

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the "**BLA**"),
R.S.C. 1985, c. B-3)

No.:
500-11-052107-170/500-11-052108-178
500-11-052109-176/500-11-052106-172

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:
FREEMARK APPAREL BRANDS ESP INC.**

-and-

FREEMARK APPAREL BRANDS USA INC.

-and-

FREEMARK APPAREL BRANDS INC.

-and-

FREEMARK APPAREL BRANDS TEC INC.

Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

SECOND MOTION FOR AN EXTENSION OF TIME TO FILE A PROPOSAL

(Section 50.4(9) of the *Bankruptcy and Insolvency Act*)

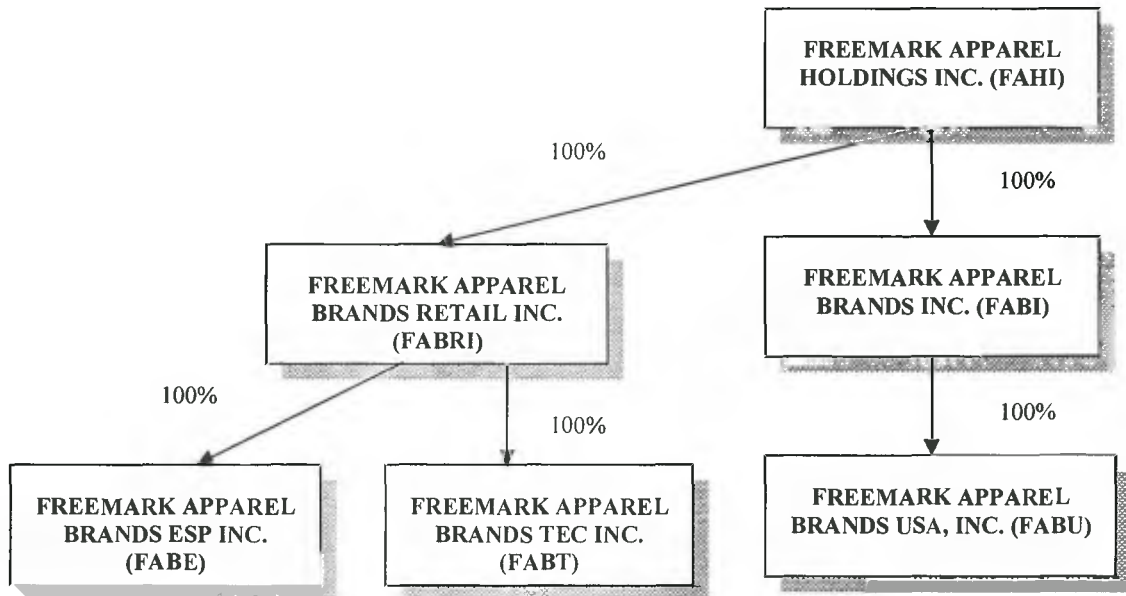
**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE
REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL
DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE
FOLLOWING:**

I. INTRODUCTION

1. By the present motion, Freemark Apparel Brands ESP Inc. (“**FABE**”), Freemark Apparel Brands USA, Inc. (“**FABU**”), Freemark Apparel Brands Inc. (“**FABI**”) and Freemark Apparel Brands Tec Inc. (“**FABT**” and collectively with **FABE**, **FABI** and **FABU**, the “**Debtors**”) seek a second extension of time for filing a proposal of forty-five (45) days, for the reasons more fully explained below.

II. FACTUAL & PROCEDURAL BACKGROUND

2. **FABE** with **FABT** are owned by Freemark Apparel Brands Retail Inc. (“**FABRI**”). **FABRI** is owned by Freemark Apparel Holdings Inc. (“**FAHI**”) which also own **FABI** which in turn owns **FABU**. **FABI**, **FAHI**, **FABE**, **FABRI**, **FABT** and **FABU** are collectively hereinafter defined as the “**FAB Group**”.
3. The **FAB Group** organizational chart can be represented as follows:



4. The **FAB Group** is a premier retailer of branded apparel, operating since 2004 (the “**Business**”). The **Business** can be considered more fully as follows:
 - (i) **FABE** and **FABT** used to operate 58 retail locations throughout Canada under the following banners: Bench, Scotch & Soda, Esprit and Thread+Copper. **FABT** operates or used to operate the Bench, Scotch & Soda and Thread+Copper stores while **FABE** operates the Esprit stores;
 - (ii) **FABI** operates the wholesale business of the **FAB Group** in Canada. **FABI** has long-standing relationships with The Bay, Simons, Winners, Saks Off 5th and many other retailers;

