

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

In re: : Chapter 7  
: :  
HRP Myrtle Beach Holdings, LLC *et al.*,<sup>1</sup> : Case No. 08-12193 (KJC)  
: :  
Debtors : Jointly Administered

**FPI/MBE LLC'S MOTION TO ENFORCE SALE ORDER**

FPI/MBE LLC (“FPIMBE”), the purchaser of substantially all of the assets of HRP Myrtle Beach Holdings, LLC et al. (the “Debtors”), by and through its undersigned counsel, Diamond McCarthy, LLC, Dewey & LeBoeuf LLP and Ballard Spahr Andrews & Ingersoll, LLP, hereby respectfully moves this Court for an order granting FPIMBE’s Motion to Enforce Sales Order (the “Motion to Enforce”), and in support hereof, states as follows:

**I. INTRODUCTION**

Steve Goodwin (“Goodwin”) – who as this Court well knows has participated in the underlying proceedings from their very inception as the Debtor’s former CEO – is now trying to shamefully unravel all that has been accomplished after laying behind the log when the Court duly considered and approved FPIMBE Asset Purchase Agreement acquiring all of the Debtor’s assets and related rights and interests free and clear of any claims. Erstwhile silent, Goodwin now belatedly claims that he and his ill-conceived company, HRP Creative Services Co., LLC

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<sup>1</sup> The Debtors are the following seven entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): HRP Myrtle Beach Holdings, LLC (1546), HRP Myrtle Beach Holdings Capital Corp. (5553), HRP Myrtle Beach Operations, LLC (1625), HRP Myrtle Beach Capital Corp (4272), HRP Myrtle Beach Management, LLC (0297), HRP Global Management LLC (2138) and We Got Your Back Security Co., LLC (3877). The address of each of the Debtors is 211 George Bishop Parkway, Myrtle Beach, South Carolina 29579.

("Creative Services"), actually still own the Park's basic DNA or alleged underlying intellectual property. Not just on some discrete level, but in a most integral, wide-ranging, and all-inclusive manner. To be sure, Goodwin himself asserts in a recent March 1st email that no one – not FPIMBE or any other purchaser – can open or operate the Park without paying Creative Services for its alleged intellectual property:

First let me note that the Intellectual Property owned by HRP Creative Services Co., LLC constitutes much more than the trademarks relating to Hard Rock Park. The Park, as built, incorporated the Creative Content throughout it's [sic] layout, including the building design and attraction layouts. *I find it inconceivable that you can consider opening the Park in 2009 without securing an agreement with us to utilize our Intellectual Property, as the cost and time to strip out our Creative Content from the Park would seem to rule out such a course of action.*<sup>2</sup>

Goodwin's brash allegation that all of the Park – from its layout to its trademarks – belong to a suspect entity that must be compensated before FPIMBE can reopen the Park threatens its very existence, let alone expedited reopening.

FPIMBE takes solace in that Goodwin's position, however brash and disturbing, lacks legal foundation because:

- (1) Goodwin and/or Creative Services waived ***all rights*** they may have had to the Park's intellectual property by failing to object to the sale of the Park and its assets to FPIMBE;
- (2) under well-settled intellectual property law, the sale of the Park's goodwill to FPIMBE necessarily included the Park's trademarks and trade dress; and
- (3) the sale of the Park as a going concern included all trademarks and trade dress necessary for the Park's reopening in 2009.

FPIMBE files this Motion so that the Court can reaffirm that these positions are correct under the Sale Order and applicable law, and to ensure that Goodwin and Creative

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<sup>2</sup> A true and correct copy of Goodwin's email is attached as Exhibit "A" to the Motion.

Services do not violate the Sale Order by filing a meritless intellectual property lawsuit against FPIMBE that could jeopardize the Park's reopening.

