

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

No: 500-11-057805-208  
No: 500-11-057804-201

DATE: March 27, 2020

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**PRESIDING: MARIE-ANNE PAQUETTE, J.S.C.**

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**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF:**

**FREEMARK APPAREL BRANDS RETAIL BE INC.**

-and-

**FREEMARK APPAREL BRANDS GROUP INC.**

Debtors/Petitioners

-and-

**RICHTER ADVISORY GROUP INC.**

Trustee

-and-

**THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL  
RIGHTS (QUÉBEC)**

Mis-en-cause

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**ORDER APPROVING A TRANSACTION AND ORDERING THE ASSIGNMENT OF  
AGREEMENTS**

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**ON READING** the *Motion for the Issuance of an Order Approving a Transaction and Ordering the Assignment of Agreements* (the "**Motion**") filed by the Debtors/Petitioners, Freemark Apparel Brands Retail BE Inc. ("**FAB Retail**") and Freemark Apparel Brands

Group Inc. ("**FAB Wholesale**" and, together with FAB Retail, the "**Debtors**"), including the exhibits and the affidavit in support thereof, as well as the report of the Trustee dated March 23, 2020;

**GIVEN** the submissions of the Debtors at the hearing on the Motion;

**GIVEN** the filing by each of the Debtors of a *Notice of Intention to Make a Proposal* ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**");

**GIVEN** the absence of opposition to the Motion;

**SEEING** that it is appropriate to issue an order:

- a) approving the transaction (the "**Transaction**") contemplated in the Amended and Restated Offer to Purchase (the "**Purchase Agreement**") by and between FAB Wholesale and 11951432 Canada Inc. (the "**Purchaser**") a copy of which was filed under seal as Exhibit R-5 in support of the Motion;
- b) authorizing the repayment by FAB Wholesale of all amounts owing to Bench IP Holdings LLC ("**GB Bench Holdings**"), an affiliate of Gordon Brothers Brands LLC ("**GBB**"), pursuant to the GBB Loan Agreement (as defined in the Purchase Agreement);
- c) vesting in the Purchaser the Purchased Assets (as defined in the Purchase Agreement), free and clear of any and all Encumbrances (as defined hereinafter);
- d) ordering the assignment in favour of the Purchaser of FAB Wholesale's rights and obligations under the purchase orders described in Schedule "A" hereto (the "**Purchase Orders**"). The Purchaser Orders exclude any Canadian wholesale orders placed with FAB Wholesale and shipped to Costco on or prior to April 26, 2020 and further excludes all bookings for products to fulfil such excluded purchase orders and excludes all present and future inventory of products that are intended for such excluded purchase orders (the "**Excluded Purchase Orders and Inventory**"), provided however that the Purchaser shall have the right to acquire from FAB Wholesale at FAB Wholesale's full landed cost inventory remaining on hand after April 26, 2020 that the Purchaser requires to fulfill the Purchase Orders;
- e) ordering the assignment of FAB Wholesale's rights and obligations under the sublicenses described in Schedule "B" hereto (the "**Assigned Sublicenses**") in favour of FAB IP CO LP ("**FAB IP**");
- f) ratifying the Special Call Exercise (as defined in the Purchase Agreement);
- g) authorizing and approving the designation of Wraith Holdings International Limited ("**Wraith**") by the Purchaser as the purchaser for the purposes of the ROW IP Conveyance (as defined in the Purchase Agreement) pursuant to the Special Option (as defined in the Purchase Agreement) and/or the assignment in favour of Wraith of the rights and obligations of FAB Wholesale pursuant to the Put/Call and

Special Option Agreement dated as of October 18, 2018 (the “**Special Option Agreement**”) (exhibit R-2 in support of the Motion); and

- h) authorizing the termination of the Merchandise and Retail License Agreement (the “**Internal License Agreement**”) entered into as of October 18, 2018 between FAB IP and FAB Wholesale, provided that, notwithstanding the termination of the Internal License Agreement, FAB Wholesale, Accord Financial Inc. (“**Accord**”), and any receiver appointed by Accord or any trustee in bankruptcy appointed in respect of FAB Wholesale shall be entitled to sell all of the remaining Bench branded products, including Bench branded products on order and not yet delivered, within Canada and on a non-exclusive and royalty-free basis, for such time period as may be required (the “**Sell-Off Right**”).

