

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

In re:	)	Chapter 11
	)	
Urban Brands, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-13005 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Hearing Date: October 13, 2010 at 10:00 a.m. (EDT)
	)	Objection Deadline: October 6, 2010 at 4:00 p.m. (EDT)

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER  
AUTHORIZING THE RETENTION AND EMPLOYMENT  
OF RICHARDS, LAYTON & FINGER, P.A. AS COUNSEL  
TO THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE  
PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (the "Debtors") file this application (the "Application") for entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to retain and employ Richards, Layton & Finger, P.A. ("RL&F") as their bankruptcy counsel *nunc pro tunc* to the Petition Date (as defined herein). In support of this Application, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

## **JURISDICTION**

1. This Court has jurisdiction over the Application under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b).

2. The bases for the relief requested herein are sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2014-1 and 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

## **BACKGROUND**

### **A. Introduction**

3. On September 21, 2010 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief (collectively, the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in these Chapter 11 Cases.

### **B. Overview of the Debtors’ Business**

5. The Debtors are a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. Urban Brands, Inc., a Delaware corporation, is the direct or indirect parent company of all of the Debtors. Until 2009, the Debtors also operated stores under the brand name of Marianne.

6. The Ashley Stewart concept was founded in 1991 and has grown to become a nationally-recognized brand. According to an October 2009 industry survey by the NPD Group, a nationally recognized firm specializing in apparel research, plus sized African American women ranked Ashley Stewart third of all retailers, behind only Wal-Mart and Lane Bryant, as their favorite place to shop.

7. Ashley Stewart operates broadly in the women's apparel market, which the NPD Group estimates is approximately \$107 billion. Within women's fashion, Ashley Stewart focuses on the plus sized market, which is estimated to be over \$18 billion and growing. Within this subset of the market, Ashley Stewart focuses on the underserved urban market, particularly the African American and Hispanic consumer, two of the fastest growing segments of the U.S. population. Ashley Stewart is one of the few concepts focusing directly on these particular niche markets.

8. As of the Petition Date, the Debtors operate approximately 210 stores in 26 states with approximately 2,100 employees, the majority of which are minority women. The store base is reinforced by a strong online presence through AshleyStewart.com, providing both a marketing tool as well as an additional outlet for Ashley Stewart customers.

9. Despite the strength of their brand names and success at individual store locations, the Debtors began suffering from cash flow/liquidity problems in 2007, especially in their Marianne division. The Debtors' financial difficulties continued in 2008 with the slow down in the overall economy. As part of a strategic initiative to strengthen their balance sheet and improve their liquidity by focusing exclusively on the Ashley Stewart brand, in February 2008, the Debtors began divesting themselves of all of their Marianne stores. The proceeds from the Marianne divestitures, coupled with the reduction of the working capital investment needed

to support the Marianne brand name, provided improvement in operating results and cash flow during fiscal year 2009 (ending January 30, 2010). Unfortunately, although the Debtors significantly reduced their net losses from approximately \$44.3 million in 2008 to \$28.6 million in 2009, the business continued to operate at a loss. Additionally, from fiscal year 2008 to fiscal year 2009, the Debtors net sales decreased from \$179.6 million to \$174.6 million.

**C. The Debtors' Capital and Debt Structure**

10. The Debtors are borrowers under a Loan and Security Agreement dated as of September 3, 2004 (the "Prepetition Financing Agreement"), with Bank of America, N.A. (successor by merger to LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for LaSalle Bank Midwest National Association f/k/a Standard Federal Bank National Association). The Prepetition Financing Agreement was an asset-based facility with a maturity date of September 10, 2010. The availability for borrowings and letter of credit obligations under the Prepetition Financing Agreement was capped at \$6.5 million and is further limited to an amount supported by a borrowing base consisting of certain cash, certain accounts receivable and eligible inventory. As of the Petition Date, the Debtors owed only approximately \$2,251,651 plus interest on the facility with an additional \$2,366,324 in outstanding letters of credit (all of which are fully collateralized by the Debtors' cash).

11. In April 2004, the Debtors entered into a Note Purchase Agreement with a group of institutional investors led by Trimaran Fund II, L.L.C. ("Trimaran"), the Debtors' largest equity holder, and certain officers, employees and consultants of the Debtors. From August 2007 to November 2009, the Debtors entered into five additional note purchase agreements to raise additional capital. In total, the Debtors sold \$58,500,000 in senior unsecured

notes (the “Notes”). As of the Petition Date, the Debtors owed approximately \$81.3 million on account outstanding principle and interest on the Notes.

**D. Objectives of Chapter 11 Filing**

12. In April 2010, the Debtors engaged Oppenheimer & Co. Inc. (“Oppenheimer”) to assist the Debtors in searching for additional equity and/or mezzanine financing. Following exhaustive efforts to locate additional capital, the Debtors determined that there was insufficient interest in the market for this additional financing and, as a result, the Debtors’ best alternative to preserve the Debtors’ business as a going concern and maximize the value of their assets was to pursue a sale of all or substantially all the Debtors’ assets.

