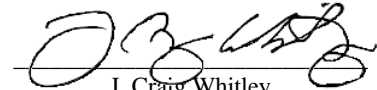


FILED & JUDGMENT ENTERED
Steven T. Salata

March 8 2019

Clerk, U.S. Bankruptcy Court
Western District of North Carolina




J. Craig Whitley
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

In re:) Chapter 11
)
BALLANTYNE BRANDS, LLC,) Case No. 19-30083
)
) Jointly Administered¹
)
Debtor.)

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. §§ 361 AND 363 AND SCHEDULING FINAL HEARING**

On January 22, 2019, Ballantyne Brands, LLC (the “Debtor”) filed its *Debtor’s Motion for Authorization to Use Cash Collateral and to Provide the Secured Creditor with Adequate Protection* (the “Motion”). [Doc. 9]. The Debtor requested that the Court schedule an expedited hearing on the Motion. The Motion sought entry of an interim order authorizing the use of cash collateral as defined in section 363(a) of the Bankruptcy Code on a preliminary basis through the date of a final hearing on the Motion. The Motion came before the Court on January 23, February 12, February 26, and March 6, 2019 for hearings on notice to all interested parties via ECF noticing, U.S. mail, electronic mail, and/or facsimile transmission. The notice provided is adequate and reasonable under the circumstances of this case. Based

¹ Ballantyne Brands, LLC, a Delaware limited liability company, is the debtor in possession in Case No. 19-30083. Ballantyne Brands, LLC, a North Carolina limited liability company, is the debtor in possession in Case No. 19-30084. The two cases are jointly administered by separate orders of this Court, with Case No. 19-30083 being identified as the lead case.

upon the evidence presented, the Debtor's use of cash collateral on an interim basis in accordance with the terms and conditions set forth herein appears to be in the best interest of the estate and its creditors; accordingly, it is hereby **ORDERED** that:

1. The Debtor may use cash collateral during the period beginning with the filing of its bankruptcy petition on January 18, 2019 (the "Petition Date"), and continuing through the date of the Final Hearing (as defined below), in the ordinary course of business for the expenses specified in the budget (the "Budget"), which is attached hereto and incorporated herein by reference as Exhibit A.

2. The Debtor may use cash collateral only for ordinary and necessary business expenses consistent with the specific items and amounts contained in the attached budget; *provided*, however, that the Debtor may vary from the Budget by 10% per line item on a cumulative basis (excluding the Fontem IP Licensing line item, to which the 10% variance has no application).

3. The Debtor shall not use, sell or expend, directly or indirectly, cash collateral or any proceeds, products or offspring thereof, except as authorized in this interim order.

4. The Debtor's authority to use cash collateral in accordance with the terms and conditions set forth herein shall terminate at 11:59 p.m. on the date of the Final Hearing, unless the Court further authorizes the use of cash collateral at the Final Hearing or upon mutual consent of the Debtor and its senior secured creditor, DSC Services II, LLC ("DSC").

5. Because DSC may have an interest in the Debtor's cash, accounts receivable, and the proceeds thereof, which may be used by the Debtor in accordance with this interim order, DSC shall be granted adequate protection as set forth in the following paragraph.

6. As adequate protection for DSC's interest in cash collateral of the Debtor, to the extent the Debtor uses such cash collateral, DSC is granted valid, attached, choate, enforceable, perfected and continuing security interests in, and liens upon post-petition assets of the Debtor of the same character and type actually used, to the same extent and validity as the liens and encumbrances of DSC attached to the Debtor's assets pre-petition (the "Post-Petition Collateral"); *provided that*, under no circumstances shall DSC have a security interest or lien in any avoidance actions of the Debtor under Chapter 5 of the Bankruptcy Code or their proceeds. DSC's security interests in, and liens upon, the Post-Petition Collateral as described herein shall have the same validity and priority as existed between DSC, the Debtor, and all other creditors or claimants against the Debtor's estate on the Petition Date.

7. This order is without prejudice to the rights of DSC or other creditors to seek additional adequate protection or other relief available under the Bankruptcy Code, and entry of this order is without prejudice to the rights of DSC or other interested parties to challenge or otherwise contest entry of a final order authorizing the use of cash collateral.

8. This order is also entered without prejudice to: (a) the claims, rights, and defenses that the Debtor and/or any other party in interest may have to challenge the nature, validity, priority or extent of the liens asserted by DSC; and (b) any and all claims, rights, and defenses DSC may assert in any action to challenge the nature, validity, priority or extent of the liens it may assert.

