

11-05-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings => => =>



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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

11-5-02

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): First Source Financial LLP 11-5-02
Individual(s) Association
General Partnership Limited Partnership State of Illinois
Corporation
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Lew Magram, Ltd.
Internal Address:
Street Address: 414 Alfred Avenue
City: Teaneck State: New Jersey Zip: 07666
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State New York
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

1. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Corporation-State
Other Release of lien by Court Order
Execution Date: March 9, 2000

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 1,554,789
Additional number(s) attached Yes No

B. Trademark Registration No.(s) 1,554,789
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Francie R. Gorowitz, Esq.
Internal Address: O'Melveny & Myers LLP
Street Address: 1999 Avenue of the Stars
City: Los Angeles State: CA Zip: 90067-6035

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41) \$ 40.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number: 500639
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
Francie R. Gorowitz Signature November 4, 2002 Date
Total number of pages including cover sheet, attachments, and document: 19

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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TRADEMARK REEL: 2609 FRAME: 0933

**U.S. Bankruptcy Court
Southern District of New York
Notice of Electronic Filing**

The following transaction was received from Porter, Marguerite on 3/9/2000 at 4:26 PM

Case Name: Stylesite Marketing, Inc.
Case Number: 00-10099-smb
Document Number: 67

Docket Text:

Order signed on 3/9/2000 Authorizing and Approving the Sale of Certain Assets of Lew Magram Ltd. and Brownstone Holdings, Inc. Free and Clear of Liens, Claims and Encumbrances; Authorizing and Approving the Terms of the Asset Purchase Agreement; Scheduling Further Hearings to Consider the Assumption and Assignment of Certain Executory Contracts and Authorizing the Exemption of the Sale from Stamp or Similar Taxes (Related Doc # [23]) (Porter, Marguerite)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:A:/ordersale.pdf

Electronic document Stamp:

[STAMP NYSBStamp_ID=842906028 [Date=3/9/2000] [FileNumber=168104-0] [b0249116007f67ed569d06248ed04b6601df440931977cdfef192f70ed58337f1823a23ddd16d6d163c21f323dea3ce12b3ba279d51068141eed26f796d160b]]

Document description:Exhibit

Original filename:A:/assetpurchase.pdf

Electronic document Stamp:

[STAMP NYSBStamp_ID=842906028 [Date=3/9/2000] [FileNumber=168104-1] [a25a75f86513cd2b9b3a4e061ba43a60469e9b208b5e3359450c77b63f16e7853b1d445429078d3cb9acb7bbe015466724a91dd2152eeb64e018b77f9a138a88]]

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	Chapter 11
STYLESITE MARKETING, INC., LEW MAGRAM LTD., BROWNSTONE HOLDINGS, INC., and ECOLOGY KIDS INC.,	Case No. 00-10099 (SMB), Case No. 00-10100 (SMB), Case No. 00-10101 (SMB) and Case No. 00-10103 (SMB)

Debtors.

Jointly Administered

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**ORDER PURSUANT TO SECTIONS 105, 363, 365 AND 1146 OF
THE BANKRUPTCY CODE (i) AUTHORIZING AND APPROVING
THE SALE OF CERTAIN ASSETS OF LEW MAGRAM LTD. AND
BROWNSTONE HOLDINGS, INC. FREE AND CLEAR OF LIENS, CLAIMS,
AND ENCUMBRANCES, (ii) AUTHORIZING AND APPROVING THE TERMS
OF THE ASSET PURCHASE AGREEMENT, (iii) SCHEDULING FURTHER
HEARINGS TO CONSIDER THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND (iv) AUTHORIZING THE
EXEMPTION OF THE SALE FROM STAMP OR SIMILAR TAXES**

StyleSite Marketing, Inc., Lew Magram Ltd., Brownstone Holdings, Inc. and, Ecology Kids
Inc., debtors and debtors-in-possession (collectively, "Debtors"), filed on February 2, 2000 in this
Court a motion for entry of an order pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy
Code (the "Sale Order") authorizing and approving, among other things, (i) the emergency sale of

