

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
UBI LIQUIDATING CORP., INC. et al.,¹) Case No.: 10-13005 (KJC)
)
)
Debtors.) Jointly Administered
)
) Hearing Date: December 6, 2011 at 11:00 a.m. (ET)
) Objection Deadline: November 30, 2011 at 4:00 p.m. (ET)

Re: Dkt. No. 1476

LIMITED OBJECTION OF THE NEW 5-7-9 AND BEYOND, INC. TO DEBTORS' MOTION, PURSUANT TO 11 U.S.C. §§ 105, 363, AND 554, FOR ENTRY OF AN ORDER AUTHORIZING THE (I) ABANDONMENT AND DESTRUCTION OF CERTAIN FILES AND ELECTRONIC RECORDS; AND (II) EXPENDITURE OF ESTATE FUNDS IN ACCORDANCE THEREWITH

The New 5-7-9 and Beyond, Inc. ("5-7-9"), by its undersigned counsel, as and for its Limited Objection to the Debtors' Motion, Pursuant to 11 U.S.C. §§ 105, 363, and 554, for Entry of an Order Authorizing the (I) Abandonment and Destruction of Certain Files and Electronic Records; and (II) Expenditure of Estate Funds in Accordance Therewith (the "Motion"), respectfully sets forth as follows:

BACKGROUND

1. On September 21, 2010 (the "Petition Date") the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy

¹ The Debtors in these cases are UBI Liquidating Corp., 100% Girls Ltd., 100% Girls of Georgia, Inc., 100% Girls of New York, Inc., 100% Girls of New Jersey, Inc., A.S. Interactive, Inc., ASL Liquidating Corp., Ashley Stewart Apparel Corporation, Ashley Stewart Clothing Company, Inc., ASMCI Liquidating Corp., ASWL Liquidating Corp., ASIL 6, Inc., ASNJ 10, Inc., Carraizo Alto Apparel Corporation, Church Street Retail, Inc., Kid Spot Ltd., Kidspot of Delaware, Inc., Kidspot of Illinois, Inc., Kidspot of Michigan, Inc., Kidspot of New Jersey, Inc., Kidspot of Ohio, Inc., Kidspot of Pennsylvania, Inc., Kidspot of Texas, Inc., Large Apparel of Alabama, Inc., Large Apparel of California, Inc., Large Apparel of Connecticut, Inc., Large Apparel of District of Columbia, Inc., Large Apparel of Florida, Inc., Large Apparel of Georgia, Inc., Large Apparel of Illinois, Inc., Large Apparel of Indiana, Inc., Large Apparel of Louisiana, Inc., Large Apparel of Maryland, Inc., Large Apparel of Michigan, Inc., Large Apparel of Mississippi, Inc., Large Apparel of Missouri, Inc., Large Apparel of New Jersey, Inc., Large Apparel of New York, Inc., Large Apparel of North Carolina, Inc., Large Apparel of Ohio, Inc., Large Apparel of Pennsylvania, Inc., Large Apparel of South Carolina, Inc., Large Apparel of Tennessee, Inc., Large Apparel of Texas, Inc., Large Apparel of Virginia, Inc., Large Apparel of Wisconsin, Inc., Marianne Ltd., Marianne USPR, Inc., Marianne VI, Inc., Metro Apparel of Kentucky, Inc., Metro Apparel of Massachusetts, Inc., The Essence of Body & Soul, Ltd., UACONJI Liquidating Corp., UACONYI Liquidating Corp., and UBTHC Liquidating Corp.

Code”). The Debtors represent that UBI Liquidating Corp., formerly known as Urban Brands, Inc., is the direct or indirect parent company of each of the other Debtors.

2. On October 19, 2011, the Court entered an *Order Confirming the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 1447].

3. On November 11, 2011, the Debtors filed the Motion.

OBJECTION

4. 5-7-9 and its affiliates operate a chain of over 1100 retail stores in the United States, Puerto Rico and the Virgin Islands.

5. Debtor UBI Liquidating Corp. f/k/a Urban Brands, Inc. is a party to an Asset Purchase Agreement, dated January 23, 2009, by and among 5-7-9 as buyer, and Marianne USPR, Inc., Carraizo Alto Apparel Corporation, Large Apparel of New Jersey, Inc., and Marianne VI, Inc., as sellers (collectively, “Sellers”), and Urban Brands, Inc. (“UBI”) to the extent set forth therein, as modified and amended pursuant those certain letter agreements dated as of February 2, 2009, February 5, 2009, February 18, 2009, March 5, 2009, March 31, 2009, and April 23, 2009 (collectively, the “APA”).²

6. Pursuant to the APA, 5-7-9 acquired certain Transferred Stores and Transferred Assets (as those terms are defined in the APA). 5-7-9 also acquired certain rights and claims against the Debtors which are set forth in its five Second Amended Proofs of Claim filed against the Debtors’ estates (Claim Nos. 829, 830, 831, 832 and 833) (the “Claims”). 5-7-9’s claims arose from certain litigations commenced against 5-7-9 and/or its affiliates which concern the Transferred Stores and Transferred Assets (as those terms are defined in the APA), and for which 5-7-9 asserts it is entitled to be indemnified and held harmless for.

² Copies of the APA and other documents referenced herein are voluminous and can be obtained by contacting counsel for 5-7-9.

7. Since the claims of 5-7-9 have not been resolved, and the litigations referred to therein are on-going, 5-7-9 objects to that portion of the Motion which allows the Debtors to abandon and destroy all documents relating to three litigations referred to in 5-7-9's Claims; that is, (1) Morales Realty, Inc. v. Urban Brands, Inc., Marianne, USPR, Inc., et al; (2) L.A. Printex Industries, Inc. v. MeeTV Magic, Inc.; Marianne Stores, Inc., et al; and (3) Sonia Cruz Soto v. Marianne; as well as all information relating to any underlying stores that the Debtors had associated with those cases, such as (with regard to the Morales Realty litigation) Rainbow Store #1320 located at Paseo De Diego #70, Rio Piedras, Puerto Rico; the stores relating to where (in the L.A. Printex litigation) the alleged infringing goods were found or sold, and the stores relating to where Sonia Cruz Soto worked.

8. In addition, 5-7-9 wants that all documents and information under those stores be kept, as well as all documents in any way related to those claims, such as purchase orders and invoices relating to the alleged infringing goods in the LA Printex case.

9. Additionally, 5-7-9 is in the process of checking if there are any employment cases, worker's compensation cases, or negligence cases relating to any former employees of Marianne/Urban Brands, or any Marianne stores in any way relating to the period prior to the acquisition of Marianne from Urban Brands. All such information regarding those employees and/or store locations should be kept.

WHEREFORE, 5-7-9 respectfully requests that the portion of the Motion that affects the documents and information relevant to 5-7-9's claims referred to herein be denied in its entirety, and that such documents and information be preserved until suitable arrangements can be made pertaining thereto, together with such other and further relief as is just and proper.

Dated: November 30, 2011
Wilmington, Delaware

Respectfully submitted,

The Rosner Law Group LLC

By: /s/ Scott J. Leonhardt
Scott J. Leonhardt (DE #4885)
824 Market Street, Suite 810
Wilmington, DE 19801
(302) 777-1111
Leonhardt@teamrosner.com

and

**Platzer, Swergold, Karlin, Levine,
Goldberg & Jaslow, LLP**
Sherri D. Lydell, Esq.
1065 Avenue of the Americas, 18th Floor
New York, New York 10018
(212) 593-3000

Attorneys for The New 5-7-9 and Beyond, Inc.