing of non-core categories in existing markets: *discussions under way to add eyewear and bedding licenses in NA.*
- Growth of existing Canadian and US E-Commerce, and launch of Global E-Commerce: *currently more than 250,000 registered online users in Canada.*
- US & International Costco.
- Global licensing.

Strong brand equity

Bench is widely recognized for its multipurpose city clothing and has built extremely strong equity in Canada, the UK and Germany. The Brand is currently widely available in those markets.

Investment opportunity

FAB is seeking to monetize its interest in the Bench Brand via a sale transaction either to a single purchaser interested in owning the Global Bench IP, or multiple acquirers interested in regional ownership of the Bench Brand (Canada, USA, rest of world). FAB will also entertain opportunities to enter into a strategic partnership.

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

Financial Overview

- Worldwide annual sales CAD \$125M at wholesale value
- Royalty revenues in excess of CAD \$9.5M

Canada

~\$80M Sales at Wholesale
\$6.0M Annual Royalties

Europe

~\$45M Sales at Wholesale
\$3.6M Annual Royalties

Sale and Investment Solicitation Process

- On January 21, 2020, Freemark Apparel Brands Group Inc. ("FAB") filed a Notice of Intention to Make a Proposal ("NOI") under the Bankruptcy and Insolvency Act ("BIA").
- Richter Advisory Group Inc. ("Richter" or "Trustee") was named Trustee.
- Richter is conducting an accelerated formal sale and investment solicitation process for the intellectual property and current order book owned by FAB.
- Detailed information relating to the Bench intellectual property will be made available, in a virtual data room, upon signature and receipt by Richter of the Confidentiality Agreement (attached hereto). All inquiries and any requests for additional information should be made directly to Richter.
- Upon execution of the Confidentiality Agreement, interested parties will also be provided with a process letter setting out the terms of the solicitation process and associated timelines. **Interested parties will be required to submit Binding Offers by no later than 12:00 PM ET on Friday, March 6, 2020.**
- Documents relating to the NOI are available on the Trustee's website at:
<https://www.richter.ca/insolvencycase/freemark-apparel/>
- Any transaction will be subject to approval by the Court and secured lenders.

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

About Richter

Founded in Montréal in 1926, Richter is a licensed public accounting firm that provides assurance, tax and wealth management services, as well as financial advisory services in the areas of organizational restructuring, business valuation, corporate finance, litigation support, and forensic accounting. Richter has offices in Toronto, Montréal and Chicago. Our team is composed of more than 450 partners, specialists, high level professionals and administrative staff.

Confidentiality and Disclaimer

This document has been prepared based on information provided by our client and is intended to provide preliminary information to interested parties to formulate the basis of their investment and/or transaction intent. The information contained herein is confidential and proprietary to our client. Accordingly, the reader agrees to treat all information as strictly confidential and shall not disclose, either in part or in whole, to any party not directly involved in the investment and/or transaction decision.

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**Enquiries concerning this Investment Opportunity
should be directed to**

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