



above-captioned chapter 11 cases (collectively, the "Debtors") of Ashley trademarks, and (2) the Debtors' motions set for hearing on August 4, 2010 regarding final approval of cash management [Docket No. 12], critical vendor protections for Mengnu Group Co. Ltd. ("Mengnu") [Docket No. 4], procedures for resolution and payment of claims under section 503(b)(9) of the Bankruptcy Code [Docket No. 17], interim compensation of professionals [Docket No. 13] and interim settlement with the Debtors' credit card processor [Docket No. 93]. In support of this Limited Objection/Request, Ashley respectfully represents as follows:

### **BACKGROUND**

Ashley and Hartsdale are parties to seven separate Trademark Usage Agreements (the "TUAs"), each of which governs Hartsdale's use of certain Ashley trademarks (the "Trademarks") at a specific store location (the "Homestores"). The TUAs contain terms and conditions regarding Hartsdale's use of the Trademarks. The TUAs have five (5) year terms, commencing on October 27, 2006 (for the first location) through April 9, 2010 (for the most recently established location). All seven of the Homestores operated by Hartsdale are located in New York.

An affiliate of Ashley also supplies a limited amount of product to the Debtors' other non-Ashley Homestore locations.

### **LIMITED OBJECTION/REQUEST FOR ADEQUATE PROTECTION**

Pursuant to the TUAs, Hartsdale uses the Trademarks, which are the property of Ashley. Hartsdale continues to use the Trademarks post-petition-- indeed, the continued operations of the seven Homestores operated by Hartsdale is entirely dependent on its use of the Trademarks. Since the Debtors commenced these chapter 11 cases, Ashley has engaged in discussions with the Debtors in an attempt to obtain comfort that Hartsdale's continued use of the Trademarks will

not put the value of the Trademarks as risk. In particular, Ashley raised concerns regarding the Debtors' cash management practices with the Debtors and with the Court in the context of the Debtors' motion to approve cash management procedures. In addition, counsel for Ashley discussed with counsel for the Debtors concerns related to the critical vendor relief sought for Mengnu, the Debtors' proposed procedures for resolution and payment of claims under section 503(b)(9) of the Bankruptcy Code, and interim compensation procedures. Ashley also has concerns that are implicated by the Debtors' proposed interim settlement with its credit card processor.

Ashley's concerns ultimately redound to an issue of paramount importance to Ashley and its business-- the preservation of value in the Trademarks. Ashley has been building the value of the Trademarks for over 50 years, and they represent the lifeblood of Ashley's business. The Ashley brand is successful because of the quality in product and service that it represents to the consumer. In licensing the Trademarks to operators of Homestores, such as Hartsdale, Ashley takes great care to ensure that each Homestore will be operated in a way that maintains this same level of service to consumers, thereby preserving the value of the Trademarks.

Section 363(e) of the Bankruptcy Code requires that:

Notwithstanding any other provisions of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e).

Section 362(d)(1) further provides for relief from stay to be granted “for cause, including the lack of adequate protection of an interest in property.” 11 U.S.C. § 362(d)(1). Under both

sections 363(e) and 362(d)(1), the Debtor bears the burden of proving adequate protection. See 11 U.S.C. §§ 362(g); 363(p)(1).

As of the date hereof, Ashley has not been able to obtain comfort from the Debtors that Ashley's interest in the Trademarks is and will be adequately protected for the Debtors' post-petition use thereof. Accordingly, Ashley requests that the Court condition any further use by Hartsdale (or any of the other Debtors) of the Trademarks on Ashley receiving adequate protection. Because the most acute risk of damage to the value of the Trademarks would stem from interruption in service to the Homestore customers, Ashley requests that such adequate protection include, without limitation, the requirement that Hartsdale maintain sufficient cash on hand so that, when added to the value of order-specific non-floor inventory at cost, the total remains greater than or equal to total customer deposits for the Homestores. By conditioning further use of the Trademarks on this form of adequate protection, the Court will ensure that no consumer will be put in a position of having placed a deposit for a purchase from one of the Homestores and not receiving either prompt delivery of the product or a refund of the deposit.

In conjunction with Ashley's request for adequate protection, Ashley asserts a limited objection to certain of the matters set for hearing on August 4, 2010. The basis for Ashley's limited objection to these matters dovetails with its request for adequate protection, as briefly outlined below:

- Cash Management: Ashley objects to the Debtors' proposed cash management procedures to the extent that they would allow consumer deposits and/or sale proceeds from the Homestores to be upstreamed and used to fund operations of the other Debtors. While it may be appropriate for Hartsdale to reimburse another Debtor for Hartsdale's share of certain common operating expenses, such as

payroll or G&A, the Debtors should not be permitted to siphon value from Hartsdale and put the Homestores, and most importantly the Homestore customers, at risk due to the operational or chapter 11 expenses of other stores and Debtors.

- Critical Vendor Protections for Mengnu: Similarly, Ashley objects to the Debtors' proposed critical vendor protections for Mengnu to the extent that they would allow consumer deposits and/or sale proceeds from the Homestores to be upstreamed and used to fund payments to Mengnu. Mengnu does not supply the Homestores, and therefore value from the Homestores should not be used to satisfy Mengnu's claims.
- Procedures for Section 503(b)(9) Claims: Ashley objects to the Debtors' proposed procedures for resolution and payment of claims under section 503(b)(9) of the Bankruptcy Code to the extent that (i) they would permit consumer deposits and/or sale proceeds from the Homestores to be used to satisfy section 503(b)(9) claims against other Debtors, and (ii) they fail to ensure that section 503(b)(9) claims against Hartsdale will be satisfied pari passu with other non-ordinary course administrative claims.
- Procedures for Interim Compensation of Professionals: Ashley objects to the Debtors' proposed procedures for interim compensation of professionals to the extent that (i) they would permit value from Hartsdale to be used to satisfy a disproportionate share of professional fees and expenses, and (ii) they fail to ensure that Hartsdale will have sufficient funds to satisfy all other administrative claims and outstanding customer deposits.

- Proposed Interim Settlement With Credit Card Processor: Ashley objects to the Debtors' proposed interim settlement with its credit card processor to the extent that the proposed settlement (i) fails to segregate reserves for Homestore customer deposits from deposits for the Debtors' other stores, and (ii) otherwise fails to adequately ensure that customers will be able to obtain refunds of deposits when necessary.

Ashley will continue to engage in good faith discussions with the Debtors in advance of the August 4 hearing in an attempt to resolve these issues.

WHEREFORE, Ashley respectfully requests that the Court (i) sustain this Limited Objection, (ii) grant this Request, (iii) condition the Debtors' use of the Trademarks on adequate protection of Ashley's interest in the Trademarks, including but not limited to requiring that Hartsdale maintain sufficient cash on hand so that, when added to the value of order-specific non-floor inventory at cost, the total remains greater than or equal to total customer deposits for the Homestores, and (iv) grant such other and further relief as the Court deems to be just and proper.

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