

06-18-2002



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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Venture Stores, Inc.

6-11-02

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date:

2. Name and address of receiving party(ies)

Name: Elan-Polo, Inc.

Internal Address: 630 Melrose Avenue

Street Address: 630 Melrose Avenue

City: Nashville State: TN Zip: 37211-2161

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,202,884

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: FRED B HUNT JR

Internal Address: PO BOX 169

Street Address: 202 Union Planters Bank Bldg.

City: Shelbyville State: TN Zip: 37162-0169

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Fred B. Hunt, Jr.

Name of Person Signing

Signature

06/05/02

Date

Total number of pages including cover sheet, attachments, and document: 16

06/18/2002 6TOM11 00000029 2202184

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Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002527 FRAME: 0017

714-080 364

ASSIGNMENT AGREEMENT

This Assignment Agreement ("Agreement") is entered into as of the 28th day of July, 2000 (the "Effective Date").

WHEREAS, Venture Stores, Inc. ("VENTURE"), a corporation of the state of Delaware, located and doing business at 871 Midpoint Drive, O'Fallon, Missouri 63366, has for several years continuously operated retail department stores throughout the United States selling various goods;

WHEREAS, VENTURE owns the mark STONE MESA (hereinafter the "Mark") for use in connection with watches, handbags, purses, and luggage, and holds U.S. Trademark Registration No. 2,202,884 therefor (the "Registration");

WHEREAS, ELAN-POLO, INC. ("ELAN-POLO"), a corporation of the State of Missouri, having a place of business at 630 Melrose Avenue, Nashville, Tennessee, has used the mark in connection with footwear and has filed a U.S. Trademark Application for the mark, and VENTURE has objected to ELAN-POLO's actions;

WHEREAS, the parties desire to amicably resolve their differences;

WHEREAS, VENTURE has filed for protection under Chapter 11 of Title 11 of the United States Code in the Bankruptcy Court for the District of Delaware ("Bankruptcy Court"); and

WHEREAS, the Bankruptcy Court has approved the sale by VENTURE of miscellaneous personal property, including intellectual property rights, outside the ordinary course of business, by Order dated June 1, 1998, as shown on Exhibit A (hereinafter the "Order"), pursuant to a Motion filed by VENTURE and dated May 18, 1998, as shown on Exhibit B (hereinafter the "Motion").

NOW THEREFORE, in consideration of the mutual promises agreed to herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. (a) Subject to the provisions of this Agreement, VENTURE hereby sells, assigns and transfers unto ELAN-POLO whatever right, title and interest it may have in and to said Mark, including the Registration in the United States (and all territories and protectorates of the U.S. subject to federal trademark law), together with whatever goodwill of the business symbolized by such Mark, if any, it may have, and the right to sue for past infringement thereof.

(b) Said sale, assignment and transfer of the Mark and Variations is subject to receipt by VENTURE of payment from ELAN-POLO in the amount of Ten Thousand U.S. Dollars (US \$10,000) ("Purchase Price").

2. ELAN-POLO expressly acknowledges that VENTURE is not currently using the Mark in commerce, and further, ELAN-POLO acknowledges and agrees that, except as expressly provided herein, VENTURE makes no warranties or representations whatsoever regarding the Mark, including the Registration.

3. The parties agree that upon VENTURE's receipt from ELAN-POLO of (a) an executed original of this Agreement, and (b) the Purchase Price, VENTURE agrees to promptly execute an assignment document ("Assignment Document") for the purpose of ELAN-POLO recording its ownership of the Registration with the United States Patent and Trademark Office. A copy of said Assignment Document is attached as Exhibit C hereto. In the event of any conflict between the terms of the Assignment Document and this Agreement, this Agreement shall govern and take precedence over the Assignment Document.

4. If any provision of this Agreement is, becomes or is deemed invalid or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable law so as to be valid, legal and enforceable in such jurisdiction. If such provision cannot be amended without materially altering the intention of the parties, it shall be stricken and the remainder of this Agreement shall continue in full force and effect.

