

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.:500-11-052107-170  
500-11-052109-176

S U P E R I O R C O U R T  
(Commercial Division)  
(Sitting as a Court designated pursuant to the  
*Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3 (the "*BIA*")

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

**FREEMARK APPAREL BRANDS INC.**

- and -

**FREEMARK APPAREL BRANDS TEC INC.**

Debtors/Petitioners

- and -

**RICHTER ADVISORY GROUP INC.**

Trustee

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**MOTION FOR AN AUTHORIZATION TO SELL  
ASSETS OF THE DEBTORS AND THE ISSUANCE OF A VESTING ORDER  
(Section 65.13 *BIA*)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE REGISTRAR, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTORS/PETITIONERS FREEMARK APPAREL BRANDS INC. AND FREEMARK APPAREL BRANDS TEC INC. RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. On February 17, 2017, each of Freemark Apparel Brands Inc ("**FABI**") and Freemark Apparel Brands TEC Inc. ("**FABT**") filed a Notice of Intention to Make a Proposal (the "**NOI**"), the whole as more fully appears from the Court record.
2. On February 23, 2017, this Court ordered a joint administration of FABI's notice of intention to make a proposal with the notices of intention to make a proposal of FABT, FABE and FABU (as defined herein at para. 6).
3. By the present motion, FABI and FABT respectfully seek the issuance of an approval and vesting order authorizing the sale of the Scotch & Soda apparel business to Scotch & Soda Export B.V. and Scotch & Soda Retail Canada Inc.

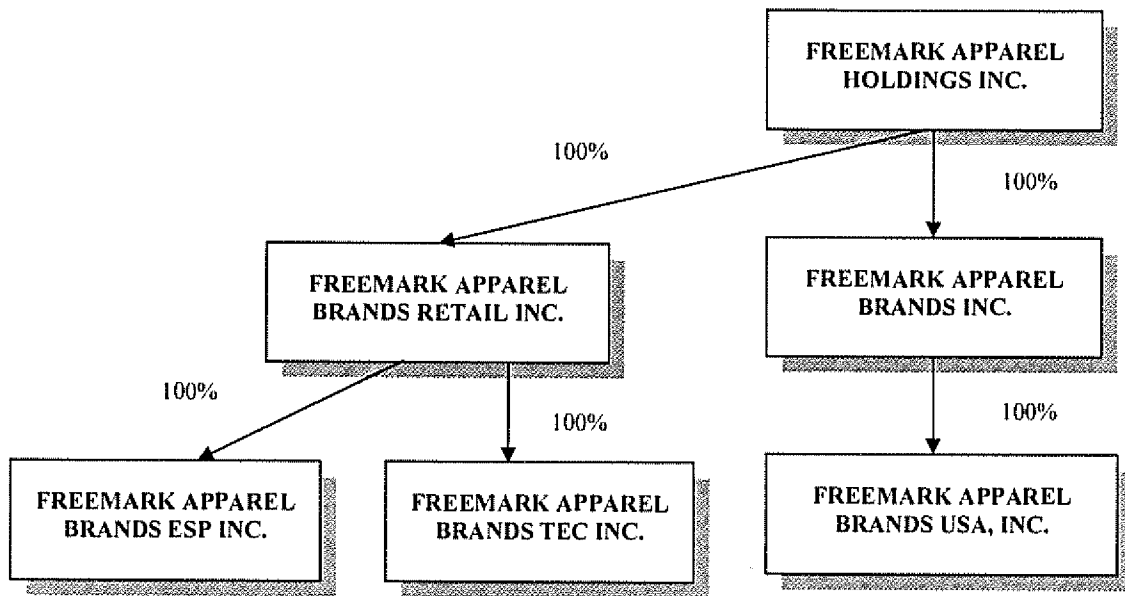
(together, the "**Purchasers**", and each a "**Purchaser**"), as set out more particularly herein.

