

DAVIS WRIGHT TREMAINE LLP  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
(206) 622-3150 (telephone)  
Ragan L. Powers (*admitted pro hac vice*)  
Hugh R. McCullough

*Attorneys for Seattle's Best Coffee LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT NEW YORK

----- X  
In re : Chapter 11  
: :  
BORDERS GROUP, INC., *et al.* : Case No. 11-10614 (MG)  
: :  
Debtors. : (Joint Administration Pending)  
----- X

**LIMITED OBJECTION OF SEATTLE'S BEST COFFEE LLC TO  
DEBTORS' MOTION REQUESTING APPROVAL OF  
PROCEDURES FOR THE REJECTION OF UNEXPIRED LEASES**

Seattle's Best Coffee LLC ("SBC") hereby objects to the motion of Borders Group, Inc. ("BGI") and its affiliated debtors (collectively, the "Debtors") pursuant to sections 105, 365(a), and 554(a) requesting approval of procedures for the rejection of unexpired leases (the "Motion").

**I. INTRODUCTION**

The Debtors and SBC are parties to a Master License Agreement (the "MLA") under which the Debtors operate SBC-branded cafes in substantially all of their stores. The proposed order accompanying the Motion does not adequately protect SBC's intellectual and other property rights in connection with rejection of store leases and abandonment of real and personal property. The Court should deny the Motion unless two problems are addressed.

*First*, SBC should receive notice of each proposed lease rejection and related abandonment of property. SBC's interests will be materially affected by the closing of the

Debtors' stores, and SBC may need to take steps to protect those interests, particularly with respect to its trademarks, trade dress, and trade secrets.

*Second*, any order granting the Motion should expressly state that approval of the proposed rejection procedures is without prejudice to SBC's rights under the MLA or applicable law with respect any lease rejection or abandonment of property.

## **II. FACTS**

1. Pursuant to the terms of the MLA, the Debtors are licensed to operate SBC-branded cafes in substantially all of the Debtors' bookstores. The MLA requires the Debtors to maintain a uniform SBC-branded look and feel in the operation of the cafes. The aim is to ensure that customers enjoy the same quality experience in every SBC cafe that they have come to associate with the SBC brand.

2. SBC trademarks and trade dress are licensed for use in the Debtors' cafes so that customers closely identify those cafes with the SBC brand and reputation. Most of the cafes were built to SBC specifications, using SBC colors, designs, and logos in the tile work, in the paint on the walls, in the appearance of the furniture, and on other fixtures and equipment used in the cafes.

3. In addition to the trademarks and trade dress used in the physical design and ornamentation of the cafes, the Debtors affix SBC trademarks to various items of equipment and inventory used and sold in the daily operation of those cafes. Customers of the Debtors' cafes drink SBC-brand beverages in SBC-branded cups made by Borders employees that have been trained in SBC-specified techniques. SBC beverages are prepared in accordance with SBC trade secrets using proprietary information supplied exclusively by SBC.

4. The MLA imposes certain requirements on the Debtors in the event they elect to close one of its stores and associated cafe. The Debtor has not yet formally indicated its intentions with respect to assumption or rejection of the MLA.

### **III. DISCUSSION**

#### **A. SBC is entitled to notice of each proposed rejection and abandonment.**

5. SBC should receive specific notice of each proposed lease rejection and related abandonment of property by the Debtors. If done without notice, the Debtors may seek to abandon SBC-branded furniture, fixtures, equipment, or inventory in a way that is inconsistent with the terms of the MLA, or that otherwise violates SBC's rights. SBC needs notice of each rejection or abandonment so that it may protect its interests, particularly with respect to its trademarks, trade dress, and trade secrets. Consequently, this Court should deny the Motion unless SBC and its attorneys are added to the list of Rejection Notice Parties defined in paragraph 2.a. of the proposed order.

#### **B. The Motion should be granted without prejudice to SBC's rights.**

6. Although the Motion seeks entry of an order regarding procedures to be followed in rejecting leases and abandoning property, certain provisions of the proposed order might be argued to limit SBC's rights. For example, paragraph 5 of the proposed order would authorize the Debtors, in their "sole discretion", to abandon "property located at premises that are the subject of any rejected Lease." Paragraph 7 suggests that the Debtors are permitted to transfer any property they leave behind free of any "interests."

7. The abandonment of property by the Debtors does not confer upon landlords the right to use or sell property subject to the MLA or SBC's trademark or other rights without SBC's consent. For example, landlords should not be authorized to continue operation of a cafe in a current location using SBC trademark and processes. Similarly, the Debtors' abandonment

of furniture, fixtures, equipment, inventory, or other property that are marked with SBC trademarks or that constitutes trade dress or contain SBC proprietary information may constitute a breach of the MLA. Whether and to what extent such actions violate the MLA are matters for another day. While SBC hopes to work cooperatively with the Debtor through its Chapter 11 process, entry of this order should not prejudice SBC's rights under the MLA or applicable law.

8. For these reasons, paragraph 5 of the proposed order should be revised to include the following language:

This Order shall not be construed (a) to authorize the Debtors to violate or breach the terms of any agreements with Seattle's Best Coffee LLC ("SBC"), (b) to grant any third party, including without limitation any affected landlord, any rights with respect to real or personal property that is the subject of the Debtors' agreements with SBC, or (c) to otherwise impair SBC's rights under applicable law. In particular, and without limitation, SBC's right to object to any proposed abandonment of furniture, fixtures, equipment, inventory, or other items of property that are marked with or contain SBC trademarks, constitute or contain SBC's trade dress or trade secrets or other proprietary information shall not be impaired or affected by entry of this Order.

9. This additional language will ensure that the proposed order is purely procedural and does not impair any substantive interest of SBC.

#### IV. CONCLUSION

Unless the requested changes are made to the proposed order, SBC hereby requests the Court to deny the Motion and to grant such other and further relief as may be just and proper.

Dated: Seattle, Washington  
March 8, 2011

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Hugh R. McCullough  
Ragan L. Powers  
Hugh R. McCullough

*Attorneys for Seattle's Best Coffee LLC*

1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
(206) 622-3150 (telephone)  
*hughmccullough@dwt.com*