5. This Agreement contains the entire agreement and understanding between the parties and supersedes any previous agreement and understanding, written or oral, relating to the subject matter of this Agreement.

6. This Agreement shall be binding upon and inure to the benefit of the parties and their assigns, successors and legal representatives.

7. Upon receipt of the Purchase Price, and an executed copy of this Agreement, Venture hereby waives any claim it may have for ELAN-POLO's use of the mark STONE MESA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated above.

VENTURE STORES, INC.

By: Teresa Hanger
PRINTED NAME: Teresa Hanger
TITLE: Vice Pres

ELAN-POLO, INC.

By: Fred B. Hunt Jr.
PRINTED NAME: Fred B. Hunt Jr.
TITLE: Attorney for Elan Polo Inc.



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re

VENTURE STORES, INC.,
a Delaware corporation.

Case No. 98-101-RRM

Debtor.

Chapter 11

**ORDER AUTHORIZING THE SALE OF MISCELLANEOUS PERSONAL
PROPERTY OUTSIDE OF THE ORDINARY COURSE OF BUSINESS AND
ESTABLISHING PROCEDURES THEREFOR**

This matter is before the Court on the Motion of Debtor and Debtor in Possession for Order Authorizing the Sale of Miscellaneous Personal Property Outside of the Ordinary Course of Business and Establishing Procedures Therefor (the "Motion") (capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion), filed by Venture Stores, Inc., debtor and debtor in possession (the "Debtor"), on May 18, 1998. The Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2) and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein:

IT IS HEREBY ORDERED THAT:

1. The Motion shall be, and hereby is, **GRANTED**.

2 The Debtor is authorized, in the exercise of its business judgment, to conduct sales of the Miscellaneous Property, outside of the ordinary course of business, in accordance with the procedures set forth in the Motion, without the need for any further Order of this Court.

3. All sales of Miscellaneous Property conducted pursuant to the authority granted in this Order shall be free and clear of liens, claims and encumbrances, with all liens, claims and encumbrances attaching to the proceeds of sale.

4 Nothing herein shall be construed to limit the Debtor's ability to move this Court for authority to sell personal property or other assets, or take any other action pursuant to 11 U.S.C. § 363.

Dated: Wilmington, Delaware
June 1, 1998


UNITED STATES DISTRICT JUDGE



Hearing Date: 6/2/98 12:00 Noon
 Objection Deadline: 5/28/98 4:00 p.m.

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF DELAWARE

In Re:

VENTURE STORES, INC.,
 a Delaware corporation.

Case No. 98-101-RRM

Debtor.

Chapter 11

**MOTION OF DEBTOR AND DEBTOR IN POSSESSION FOR AN ORDER
 AUTHORIZING THE SALE OF MISCELLANEOUS PERSONAL
 PROPERTY OUTSIDE OF THE ORDINARY COURSE OF BUSINESS
 AND ESTABLISHING PROCEDURES THEREFOR**

Venture Stores, Inc., debtor and debtor in possession (the "Debtor") hereby moves the Court for the entry of an order, pursuant to sections 105 and 363 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code") authorizing the Debtor to sell miscellaneous personal property outside of the ordinary course of business and establishing procedures for the same. In support of this motion, the Debtor respectfully represents as follows:

Background

1. On January 20, 1998 (the "Petition Date"), the Debtor commenced its reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").
2. The Debtor continues in possession of its properties and operates and manages its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On February 2, 1998, the United States trustee for the District of Delaware (the "United States Trustee") appointed a statutory committee of unsecured creditors in this chapter 11 case (the "Creditors' Committee") pursuant to section 1102 of the Bankruptcy Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The Debtor is a general merchandise retailer operating, as of the Petition Date, 93 Venture retail department stores in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Oklahoma and Texas (with approximately 10 million total square feet of selling space). In addition, the Debtor operates 3 distribution facilities and a return center. The Debtor is in the process of closing all of its stores and warehouses pursuant to the authority granted under Orders of this Court dated February 23, 1998 and May 7, 1998.