**FOR THESE REASONS, THE COURT HEREBY:**

1. **GRANTS** the Motion;

**DEFINITIONS**

2. **ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the Motion;

**SERVICE AND NOTICE**

3. **DECLARES** that sufficient prior notice of the presentation of the Motion has been provided by the Debtors to interested parties, including, without limitation, the Debtors’ secured creditors, and that the Motion is properly returnable today;
4. **PERMITS** the service of this Order at any time and place and by any means whatsoever, including, without limitation, by email;
5. **DECLARES** that the parties to the Assigned Sublicenses (the “**License Counterparties**”) and to the Purchase Orders (the “**PO Counterparties**”) have received adequate notice of the Motion pursuant to section 84.1 *BIA*;

**APPROVAL OF TRANSACTION**

6. **ORDERS** and **DECLARES** that the Transaction is hereby approved and that the execution by FAB Wholesale of the Purchase Agreement, and of all documents and writings, and the performance by FAB Wholesale of all acts, necessary or useful to give effect to the Transaction, and the completion of the Transaction, are hereby authorized and approved, with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee;
7. **ORDERS** and **DECLARES** that the Special Call Exercise is hereby authorized and ratified, as well as the designation of Wraith as purchaser under the Special Option and/or the assignment in favour of Wraith of the rights and obligations of FAB Wholesale pursuant to the Special Option Agreement;



8. **ORDERS** and **DECLARES** that the repayment by FAB Wholesale of all amounts owing to GB Bench Holdings under the GBB Loan Agreement is hereby authorized and approved and, for greater certainty, **PRAYS ACT** that GB Bench Holdings will distribute the repayment proceeds to GBB or such party as GBB may designate;
9. **ORDERS** and **DECLARES** that the termination of the Internal License Agreement is hereby authorized and approved, subject to the Sell-Off Right;
10. **AUTHORIZES** the Purchaser to acquire from FAB Wholesale at FAB Wholesale's full landed cost inventory remaining on hand after April 26, 2020 that the Purchaser requires to fulfill the Purchase Orders;

#### **ASSIGNMENT OF SUBLICENSES**

11. **ORDERS** and **DECLARES** that, upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), the rights, benefits, obligations and interests of FAB Wholesale under the Assigned Sublicenses shall be automatically and irrevocably assigned to FAB IP without any further consent or approval or this Court;
12. **ORDERS** that any monetary defaults of FAB Wholesale in relation to the Assigned Sublicenses – other than those arising by reason only of the insolvency of FAB Wholesale, the commencement of proceedings under the *BIA* or the failure to perform non-monetary obligations – shall be remedied on or before May 1, 2020;
13. **ORDERS** that any anti-assignment or consent-to-assignment provisions in any Assigned Sublicenses shall not restrict, limit, impair, prohibit or otherwise affect the assignment of the Assigned Sublicenses provided by this Order;
14. **ORDERS** that the Assigned Sublicenses shall be valid and binding and in full force and effect and enforceable by FAB IP in accordance with their terms for the benefit of FAB IP;
15. **ORDERS** and **DIRECTS** FAB Wholesale to notify a copy of this Order to each of the License Counterparties in the same manner as such License Counterparty was notified of the Motion;
16. **AUTHORIZES** the Debtors to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assigned Sublicenses to FAB IP in accordance with this Order;

#### **ASSIGNMENT OF THE PURCHASE ORDERS**

17. **ORDERS** and **DECLARES** that, upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), the rights, benefits, obligations and interests of FAB Wholesale under the Purchase Orders (which, for certainty, shall exclude the Excluded Purchase Orders and Inventory) shall be automatically and irrevocably assigned to the Purchaser without any further consent or approval or this Court;