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**TRADEMARK
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certain assets of the Debtors free and clear of liens, claims, and encumbrances, subject to the terms of the asset purchase agreement, (ii) the asset purchase agreement as entered into by the Debtors pursuant to the Auction Procedures (as defined in the Sale Motion) for the sale of the assets in whole or in part, (iii) the assumption and assignment of certain executory contracts and unexpired leases and the rejection of others and (iv) the exemption of the sale from stamp or similar taxes (the "Sale Motion"). The Court conducted the hearing on the Sale Motion on February 29, 2000 (the "Sale Hearing"). Having considered the Sale Motion, the pleadings, the arguments and the statements of counsel, the evidence presented at the Sale Hearing, and the record in these proceedings, and objections having been filed and either withdrawn, or overruled, the Court makes the following findings of fact and conclusions of law and, pursuant thereto, enters the following order:

FINDINGS OF FACT

1. On January 13, 2000 (the "Petition Date"), StyleSite Marketing, Inc. ("StyleSite"), Lew Magram Ltd. ("Lew Magram"), Brownstone Holdings, Inc. ("Brownstone") and, Ecology Kids Inc. ("Ecology") filed with the Clerk of this Court their respective petitions for relief under chapter 11, title 11, of the United States Code (the "Bankruptcy Code"). All Debtors are now operating their business and managing their property as debtors-in- possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On January 14, 2000, the Court granted the Debtors' motion for an order of joint administration pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") providing for the joint administration of these cases and for consolidation for procedural purposes only.

3. On or about January 24, 2000, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the Committee”).

4. On February 16, 2000, the Court entered a Final Order approving post-petition debtor-in-possession financing (the “Final Order”) which financing is being provided to the Debtors by First Source Financial LLP (“First Source”).

~~5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.~~

~~6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 363, 365 and 1146 of the Bankruptcy Code and Rules 2002 and 9006 of the Bankruptcy Rules.~~

~~7. Venue of the Debtors’ chapter 11 cases and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.~~

8. On February 9, 2000, the Court signed an order approving the Auction Procedures and scheduling the Sale Hearing (the “Scheduling Order”). Notice of the Sale Hearing was served in accordance with the Scheduling Order.

9. The Debtors notified potential purchasers who had and might have an interest in purchasing the assets (the “Qualified Bidders”) of Brownstone and Magram. The Debtors sent to each Qualified Bidder a copy of a proposed asset purchase agreement for the sale of such Assets, and provided reasonable access to Debtors’ books, records and executives to Qualified Bidders for the purpose of conducting due diligence. Any Qualified Bidders desiring to submit a bid at the auction (a “Bid”) was required to deliver a Bid, consisting of (a) an executed version of the asset purchase agreement with marked alterations, if desired, (b) an earnest money deposit (the “Earnest Down Payment”) equal to 10% of the total proposed purchase price, and (c) an Adequate Assurance

Package (as described in the Auction Procedures) such that the Bid was actually received in writing as particularly set forth in the Scheduling Order not later than 10:00 a.m. on February 25, 2000.

10. Two (2) bids were received for the assets of Lew Magram and Brownstone, and an auction was held before this Court on February 29, 2000. (the "Auction"). As a result of the Auction, and subject to this Court's approval, Fingerhut Companies, Inc., as purchaser (the "Purchaser") in the amount of approximately \$6,750,000 in cash (the "Purchase Price") for the purchase of substantially all assets of Lew Magram and Brownstone (the "Acquired Assets"), as defined in the Asset Purchase Agreement attached hereto as Exhibit "A" ("Asset Purchase Agreement"), was selected by Lew Magram and Brownstone ~~in consultation with representatives of the Secured Creditor (as defined in the Sale Motion)~~, as the highest and best Bid (the "Winning Bid"). The Debtors' secured lender, First Source, in accordance with 11 U.S.C. § 363(k) credit bid a portion of its secured claim herein in the amount of \$6,500,000 as the Backup Bidder (as defined in the Auction Procedures). Pursuant to the Auction Procedures, following the conclusion of the Auction, the Purchaser and Lew Magram and Brownstone completed and executed the Asset Purchase Agreement, with such amendments and modifications as reflected on the record of the Sale Hearing, subject to approval of the Bankruptcy Court.

