

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

In re:)	Chapter 11
)	
DAN RIVER INC., <i>et al.</i>)	Case Nos. 04-10990 through 04-10993
)	Jointly Administered
)	
Debtors.)	Judge Drake
<hr/>)	

**DEBTOR’S MOTION FOR APPROVAL OF LICENSE AGREEMENT
WITH AHG LICENSING, INC.**

Dan River Inc. (the “Debtor”) files this motion for approval of a license agreement with AHG Licensing, Inc. (“AHG”) pursuant to Section 363 of the Bankruptcy Code, respectfully showing the Court as follows:

Summary of Relief Requested

1. By this Motion, the Debtor requests authority to enter into a trademark licensing agreement (the “License Agreement”) with AHG. One aspect of the Debtor’s business involves marketing home fashions products that contain various licensed names and trademarks. Because the Debtor enters into trademark license agreements, such as the License Agreement, in the ordinary course of its business, the Debtor does not believe that Court approval ordinarily would be necessary to enter into and perform under a new trademark license agreement. However, AHG requested, and the License Agreement contains, a requirement for the Debtor to obtain the Court’s approval to enter into the License Agreement in order for the License Agreement to become effective. Accordingly, the Debtor requests the entry of an order approving the Debtor’s execution of the License Agreement.

Jurisdiction

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Background

3. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on March 31, 2004 (the “Petition Date”).

4. The Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors was appointed in these cases on April 12, 2004.

5. On May 6, 2004, the Debtor and AHG executed the License Agreement. The License Agreement contains certain pricing information and other terms that both the Debtor and AHG believe should remain confidential because disclosure of such terms could impact the negotiation of similar agreements with other parties. Accordingly, the License Agreement is not attached as an exhibit to this Motion. However, a copy of the License Agreement has been provided to counsel for the creditors’ committee, counsel for the Debtor’s post-petition lenders, and the United States Trustee.

6. Generally, the License Agreement grants the Debtor the exclusive right to use the Trademarks (as defined in the License Agreement) in connection with the manufacture and sale of products such as bedding and bedding accessories, towels, and other similar products. The Trademarks include “Caribbean Joe,” “Havana Jack’s Café,” and other trademarks representing a

Caribbean resort theme. The License Agreement provides for a term of forty-two months and provides for a payment of royalties based on net sales, with a minimum guaranteed royalty.

Basis for Relief

7. Under Section 363(c)(1) of the Bankruptcy Code, the Debtor is authorized to enter into transactions in the ordinary course of business without the need for notice and a hearing. Courts apply a two-step inquiry to determine whether a transaction is within the ordinary course of a debtor's business: a "horizontal dimension" test and a "vertical dimension" test. In re Roth America, Inc., 975 F.2d 949, 952 (3d Cir. 1992). Under the horizontal dimension test, a transaction is within the ordinary course of business if the transaction is the type of transaction that is usual for companies in that industry. Id. at 953. The vertical dimension test is characterized as the creditors' expectations test and determines whether a transaction is in the ordinary course of business by determining whether the transaction is one that creditors reasonably expect the debtor to undertake. Id.

8. Entering into the License Agreement is a transaction within the ordinary course of business under both the horizontal dimension and vertical dimension tests. Marketing products using licensed trademarks is a routine practice for companies in the textile industry. Prior to the Petition Date, Dan River entered into numerous such licensing agreements, so the License Agreement is the type of transaction that creditors should reasonably expect the Debtor to undertake. Accordingly, entering into the License Agreement is a transaction within the ordinary course of business that the Debtor is authorized to undertake pursuant to Section 363(c)(1) of the Bankruptcy Code.

9. Moreover, even if entering into the License Agreement were a transaction outside the ordinary course of the Debtor's business, the Debtor should be authorized to enter into the

License Agreement pursuant to Section 363(b)(1) of the Bankruptcy Code. The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized under Section 363(b)(1) when there is a “sound business purpose” that justifies the requested action. See In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); Big Shanty Land Corp. v. Comer Properties, Inc., 61 B.R. 272, 278 (N.D.Ga. 1985); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991). In essence, this inquiry amounts to a “business judgment test.” In re Montgomery Ward Holding Corp., 242 B.R. 147 (D.Del. 1999) (citations omitted).

10. In this case, the Debtor has determined, in the exercise of its business judgment, that entering into the License Agreement is in its best interest as well as the best interests of its bankruptcy estate and its creditors. Accordingly, the Debtor requests that, even if the License Agreement is deemed to be outside the ordinary course of the Debtor’s business, the Court approve the Debtor’s execution of the License Agreement pursuant to Section 363(b)(1).

Notice

11. Notice of this Motion has been provided to the parties listed on the Master Service List and to AHG. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

Conclusion

12. For the foregoing reasons, the Debtor respectfully requests that the Court enter the proposed order attached hereto as Exhibit A and grant such further relief as the Court deems just and proper.

This 17th day of May, 2004.

Respectfully submitted,

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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
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Debtors.)	Judge Drake
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**ORDER GRANTING DEBTORS'
MOTION FOR APPROVAL OF LICENSE AGREEMENT**

This matter is before the Court on the motion of Dan River Inc. (the “Debtor”) dated May 17, 2004 for approval of a license agreement with AHG Licensing, Inc. (the “Motion”). (Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the Motion.)

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to all parties on the Master Service List and to AHG; that no further notice is necessary; that the relief sought in the motion is in the best interests of the Debtor, its estate, and its creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (document no. ____) is GRANTED.
2. Effective immediately, the Debtor is authorized to execute and perform under the License Agreement.

3. Notwithstanding Federal Rule of Bankruptcy Procedure 6004(g), this Order shall be effective immediately upon its entry.

4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

SO ORDERED.

At Newnan, Georgia this ____ day of _____, 2004.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

Prepared and presented by:

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