

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

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Ref. Docket Nos. 9, 644, 1092,  
1277

**ASICS AMERICA CORPORATION’S (I) OPPOSITION TO TERM LOAN  
AGENT’S EMERGENCY MOTION FOR ADEQUATE PROTECTION, AND  
(II) JOINDER TO AGRON, INC.’S OPPOSITION TO TERM LOAN AGENT’S  
EMERGENCY MOTION FOR ADEQUATE PROTECTION**

ASICS America Corporation (“ASICS”) hereby objects to the *Term Loan Agent’s Emergency Motion for Adequate Protection* [D.I. 1092] (the “Motion”), and joins *Agron, Inc.’s Opposition to Term Loan Agent’s Emergency Motion for Adequate Protection* [D.I. 1277] (the “Agron Opposition”). Further, ASICS reserves the right to pursue, participate in, and supplement any objection to the relief requested by Wilmington Savings Fund Society, FSB, as collateral and administrative agent (together, the “Term Loan Agent”) under that certain Amended and Restated Credit Agreement, dated as of November 16, 2010 (the “Term Loan Credit Agreement”), at any hearing on the Motion, and respectfully states:

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.



## **OBJECTION AND JOINDER**

### **A. Background.**

1. ASICS and TSA Stores, Inc. (“TSA”), one of the above captioned debtors and debtors in possession (the “Debtors”), were parties to that certain 2015 Vendor Deal Sheet Summary (Pay By Scan) agreement (the “Agreement”) through which ASICS consigned certain goods to TSA (the “ASICS Property”). The Agreement incorporated by reference that certain 2015 Sports Authority Vendor Relationship Guide (the “Vendor Guide”). Pursuant to the Vendor Guide, the Agreement is controlled by Colorado law.

2. A material portion of the Debtors’ business consisted of selling consigned goods delivered to the Debtors by approximately 160 different consignment vendors. According to the Debtors, as of the Petition Date, they were holding approximately \$85 million in consigned goods (the “Consigned Goods”). Pursuant to the Debtors, the ASICS Property consisted of approximately \$13,445,744.95 at cost, representing 797,626 separate items of property.

3. As stated in prior pleadings and at hearings before the Court, ASICS terminated the Agreement on February 10, 2016, prior to the Petition Date (defined herein). On March 16, 2016 the Debtors filed an adversary proceeding complaint against ASICS, which was amended on April 13, 2016.

4. On March 2, 2016 (the “Petition Date”), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

5. On the Petition Date, the Debtors filed, *inter alia*, the *Debtors’ Motion for Interim and Final Orders (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of All Liens, Claims and Encumbrances and (II) Grant Administrative Expense Priority to Consignment Vendors for Consigned Goods Delivered Postpetition; and (B) Grant Replacement Liens to Consignment Vendors with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment Vendors [D.I. 9]* (the “Consignment Motion”).

6. The Bankruptcy Court entered the following interim orders on the Consignment Motion, each subject to final hearing and order on the Consignment Motion:

- *Interim Order (a) Authorizing the Debtors to (i) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of All Liens, Claims and Encumbrances and (ii) Grant Administrative Expense Priority to Consignment Vendors for Consigned Goods Delivered Postpetition; and (b) Grant Replacement Liens to Consignment Vendors with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment Vendors*, entered March 11, 2016 [D.I. 278];
- *Order*, entered March 11, 2016 [D.I. 289]; and
- *Supplemental Interim Order Authorizing the Debtors to Continue to Sell Certain Prepetition Consigned Goods*, entered April 5, 2016 [D.I. 1044],

(collectively, the “Consignment Orders”).

7. On March 22, 2016, ASICS filed its *Omnibus Objection of Asics America Corporation to Debtors’ Motions for Entry of Final Orders on the (1) Consignment Motion; (2) Gob Motion; and (3) Dip Motion* [D.I. 644] (the “Omnibus Objection”). ASICS objects to the relief requested in the Consignment Motion because, among other things, the Agreement was terminated and neither the Agreement nor the ASICS Property is an asset of the Debtors’ estates.