## **II. RELIEF REQUESTED**

1. FPIMBE respectfully requests that the Court Grant its Motion and enter an order that:

(a) Creative Services and/or its principals waived any and all rights to the Park's intellectual property by failing to timely object to the Sale Order;

(b) FPIMBE purchased and acquired any and all of Creative Services' and/or its principals' rights, title, and interests **located at or related to** the Park **free and clear of all encumbrances**; and

(c) Enjoins Creative Services and/or its principals pursuant to 28 U.S.C. § 2283 and Paragraph 15 of the Sale Order from instituting any lawsuit to relitigate the waiver and transfer of any and all of the Park's intellectual property in favor of FPIMBE pursuant to the Sale Order.

## **III. JURISDICTION**

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **IV. FACTUAL & PROCEDURAL BACKGROUND**

##### **A. CREATIVE SERVICES' ALLEGED OWNERSHIP OF THE PARK'S INTELLECTUAL PROPERTY.**

3. Contrary to Goodwin's public pronouncements and purported claims to have originally conceived of the Park's "rock and roll" concept and related themes, design, and layout, he was not even in the picture yet when it took place and most certainly did not do so alone or for himself. In fact, the idea, design, layout, and related theming of the Park was conceived of and paid for by others on behalf of and for the benefit of the Park itself. Goodwin subsequently used his position to usurp or lay claim to that which was not his in the first place and give it to Creative Services – an entity he created long after the fact for the sole purpose of circumventing others and absconding with what is integral to the Park's very existence.

4. Be that as it may, Goodwin evidently claims to have had the idea for Hard Rock Park in 2002, and to have begun taking on investors in 2004. After taking investors' money, he attempted, as indicated above, to split any and all intellectual property concerning the Park – including all trademarks, trade dress, and alleged concepts and designs – from the Debtor. Goodwin did this by creating Creative Services as a separate limited liability company in November of 2005.

5. Then, in March of 2006, Goodwin executed a self-dealing licensing agreement, the Creative Services Agreement (the "CSA"), both on behalf of the Debtor (as licensee) and Creative Services (as licensor). In its Recitals, the CSA falsely alleges that "principals of [Creative Services] developed certain trademarks, trade names, service marks, logos, slogans, trade dress, commercial symbols and other intellectual property to be used in

conjunction with the Park,” and that the Debtor could only use such intellectual property with a license from Creative Services.<sup>3</sup>

6. Goodwin is referring to the CSA in his March 1st email to FPIMBE alleging that the Park cannot reopen without his consent. In that email, Goodwin offers his consent to the Park’s re-opening, if FPIMBE agrees to enter into a licensing agreement similar to the CSA and pays Creative Services a yearly, up-front half-million dollar licensing fee, as well as 1.5% of the Park’s gross revenue above \$50 million. Of course, the threat is that FPIMBE will be sued, and possibly enjoined, if it proceeds with its plans to re-open the Park by Memorial Day 2009. Goodwin’s threat places FPIMBE’s business in jeopardy, and creates a very real need for the Court to altogether denounce Goodwin’s arguments under the Court’s Sale Order.

#### **B. THE ASSET PURCHASE AGREEMENT AND SALE ORDER.**

7. On September 24, 2008, the Debtor filed for bankruptcy relief in Delaware. The filing followed an initial season at the Park that was plagued with poor attendance and increasing inability to service the nearly \$400 million of debt the Park had incurred in its planning, construction, and early operation phases. The bankruptcy filing included most of the HRP entities – with the notable exception being Creative Services, which apparently escaped bankruptcy because Goodwin specifically created it to hold only some of the Park’s assets (its intellectual property), but none of its liabilities.

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<sup>3</sup> CSA at Recitals C & D.

8. On January 6, 2009, the case was converted to a Chapter 7 case.<sup>4</sup> The debtor-in-possession lender and the new Chapter 7 Trustee (the “Trustee”) then entered into discussions with a number of parties regarding the sale. FPIMBE prevailed and entered into an Asset Purchase Agreement (the “APA”) for the purchase of all of the debtors’ real property, equipment, and inventory (subject to certain license restrictions) for \$25 million. The APA was submitted to the Bankruptcy Court and ultimately approved. A detailed Order approving the APA (the “Sale Order”) was entered (subject only to the objection of Hard Rock – which was ultimately withdrawn) on February 18, 2009.<sup>5</sup> Specifically, the APA conveys all of the Park’s assets – and all assets related to the Park – free and clear of all encumbrances:

