

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

AMG INTERNATIONAL, INC.,

Debtor.¹

Chapter 11

Case No. 17-25816 (JKS)

**MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING USE OF CASH COLLATERAL**

AMG INTERNATIONAL, INC. ("Debtor"), by and through its proposed undersigned counsel, files this *Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral* ("Motion"), and in support of this Motion, states as follows:

BRIEF STATEMENT OF RELIEF REQUESTED

By this Motion, the Debtor requests that this Court enter interim and final orders authorizing the Debtor to use cash collateral in accordance with the budgets attached hereto as Exhibits "A" and "B." A copy of the proposed interim order is attached hereto as Exhibit "C". The Debtor proposes to use cash collateral, on an interim basis, for purposes of funding payroll, rent, and insurance.

¹ The Debtor in this chapter 11 case and the last four digits of their federal tax identification number is AMG International, Inc. (7839). The Debtor's service address is: 71 Walsh Drive, Parsippany, NJ 07054.

Approval of the instant Motion is necessary and critical to the Debtor's ongoing business operations, as well as for the preservation of asset and collateral value.

The information relevant to the Court's consideration of this Motion is as follows:

- *Affected Secured Creditor:* *France Sport, S.A. (consents to requested relief)*
- *Basis for Secured Claim:* *Security Agreement and Recorded UCC-1*
- *Amount Owed:* *\$2,860,000.00 (minimum)*
- *Amount of CC for which authorization is sought* *\$431,575.52*
- *Proposed CC Use:* *August 3, 2017 through August 23, 2017*
- *Adequate Protection:* *(a) Continuing Liens² (same extent, validity and priority as of Petition Date and to a maximum of cash collateral used); (b) Replacement Liens, but only to the extent the Continuing Liens are not sufficient to protect against diminution in the value of the Pre-Petition Collateral; and (c) super-priority administrative claim in an amount necessary to otherwise protect against diminution in the value of the Pre-Petition Collateral in the event the Continuing Liens and Replacement Liens are not sufficient to protect against any such diminution.*

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion 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)(A) and (M).

BACKGROUND

2. On August 3, 2017, the Debtor filed a voluntary petition under Chapter 11 of Title

² Capitalized terms not defined in this Motion have the same meanings they have in the Loan Documents (defined in paragraph 10 below).

11 of the United States Code. The Debtor remains in possession of its assets and is operating its business as a debtor-in-possession pursuant to the authority of 11 U.S.C. §§ 1107 and 1108.

A. Organization

3. The Debtor is a Delaware corporation.

4. The Debtor is wholly-owned by Award Investment and Development, Inc., a Delaware corporation.

5. The Debtor is engaged in the business of distributing trophies and related products. The Debtor acquires inventory from both domestic and international manufacturers. The Debtor sells product in the United States and overseas.

6. The Debtor employs approximately forty-one (41) individuals, including six (6) union employees in New Jersey.

7. The Debtor leases non-residential real property in New Jersey, California, Illinois, Texas and Georgia. The Debtor's central warehouse is located in Parsippany, New Jersey. Most of the Debtor's inventory is shipped to, and located in, the New Jersey warehouse location. The Debtor's second largest warehouse is located in California. Inventory is shipped to the Debtor's other warehouse locations for storage and distribution.

8. The Debtor's sales are to trophy shops located within the United States, while some sales are international. All sales by the Debtor are for resale to end consumers.

9. For the three-months' ending March 31, 2017, the Debtor had net sales of approximately \$2,700,000.00. For the same period, the Debtor experienced a net loss before interest and taxes in the amount of approximately \$406,000.00. For the twelve-months' ending December 31, 2016, the Debtor gross revenue of approximately \$12,700,000.00 and a net loss before interest and taxes in the amount of approximately \$762,000.00.

B. Financing

10. In order to finance operations, France Sport, S.A., a company incorporated under the laws of the Republic of France, loaned the amount of \$2,860,000.00 to the Debtor. The loan was consummated on or about January 24, 2014. The loan was evidenced by a term note, a loan and security agreement, and a recorded UCC-1 financing statement (collectively, the “Loan Documents”).

11. In accordance with the Loan Documents, France Sport, S.A. asserts a first-priority lien against substantially all of the Debtor’s assets, including, without limitation, inventory, goods, accounts, and cash and non-cash proceeds.

12. Additionally, France Sport, S.A. has advanced other monies to the Debtor in the amount of approximately \$2,900,000.00. France Sport, S.A. asserts that the additional advances are secured. In total, France Sport, S.A. is owed approximately \$5,800,000.00 excluding interest, fees and other costs.

13. France Sport, S.A. is the majority shareholder of Award Investment and Development, Inc., the Debtor’s sole shareholder.

