

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**



THE HONOURABLE)
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HAINES

FRIDAY, THE 2ND

DAY OF NOVEMBER, 2018

Court File No. 31-2436097

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
FLUID BRANDS INC.**

(Court Seal)

Court File No. 31-2436108

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
11041037 CANADA INC.**

Court File No. 31-2436109

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL
OF 11041045 CANADA INC.**

LIQUIDATION PROCESS ORDER

THIS MOTION, made by Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (the "Debtors") for an Order, among other things, approving the consulting agreement entered into between the Debtors herein and Merchant Retail Solutions ULC and Gordon Brothers Canada ULC (the "Consulting Agreement") and other related relief was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Notice of Motion of the Debtors, in particular, the Affidavit of Fred Benitah, sworn November 1, 2018 and on reading the First Report to Court of the Proposal Trustee and on hearing the submissions of the counsel for the Debtors, counsel for the Proposal Trustee and counsel for the Canadian Imperial Bank of Commerce, being the first-ranking secured creditor and primary operating lender of the Debtors, *and such other persons listed on the counsel slip*

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SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the Consulting Agreement.

APPROVAL OF THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sale Guidelines attached hereto as Schedule "A" (the "Sale Guidelines"), and the transactions contemplated under the Consulting Agreement, including *Agreement* the Sale Guidelines, are hereby approved with such minor amendments *to the consulting (but not the sale guidelines)* as the Debtors, with the consent of the Proposal Trustee, and the Consultant may deem necessary and agree to in writing. Subject to the provisions of this Order, the Debtors, and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement and the Sale Guidelines and each of the transactions contemplated therein.

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THE SALE

4. **THIS COURT ORDERS** that the Debtors, with the assistance of the Consultant, is authorized and directed to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores, all in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve each conflict is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that the Debtors, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E, free and clear of all liens, claims, encumbrances, security interests, hypothecs, prior claims, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by this Order and any other charges hereinafter granted by this Court in these proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances"), which Claims will attach instead to the proceeds received from the Merchandise and the FF&E, other than amounts due and payable to the Consultant by the Debtors

under the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

6. **THIS COURT ORDERS** that, subject to the terms of this Order and the Sale Guidelines, the Consultant shall have the right to use the Stores and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of the Debtors as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the Debtors' stay of proceedings provided under section 69 or section 69.1 of the BIA, as applicable and as such stay may be extended from time to time.

7. **THIS COURT ORDERS** that until the Sale Termination Date or such earlier date as a lease is disclaimed in accordance with the BIA, the Consultant shall have access to the Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Debtors and the Debtors have granted the right of access to the applicable Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Debtors shall pay amounts constituting rent or payable as rent under real property leases (including for greater certainty, common area maintenance charges, utilities, and realty taxes and any other amounts payable to the landlord under the lease) (collectively, "Rent") or as otherwise may be negotiated between the Debtors and the landlord from time to time in accordance with the terms of the applicable real property ^{lease} on the first business day of each month, in advance (but not in arrears). Upon delivery of a notice of disclaimer or resiliation, the



Debtors shall pay all Rent owing by the Debtors to the applicable landlord in respect of such lease due for the notice period stipulated in the BIA to the extent that Rent for such period has not already been paid.

9. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Stores. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease.

10. **THIS COURT ORDERS** that nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

11. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the Debtors' trademarks, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Debtors to use the trade names, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement, the Sale Guidelines and this Order, provided that the Consultant provides the Debtors with a copy of any proposed advertising two days prior to its use in the Sale.

CONSULTANT LIABILITY

12. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to the Debtors and that it shall not be liable for any claims against the Debtors other than as expressly provided in the Consulting Agreement or the Sale Guidelines. More specifically:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores or the assets located therein or associated therewith or of the Debtors' employees located at the Stores or any other property of the Debtors;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) The Debtors shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores during and after the term of the Consulting Agreement, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

13. **THIS COURT ORDERS** to the extent any of the Debtors' landlords may have a claim against the Debtors arising solely out of the conduct of the Consultant in conducting the Sale for

which the Debtors have claims against the Consultant under the Consulting Agreement, the Debtors shall be deemed to have assigned free and clear such claims to the applicable landlord (the "Assigned Landlord Rights"); provided that each such landlord shall only be permitted to advance each such claims against the Consultant if written notice, including the reasonable details of such claims, is provided by such Landlord to the Consultant, the Debtors and the Proposal Trustee during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date.

CONSULTANT AS UNAFFECTED CREDITOR

14. **THIS COURT ORDERS** that, in accordance with section 69.4 of the BIA, and subject only to paragraph 6 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of the Debtors and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the "Consultant's Claims"), the Consultant shall be treated as an unaffected creditor in the context of the present proceedings and in any proposal.

15. **THIS COURT ORDERS** that notwithstanding the terms of any order issued by this Court in the context of the present proceedings or the terms of the ~~BIA~~, the Debtors shall not be entitled to repudiate, disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

16. **THIS COURT ORDERS** that the Debtors are hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

17. **THIS COURT ORDERS** that no Claims shall attach to any amounts payable by the Debtors to the Consultant pursuant to the Consulting Agreement, including any amounts that must

be reimbursed by the Debtors to the Consultant, and the Debtors shall pay any such amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

18. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Debtors or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively, the "Agreement") which binds the Debtors:

- (a) the Consulting Agreement and the transactions and actions provided for and contemplated therein (including the Sale Guidelines), including, without limitation, the payment of amounts due to the Consultant; and
- (b) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

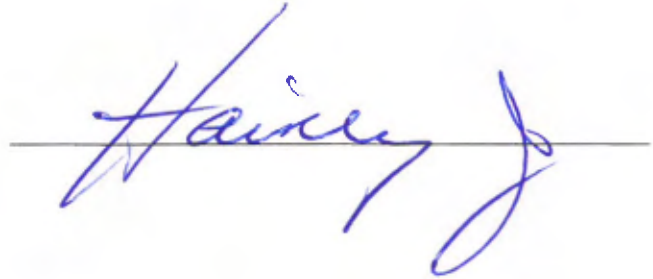
19. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Debtors or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of any of the Debtors; (d) the provisions of any federal or provincial statute; or (e) any Agreement which binds the Debtors, any obligation to clean up or repair any of the leased premises contained in this Order or the Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Debtors and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

GENERAL

20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist the Debtors, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtors and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that any interested party (including the Debtors and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Hainey".

SCHEDULE A

SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of 11041037 Canada Inc., and 11041045 Canada Inc. (collectively, the "Merchant"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC (the "Consultant") and the Merchant dated as of October 31, 2018 (the "Consulting Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order dated November 2, 2018 approving the Consulting Agreement (the "Approval Order") or any further Order of the Ontario Superior Court of Justice (Commercial List) (the "Court"); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement. *Such sale to end no later than January 31, 2019.*
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an "everything on sale", an "everything must go", a "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Proposal Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to

as per attached

utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the NOI proceedings (the "Service List"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Sarah Baker who may be reached by phone at 847-504-2462 or email at sbaker@hilcoglobal.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FLUID BRANDS INC.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041037 CANADA INC.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041045 CANADA INC.

Court File Nos. 31-2436097, 31-2436108 & 31-2436109

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

LIQUIDATION PROCESS ORDER

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