Purchase and Sale of Assets. Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and on the terms subject to the conditions set forth in this Agreement and the Sale Order, the Purchaser shall purchase, acquire and accept from the Trustee, and the Trustee shall sell, transfer, assign, convey and deliver . . . to the Purchaser, on the Closing Date, all of the Bankruptcy Estate’s right, title and interest in, to and under, ***free and clear of all Encumbrances*** . . . all of the following assets, properties, and rights of the Bankruptcy Estate ***located at or related to*** the Park. . . .<sup>6</sup>

9. Creative Services and Goodwin were given notice of the hearing, but made no objection to the Order. The Order is now final and non-appealable.

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<sup>4</sup> See Docket Entry (“Doc.”) #335.

<sup>5</sup> See Doc. # 436.

<sup>6</sup> See APA, § 1.1

## V. ARGUMENT & AUTHORITIES

### A. **CREATIVE SERVICES WAIVED ITS INTELLECTUAL PROPERTY RIGHTS BY FAILING TO OBJECT TO THE SECTION 362 SALE.**

10. Creative Services' attempts to extort licensing payments from FPIMBE must fail, as a matter of law, because Creative Services waived its rights to any and all of its intellectual property associated with the Park by failing to object to the Sale Order.

11. Section 363(f)(2) of the Bankruptcy Code empowers the Trustee to sell property of the estate "free and clear of any interest in such property of an entity other than the estate" if "such entity consents. . . ."<sup>7</sup> As a matter of well-established bankruptcy law in the Third Circuit and elsewhere, an entity consents to a Section 363 sale if, after receiving notice of the sale, the entity fails to object.<sup>8</sup> In effect, Section 363 gives the Trustee the right to sell property that a third party has an interest in, so long as the party alleging ownership does not

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<sup>7</sup> 11 U.S.C. § 363(f)(2) (emphasis supplied).

<sup>8</sup> See, e.g., *In re Allegheny Health Educ. and Research Found.*, 383 F.3d 169, 177–78 (3d Cir. 2004) (holding that a creditor was bound by the terms of an asset purchase agreement, even when the terms of the agreement may not have complied with provisions of the Bankruptcy Code, where the creditor failed to timely object); *In re James*, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997) ("In this case, section 363(f)(2) is satisfied because [the mortgagee] failed to object to the proposed sale of the [real property]. By failing to object to the sale, [the mortgagee] implicitly conveyed its consent to the sale for purposes of satisfying section 363(f)(2)."); *In re Shary*, 152 B.R. 724, 725 (Bankr. N.D. Ohio 1993) (holding that state's failure to object to sale or confirmation of debtor's liquor license implicitly conveyed state's consent where state was duly noticed and undisputedly had knowledge of sale during its pendency); *In re Gabel*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) ("Having previously determined that [the creditor] was properly noticed, I need now only decide if this failure to object, according to the clear terms of the notice, should be viewed as 'consent' within the meaning of Section 365(f)(2). My own reading of the law and the jurisprudence in this area leaves me with the firm belief that this is exactly the legal effect that must be given to such a failure to object.").

object: “When a bankruptcy court approves the sale of an asset of the debtor, a person who has notice of the sale cannot later void it on the ground that he is the asset’s real owner.”<sup>9</sup>

12. Section 363(f)(2) provision allowing the Trustee to extinguish a non-debtor’s “interest in such property” must be read expansively,<sup>10</sup> and is not limited to in rem interests, but rather includes all other interests that arise from the property’s sale.<sup>11</sup> Indeed, courts interpreting the scope of Section 363(f)(2) have extended its reach to intellectual property:

The bankruptcy court’s sale order, consistent with 11 U.S.C. § 363(f), extinguished all “interests” in the assets acquired by Reuters [purchaser], and this included an interest in the intellectual property that Reuters acquired from Bridge. . . . It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. . . . It could not be otherwise; transaction costs would be prohibitive if