C. Assets and Liabilities

14. As of December 31, 2016, the Debtor had total assets of approximately \$10,000,000.00 (book value) and total liabilities of approximately \$7,200,000.00. As of May 26, 2017, the Debtor had total assets of approximately \$9,700,000.00 (book value) and total liabilities of approximately \$6,600,000.00.

15. The Debtor’s assets consist primarily of accounts receivable and inventory.

EVENTS LEADING TO BANKRUPTCY

16. The Debtor has been operating at a loss.

17. In 2017, the Debtor has experienced a thirty percent (30%) reduction in sales. Approximately eighty percent (80%) of the total reduction represents the loss of a single customer.

18. Since acquiring an indirect majority interest in the Debtor, France Sport, S.A. has loaned monies to the Debtor in order to provide much needed working capital; however, France Sport, S.A. is no longer willing to provided funding to cover losses.

19. Additionally, one of the Debtor's landlords served the Debtor with a notice of default and potential termination of lease.

20. Consequently, the Debtor has resolved to seek protection under Chapter 11, so as to afford the Debtor an opportunity to either restructure operations or pursue an orderly liquidation of the Debtor's assets.

21. The Debtor leases non-residential real property in New Jersey, California, Illinois, Texas and Georgia. The Debtor's central warehouse is located in Parsippany, New Jersey. Most of the Debtor's inventory is shipped to, and located in, the New Jersey warehouse location. The Debtor's second largest warehouse is located in California. Inventory is shipped to the Debtor's other warehouse locations for storage and distribution.

22. The Debtor's sales are to trophy shops located within the United States, while some sales are international. All sales by the Debtor are for resale to end consumers.

23. For the three-months' ending March 31, 2017, the Debtor had net sales of approximately \$2,700,000.00. For the same period, the Debtor experienced a net loss before interest and taxes in the amount of approximately \$406,000.00. For the twelve-months' ending December 31, 2016, the Debtor gross revenue of approximately \$12,700,000.00 and a net loss before interest and taxes in the amount of approximately \$762,000.00.

D. Financing

24. In order to finance operations, France Sport, S.A., a company incorporated under the laws of the Republic of France, loaned the amount of \$2,860,000.00 to the Debtor. The loan was consummated on or about January 24, 2014. The loan was evidenced by a term note, a loan and security agreement, and a recorded UCC-1 financing statement (collectively, the “Loan Documents”).

25. In accordance with the Loan Documents, France Sport, S.A. holds a first-priority lien against substantially all of the Debtor’s assets, including, without limitation, inventory, goods, accounts, and cash and non-cash proceeds. In fact, France Sport, S.A. holds the only line on those assets.

26. France Sport, S.A. is the majority shareholder of Award Investment & Development, Inc., the Debtor’s sole shareholder.

E. Assets and Liabilities

27. As of December 31, 2016, the Debtor had total assets of approximately \$10,000,000.00 (book value) and total liabilities of approximately \$7,200,000.00. As of May 26, 2017, the Debtor had total assets of approximately \$9,700,000.00 (book value) and total liabilities of approximately \$6,600,000.00.

28. The Debtor’s assets consist primarily of accounts receivable and inventory.

EVENTS LEADING TO BANKRUPTCY

29. The Debtor has been operating at a loss.

30. In 2017, the Debtor has experienced a thirty percent (30%) reduction in sales. Approximately eighty percent (80%) of the total reduction represents the loss of a single customer.

31. Since acquiring an indirect majority interest in the Debtor, France Sport, S.A. has loaned monies to the Debtor in order to provide much needed working capital; however, France Sport, S.A. is no longer willing to provided funding to cover losses.

32. Additionally, one of the Debtor's landlords served the Debtor with a notice of default and potential termination of lease.

33. Consequently, the Debtor has resolved to seek protection under Chapter 11, so as to afford the Debtor an opportunity to either restructure operations or pursue an orderly liquidation of the Debtor's assets.

FACTS IN SUPPORT OF RELIEF REQUESTED

33. By this Motion, the Debtor seeks an order authorizing the Debtor to utilize cash collateral in order to operate the Debtor's business interests.

34. France Sport, S.A. asserts a lien against substantially all of the Debtor's assets, including, without limitation, collateral representing cash collateral within the meaning of section 363 of the Bankruptcy Code.

35. The Debtor seeks authority to use cash collateral in accordance with the budgets attached hereto as Exhibits "A" and "B." Exhibit "A" represents the four-week "interim budget" (the "Interim Budget") which will govern use of cash collateral pending a final hearing on this Motion (the "Interim Period") in order to avoid immediate and irreparable harm to the estate. Exhibit "B" represents the twelve-week budget which will govern use of cash collateral following a final hearing on this Motion (the "Final Budget") (the Interim Budget and the Final Budget are hereinafter collectively referred to as the "Budgets").