9. The Legal Fees Carve-Out of \$70,000 as shown in the Budget is approved for the payment of allowed fees and expenses incurred by the Debtor's professionals during its Chapter 11 case.

10. Further, with respect to the Fontem IP Licensing line item in the Budget, the Debtor shall deposit the budgeted amount of \$23,100 per month into the trust account of the Debtor's counsel on the last day of each month during which this order is in effect; *provided that*, the deposit for February 2019 shall be made into the trust account of the Debtor's counsel by March 13, 2019.²

11. On or before 5:00 p.m. on April 5, 2019, the Debtor shall deliver to counsel for DSC, Fontem, and the Bankruptcy Administrator a budget-to-actual report in the same format as the Budget for the months of February and March 2019 (comparing the Debtor's actual performance to the projected amounts shown in the Budget and the variance between them).

12. A final hearing on the use of Cash Collateral shall be held on April 9, 2019 at 9:30 a.m., in the United States Bankruptcy Court, Charles Jonas Federal Building, Courtroom 1-4, 401 West Trade Street, Charlotte, North Carolina (the "Final Hearing").

13. Any party wishing to object to the relief granted herein being allowed on a final basis shall file such objection with the Court in accordance with the Local Rules of the United States Bankruptcy Court, together with proof of service thereof, showing service upon all interested parties, so as to be received no later than three (3) business days prior to the Final Hearing.

14. The Debtor is directed to serve a copy of this Order upon: (a) the Bankruptcy Administrator for the Western District of North Carolina, (b) the Debtor's twenty (20) largest

² The noted line item in the Budget refers to certain payments to be made by the Debtor pursuant to a *Settlement Agreement* and *Global License Agreement* entered into by the Debtor and, as applicable, Fontem Holdings 1 B.V. and/or Fontem Ventures B.V. (jointly, "Fontem"). Fontem and the Debtor have represented, and the Court agrees, that the budgeted line item is an estimate only, and that any amounts due under said agreements shall be determined according to their written terms and the Debtor's actual performance. This order is also entered without prejudice to the rights and liabilities of the Debtor and Fontem under said agreements and applicable law.

unsecured creditors, (c) DSC, and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002, and shall file a certificate of service specifying the manner and method of service.

[EXHIBIT A FOLLOWS]

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of this Order.	United States Bankruptcy Court
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Exhibit A

**Ballantyne Brands, LLC
Cash Collateral Budget**

	<u>February-19</u> *	<u>March-19</u>	<u>April-19</u>
Beginning Cash Balance	\$ 44,781	\$ 89,991	\$ 82,756
Revenue	220,000	236,500	236,500
Overhead			
Rent	(10,500)	(5,100)	(5,100)
Payroll, withholding, benefits	(53,300)	(53,300)	(53,300)
Office equipment lease payments costs	(600)	(600)	(600)
Insurance	(1,500)	(1,500)	(1,500)
Insurance	(17,500)	(10,500)	(7,000)
Phones, internet	(3,500)	(3,500)	(3,500)
Miscellaneous	(10,790)	(10,790)	(10,790)
Total Overhead	<u>(97,690)</u>	<u>(85,290)</u>	<u>(81,790)</u>
Bank and Credit Card Processing Fees	(9,000)	(9,000)	(9,000)
Cost of goods sold			
Vendors (inventory)	-	(78,045)	(78,045)
Shipping and warehousing	(44,000)	(47,300)	(47,300)
Total Costs of Goods	<u>(44,000)</u>	<u>(125,345)</u>	<u>(125,345)</u>
Fontem IP Licensing (Accrued)	(23,100)	(23,100)	(23,100)
Sales Taxes	(1,000)	(1,000)	(1,000)
Bankruptcy Fees			(4,875)
Legal Fees (Carve-Out)	-	-	<u>(70,000)</u>
Total Expenses	<u>(174,790)</u>	<u>(243,735)</u>	<u>(315,110)</u>
Net Change in Cash	<u>45,210</u>	<u>(7,235)</u>	<u>(78,610)</u>
Ending Cash Balance	<u>\$ 89,991</u>	<u>\$ 82,756</u>	<u>\$ 4,146</u>

* - February 2019 period is from the petition date (Jan 18, 2019) to February 28, 2019.