- (iii) FABU operates the wholesale business of the FAB Group in the United States; and
 - (iv) The FAB Group has or had licensing agreements for the following world class brands: Bench, Scotch & Soda, Esprit and Garcia.
5. On February 17, 2017, each of the Debtors filed a notice of intention to make a proposal (the “**Notices**”) and Richter Advisory Group Inc. (“**Richter**”) was appointed trustee to the Notices.
 6. On February 23, 2017, this Court allowed the joint administration of the Notices of all the Debtors, the whole as it appears from this Court’s record. Therefore, this motion is filed in file 500-11-052107-170 (FABI), but also applies to files number 500-11-052108-178 (FABU), 500-11-052109-176 (FABT) and 500-11-052106-172 (FABE).
 7. On or around February 28, 2017, the Debtors disclaimed, in accordance with section 65.11 *BIA*, 31 underperforming leases.
 8. On March 9, 2017, this Court issued a vesting order in accordance with section 65.13 *BIA* pursuant to which FABI and FABT sold the Business that relates to the Scotch and Soda brand (the “**S&S Transaction**”), the whole as it appears from this Court’s record.
 9. On March 16, 2017, the Debtors presented a *First Motion for an Extension of Time to File a Proposal* which was granted by this Court. The Debtors currently have until April 28, 2017 to file their proposal, the whole as it appears from this Court’s record.
 10. On the same day, this Court granted an *Order Authorizing a Sale and Investment Solicitation Process*, the whole as it appears from this Court’s record.
 11. The milestones provided for in the *Sale and Investment Solicitation Process* (the “**SISP**”) were subsequently amended with the consent of Richter and HSBC Bank (the “**Bank**”), the Debtors’ first ranking secured creditor. The revised key milestones are:
 - (i) Offers to be submitted by no later than April 28, 2017;
 - (ii) Selection of the best offer(s) by no later than May 3, 2017 and;
 - (iii) Closing of the transaction(s) no later than May 19, 2017.

III. THE DEBTOR’S CREDITORS

12. The Debtors only have two secured creditors, namely the Bank and FAHI.
13. As of the day of the filing of the Notices, the indebtedness of the Debtors towards the Bank was approximately CDN\$10,208,352 and US\$2,117,324. Following closing of the S&S Transaction, the Bank received a portion of the purchase price equal to \$1,300,000 (including taxes) which had the effect of reducing the amount of the indebtedness owed to the Bank. The Debtors and the Bank have entered into a Forbearance Agreement that expires on May 19, 2017, i.e. the day the closing of the transaction(s) should occur.

14. As of the day of the filing of the Notices, the indebtedness of FABI and FABT towards FAHI was approximately \$10,700,000. However, FAHI subsequently advanced an additional amount of \$500,000 so as to finance, *inter alia*, the restructuring process. In consideration of said additional advance, the Debtors have granted additional security to FAHI to secure the additional advance.
15. In summary, as of the day of the filing of the Notices, the Debtors owed its creditors approximately \$32.2 million summarized as follows:
 - (i) Secured lenders (namely the Bank and FAHI): \$21.7 million; and
 - (ii) Unsecured trade creditors: \$10.5 million.
16. The above-noted amount does not include any amount that may be claimed by landlords for damages resulting from any lease disclaimers.

IV. EXTENSION OF TIME

17. Since the filing of the Notices, the Debtors, with the assistance of their advisors and the Trustee, have been working hard to assess the Debtors' various options and alternatives.
18. Once the offers will have been received in accordance with the SISP, the Debtors together with their advisors should be in a better position to complete a proposal to their creditors.
19. According to the current schedule, closing of a transaction or an investment is scheduled for May 19. Then, the Debtors will need to either further extend the Forbearance Agreement and/or consider the alternatives for the filing of a proposal. Thereafter, a further 45-day extension is required.
20. In addition, the Debtors have been working together with the Bank and FAHI, their principal secured creditors.
21. The Debtors seek this extension in order to allow them to file proposals in due course and complete the transaction(s) which will be chosen in accordance with the SISP.
22. The Debtors and the Trustee consider that an extension is in the best interest of all stakeholders.
23. The Bank and FAHI are supportive of this Motion and of the extension sought.
24. A copy of the Debtors' cash-flow statement and a copy of the report on the state of the Debtors' business and financial affairs are communicated herewith *en liasse* as **Exhibit R-1**.

V. CONCLUSIONS

25. If the extension sought is granted, the Debtors as well as the Trustee are not aware that any creditor will be materially prejudiced. On the contrary, if the extension is not granted

and the Debtors become bankrupt, a significant prejudice will be suffered by all of the Debtors' stakeholders, including creditors and employees.

26. The Debtors have acted and are acting in good faith and with due diligence.
27. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Second Motion for an Extension of Time to file a Proposal*;

EXTEND to June 12, 2017 the delay granted to Freemark Apparel Brands ESP Inc., Freemark Apparel Brands USA, Inc., Freemark Apparel Brands Inc. and Freemark Apparel Brands Tec Inc. to file proposal with the Official Receiver.

DECLARE that this Order shall also apply to files bearing the court numbers 500-11-052108-178, 500-11-052109-176 and 500-11-052106-172, as if it were rendered in such court files

THE WHOLE, without costs, save in the event of a contestation.

MONTREAL, April 24, 2017



DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Debtors.

NOTICE OF PRESENTATION

TO THE SERVICE LIST

TAKE NOTICE that the *Second Motion for an Extension of Time to file a Proposal* will be presented for hearing and allowance at 8:45 a.m. on April 27, 2017 in room 16.10 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, April 24, 2017


DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors

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Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

**SECOND MOTION FOR AN EXTENSION OF
TIME TO FILE A PROPOSAL, AFFIDAVIT
AND NOTICE OF PRESENTATION**

ORIGINAL



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