4. On March 2, 2017, FABI and Scotch & Soda Export B.V. ("**S&S Export**"), a Dutch-based international fashion company, executed an asset purchase agreement generally related to the Scotch & Soda label wholesale apparel business (the "**Wholesale APA**"). Also on March 2, 2017, FABI and Scotch & Soda Retail Canada Inc. ("**S&S Retail**") entered into an asset purchase agreement generally related to the Scotch & Soda label retail apparel business (the "**Retail APA**", and together with the Wholesale APA, the "**APAs**"). The transactions contemplated in both the Wholesale APA and Retail APA are subject to this Court's approval and issuance of an approval and vesting order substantially in the form attached hereto as **Exhibit R-1** (the "**Approval and Vesting Order**").
5. As described more particularly below, the Wholesale APA and the Retail APA provide for, and FABI and FABI are respectfully seeking this Court's approval for:
  - a) the authorization to complete the sale of the assets contemplated in the APAs therefore allowing for the closing of the Contemplated Transaction (as defined herein at para. 17) and vesting in and to the Purchasers all of the right, title and interest in and to the Purchased Assets (as defined herein at para. 17) free and clear of all claims, liens, hypothecs, security interests and other encumbrances, as set out more specifically in the Approval and Vesting Order;
  - b) the assignment of the Leases (as defined herein in para. 17); and
  - c) all necessary orders of this Court so as to allow for the closing of the APAs, in accordance with their terms,

the whole as more fully set forth hereunder.

## **II. THE BUSINESS AND HISTORICAL BACKGROUND**

6. FABI is owned by Freemark Apparel Holdings Inc. ("**FAHI**") which also owns Freemark Apparel Brands Retail Inc. ("**FABRI**") which in turn owns Freemark Apparel Brands ESP Inc. ("**FABE**") and FABI. FABI also owns Freemark Apparel Brands USA, Inc. ("**FABU**") (FABI, FAHI, FABE, FABRI, FABI and FABU are collectively hereinafter defined as the "**FAB Group**").
7. The FAB Group organizational chart can be represented as follows:



8. The FAB Group is a premier retailer of branded apparel, operating since 2004.
9. FABI and FAT operate 58 retail locations throughout Canada under the following banners: Bench, Scotch & Soda, Esprit and Thread+Copper. FAT operates the Bench, Scotch & Soda and Thread+Copper stores while FABI operates the Esprit stores.
10. Pursuant to a distribution agreement entered into among FABI and S&S Export, as of February 1, 2008 (the "**S&S Distribution Agreement**"), FABI obtained an exclusive license to carry out wholesale apparel sales in respect of Scotch & Soda label apparel in Canada. FABI operates the wholesale business of the FAB Group in Canada with respect to the Scotch & Soda products. FABI has long-standing wholesale customer relationships with The Bay, Simons, Winners, Saks Off 5<sup>th</sup> and many other retailers.
11. Pursuant to a retail agreement between Freemark Apparel Brands Retail SS Inc. (subsequently assigned to FAT upon the dissolution of the aforementioned Freemark entity) and S&S Export, FAT obtained an exclusive license to operate retail store outlets offering Scotch & Soda apparel and related products for sale.
12. FAT operates five retail store outlets under the Scotch & Soda banner located in Laval, Toronto, Calgary, Edmonton and Richmond (collectively, the "**Stores**"). All of the Stores are built and organized in accordance with the standards set forth by S&S Export.
13. The wholesale and retail business described in paragraphs 11 and 12 are referred herein as the "**S&S Business**".

14. As of today, the book value of the assets of the S&S Business being sold as part of the Contemplated Transaction can be divided as follows:
- (i) Inventory: \$2.8M;
  - (ii) Store assets: \$1.5M and
  - (ii) Showroom fixture: \$0.1M.

### III. THE SALE OF FABI AND FABT'S ASSETS

15. Prior to the filing of the NOI, the FAB Group approached S&S Export to discuss its upcoming restructuring and its liquidity issues. Amongst the alternatives discussed, S&S Export then offered to purchase the S&S Business from the FAB Group which would provide some liquidity to the FAB Group.
16. On February 22, 2017, FABI and FABT entered into a non-binding letter of intent with S&S Export to purchase certain assets related to the S&S Business.
17. Viewed as a single transaction (the "**Contemplated Transaction**"), the Wholesale APA and the Retail APA, if approved by this Court and subject to the satisfaction of certain conditions precedent set out therein, will permit the Purchasers to acquire, among other things:
- (i.) under the Retail APA, all of FABT's right, title and interest in the two Scotch & Soda store leases in Laval, Quebec and Richmond, British Columbia pursuant to the Lease Agreement dated August 4, 2016 between FABT and Le Carrefour Laval (2013) Inc. (the "**Laval Landlord**") and the Lease Agreement dated November 4, 2015 amongst FABT and Ontrea Inc. and Ivanhoe Cambridge II Inc. by their agent Cadillac Fairview Corporation Limited (the "**Richmond Landlord**") (together referred to as the "**Leases**"), respectively;
  - (ii.) under the Retail APA, the furniture and fixtures for all Scotch & Soda retail stores outlets;
  - (iii.) under the Retail APA, S&S Retail will continue to employ substantially all of the Store employees for the Laval and Richmond locations, and may make offers of employment to retail employees at the three other Scotch & Soda store locations (which leases have been disclaimed by FABT), if S&S Export is able to negotiate lease terms with the landlords at those store locations;
  - (iv.) under the Wholesale APA, all right, title and interest in the following assets used in the wholesale portion of the S&S Business: the full and detailed customer list (contact details, key terms, etc.) and all customer contracts and orders (including all delivery extensions) with and by wholesale customers for Scotch & Soda products, including without limitation, such