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<sup>9</sup> *ITOFCA, Inc. v. MegaTrans Logistics, Inc.*, 322 F.3d 928, 930 (7th Cir. 2003); *see also Al Perry Enters., Inc. v. Appalachian Fuels, LLC*, 503 F.3d 538, 541-44 (6th Cir. 2007) (holding that bankruptcy court’s approval of sale of debtor’s assets “free and clear of all liens, claims and encumbrances” extinguished sales agent’s claim to past and prospective commissions under coal supply contract, where agent had notice that its right to receive commissions was about to be extinguished by virtue of asset purchase, but failed to file proof of claim and did not object to assets sale, and obligation to pay commission was not expressly assumed by buyer under purchase agreement or bankruptcy court order approving sale of assets); *Operating Sys Support, Inc. v. Wang Labs., Inc.*, No. 01-2700, 52 Fed. Appx. 160, 170 (3d Cir. 2002) (not designated for publication) (concluding that Bankruptcy Court’s free and clear sale of debtor’s rights to software program did not extinguish licensee’s rights in the program, where the conveyance expressly preserved the rights of third parties under the license agreements).

<sup>10</sup> *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

<sup>11</sup> *Id.*

everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold.<sup>12</sup>

13. It is undisputed that Creative Services had notice of the Trustee's Section 363 sale to FPIMBE but failed to object. It is therefore black letter law that Creative Services waived its right to claim that it allegedly owns intellectual property that was sold to FPIMBE. This Motion accordingly asks the Court to affirm its Sale Order and declare that Creative Services waived its rights to any and all intellectual property regarding the Park so that FPIMBE can move forward with its plans to reopen by Memorial Day without facing a meritless lawsuit by Creative Services.

**B. THE SALE ORDER CONVEYED ALL OF THE PARK'S GOODWILL AND THE TRADE DRESS RIGHTS THAT SYMBOLIZE THE GOODWILL TO FPIMBE.<sup>13</sup>**

14. It is beyond dispute that the Sale Order transferred all of the Park's goodwill to FPIMBE. Creative Services' position presumably is that, despite transferring all of the Park's goodwill to FPIMBE, the Sale Order did not transfer the Park's trademarks and trade dress because that intellectual property belongs to Creative Services, not the Debtor.

Notwithstanding that Section 363 renders its position untenable, Creative Services' argument

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<sup>12</sup> *FutureSource LLC v. Reuters Limited*, 312 F.3d 281, 285-86 (7th Cir. 2002) (citation omitted); *see also Denbicare U.S.A., Inc. v. Toys R Us, Inc.*, 84 F.3d 1143, 1151 (9th Cir. 1996) (affirming dismissal of copyright owner's infringement action because the copyright owner could have objected to the bankruptcy sale on the grounds of infringement, but did not, and was deemed to have consented to the sale).

<sup>13</sup> FPIMBE also acquired all trademarks generated or associated with the Park, both through the Asset Purchase Agreement and by Creative Services' failure to object to the Sale Order. While this section of the Motion focuses primarily on trade dress, trademarks are discussed herein because the cited cases discuss trademarks. That same discussion would also apply to trade dress.

must fail under traditional intellectual property law for two reasons. First, Creative Services' attempt to sever the Park's trademarks and trade dress from its goodwill is an invalid assignment in gross. Second, the Trustee's sale of the Park's intangible assets to FPIMBE necessarily included the Park's trademarks and trade dress because the sale was to ensure the Park could continue as a going concern.

15. Creative Services' Argument Renders the Sale Order an Invalid Assignment in Gross.

16. A trademark is merely a symbol of goodwill<sup>14</sup> that has no independent significance apart from the goodwill that it symbolizes.<sup>15</sup> “[A] trademark is merely one of the visible mediums by which the good will is identified, bought, and sold, and known to the public.”<sup>16</sup> The U.S. Supreme Court has stated that it is “fundamental error” to assume “that a trademark right is a right in gross or at large, like a statutory copyright or a patent for an invention, to either of which, in truth, it has little or no analogy.”<sup>17</sup> The Supreme Court further stated:

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<sup>14</sup> *Marshak v. Green*, 746 F.2d 927, 929 (2d Cir. 1984); *Premier Dental Products Co. v. Darby Dental Supply Co.*, 794 F.2d 850, 853 (3d Cir. 1986), *cert. denied*, 479 U.S. 950 (1986).