18. **ORDERS** that any monetary defaults of FAB Wholesale in relation to the Purchase Orders – other than those arising by reason only of the insolvency of FAB Wholesale, the commencement of proceedings under the *BIA* or the failure to perform non-monetary obligations – shall be remedied on or before May 1, 2020;
19. **ORDERS** that any anti-assignment or consent-to-assignment provisions in any Purchase Orders shall not restrict, limit, impair, prohibit or otherwise affect the assignment of the Purchase Orders provided by this Order;
20. **ORDERS** that the Purchase Orders shall be valid and binding and in full force and effect and enforceable by the Purchaser in accordance with their terms for the benefit of the Purchaser;
21. **ORDERS** and **DIRECTS** FAB Wholesale to notify a copy of this Order to each of the PO Counterparties in the same manner as such PO Counterparty was notified of the Motion;
22. **AUTHORIZES** the Debtors to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Purchase Orders to the Purchaser in accordance with this Order;

#### **VESTING OF PURCHASED ASSETS**

23. **ORDERS** and **DECLARES** that upon the issuance of the Certificate, all rights, title and interest in and to the Purchased Assets (which, for greater certainty, shall exclude the Excluded Purchase Orders and Inventory) shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Ontario, Alberta, British Columbia, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island or Newfoundland and Labrador Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate;
24. **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof;

#### **CANCELLATION OF SECURITY REGISTRATIONS**



**For Quebec Property:**

25. **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to (i) reduce the scope of registrations number 17-0472371-0001, 17-0472371-0002, 17-1142744-0001 and 17-1142790-0001 in connection with the Purchased Assets and (ii) to strike registrations number 18-1160692-0001 and 18-1160779-0001 in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations;

**For Property Outside Quebec:**

26. **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry, the British Columbia Property Registry, the Alberta Personal Property Registry, the Saskatchewan Personal Property Registry, the Manitoba Personal Property Registry, the New-Brunswick Personal Property Registry, the Nova Scotia Personal Property Registry, the Prince Edward Island Personal Property Registry and the Newfoundland Personal Property Registry (collectively, the "PPR") as may be necessary, from any registration filed against FAB Wholesale in the PPR, provided that FAB Wholesale shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and that FAB Wholesale shall be authorized to take any further steps by way of further application to this Court;
27. **ORDERS** that the Purchaser or FAB Wholesale shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances;

**VALIDITY OF TRANSACTION, ASSIGNMENT OF SUBLICENSES AND ASSIGNMENT OF PURCHASE ORDERS**

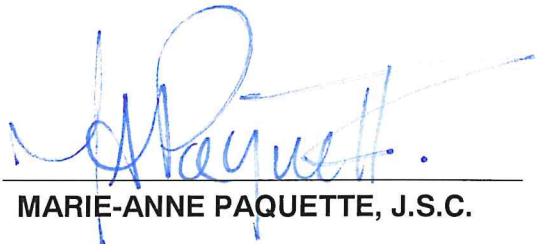
28. **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
  - b) any petition for a receiving or bankruptcy order now or hereafter issued pursuant to the *BIA* and any order issued pursuant to such petition, or any assignment in bankruptcy; or
  - c) the provisions of any federal or provincial legislation;

The Transaction, the assignment of the Assigned Sublicenses to FAB IP, the assignment of the Purchase Orders to the Purchaser and the vesting of the Purchased Assets in the Purchaser in accordance with this Order, as well as any payments made or actions taken pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *BIA* or any other applicable

federal or provincial legislation, as against the Debtors, the Purchaser, FAB IP or the Trustee;

**GENERAL**

29. **ORDERS** that Exhibits R-3 and R-5 in support of the Motion be kept confidential and under seal until further order of this Court;
30. **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
31. **DECLARES** that the Debtors shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Debtors as may be deemed necessary or appropriate for that purpose;
32. **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
33. **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
34. **THE WHOLE** without costs.



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MARIE-ANNE PAQUETTE, J.S.C.

