

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
Fleming Companies, Inc., <u>et al.</u>	)	
	)	Case No. 03-10945 (MFW)
Debtors.	)	
	)	(Jointly Administered)

Objection Deadline: May 28, 2003 at 4:00 p.m. prevailing Eastern time<sup>1</sup>  
Hearing Date: June 4, 2003 at 4:30 p.m. prevailing Eastern time

**LIMITED OBJECTION OF STARBUCKS CORPORATION TO THE MOTION OF FLEMING COMPANIES, INC. AND RAINBOW FOOD GROUP, INC. FOR ORDER AUTHORIZING: (A) SALE OF 31 RAINBOW FOOD RETAIL GROCERY STORES' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; AND (B) ASSUMPTION AND ASSIGNMENT OF ACQUIRED CONTRACTS AND LEASES**

Starbucks Corporation (“Starbucks”), by and through its undersigned counsel, hereby submits this Limited Objection (the “Limited Objection”) to the Motion of Fleming Companies Inc. and Rainbow Food Group, Inc. (the “Debtors”) for entry of an Order Authorizing: (a) Sale of 31 Rainbow Food Retail Grocery Stores’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; and (b) Assumption and Assignment of Acquired Contracts and Leases (the “Rainbow Motion”). In support of its Limited Objection, Starbucks respectfully represents as follows:

1. Starbucks does not believe that it has been served with notice of the Rainbow Motion but has just received a copy of a Motion, dated May 20, 2003, for Order Authorizing The “As Is, Where Is” Sale Of Fleming’s Minneapolis, Minnesota Product Supply Center Real And

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<sup>1</sup> Please see discussion in paragraph 1 below regarding the timing of the filing of this Limited Objection.

Personal Property Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances (the “PSC Motion”), the objection deadline for which is May 30, 2003. Upon review of the PSC Motion, Starbucks became aware of the present motion (the “Rainbow Motion”). Starbucks is a large organization with many offices and it is possible that Starbucks was served with notice of the Rainbow Motion. However, Starbucks has yet to locate any such Motion or Notice. Through counsel, on the afternoon of May 30, 2003, Starbucks has obtained a copy of the Rainbow Motion and, accordingly, is filing this Limited Objection at the earliest possible time.

2. Starbucks is the licensor pursuant to a Master Licensing Agreement with Rainbow Foods Group, Inc., which Starbucks believes is the same entity as the Debtor referred to in the Rainbow Motion as “Rainbow Food Group, Inc.” (“Rainbow”), a Nevada corporation, dated March 9, 2001, as amended (the “Master Licensing Agreement”). Starbucks has not had an opportunity to fully review the Rainbow Motion. However, to the extent that the Debtors seek to assume and assign the Master Licensing Agreement pursuant to the Rainbow Motion, Starbucks objects to any such effort as being in violation of the express terms of the Master Licensing Agreement and not permitted pursuant to the Bankruptcy Code and governing case law. See, e.g., Perlman v. Catapult Entm’t. Inc. (In re Catapult Entm’t. Inc.), 165 F.3d 747 (9<sup>th</sup> Cir. 1999); In re Patient Educ. Media, Inc., 210 B.R. 237 (Bankr. S.D.N.Y. 1997).

3. Pursuant to the Master Licensing Agreement, Starbucks granted to Rainbow a nonexclusive license to construct up to five Starbucks stores within Rainbow’s grocery stores, subject to the terms and conditions of the Master Licensing Agreement and in strict accordance therewith. For decades, Starbucks has cultivated a brand identity and believes that it has successfully developed one of the most recognizable and valuable brands and trademarks in the United States. The name “Starbucks” and related attributes are among the most valuable assets

of Starbucks. In keeping with the importance of these assets, Starbucks has, only in limited and carefully defined circumstances, granted nonexclusive licenses to construct and operate Starbucks stores, together with the limited right to use certain of Starbucks' intellectual property. The Master Licensing Agreement contains clear and strict provisions regarding the manner of use of the licensed attributes, including, of particular relevance to the Rainbow Motion, the prohibition on assignment of the Master Licensing Agreement and related attributes. Section 6.4.1 of the Master Licensing Agreement, regarding "Transferability of Interest," provides:

6.4.1 [Rainbow] may not sell, assign, or transfer its interest in the License or this Agreement, including transfers for security, without Starbucks prior written approval, which Starbucks may withhold in its sole and absolute discretion, and any attempt or purported assignment or transfer shall constitute a breach of this Agreement and be void and shall be cause for termination.

As such, the Master Licensing Agreement is not subject to assumption and assignment by Rainbow or the Debtors to a third party, as the Debtors may be seeking to do pursuant to the Rainbow Motion. Indeed, the mere attempt to assign the Master Licensing Agreement is stated to be cause for termination. Sections 6.1.2.6 and 6.1.2.8 of the Master Licensing Agreement, relating to "Termination; Default," provides:

6.1.2.6 [Rainbow]'s filing of a voluntary petition in bankruptcy or any pleading seeking any reorganization, liquidation, or dissolution under any law, or [Rainbow]'s admission or failure to contest the material allegations of any such pleading filed against it, the entry of an order for relief against [Rainbow] under the Bankruptcy Code, the adjudication of [Rainbow] as insolvent, the appointment of a receiver for a substantial part of the assets of [Rainbow] or its Starbucks Stores, the abatement of the claims of creditors of [Rainbow] or the Starbucks Stores under any law, or the making of an assignment for the benefit of creditors, or similar disposition of the assets of the Starbucks Stores.

6.1.2.8 [Rainbow]'s assignment, transfer, or attempt to assign or transfer: (i) a Starbucks Store, this License or the Agreement, or [Rainbow] in whole or in part or (ii) any portion of the premises

upon which any Starbucks Store is located, in a manner inconsistent with the provisions of Section 6.4 of this Agreement.

Thus, the attempt to assign the Master Licensing Agreement, as well as the mere filing of Rainbow's bankruptcy case, are grounds for termination. Nonexclusive license agreements, such as the Master Licensing Agreement, are not subject to the provisions of Section 365 of the Bankruptcy Code overriding default provisions such as those cited above.

4. Immediately upon receipt of the PSC Motion, through counsel, Starbucks contacted counsel to the Debtors. The parties promptly agreed to engage in discussions with respect to the Rainbow Motion. However, to protect its interests, Starbucks is filing this Limited Objection and expressly reserves all of its rights, entitlements and interests pursuant to the Bankruptcy Code, the Master Licensing Agreement and otherwise.

**WHEREFORE**, Starbucks respectfully requests that this Court (i) deny the Rainbow Motion to the extent that it seeks authority to assume and assign the Master Licensing Agreement or any portion thereof and (ii) grant such other and further relief as is just and proper.

Dated: New York, New York  
May 30, 2003

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