<sup>15</sup> *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97-98 (1918); *American Steel Foundries v. Robertson*, 269 U.S. 372, 380 (1926).

<sup>16</sup> *Coca-Cola Bottling Co. v. Coca-Cola Co.*, 269 F. 796, 806 (D. Del. 1920).

<sup>17</sup> *Theodore Rectanus*, 248 U.S. at 97.

There is no such thing as property in a trademark except as a right appurtenant to an established business or trade in connection with which the mark is employed.<sup>18</sup>

17. Because goodwill and a trademark may not be separated, a trademark cannot be sold or assigned apart from the goodwill it symbolizes.<sup>19</sup> A transfer that purports to transfer a trademark separately from its goodwill is an “assignment in gross” and is invalid.<sup>20</sup> The prohibition on the sale or assignment of a trademark in gross is designed to prevent a consumer from being misled or confused as to the source and nature of the goods or services that he acquires.<sup>21</sup>

18. FPIMBE’s Asset Purchase Agreement with the Trustee, which was approved by the Sale Order, sold, inter alia, “all goodwill and other intangible assets generated or associated with the Purchased Assets. . . .”<sup>22</sup> FPIMBE contends that the Sale Order is valid and lawful. FPIMBE also contends that, by acquiring all goodwill relating to the Park, FPIMBE also

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<sup>18</sup> *Id.* Trade dress also is merely a symbol of goodwill and would be governed by the same law.

<sup>19</sup> *Marshak v. Green*, 746 F.2d at 929 (attachment and auction of a trademark apart from its associated goodwill was set aside and reversed); *Premier Dental*, 794 F.2d at 853 (foreign manufacturer may assign U.S. trademark rights to its U.S. distributor because they were transferred or assigned only to represent the transfer of goodwill connected with the business and not separately from the goodwill).

<sup>20</sup> *Beauty Time, Inc. v. VU Skin Systems, Inc.*, 118 F.3d 140, 150 (3d Cir. 1997) (because trademark assignment was not made in connection with the business or goodwill, it was in gross and invalid); *Green River Bottling Co. v. Green River Corp.*, 997 F.2d 359, 362 (7th Cir. 1993) (trademark cannot be sold “in gross,” that is, separately from the essential assets used to make the product or service that the trademark identifies).

<sup>21</sup> *Sugar Busters LLC v. Brennan*, 177 F.3d 258, 265 (5th Cir. 1999); see also *Green River Bottling Co. v. Green River Corp.*, 997 F.2d 359, 362 (7th Cir. 1993).

<sup>22</sup> APA, art. 1.1(d).

acquired all trademarks and trade dress generated or associated with the Park in which Creative Services may previously have had an interest.

19. Creative Services' challenge to FPIMBE's ownership of the Park's intellectual property, however, constitutes an improper collateral attack on the validity of the Sale Order by attempting to render it an invalid assignment in gross. Creative Services' position is that the Sale Order approved the conveyance of the Park's goodwill, but without the trademarks and trade dress (which are allegedly owned by Creative Services).<sup>23</sup> If Creative Services is correct, that would render the Sale Order an invalid assignment in gross.

20. FPIMBE files this Motion to affirm that the Sale Order's transfer of the Park's goodwill necessarily includes all of the Park's trademark and trade dress, and is not an invalid assignment in gross. Moreover, FPIMBE seeks to enforce the Sale Order by obtaining a ruling that, because FPIMBE owns the Park's goodwill, any trademark and trade dress rights allegedly owned by Creative Services are unenforceable. If there is no goodwill, a trademark symbolizes nothing and is not entitled to protection.<sup>24</sup>

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<sup>23</sup> As noted above, Creative Services claims to own the Park's trademarks and trade dress pursuant to the Creative Services Agreement, a contract resulting from Goodwin's self-dealing. But the assignment to Creative Services itself violated the prohibition on assignments in gross. By placing the assets and goodwill of the Park in the Debtor, but splitting out the trademarks and trade dress rights into Creative Services, Goodwin executed an invalid assignment in gross. This, and the myriad other reasons why Goodwin's self-dealing precludes him from asserting intellectual property rights in the Park, will undoubtedly be the subject of broader claims by FPIMBE and/or the Trustee against Goodwin.