customer lists, contracts and orders related to Fall/Winter 2017 Scotch & Soda products;

- (v.) under the Wholesale APA, all right, title and interest in the inventory of Scotch & Soda products (including all Spring/Summer 2017 Scotch & Soda products and all "Never out of stock"/core inventory regardless of the season) owned or currently held by FABI and FABT (including, for greater certainty, any such inventory that is currently in FABI and FABT's possession or in transit); and
- (vi.) under the Wholesale APA, all of the Scotch & Soda wholesale merchandise showroom fixtures situated at 5640 Paré Street, Montreal, Quebec,

(collectively the "**Purchased Assets**"), the whole as more fully appears from the APAs.

- 18. The Purchased Assets do not include cash, cash equivalents or accounts receivables.
- 19. The material terms of the Contemplated Transaction, as set out in the APAs, are as follows:
  - (i.) the aggregate cash consideration for the Purchased Assets will be \$2,225,312.72 comprised of an amount of \$317,312.72 under the Wholesale APA and \$1,908,000.00 under the Retail APA (subject in both cases to certain adjustments set out in the APAs);
  - (ii.) under the Wholesale APA, FABI will transfer and assign to the Purchaser all of its right, title, and interest in the purchase and sale orders related to the Spring/Summer 2017 Scotch & Soda products;
  - (iii.) the Purchased Assets are being sold on an "as is, where is" basis;
  - (iv.) under the Retail APA, S&S Retail will acquire all of FABT's right, title and interest in the Leases, and all of FABT's rights as against the Laval Landlord and the Richmond Landlord shall be assigned to S&S Retail;
  - (v.) Under the Retail APA, S&S Retail shall be assigned FABT's rights under all active contracts related to the retail business, except for those contracts identified by S&S Retail, in its sole discretion, which shall not form a part of the Purchased Assets;
  - (vi.) the closing of the Contemplated Transaction shall occur by no later than March 8, 2017; and;
  - (vii.) under the Retail APA, S&S Retail will hire substantially all current FABT employees at the two store locations being acquired in the Contemplated Transaction.

#### IV INDEBTEDNESS AND SECURITY

20. FABI and FABT only have two secured creditors, namely HSBC Bank Canada ("HSBC") and FAHI.
21. On January 10, 2010, FABI, FABT and HSBC entered into a Credit Facility Letter which was amended on several occasions and more recently on December 14, 2016 (the "HSBC Loan"), as appears from a copy of said HSBC Loan communicated herewith as **Exhibit R-2**.
22. On March 22, 2010 and on February 28, 2011, FABI granted to HSBC hypothecs to guarantee its obligations towards the latter, as appears from a copy of said hypothecs and the extracts of the RDPRM communicated herewith *en liasse* as **Exhibit R-3**.
23. On March 22, 2010 and on February 28, 2011, FABT granted to HSBC hypothecs to guarantee its obligations towards the latter, as appears from a copy of said hypothecs and the extracts of the RDPRM communicated herewith *en liasse* as **Exhibit R-4** (collectively with Exhibit R-3, the "HSBC Hypothecs").
24. The HSBC Hypothecs were granted on the universality of FABI and FABT's present and future, corporeal and incorporeal, movable property, the whole as more fully appears from Exhibit R-3 and R-4.
25. As of February 17, 2017, the indebtedness of FABI and FABT towards HSBC was approximately \$12,116,519.
26. On June 27, 2012, FABI and FAHI entered into a Loan Agreement, as appears from a copy of said agreement communicated herewith as **Exhibit R-5**.
27. On June 27, 2012, FABT and FAHI entered into a Loan Agreement, as appears from a copy of said agreement communicated herewith as **Exhibit R-6**.
28. On March 30, 2007 and on June 27, 2012, FABI granted to FAHI hypothecs to guarantee its obligations towards the latter, as appears from a copy of said hypothecs and the extracts of the RDPRM communicated herewith *en liasse* as **Exhibit R-7**.
29. On June 27, 2012, FABT granted to FAHI a hypothec to guarantee its obligations towards the latter, as appears from a copy of said hypothec and an extract of the RDPRM communicated herewith *en liasse* as **Exhibit R-8** (collectively with Exhibit R-7, the "FAHI Hypothecs").
30. The FAHI Hypothecs were granted on the universality of FABI and FABT's present and future, corporeal and incorporeal, movable property, the whole as more fully appears from Exhibits R-7 and R-8.
31. As of February 17, 2017, the indebtedness of FABI and FABT towards FAHI was approximately \$10,700,000.