5. The Debtor provided a wide assortment of value-priced merchandise for basic and fashion needs. Merchandise offerings at the Debtor's stores included (i) "hardline" products such as home furnishings, housewares, consumer electronics, home textiles, toys, outdoor sports and home fitness equipment, and household consumables; and (ii) "softline" products such as women's, men's and children's apparel, licensed team merchandise, shoes, jewelry, cosmetics and fashion accessories. As of October 25, 1997, the Debtor generated over \$1.2 billion in annual revenue and employed over 12,000 full-time and part-time employees.

6. The Debtor operated as a division of The May Department Stores Company ("May") from its inception in 1970 until the fall of 1989 when, in anticipation of its disposition, May transferred all of the Venture division's assets and liabilities to the Debtor. The Debtor was spun off as an independent publicly-held corporation on November 3, 1990. The Debtor has approximately 18.3 million shares of common stock outstanding.

Relief Requested and Basis Therefor

7. As reflected in numerous pleadings filed with the Court over the past three weeks, the Debtor has determined that it is in the best interests of its estate and its creditors to immediately commence the closure of its retail stores and the orderly liquidation of its assets. Although the Debtor's real estate interests represent by far the most significant category of value of the Debtor's estate, the Debtor also owns thousands of items of personal property (collectively, the "Miscellaneous Property"), which must be liquidated. Miscellaneous Property includes, without limitation, office furnishings and equipment, supplies, paper stock, motor vehicles, trailers, and intellectual property rights. The Miscellaneous Property does not include leased property or the Debtor's interest in executory contracts or unexpired leases, which will be addressed in separate motions filed pursuant to section 365 of the Bankruptcy Code as the need arises.

8. Because it would be impractical to file repeated applications with the Court to authorize successive sales of Miscellaneous Property, the Debtor seeks authority, in its discretion, to sell (and/or to license, in the case of intellectual property rights) Miscellaneous Property outside of the ordinary course of business, pursuant to 11 U.S.C. § 363(b), in accordance with the procedures set forth below.

9. The Debtor proposes that it be authorized to sell Miscellaneous Property having a value of less than \$25,000 in the aggregate per transaction in the exercise of its business judgment, without need for notice to any party or further Court approval. If the Debtor intends to sell Miscellaneous Property having a value in excess of \$25,000 but not more than \$500,000 in the aggregate per transaction, the Debtor proposes to provide written notice of the Proposed Sale to the Committee and the Debtor's lender, BT Commercial Corporation ("BTCC"), by facsimile.

identifying the assets to be sold, the consideration to be received by the Debtor, the proposed purchaser and a contact person at the Debtor's offices whom BTCC or the Committee's financial advisors may contact with any questions regarding the proposed transaction. If neither BTCC nor the Committee objects to the sale within four business days after receipt of the notice, the Debtor may enter into and consummate the sale without further notice to any party and without obtaining any further Order of this Court. If BTCC or the Committee submits a timely objection to the proposed sale, the sale will not be consummated absent (i) a withdrawal of the objection, or (ii) entry of an order of this Court authorizing such sale. Nothing herein would preclude the Debtor from seeking further Court approval for any asset sale transaction.

10. Section 363(b) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell or lease, other than the ordinary course of business, property of the estate." To approve a use, sale or lease of property other than in the ordinary course of business, the court must find "some articulated business justification." See, e.g., In re Martin (Myers v. Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing In re Schipper (Fulton State Bank v. Schipper), 933 F.2d 513, 515 (7th Cir. 1991); Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of Lionel Corp. and requiring good faith). In re Delaware and Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound business judgment" test in the Abbotts Dairies decision).