<sup>24</sup> See, e.g., *Industrial Rayon Corp. v. Duchess Underwear Corp.*, 92 F.2d 33, 35-36 (2d Cir. 1937), cert. denied, 303 U.S. 640 (1938); *Merry Hull & Co. v. Hi-Line Co.*, 243 F.Supp. 45, 50 (S.D.N.Y. 1965).

21. FPIMBE's Purchase of the Park as a Going Concern Necessarily Included the Park's Trademarks and Trade Dress.

22. FPIMBE's purchase of the Debtor's assets was intended to permit the Park to continue as a going concern, with full intent that the Park be reopened as soon as possible in 2009 after the shortened 2008 season. And when a business is sold as a going concern, goodwill and trademarks are transferred even though not specifically mentioned in the contract of sale.<sup>25</sup> This is certainly true when the sale includes the Debtor's intangible assets, as here. If a whole business is sold in bankruptcy, trademarks implicitly pass to the buyer of the whole intangible assets, even if trademarks are not specifically mentioned in the contract of sale.<sup>26</sup> If not all tangible business assets of the bankrupt are sold, the buyer acquires the trademarks and goodwill of the bankrupt if, as here, the assets purchased are sufficient to enable the buyer to "go on in real continuity with the past."<sup>27</sup>

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<sup>25</sup> *President Suspender Co. v. MacWilliam*, 238 F. 159, 162 (2d Cir. 1916), *cert. denied*, 243 U.S. 636 (1917); *Dovenmuehle v. Gilldorn Mortgage Midwest Corp.*, 871 F.2d 697, 700-02 (7th Cir. 1989).

<sup>26</sup> *American Dirigold Corp. v. Dirigold Metals Corp.*, 125 F.2d 446, 453 (6th Cir. 1942); *American Sleek Craft, Inc. v. Nescher*, 131 B.R. 991, 996-98 (D. Ariz. 1991) (presumption of a transfer of goodwill and trade names in bankruptcy sale applies).

<sup>27</sup> *Merry Hull & Co. v. Hi-Line Co.*, 243 F.Supp. 45, 51-52 (S.D.N.Y. 1965); *Mutual Life Insurance Co. v. Menin*, 115 F.2d 975 (2d Cir. 1940), *cert. denied*, 313 U.S. 578 (1941) (purchase of all but "minor" tangible assets at bankruptcy sale operated to pass goodwill and trademarks to buyer); *see also Holly Hill Citrus Growers' Association v. Holly Hill Fruit Products, Inc.*, 75 F.2d 13 (5th Cir. 1935) (sale of trademark for marketing part of business but not for fruit growing part upheld as valid transfer); *Maola Ice Cream Co. v. Maola Milk & Ice Cream Co.*, 238 N.C. 317, 77 S.E. 2d 910 (1953) (trademark associated with one plant properly assigned).

23. FPIMBE essentially bought the Park as a going business, and certainly bought a distinct portion of the business, including its goodwill – all as embodied within the Sale Order’s conveyance of the trademarks and trade dress symbolizing that goodwill. Thus, in order to permit the Park to re-open as scheduled, FPIMBE asks this Court to reaffirm that the Sale Order’s conveyance of the Park’s business and its intangible assets necessarily included its trademarks and trade dress.

Dated: March 20, 2009  
Wilmington, Delaware

Respectfully submitted,

/s/ Tobey M. Daluz

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COUNSEL FOR FPI/MBE, LLC

# **EXHIBIT A**

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> From: steven@hrpusa.com  
> To: mikeo\_keeffe@hotmail.com  
> Subject: HRP Creative Services  
> Date: Sun, 1 Mar 2009 12:59:39 -0500

> CONFIDENTIAL

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> Mike

> We have had time to briefly review the situation regarding your request for a proposal to utilize the Intellectual Property previously licensed to HRP Myrtle Beach Operations LLC at the Hard Rock Park in Myrtle Beach.

