

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the "*BIA*"),
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

THIRD MOTION FOR AN EXTENSION OF TIME TO FILE A PROPOSAL

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

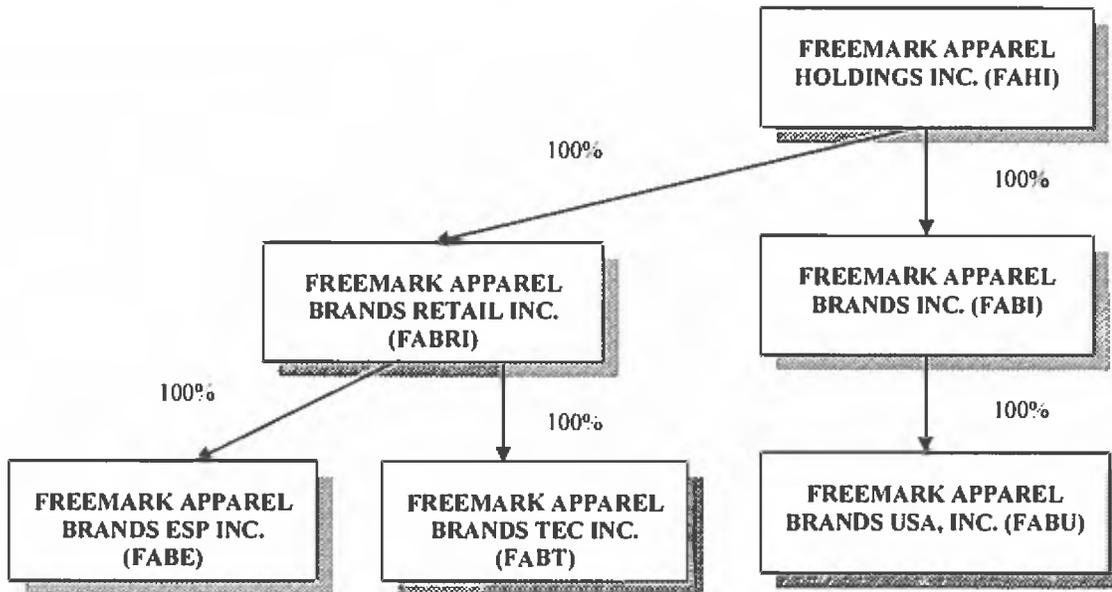
TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

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 third 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 was a premier retailer of branded apparel, operating since 2004 (the “**Business**”). The Business can be described 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 operated the Bench, Scotch & Soda and Thread+Copper stores while FABE operated the Esprit stores;
 - (ii) FABI operated 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 operated the wholesale business of the FAB Group in the United States; and
 - (iv) The FAB Group 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.
 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, and the deadline to close the transaction(s) was extended to May 19, 2017.
 12. Following the approval of the SISP by this Court, the Debtors together with Richter took the following steps:
 - (i) Finalized a list of potential purchasers and investor for the assets of the Debtors;
 - (ii) Created a virtual data room containing all relevant information concerning the Debtors’ business and operations (the “Data Room”);
 - (iii) Prepared a draft non-disclosure agreement to be signed by each prospective purchaser or investor in order to access the Data Room; and
 - (iv) Prepared and issued solicitations of offers to over 300 potential purchasers or investors, advising them of the salient terms of the SISP, including the fact that all offers in respect of the property had to be submitted to Richter by the Deadline. Receipt was confirmed for 76 parties, consisting of potential strategic acquirers (35), financial investors (23) and liquidators (18).

In total, 20 interested parties agreed to execute, in accordance with the SISP, a non-disclosure agreement allowing them to access the Data Room.

13. On April 27, 2017, the Debtors presented a Second Motion for an Extension of Time to File a Proposal which was granted by this Court. The Debtors currently have until June 12, 2017 to file their proposal, the whole as it appears from this Court's record.
14. On May 16, 2017, this Court issued a vesting order in accordance with section 65.13 *BIA* pursuant to which all the Business, save for the assets already sold pursuant to the S&S Transaction, was sold (the "Transaction"), the whole as it appears from this Court's record.
15. The material terms of the Transaction were, *inter alia*, as follows:
 - (i) the purchase price was the aggregate amount of (a) the entire indebtedness of the Debtors towards the Bank as at the Closing Date (b) the entire indebtedness of the Debtors towards FAHI, the second ranking secured creditor, as at the Closing Date and (c) certain assumed liabilities which included only obligations which were incurred and became due after the filing of the Notices (save and except for obligations incurred and/or accrued prior to the date of the filing of the Notices in respect of employees which are being assumed by the Purchaser) (collectively, the "Assumed Liabilities");
 - (ii) the Purchased Assets had to be free of all liens or other encumbrances;
 - (iii) the Purchased Assets had to be sold on an "as is, where is" basis;
 - (iv) the Purchaser did not assume any liabilities of the Debtors other than the Assumed Liabilities (which included, amongst other, all post filings liabilities); and
 - (vii) the Transaction had to close by no later than May 19, 2017.
16. On May 19, 2017, the Transaction closed, as scheduled.
17. The Transaction was extremely beneficial to the Debtors' stakeholders given that it:
 - (i) allowed the repayment in full of all of the Debtors' secured creditors;
 - (ii) saved a substantial number of jobs and thus reduced the indebtedness of the Debtors towards the employees;
 - (iii) prevented the termination of a substantial number of lease agreements and supply agreements; and
 - (iv) allowed for the payment of the Assumed Liabilities.

IV. EXTENSION OF TIME

18. Since the filing of the Notices, the Debtors, with the assistance of their advisors and the Trustee, have been working to assess the Debtors' various options and alternatives.
19. Since the closing of the Transaction, the Debtors together with their advisors are in a better position to assess whether a proposal may be presented to the creditors.
20. The Debtors seek this extension in order to determine the possibility of filing a proposal(s) and its content.
21. The Debtors and the Trustee consider that an extension is in the best interest of all stakeholders.
22. 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**

23. If the extension sought is granted, the Debtors as well as the Trustee are not aware that any creditor will be materially prejudiced. To the contrary, if the extension is not granted and the Debtors become bankrupt, a significant prejudice will be suffered by all the remaining stakeholders' of the Debtors given that they will not receive any dividend whatsoever. The remaining creditors of the Debtors will receive a dividend only in the event that the Debtors are able to file a proposal.
24. The Debtors have acted and are acting in good faith and with due diligence.
25. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

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

EXTEND to July 24, 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, June 6, 2017



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors.

AFFIDAVIT

I, the undersigned, Lawrence Routtenberg, director of the Debtors, having a place of business at 5640 Paré Street in the City of Mont-Royal, Québec, solemnly declare the following:

1. I am the director of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Third Motion for an Extension of Time to file a Proposal*;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED



Solemnly affirmed before me in Montreal
on the ~~15th~~ ^{14th} day of June, 2017



NOTICE OF PRESENTATION

TO THE SERVICE LIST

TAKE NOTICE that the *Third Motion for an Extension of Time to file a Proposal* will be presented for hearing and allowance at 8:45 a.m. on June 9, 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, June 6, 2017



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors

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500-11-052109-176 / 500-11-052108-178
SUPERIOR COURT
Commercial Division/District of Montréal

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FREEMARK APPAREL BRANDS USA
FREEMARK APPAREL BRANDS INC.
FREEMARK APPAREL BRANDS TEC INC.**

Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

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

ORIGINAL



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