13. Accordingly, in August 2010, Oppenheimer expanded its marketing efforts to solicit interest from prospective purchasers of the Debtors and their assets as a going-concern. As a result of this process, New Ashley Stewart, LLC (“New Ashley” or the “Stalking Horse Bidder”) emerged as the party submitting the highest and best bid for the Debtors’ assets. Accordingly, the Debtors, with the approval of their board of directors, engaged in active negotiations with New Ashley regarding a potential going concern transaction and, on September 8, 2010, the Debtors and New Ashley executed a non-binding letter of intent. Following the execution of the letter of intent, the Debtors and their advisors actively negotiated with New Ashley regarding the definitive terms and conditions of an asset purchase agreement. The Debtors executed an asset purchase agreement with New Ashley on September 21, 2010.

14. The Debtors believe that a going-concern sale of the Debtors’ business presents the best opportunity to maximize recoveries for creditors and preserve thousands of jobs for the Debtors’ employees. Accordingly, the Debtors filed a sale procedures motion on September 22, 2010 [Docket No. 34].

**RETENTION OF RICHARDS, LAYTON & FINGER, P.A.**

15. Subject to approval of this Court, the Debtors wish to employ RL&F as their counsel in connection with the commencement and prosecution of their Chapter 11 Cases. Pursuant to section 327(a) of the Bankruptcy Code, the Debtors request that the Court approve the employment of RL&F under an evergreen retainer *nunc pro tunc* to the Petition Date to perform the extensive legal services that have been and will be necessary during their Chapter 11 Cases.

16. The Debtors have selected RL&F as their counsel because of the firm's extensive experience and knowledge in the field of debtors' and creditors' rights, business reorganizations and liquidations under chapter 11 of the Bankruptcy Code, its expertise, experience, and knowledge practicing before this Court, its proximity to the Court and its ability to respond quickly to emergency hearings and other emergency matters in this Court.

17. The services of RL&F under the evergreen retainer are necessary to enable the Debtors to execute faithfully their duties as debtors in possession. Subject to further order of this Court, RL&F will render the following professional services:

- (a) to advise the Debtors of their rights, powers and duties as debtors and debtors in possession;
- (b) to take all necessary action to protect and preserve the Debtors' estates, including the prosecution of actions on the Debtors' behalf, the defense of any actions commenced against the Debtors, the negotiation of disputes in which the Debtors are involved, and the preparation of objections to claims filed against the Debtors' estates;
- (c) to prepare on behalf of the Debtors all necessary motions, applications, answers, orders, reports and papers in connection with the administration of the Debtors' estates; and
- (d) to perform all other necessary legal services in connection with the Chapter 11 Case.

18. Given the extensive nature of the services that will be provided to the Debtors, it is necessary that the Debtors employ RL&F under an evergreen retainer to render the foregoing professional services.

19. RL&F has stated its desire and willingness to act in this case and to render the necessary professional services as counsel to the Debtors. Furthermore, to the best of the Debtors' knowledge, the directors and associates of RL&F do not have any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, or their respective attorneys, except as set forth herein and in the affidavit of Mark D. Collins, a director of RL&F (the "Collins Affidavit"), a copy of which is attached hereto as Exhibit B.

20. RL&F intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The Debtors, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, propose to pay RL&F its customary hourly rates in effect from time to time as set forth in the Collins Affidavit. The Debtors submit that these rates are reasonable.

#### **EVERGREEN RETAINER REQUESTED**

21. Prior to the Petition Date, the Debtors paid RL&F a total retainer of \$360,000 (the "Retainer") in connection with and in contemplation of the Debtors' chapter 11 filing. The Debtors assert that these types of retainer agreements reflect normal business terms in the marketplace. See In re Insilco Technologies, Inc., 291 B.R. 628, 634 (Bankr. D. Del. 2003) ("the practice [of receiving security retainers] in this district has been engaged in since at

least the early 1990's"). The Debtors propose that the retainer monies paid to RL&F and not expended for prepetition services and disbursements be treated as an evergreen retainer to be held by RL&F as security throughout the Debtors' Chapter 11 Cases until RL&F's fees and expenses are awarded by final order and are then payable to RL&F.

**NOTICE**

22. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the twenty (20) largest unsecured claims on a consolidated basis; (c) counsel to the Debtors' postpetition secured lender; (d) counsel to Trimaran; (e) the Internal Revenue Service; (f) the United States Department of Justice; and (g) all parties that have timely filed requests for notice under Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no other or further notice need be given.

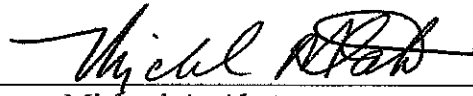
**NO PRIOR REQUEST**

23. No prior request for the relief sought in this Application has been made to this or any other court.



WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief the Court deems just and proper.

Dated: September 27, 2010  
Secaucus, New Jersey



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Name: Michael A. Abate  
Title: Vice President Finance/Treasurer of Urban Brands, Inc.