11. The closing (the "Closing") of the sale of the Acquired Assets to the Purchaser shall occur, in accordance with the terms of the Asset Purchase Agreement.

12. Objections to any relief requested by the Sale Motion, other than as related to the assumption and assignment of executory contracts and unexpired leases, were required to set forth in writing with particularity the grounds for such objections or other statements of position and were required to be served by 10:00 a.m. on February 25, 2000 on (i) the Bankruptcy Court; (ii) counsel

~~permit a finding of lack of good faith in this sale on the part of Purchaser or Lew Magram and Brownstone or that would justify setting aside the sale under section 363(n) of the Bankruptcy Code.~~

15. Approval of the Asset Purchase Agreement, the consummation of the sale of the Acquired Assets contemplated thereby, and the assumption and assignment of the Assumed Agreements (as defined in the Sale Motion), are in the best interests of Lew Magram and Brownstone respective estates. The Court finds that Lew Magram and Brownstone have articulated good and sufficient business reasons justifying the sale of the Acquired Assets pursuant to sections 105, 363 and 365 of the Bankruptcy Code. Such business reasons include, but are not limited to, the facts that (a) there is a substantial risk of deterioration of the value of the Acquired Assets if the sale is not consummated quickly; (b) the Asset Purchase Agreement constitutes the highest and best bid for the Acquired Assets; (c) the Asset Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of StyleSite Marketing, Inc.'s, Lew Magram's and Brownstone's businesses; and (d) any plan of reorganization would have most likely yielded no greater economic result.

16. The transaction reflected in the Asset Purchase Agreement represents the highest and best bid offered for such Acquired Assets after due and adequate advertising and solicitation. The consideration to be paid by Purchaser to Lew Magram and Brownstone pursuant to the Asset Purchase Agreement is fair and constitutes reasonably equivalent value for the assets proposed to be sold hereunder.

17. All findings of fact which are conclusions of law shall be deemed to be conclusions of law.

CONCLUSIONS OF LAW

18. The Court has jurisdiction of these cases and of the assets of the Lew Magram and Brownstone and their respective bankruptcy estates under U.S.C. §§ 1334 and 157.

19. The Sale Motion concerns the administration of the estates of Lew Magram and Brownstone and approval of the sale of assets of the estates of Lew Magram and Brownstone and is, therefore, a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (M), (N) and (O).

20. Good and sufficient notice of the Sale Hearing (including the Auction Procedures) has been given in accordance with the requirements of the Bankruptcy Code and the Bankruptcy Rules to all creditors asserting secured claims on the Acquired Assets and all parties requesting notice of all pleadings, among others, and no other or further notice shall be required except as expressly provided herein.

21. The Sale Motion satisfies requirements of Bankruptcy Code section 363(b) and (f), and any other applicable law relating to the sale of the Acquired Assets contemplated by the Asset Purchase Agreement, have been satisfied.

22. Subject to the procedures set forth herein, the sale motion satisfies the requirements of Bankruptcy Code section 365, and any other applicable law relating to the assumption and assignment or rejection, of the Assumed Agreement(s) contemplated by the Asset Purchase Agreement, have been satisfied.