**B. Joinder in Agron’s Objection to the Adequate Protection Motion.**

8. ASICS hereby joins in, adopts, and incorporates by reference the points, authorities, and arguments advanced in the Agron Objection and in any other similar objections that have been filed or may be filed by other parties.

9. On April 8, 2016, the Term Loan Agent filed the Adequate Protection Motion asserting unproven facts and disputed legal arguments. The Term Loan Agent is not entitled to adequate protection until it establishes it has an interest that warrants protection. First, there are significant facts in dispute as to whether the Debtors could, or even attempted to, grant an interest in the Consigned Goods to the Term Loan Agent. The May 3, 2006 Security Agreement given to the Term Loan Agent appears to be limited and only granted the Term Loan Agent a

security interest in the Debtors' "Collateral", which is defined as "personal property of each Grantor, ... **whether now owned ... or hereafter acquired....**" See Term Loan Agent's Security Agreement, at § 1.2 (emphasis added). Thus, it appears that the Term Loan Agent has no interest in the ASICS Property, which under the Agreement expressly reserved title to ASICS until the ultimate sale to the consumer customer.

10. Second, there are significant facts in dispute as to the extent of the Term Loan Agent's knowledge of the Debtors' consignment program, which would defeat the Term Loan Agent's interest in the Consigned Goods. It appears that the Term Loan Agent had general knowledge about the consignments, and particular knowledge as to ASICS' consignments with the Debtors. As set forth below, ASICS gave the Term Loan Agent express notice of the goods on consignment with TSA.

11. Finally, to the extent the Term Loan Agent establishes it has an interest in the Consigned Goods, there remain significant facts in dispute whether the Debtors' compliance with the Consignment Orders would result in the diminution of the Term Loan Agent's purported interests.

12. The Adequate Protection Motion appears to be a collateral attack of the Consignment Orders and an attempt to re-litigate issues already determined by the Court. The relief requested by the Term Loan Agent must be denied as they have failed to establish that they are entitled to any adequate protection with respect to the Consigned Goods, including the ASICS Property. To the extent the Term Loan Agent believes it has an interest in the ASICS Property, it should litigate those issues in the context of the adversary proceedings once it is determined that the Debtors have an interest in such property.

**C. The Term Loan Agent's Knowledge of the Consignments Subordinates their Interests in the Consigned Goods to the Consignment Vendors.**

13. The Term Loan Agent's primary argument is that the Uniform Commercial Code ("UCC") provides the Term Loan Agent with a superior right to the Consigned Goods with respect to every consignor that failed to comply with the perfection standards under UCC. To the extent the Term Loan Agent is correct and the UCC applies, the Term Loan Agent may not obtain a "windfall" in this case on the backs of the consignment vendors because the facts will establish that the Term Loan Agent had knowledge of the Debtors' consignment program.

14. Both general knowledge and actual knowledge of consignments are exceptions to the typical perfection requirements under the UCC. As the evidence will be developed in the context of the pending adversary proceedings, the Term Loan Agent's knowledge of the consignments will likely result in a subordination of the Term Loan Agent's interests to the consignment vendors, including ASICS.

15. Controlling precedent under Colorado law provides that a creditor with actual knowledge of a consignment cannot benefit from the "hidden lien" protection of UCC § 9-319. *See, e.g., Eurpac Serv. v. Republic Acceptance Corp.*, 27 P.3d 447, 450-51 (Colo. Ct. App. 2000) (finding actual knowledge operates as an exception to [U.C.C. § 2-326]). This actual knowledge exception to the perfection rules is recognized in a majority of courts. *See Fariba v. Dealer Services Corp.*, 178 Cal. App. 4th 156 (2009) (finding that "construing the knowledge exception [to U.C.C. §§ 9-102(a)(20) and 9-319(a)] to include constructive knowledge, but not actual knowledge, would lead to absurd results."); *GBS Meat Industry Pty. Ltd. v. Kress-Dobkin Co., Inc.*, 474 F.Supp. 1357, 1363 (W.D. Pa. 1979) (creditor with knowledge of consignment had no right under [former] U.C.C. § 2-326 [now U.C.C. § 9-102(a)(20)] to proceeds of inventory sale).