> As we have had very little contact with your group and do not yet know your planned direction or strategy, we can only provide a limited response at this time. To proceed to the next stage, we will need to perform more due diligence upon your group, which may affect our proposal significantly.

> First let me note that the Intellectual Property owned by HRP Creative Services Co., LLC

3/3/2009



constitutes much more than the trademarks

> relating to Hard Rock Park. The Park, as built, incorporated the Creative Content throughout it's layout, including the building

> design and attraction layouts. I find it inconceivable that you can consider opening the Park in 2009 without securing an agreement

> with us to utilize our Intellectual Property, as the cost and time to strip out our Creative Content from the Park would seem to rule

> out such a course of action.

>

> That said, once we satisfactorily complete our due diligence review of your group, we are prepared to proceed to an agreement

> based upon the prior value of the Intellectual Property as established in the original Creative Services Agreement.

>

> Accordingly we expect to receive a royalty equal to 1.5% of Gross Revenues for the use of the Intellectual Property. To assist you in

> your start up efforts we are prepared to make the payment of the royalty applicable only on Gross Revenues exceeding \$50 million

> in a single fiscal year, subject to the payment of a \$500,000 annual base creative services fee, payable in full at the start of each

> year. This is an effective rate of only 1% and considering the vast amount of Intellectual Property included I believe this to be a very

> fair offer. Certainly, for such a magnificent park.

>

> As discussed, we will require all of the prior controls and reporting requirements to be included in a final definitive agreement

> before you are permitted to utilize the Intellectual Property.

>

> If you are prepared to move forward on this basis we will require the following:

>

> 1. Detailed information on your ownership and management group. This should include audited financial statements.

>

> 2. A \$15,000 wire transfer to cover our projected attorneys costs.

>

> We are prepared to move quickly to meet your timetable.

>

> I reserve my right to make changes to this proposal or withdraw it entirely at anytime. Nothing in this email shall be considered a

> legally binding contract.

>

> I look forward to hearing from you.

>

> Regards,

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>

>

> Steven Goodwin

>

> HRP Creative Services Co., LLC

>

>

Express your personality in color! Preview and select themes for Hotmail®. [See how.](#)

3/3/2009

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

In re: : Chapter 7  
: :  
HRP Myrtle Beach Holdings, LLC *et al.*,<sup>1</sup> : Case No. 08-12193 (KJC)  
: :  
Debtors : Jointly Administered  
: :  
: **Regarding Docket No. \_\_\_\_\_**

**ORDER GRANTING FPI/MBE LLC'S MOTION  
TO ENFORCE SALE ORDER**

Upon consideration of the Motion of FPI/MBE LLC's ("FPIMBE") to Enforce the Sale Order (the "Motion") and after adequate notice, and good cause shown therefore, it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that Creative Services and Goodwin have waived any and all rights to the Park's intellectual property by failing to timely object to the Sale Order, and it is further

ORDERED that FPIMBE purchased and acquired any and all of Creative Services' and Goodwin's rights, title, and interests located at or related to the Park free and clear of all liens, claims, and encumbrances; and it is further

ORDERED that Creative Services and Goodwin are hereby enjoined pursuant to 28 U.S.C. § 2283 and Paragraph 15 of the Sale Order from instituting any lawsuit to relitigate the waiver and transfer of any and all of the Park's intellectual property in favor of FPIMBE pursuant to the Sale Order, and it is further

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<sup>1</sup> The Debtors are the following seven entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): HRP Myrtle Beach Holdings, LLC (1546), HRP Myrtle Beach Holdings Capital Corp. (5553), HRP Myrtle Beach Operations, LLC (1625), HRP Myrtle Beach Capital Corp (4272), HRP Myrtle Beach Management, LLC (0297), HRP Global Management LLC (2138) and We Got Your Back Security Co., LLC (3877). The address of each of the Debtors is 211 George Bishop Parkway, Myrtle Beach, South Carolina 29579.

ORDERED that this Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Dated: March \_\_\_\_\_, 2009  
Wilmington, Delaware

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The Honorable Kevin J. Carey  
United States Bankruptcy Judge