23. ~~The transaction(s) contemplated by the Asset Purchase Agreement has been bargained for and are undertaken by Purchaser and Lew Magram and Brownstone at arm's length, without collusion, and in good faith as that term is used in section 363(m) of the Bankruptcy Code, and such parties are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Purchaser~~

~~and Lew Magram and Brownstone have not engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided pursuant to section 363(n) of the Bankruptcy Code. In the absence of a stay pending appeal, if Purchaser elects to consummate the Asset Purchase Agreement at any time after entry of this Order, Purchaser shall be entitled to the protections of section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal. Bankruptcy Rule 6004(g) is hereby waived so that the closing of the Asset Purchase Agreement may close within ten (10) days of the entry of this order.~~

~~24. The transaction reflected in the Asset Purchase Agreement represents the highest and best offer for the Acquired Assets.~~

25. The transfer of the Acquired Assets, and the assumption and assignment of the Assumed Agreements, by Lew Magram and Brownstone to Purchaser (a) is or will be a legal, valid, and effective transfer of the Acquired Assets and assumption and assignment of the Assumed Agreements; (b) vests or will vest Purchaser with good title to the Acquired Assets free and clear of all liens, claims and encumbrances; and (c) constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code.

26. Except as expressly set forth in the Asset Purchase Agreement, (a) Purchaser is assuming no liabilities of the Seller (as defined in the Asset Purchase Agreement); and (b) each creditor, governmental unit, and other party in interest is permanently enjoined and prohibited from taking any action against the Purchaser, the Acquired Assets, or otherwise interfering with the Purchaser's use of the Acquired Assets, based upon or by reason of any claim which such person had against the Seller provided that such claim existed against the Debtors or their Estates as of or prior to the Closing of the Asset Purchase Agreement.

27. Purchaser qualifies for the exception from stamp or similar taxes pursuant to section 1146 of the Bankruptcy Code.

28. All of the provisions of this Order are nonseverable and mutually dependent.

29. All conclusions of law which are findings of facts shall be deemed to be findings of fact.

ORDERS

IN ACCORDANCE WITH THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Sale Motion (as modified at the Sale Hearing) is granted. ~~in all respects.~~

2. All objections, responses, and requests for continuance, if any, concerning the Sale Motion not resolved by the terms of this Order or a separate order entered contemporaneously herewith or by a stipulation announced on the record of the Sale Hearing and not otherwise withdrawn, waived, or settled, and all reservations of rights therein, are overruled and denied.

3. Lew Magram and Brownstone shall serve notice of this Order and the terms and conditions hereof on all parties to the Contracts within ten (10) business days of the entry hereof.

4. Objections relating to the assumption and assignment of the Assumed Agreements shall be filed and served so as to be actually received by at least five (5) days prior to the hearing to be scheduled on the Assumption Motion on (i) the Bankruptcy Court; (ii) counsel for Lew Magram and Brownstone, Angel & Frankel, P.C., 460 Park Avenue, New York, New York 10022, Attention: Joshua J. Angel, Esq. and Rochelle R. Weisburg, Esq.; (iii) counsel for First Source, Katten Muchin Zavis, 525 West Monroe Street, Suite 1600, Chicago, IL 60661-3693, Attention: Michael L.

Molinaro; (iv) counsel for the Committee, Kronish Lieb Weiner & Hellman LLP, 1114 Avenue of the Americas, New York, NY 10036-7798, Attention: Robert J. Feinstein, Esq.; (v) counsel for Purchaser, Fingerhut Companies, Inc., Kaye Scholer, Fierman, Hays & Handler, LLP, 425 Park Avenue, New York, NY 10022, Attention: Arthur Steinberg, Esq.; and (vi) the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attention: Greg M. Zipes, Esq.

5. If any party to an Assumed Agreement (as defined in the Asset Purchase Agreement) fails to object by such deadline, the Assumed Agreement of such party shall be deemed assumed and assigned, upon and subject to the Closing, without further order of the Court.

6. The terms and conditions of the Asset Purchase Agreement and the sale of the Acquired Assets are approved, and subject to the terms of the Asset Purchase Agreement, the assumption and assignment of the Assumed Agreements pursuant to the Asset Purchase Agreement are hereby authorized under sections 105, 363(b), and 365 of the Bankruptcy Code.