16. It is highly unlikely that the Term Loan Agent was unaware of the Debtors' consignment relationships generally. The Debtors heavily advertised the consignment vendor program to the vendor community and dedicated a significant portion of its business to selling consigned goods.

17. In addition to this general knowledge, the Term Loan Agent had actual knowledge of ASICS consignment relationship with the Debtors from at least June 2010, well before the ASICS Property was delivered to the Debtors. On June 16, 2010, ASICS sent a “Notice of Consignment” to Bank of America, N.A., as predecessor Collateral Agent to the Term Loan Agent under the Term Loan Credit Agreement (“BofA”), to the address listed on BofA’s financing statement filed against TSA (the “Notice of Consignment”). The Notice of Consignment stated: “This is to notify you that the undersigned has entered into an agreement under which it will consign various goods to The Sports Authority.” A true and accurate copy of the Notice of Consignment is attached hereto as Exhibit A. Thus, pursuant to governing Colorado law, the Term Loan Agent cannot rely on UCC § 9-319 to trump ASICS’ interest in the ASICS Property and it has no right to seek adequate protection with respect to the ASICS Property.

18. ASICS continues to assert all of its arguments in the Omnibus Objection, the adversary proceedings and other contested matters in this Court. This Joinder shall not be deemed an admission of any fact or a waiver of any of ASICS’ rights, arguments, claims, or defenses relating to the Consignment Motion, the Consignment Orders, or the Adequate Protection Motion, including filing a notice of appeal on the ultimate final order on the Consignment Motion.

WHEREFORE, ASICS respectfully requests that the Court enter an order (i) denying the Adequate Protection Motion, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: April 21, 2016

Respectfully submitted,

/s/ Adrienne K. Walker

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**EXHIBIT A**

**Notice of Consignment**





**Michael E. Zall**  
Vice President  
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Notice of Consignment

June 16, 2010

To: Bank of America, N.A., as Collateral Agent  
101 N. Tryon St., 15<sup>th</sup> Floor  
Agency Services  
Charlotte, NC 28255

Regarding: TSA Stores, Inc. ("The Sports Authority")  
1050 West Hampden Avenue  
Englewood, Co 80110

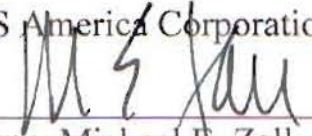
This is to notify you that the undersigned has entered into an agreement under which it will consign various goods to The Sports Authority.

The undersigned has and expects to acquire (and the interests of the undersigned as consignee shall constitute under the Uniform Commercial Code) a "purchase-money security interest" in inventory of The Sports Authority as follows:

*Goods including, but not limited to, socks manufactured and/or distributed by the undersigned which have been consigned to The Sports Authority and its successor and assigns, by ASICS America Corporation and its successors and assigns.*

Pursuant to Section 9-324 of the Uniform Commercial Code, the interest of the undersigned in such goods will have priority over any interest that you, as secured creditor of The Sports Authority, may have in the inventory of The Sports Authority including in such goods.

ASICS America Corporation

By:   
Name: Michael E. Zall  
Title: Vice President, General Counsel

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

-----X  
In re: : Chapter 11  
: :  
SPORTS AUTHORITY HOLDINGS, INC., *et al.*,<sup>1</sup> :  
: :  
: : Case No. 16-10527-MFW  
Debtors. :  
: (Jointly Administered)  
-----X

**CERTIFICATE OF SERVICE**

I, Adrienne K. Walker, do hereby certify that on the 21st day of April, 2016, I caused a copy of the ASICS America Corporation’s (I) Opposition to Term Loan Agent’s Emergency Motion for Adequate Protection, and (II) Joinder to Agron Inc.’s Opposition to Term Loan Agent’s Emergency Motion for Adequate Protection to be served through the ECF system, and that copies will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated on the attached Service List as non-registered participants as of the date herein.

Dated: April 21, 2016

/s/ Adrienne K. Walker  
Adrienne K. Walker

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

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