

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

**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

FIRST 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

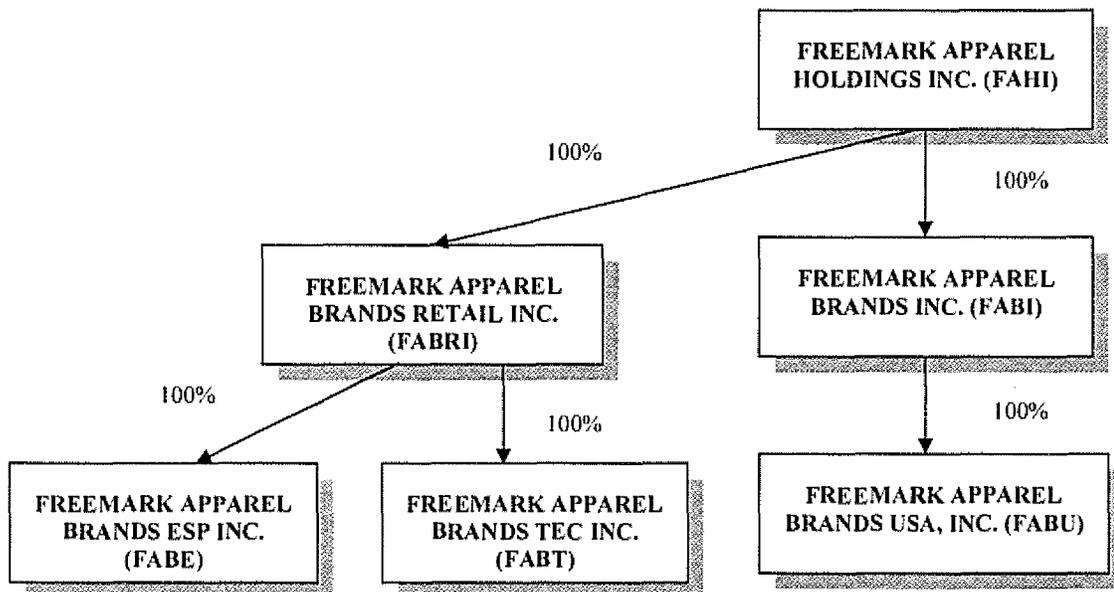
“Debtors”) seek a first extension of time for filing a proposal of forty-five (45) days, for the reasons more fully explained below.

2. The present motion might be heard concurrently with a *Motion for the Authorization of a Sale and Investor Solicitation Process*.

II. FACTUAL & PROCEDURAL BACKGROUND

3. FAVE with FAVT 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 FAVU. FABI, FAHI, FAVE, FABRI, FAVT and FAVU are collectively hereinafter defined as the “FAB Group”.

4. The FAB Group organizational chart can be represented as follows:



5. 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) FAVE and FAVT operate 58 retail locations throughout Canada under the following banners: Bench, Scotch & Soda, Esprit and Thread+Copper. FAVT operates the Bench, Scotch & Soda and Thread+Copper stores while FAVE 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) FAVU operates the wholesale business of the FAB Group in the United States; and