**V THE CONTEMPLATED TRANSACTION IS BENEFICIAL AND URGENT**

32. The Trustee to the notices of intention, namely Richter Advisory Group Inc. ("**Richter**") concluded that the Contemplated Transaction is reasonable, but in the best interests of FABI and FABT's stakeholders and hence recommends that this Court approve the Contemplated Transaction, as more fully appears from a copy of Richter's report communicated herewith as **Exhibit R-9** (the "**Report**").
33. Richter is of the view that a better offer for the Purchased Assets could not likely be obtained through a liquidation of the Purchased Assets or a more thorough sale process to seek a purchaser for the Purchased Assets. Indeed, the purchase price of the Contemplated Transaction is comparable to the amount that would likely be obtained from a liquidation process when one takes into account the liquidation costs, the delays and the uncertainty.
34. S&S Export being the owner of the brand Scotch & Soda, the Purchasers are in a better position than any other potential purchaser to maximize the value of the Purchased Assets. Furthermore, any potential purchaser of the S&S Business would need to obtain a license from S&S Export to operate the stores and sell the inventory related to the S&S Business. Hence, the Contemplated Transaction is in the best interest of FABI and FABT's stakeholders.
35. In addition, S&S Export already operates Scotch & Soda brand stores in the United States and will thus be able to quickly pursue the S&S Business with the least disturbance possible for the customers and Store employees.
36. Richter is of the view that the Contemplated Transaction represents the best possible option in the circumstances and that it is unlikely that additional efforts would result in a better offer, the whole as appears from the Report.
37. HSBC supports the Contemplated Transaction.
38. FAHI supports the Contemplated Transaction despite the fact that the purchase price will be insufficient to repay in full HSBC and thus it will not receive any proceeds from the Contemplated Transaction.
39. Both the Laval Landlord and the Richmond Landlord have confirmed their consent to the assignment of the Leases and to the granting of the Approval and Vesting Order. S&S Retail and the Laval and Richmond Landlords are in discussions to provide for a smooth transition with respect to both operation and employees. The granting of the Approval and Vesting Order at this time is an important requirement in order for the Store transition to be completed in accordance with the parties' commercial needs to minimize any business or employee disruptions. No disruptions are anticipated if the Approval and Vesting Order is granted at this time.
40. With respect to the three store locations that have been disclaimed, if S&S Export is able to negotiate new lease terms with the applicable landlords, it is expected that offers of employment will be made to the retail employees at those

locations (all in accordance with Applicable Law). Because such leases have been disclaimed, FABT's rights to the disclaimed leases are not included among the Purchased Assets, and no relief is sought with respect to them on the present motion.

41. To the FAB Group and Richter's knowledge there is no other party which manifested any interest to the Purchased Assets.
42. The Retail APA provides that the Purchaser may make offers of employment to current retail employees of the Scotch & Soda stores in Laval and Richmond. S&S Retail anticipates making such offers of employment to the majority of retail employment employees at these locations. Additionally, the Debtors advise that head-office staff who are non-exclusively involved with the S&S Business will not be terminated as a result of the Contemplated Transaction.
43. It is urgent to proceed with the Contemplated Transaction given that (i) both APAs require the Contemplated Transaction to close by March 8, 2017, due to concerns about the negative impact to the brand from extended association with the insolvency process, in particular with respect to wholesale inventory for the Spring/Summer 2017 season, which is due to be delivered to immediately, and (ii) the FAB Group requires the liquidity from the Contemplated Transaction to pursue its restructuring. Thus, the Approval and Vesting Order sought herein are required in order for the Contemplated Transaction to close within the required timeframe.