36. The Debtor requests that the Court conduct a preliminary hearing pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and authorize the Debtor to use cash collateral

on an interim basis pending a final hearing in accordance with the Interim Budget.

37. The Debtor requests that the Court conduct a final hearing and authorize the Debtor's use of cash collateral in accordance with the Final Budget.

38. It is essential to the continued operation of the Debtor's business for the Debtor to have the ability to utilize cash collateral.

39. The Debtor believes that adequate protection will be provided through the provision of continuing and replacement liens. Because Sport France, S.A., is the Debtor's only secured creditor, the replacement liens will not prejudice another secured creditor.

40. There is insufficient time for a full hearing to be held before the Debtor must use cash collateral. If this Motion is not considered on an expedited basis, and if the Debtor is denied the ability to immediately use cash collateral, there will be a direct and immediate material and adverse impact on the continuing operation of the Debtor's business and on the value of its assets and overall business operations. In order to continue its business operations in an effort to achieve a successful reorganization, the Debtor must use cash collateral in its ordinary business operations. The inability of the Debtor to meet ordinary business expenses will result in irreparable injury to the Debtor and could negatively impact the Debtor's chances for a successful reorganization.

41. If allowed to use cash collateral, the Debtor believes it can maintain its business operations.

AUTHORITY IN SUPPORT OF RELIEF REQUESTED

42. Pursuant to Section 363(c)(2)(B) of the Bankruptcy Code, a debtor-in-possession may use cash collateral with court approval after notice and a hearing. 11 U.S.C. § 363(c)(2)(B). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an

interest in property to be used by a debtor, the Court “shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Here, France Sport, S.A. consents to the proposed use of cash collateral.

43. Nevertheless, adequate protection can be provided by a number of different methods. Section 361 of the Bankruptcy Code provides that adequate protection may be provided by (1) making “a cash payment or periodic cash payments to [an] entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title . . . results in a decrease in the value of [the] entity’s interest in such property,” (2) “providing to [an] entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of [the] entity’s interest in such property” or (3) “granting such other relief . . . as will result in the realization by [an] entity of the indubitable equivalent of [the] entity’s interest in such property.” 11 U.S.C. §§ 361(1), (2), (3). Adequate protection may also be provided or otherwise realized by the existence of an equity cushion in the collateral.

44. What constitutes adequate protection is determined on a case-by-case basis. *See MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). However, regardless of how adequate protection is provided, the focus of the requirement is to protect a secured creditor from diminution in value of its interest in the collateral during the period of use by the debtor. *See In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *Delbridge v. Production Credit Ass’n & Fed. Land Bank*, 104 B.R. 824, 827-28 (E.D. Mich. 1989); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Ledgemere Land Corp.*, 116 B.R. 338, 343 (4Bankr. D. Mass. 1990).

45. Simply stated, adequate protection is necessary only to the extent the use of the creditor’s collateral will result in a decrease in “the value of such entity’s interest in such

property.” 11 U.S.C. §§ 361, 363(e); see *United Savings Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988) (the “interest in property” entitled to protection is “the value of the collateral” securing the claim). As the court in *In re Megan Racine Assoc., Inc.*, 202 B.R. 660 (Bankr. N.D.N.Y. 1996) noted:

Adequate protection . . . is intended to compensate a creditor for any decrease in the value of its security interest in collateral during the pendency of the debtor’s reorganization that is due to the imposition of the stay or is traceable to the use of such property.

Id. at 663.

46. France Sport, S.A. is only entitled to protection against the decline in value of its security interests in pre-petition collateral resulting from the Debtor’s use of cash collateral.

47. The Debtor believes that France Sport, S.A.’s interests are adequately protected by, at a minimum, the provision of continuing and replacement liens.

48. In light of the foregoing, the Debtor submits that the use of cash collateral is appropriate in accordance with the Budgets attached hereto as Exhibits “A” and “B”.

REQUEST FOR PRELIMINARY HEARING

49. The Debtor requests that the Court conduct an emergency hearing pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and further conduct a final hearing on not less than 15 days’ notice.

RESERVATION OF RIGHTS

50. By submitting this request, the Debtor does not waive any rights, including without limitation the right to object, challenge or contest the extent, validity or priority of any of France Sport S.A.’s pre-petition lien(s) and to value any or all of the collateral securing such liens.

WHEREFORE, the Debtor respectfully requests that this Court (a) enter an interim

order granting the Motion and authorizing the interim use of cash collateral in the operation of its business, the proposed form of which is attached hereto as Exhibit “C”, (b) scheduling a final hearing in order to authorize the Debtor’s use of cash collateral, and (c) entering a final order authorizing use of cash collateral in accordance with the proposed final budget (the form of the proposed order shall be filed with the Court in advance of the final hearing), as well as granting such other and further relief that the Court may deem just and proper.

Dated: August 4, 2017
Newark, New Jersey

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