**Schedule "A"**  
**ASSIGNED PURCHASE ORDERS**  
**(see attached)**



STYLE	NO	SEAS	STYLE DESCRIPTION
BLMG12963D (Item# 3904XXX)	8	S20T	MENS LS TEE
BLWK01874C (Item# 190190X)	9	S20T	LADIES long softshell coat LADIES Active Short with Bench Active Logo
BLLB10531C	10	F19	MENS Softshell Bomber Jacket
BMKD0038C	11	F19	LADIES BENCH FULL ZIP MOCK NECK JACKET
BOWE3479C	12	S20T	GIRLS BBQ JACKET
BGKK0245C	13	S20	LADIES Active leggings
BPWN00098C	14	S20	MENS POLO
MENS POLO	15	S20	MENS SS TEE
BLMG00983C	16	S20	MENS BOARD-SHORT w zipper lamination
BPMB01475C	17	S20	LADIES SS TEE
BLWG03446C	18	S20	LADIES Packable Windbreaker
BLWK01868C	19	S20	MENS Packable Windbreaker
BLMK01868C	20	S20	
BLWED03538C	21	S20	LADIES long zipup hoodie
BLWK02645C	22	S20	LADIES COTTON MIX FULL ZIP JACKET
BMEF00145C	23	S20	MENS Full Zip Jacket
BMED2315C	24	S20	MENS Pullover Hoodie
BLMF00073D	25	F20TR	MENS OTTOMAN SWEATER
BMEA0831W	26	F20TR	MENS Headway Zip Up Jacket
BKBN02100E	27	F20TR	BOYS LOGO JOGGER
BGND0215E	28	F20TR	GIRLS LOGO JOGGER
Confirmed	29	F20	MENS LOGO JOGGER
Confirmed	30	F20	UNISEX BEANIE 2PK
Confirmed	31	ECON F20	LADIES LONG PUFFER
Confirmed	32	ECON F20	LADIES Oversized Logo Hoodie

**Schedule "B"**  
**ASSIGNED SUBLICENSES**

1. Sub-License Agreement made effective as of January 29, 2019 between Freemark Apparel Brands Group Inc. and Jovi Sports Inc.
2. Sub-License Agreement made effective as of January 8, 2019 between Freemark Apparel Brands Group Inc. and TP-Holiday Group Limited
3. Sub-License Agreement made effective as of January 31, 2019 between Freemark Apparel Brands Group Inc. and AC12 Apparel Inc.
4. Sub-License Agreement made effective as of April 15, 2019 between Freemark Apparel Brands Group Inc. and Lamour Global Inc. (mens' and boys' underwear), as amended by the parties December 2019
5. Sub-License Agreement made effective as of April 15, 2019 between Freemark Apparel Brands Group Inc. and Lamour Global Inc. (socks, intimates, packaged t-shirts)

Schedule "C"

TRUSTEE'S CERTIFICATE

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

SUPERIOR COURT

(Commercial Division)

(Sitting as a court designated pursuant  
to the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. C-36)

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NO: 500-11-057804-201

NO: 500-11-057805-208

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

FREEMARK APPAREL BRANDS  
RETAIL BE INC.

-and-

FREEMARK APPAREL BRANDS  
GROUP INC.

Debtors/Petitioners

-and-

RICHTER ADVISORY GROUP INC.

Trustee

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CERTIFICATE OF THE TRUSTEE

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RECITALS:

**WHEREAS** on February 21, 2020, Freemark Apparel Brands Group Inc. ("**FAB Wholesale**") filed a notice of intention to make a proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**");

**WHEREAS** pursuant to the terms of the NOI, Richter Advisory Group Inc. (the "**Trustee**") was named trustee of the NOI;



**WHEREAS** on March ●, 2020 the Superior Court of Québec issued an Order (the "**Approval and Vesting Order**") thereby, *inter alia*, authorizing and approving a transaction (the "**Transaction**") and the execution by FAB Wholesale of an agreement (the "**Purchase Agreement**") by and between FAB Wholesale, as vendor (the "**Vendor**") and 11951432 Canada Inc., as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and of all documents and writings necessary to give effect to the Transaction (together with the Purchase Agreement, the "**Transactional Documents**"), with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee.

**WHEREAS** the Approval and Vesting Order contemplates the issuance of this Certificate of the Trustee once the (a) the Transactional Documents has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

**THE TRUSTEE CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER OF THE FOLLOWING:**

- (a) the Transactional Documents have been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee at \_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

Richter Advisory Group Inc. in its capacity as trustee, and not in its personal capacity.

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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