## VI CONCLUSIONS

44. The conclusions sought and more fully described in the draft order attached herewith as Exhibit R-1 are necessary to allow the completion of the Contemplated Transaction for the benefit of FABI and FABT's stakeholders. The draft order also includes conclusions with respect to the assignment of the leases for the Richmond and Laval Stores.
45. FABI and FABT have acted in good faith and with due diligence and with a view to successfully implementing a restructuring plan and thus maximizing the payments to its stakeholders.
46. The present *Motion for an Authorization to Sell Assets of the Debtors and the Issuance of a Vesting Order* is well founded in fact and in law.

### WHEREFORE, DEBTOR/PETITIONER PRAYS THIS HONOURABLE COURT TO:

- [A] **GRANT** the present *Motion for an Authorization to Sell Assets of the Debtors and the Issuance of a Vesting Order* (the "**Motion**").
- [B] **DECLARE** that the time for service of the Motion is hereby abridged such that the Motion is properly presentable;



- [C] **DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARE** that the Debtors are relieved of any other requirements for service of the Motion;
- [D] **RENDER** an Approval and Vesting Order substantially in the form of the order communicated in support of the Motion as Exhibit R-1;
- [E] **ORDER** the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal.
- [F] **THE WHOLE WITHOUT COSTS**, save and except in case of contestation and in such case with costs against any contesting party.

MONTREAL, March 7, 2017


*Davies Ward Phillips & Vineberg LLP*  
**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for the Debtors/Petitioners  
Freemark Apparel Brands Inc. and Freemark  
Apparel Brands TEC Inc.

AFFIDAVIT

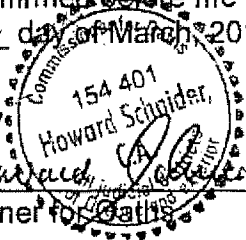
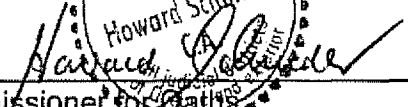
I, the undersigned, Michael Routtenberg, Secretary of Freemark Apparel Brands Inc. and Freemark Apparel Brands TEC Inc., having a place of business at 5640 Paré Street in the City of Mont-Royal, Québec, solemnly declare the following:

1. I am the Secretary of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Motion for an Authorization to Sell Assets of the Debtors and the Issuance of a Vesting Order*;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED

  
Michael Routtenberg

Solemnly affirmed before me in Montreal  
on the 7<sup>th</sup> day of March, 2017

  
  
Commissioner for Oaths

**NOTICE OF PRESENTATION**

**TO THE SERVICE LIST**

**TAKE NOTICE** that the *Motion for an Authorization to Sell Assets of the Debtors and the Issuance of a Vesting Order* will be presented for hearing and allowance at 3:30 p.m. on March 8, 2017 in chamber in the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as Counsel may be heard.

**DO GOVERN YOURSELF ACCORDINGLY.**

MONTREAL, March 7, 2017



**DAVIES WARD PHILLIPS & VINEBERG LLP**

Attorneys for the Debtors/Petitioners

Freemark Apparel Brands Inc. and Freemark

Apparel Brands TEC Inc.

## LIST OF EXHIBITS

- EXHIBIT R-1 Draft of the Approval and Vesting Order;
- EXHIBIT R-2 Copy of the HSBC Loan;
- EXHIBIT R-3 Copy of the hypothecs granted by FABI to HSBC and the extracts of the RDPRM, *en liasse*;
- EXHIBIT R-4 Copy of hypothecs granted by FABT to HSBC and the extracts of the RDPRM, *en liasse*;
- EXHIBIT R-5 Copy of the Loan Agreement between FABI and FAHI;
- EXHIBIT R-6 Copy of the Loan Agreement between FABT and FAHI;
- EXHIBIT R-7 Copy of hypothecs granted by FABI to FAHI and the extracts of the RDPRM, *en liasse*;
- EXHIBIT R-8 Copy of hypothecs granted by FABT to FAHI and the extracts of the RDPRM, *en liasse*;
- EXHIBIT R-9 Copy of the Trustee's report