- (iv) The FAB Group has licensing agreements for the following world class brands: Bench., Scotch & Soda, Esprit and Garcia.
6. On February 17, 2017, each of the Debtors filed a notice of intention to make a proposal (the “**Notices**”).
 7. As of the filing of the Notices, the FAB Group was employing approximately 650 in its various stores across Canada, its head office and its distribution center.
 8. On February 23, 2017, this Court allowed the joint administration of the notices of intention to make a proposal 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 for files number 500-11-052108-178 (FABU), 500-11-052109-176 (FABT) and 500-11-052106-172 (FABE).
 9. Within ten (10) days after filing the Notices, each of the Debtors filed a statement of projected cash-flow, reviewed by the Richter Advisory Group Inc. (the “**Trustee**”) thus completing, in the prescribed form, the report on the reasonableness of the Debtors’ cash-flow statement, the whole as appears from a copy of the cash-flow statement and of the Trustee’s Report communicated herewith *en liasse* as **Exhibit R-1**.
 10. On or around February 28, 2017, the Debtors disclaimed in accordance with section 65.11 *BIA* 31 underperforming leases.
 11. 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 part of the Business that relates to the Scotch and Soda brand, the whole as it appears from this Court’s record (the “**S&S Transaction**”). Pursuant to the S&S Transaction, the purchasers acquired *inter alia* :
 - (i) all of FABT’s right, title and interest in the two Scotch & Soda store leases in Laval, Quebec and Richmond, British Columbia (the “**Leases**”), respectively;
 - (ii) the furniture and fixtures for all Scotch & Soda retail stores outlets;
 - (iii) 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); and
 - (iv) all of the Scotch & Soda branded wholesale merchandise showroom fixtures situated at 5640 Paré Street, Montreal, Quebec.

III. THE DEBTOR’S CREDITORS

12. The Debtors only have two secured creditors, namely HSBC Bank Canada (the “**Bank**”) and FAHI.
13. On January 10, 2010, the Debtors and the Bank 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**.

14. As of March 6, 2017, the indebtedness of the Debtors towards the Bank was approximately CDN\$10,208,352 and US\$2,117,324. However, said indebtedness was reduced on March 9, 2017 by the repayment of an amount of \$1,300,000 pursuant to the closing of the S&S Transaction. The Debtors and the Bank have entered into a Forbearance Agreement.
 15. 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-3**.
 16. 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-4**.
 17. As of February 17, 2017, the indebtedness of FABI and FABT towards FAHI was approximately \$10,700,000. FAHI also recently agreed to advance an additional amount of \$500,000 so as to finance, inter alia, the restructuring process. In consideration of this additional advance, the Debtors will be granting additional security to FAHI to secure this advance.
 18. In summary, as of February 17, 2017, 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.
 19. 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**
20. 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.
 21. Therefore, the Debtors together with their advisors are in the process of working on a going concern restructuring to enable the filing of a proposal which will include:
 - a) reducing the Debtors' indebtedness;
 - b) the termination of various agreements, likely including additional leases;
 - c) reducing the financial costs;
 - d) launching a Sale and Investment Solicitation Process (the "SISP"); and
 - e) completing a transaction pursuant to the SISP.
 22. In addition, the Debtors have been working together with the Bank and FAHI, their principal secured creditors.
 23. The Debtors seek this extension in order to allow them to file proposals in due course.

24. The Debtors and the Trustee consider that an extension is in the best interest of all stakeholders.
25. The Bank and FAHI are supportive of this Motion and of the extension sought.
26. 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-5**.

V. CONCLUSIONS

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

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

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

EXTEND to April 28, 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, March 13, 2017

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Debtors.

AFFIDAVIT

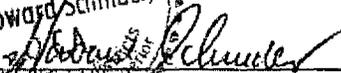
I, the undersigned, Lawrence Routtenberg, Vice-President of the Debtors, having a place of business at 5640 Paré Street in the City of Mont-Royal, Québec, solemnly declare the following:

1. I am the Vice-President of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *First 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 13th day of March, 2017

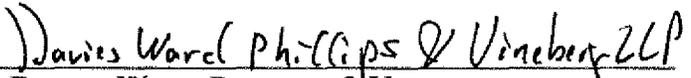
NOTICE OF PRESENTATION

TO THE SERVICE LIST

TAKE NOTICE that the *First Motion for an Extension of Time to file a Proposal* will be presented for hearing and allowance at 8:45 a.m. on March 16, 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, March 13, 2017


DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors

No. 500-11-052107-170 et al.
SUPERIOR COURT
Commercial Division
District of Montréal

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FREEMARK APPAREL BRANDS USA INC.

**FIRST MOTION FOR AN EXTENSION OF
TIME TO FILE A PROPOSAL**

ORIGINAL



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