7. Equipment that is subject to a lease will be transferred to Purchaser without further consideration in the event that it is deemed to be subject to a capital lease (i.e., not a "true lease") as compared to an operating lease.

8. Lew Magram and Brownstone are hereby authorized and directed to execute and deliver the Asset Purchase Agreement and to consummate the sale of the Acquired Assets to Purchaser pursuant to the terms of the Asset Purchase Agreement and the Auction Procedures and the related transactions in connection therewith, and the form and content of the Asset Purchase Agreement and the exhibits attached thereto are approved.

9. Lew Magram and Brownstone are authorized and directed to negotiate, execute and deliver such other and further documents, including exhibits not incorporated in the Asset Purchase

Agreement, as may be necessary or appropriate to implement and consummate the Asset Purchase Agreement.

10. Lew Magram and Brownstone are further authorized and directed to undertake their respective obligations under the Asset Purchase Agreement and other related agreements and otherwise to consummate all of the transactions contemplated thereby and to take all further actions as may be reasonably requested by Purchaser for the purpose of assembling, transferring, granting or conveying to Purchaser, or reducing to possession, all of the Acquired Assets, or as may be necessary to the performance of the obligations contemplated by the Asset Purchase Agreement.

11. Lew Magram and Brownstone and each other Person having duties or responsibilities under the Asset Purchase Agreement, the related agreements, or this Order and their respective directors, officers, general partners, members, agents, representatives, and attorneys, are authorized and empowered to carry out all of the provisions of the Asset Purchase Agreement and other related agreements; to issue, execute, deliver, file, and record, as appropriate, the related agreements, and to take any and all actions contemplated by the Asset Purchase Agreement, the related agreements, or this Order, and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the Asset Purchase Agreement, and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, or stockholders, and with like effect as if such actions had been taken by unanimous action of the respective directors, or stockholders, of such entities. All such additional agreements, documents, and instruments shall be

deemed to be "related agreements" for purposes of this Order. An officer of Lew Magram and Brownstone shall be, and hereby are, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable).

12. Lew Magram and Brownstone are further authorized and empowered, but not obligated, to cause to be filed with the secretary of state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Asset Purchase Agreement, the related agreements, and this Order, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units, or as any of the officers of Lew Magram and Brownstone may determine are necessary or appropriate. The execution of any such document, or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such Person to so act.

13. At the Closing (as defined in the Asset Purchase Agreement), and subject to the payment of the balance of the purchase price in good funds, all right, title, and interest in and to the Acquired Assets shall be immediately vested in Purchaser free and clear of all liens, claims, interests and encumbrances of any type whatsoever, pursuant to sections 105, 363(b) and (f) of the Bankruptcy Code with all such liens, claims interests and encumbrances to attach to the proceeds of the sale. Any Liens and claims on the Acquired Assets shall attach to the proceeds of the sale of the Acquired Assets in order of their priority, to the same extent and with the same validity, force and effect as if such property had not been sold.

14. The proceeds of the sale of the Acquired Assets shall be deposited with and held in escrow by Debtors' counsel, Angel & Frankel, P.C., and shall be distributed in accordance with the Asset Purchase Agreement, and the balance of the proceeds shall be subject to the asserted liens of secured creditors in accordance with their respective priorities, provided, however, that no distribution shall be made to any creditors of the Seller without further order of the Court.

15. Upon the Closing (as defined in the Asset Purchase Agreement and as set forth in ~~paragraph~~ herein) the Acquired Assets shall belong exclusively to the Purchaser and thereafter, all persons, including without limitation the seller its current and former officers, directors, employees, agents and shareholders shall be prohibited and enjoined from using and/or appropriating the Acquired Assets including without limitation the customer lists, customer names, trademarks and tradenames sold to the Purchaser without the express written authorization of the Purchaser.

16. All entities in possession of some or all of the Acquired Assets at the Closing are directed to surrender possessions of the Acquired Assets to Purchaser at such Closing.

17. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, territorial and local officials, and all other persons and entities who may be required by operation of law, and the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets.

18. If any person or entity that has filed financing statements or other documents or agreements evidencing liens on or interests in the Acquired Assets shall have delivered to the Debtors,

in proper form of filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens or other interests which the person or entity has with respect to the Acquired Assets, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets.

19. All persons are enjoined from in any way pursuing Purchaser or its affiliates to recover any claims which such person has against the ~~Debtors~~ Debtors or their Estates as of or prior to the Closing of the Asset Purchase Agreement except with respect to Accepted Liabilities (as defined in the Asset Purchase Agreement).

20. After the Closing Date, Lew Magram, Brownstone and StyleSite shall have no liability for the Accepted Liabilities and all persons are enjoined from in any way pursuing Lew Magram, Brownstone and StyleSite to recover any claim which such person had against Lew Magram, Brownstone and StyleSite in respect of the Accepted Liabilities.

21. The Asset Purchase Agreement and all other documents, agreements, and instruments necessary to effectuate and consummate the transactions contemplated by the Asset Purchase Agreement, together with the terms and provisions of this Order, shall be binding upon and shall inure to the benefit of Lew Magram and Brownstone, Purchaser, and their respective successors and assigns, notwithstanding any subsequent appointment of a trustee for one or more of the Debtors, under any chapter of the Bankruptcy Code, as to which trustee such documents, agreements, and instruments (and the terms and provisions thereof) shall be binding in all respects.

22. The Asset Purchase Agreement may be modified, amended, or supplemented by agreement of Lew Magram and Brownstone and Purchaser without further action of the Court,

provided that any such modification, amendment, or supplement is not material and substantially conforms to and effectuates the Asset Purchase Agreement.

23. If the Purchaser fails to consummate the purchase of the Acquired Assets, or any part thereof, the offeror of the next highest and best bid (the "Backup Bid") by First Source will automatically be deemed to have submitted the highest and best bid, and Lew Magram and Brownstone, at their election and in their sole discretion, and such offeror are authorized to effect the sale of the Acquired Assets, or any part thereof, to such offeror as soon as is commercially reasonable but in no event later than March 30, 2000, without further order of the Bankruptcy Court and all references herein to the Winning Bid shall be read to refer to the Backup Bid and all references herein to Purchaser shall be read to refer to the Qualified Bidder that submitted the Backup Bid.

24. If such failure to consummate the purchase is the result of a breach by the Purchaser, the Earnest Down Payment, if any, shall be forfeited to Lew Magram and Brownstone and Lew Magram and Brownstone shall have the right to seek all available damages from and against the Purchaser.

25. The Court retains exclusive jurisdiction to (a) interpret and enforce the provisions of the Asset Purchase Agreement, the Auction Procedures and this Order in all respects, including, without limitation, retaining exclusive jurisdiction to protect the Purchaser against any liability other than the Accepted Liabilities, or related to the Acquired Assets, including that Purchaser retains exclusive rights to the Acquired Assets, or otherwise in accordance with the provisions of the Asset Purchase Agreement and (b) determine or resolve any and all objections to or disputes among the parties to the Asset Purchase Agreement regarding all issues or disputes with respect to the Asset Purchase Agreement, provided, however, that in the event the Court abstains from exercising, or

declines to exercise, jurisdiction with respect to any matter referred to in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

26. The failure specifically to include any particular provisions of the Asset Purchase Agreement or related agreements in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

27. As provided by Bankruptcy Rule 7062, this Order shall be effective and enforceable immediately upon entry.

28. Nothing contained in any chapter 11 plan confirmed in these cases or the order confirming any such plan shall conflict with or deviate from the provisions of the Asset Purchase Agreement, the related agreements, or the terms of this Order.

Dated: March 9, 2000

/s/ Stuart M. Bernstein
CHIEF UNITED STATES BANKRUPTCY JUDGE