11. Courts in this District have often approved similar requests by debtors to sell miscellaneous assets without the need for further Court approval, finding that the relief requested is consistent with the applicable provisions of the Bankruptcy Code. See, e.g., In re First Merchants

Acceptance Com., Case No. 97-1500 (JIF) (D. Del. December 2, 1997) (order authorizing sale of miscellaneous office equipment with notice only to creditors' committee and lender, without need for transaction-by-transaction motion and court approval).

12. The Debtor seeks to sell the Miscellaneous Assets to third parties at prices negotiated by the Debtor and each third-party purchaser in arms-length, good faith transactions. The flexibility to pursue sales without the need to come back to the Court on each transaction is necessary to obtain the highest value for the Miscellaneous Assets and minimize administrative expenses, for the benefit of the Debtor's estate and its creditors. Moreover, given the requirement that the Debtor provide notice to the Committee and BTCC for any transaction involving the sale of Miscellaneous Goods for a purchase price in excess of \$25,000 in the aggregate, adequate oversight of the Debtor's exercise of its business judgment is ensured.

13. The proposed sales of Miscellaneous Property will be in "good faith" within the purview of the Abbotts Dairies analysis. The Committee and BTCC will have an opportunity to review and, if they wish, object to the adequacy of the price to be received for any proposed sale of Miscellaneous Property. Subject to the liens of BTCC and any other party holding an otherwise allowable secured claim in the Miscellaneous Property, the proceeds from the sales of Miscellaneous Property will flow into the Debtor's estate, to the benefit of the Debtor's estate and its creditors.

14. Accordingly, the Debtor requests authority under 11 U.S.C. § 363(b) to sell Miscellaneous Goods in the manner provided above without the necessity for any further order of this Court. Such sales will be free and clear of all liens, claims and encumbrances, with all liens, claims and encumbrances attaching to the proceeds of sale.

Notice

15. No trustee or examiner has been appointed in this chapter 11 case. Notice of this Motion has been given to (a) the United States Trustee, (b) the members of the official service list established in this chapter 11 case, (c) counsel for the Creditors' Committee, and (d) counsel for BTCC. In light of the nature of relief requested herein, the Debtor submits that no other or further notice need be given.

No Prior Request

16. No previous request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto authorizing the sale of Miscellaneous Goods free and clear of liens, claims and encumbrances subject to the limitations and procedures provided herein, and granting such other and further relief as the Court deems just and proper.

Dated: May 18, 1998
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP



David B. Straton (DE No. 980)
David M. Fournier (DE No. 2812)
1201 Market Street, Suite 1600
P.O. Box 1709
Wilmington, Delaware 19899
(302) 777-6500

EXHIBIT C

ASSIGNMENT

WHEREAS, Venture Stores, Inc. (hereinafter "Assignor"), a corporation duly organized under the laws of the State of Delaware, having its principal place of business at 871 Midpoint Drive, O'Fallon, Missouri 63366, is the owner of U.S. Registration No. 2,202,884, for the mark STONE MESA, as well as the goodwill of the business associated therewith:

WHEREAS, ELAN-POLO, Inc. (hereinafter "Assignee"), a corporation duly organized under the laws of the State of Missouri, having its principal place of business at 630 Melrose Avenue, Nashville, Tennessee desires to acquire all right, title and interest in and to the aforesaid registered trademark, together with the goodwill of the business associated therewith;

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby sell, assign and transfer unto Assignee all of its right, title and interest in and to said trademark and service marks, together with the goodwill of the business symbolized by said trademark and service marks and the registration thereof, and the right to sue for past infringement thereof.

This Agreement shall inure to the benefit of, and be binding upon, the parties, their heirs, successors and assigns.

Executed effective as of the 20th day of July, 2000.

ASSIGNOR

VENTURE STORES, INC.

By: Teresa S. Stanger

Name: Teresa Stanger

Title: Vice President

Date: 7/20/00

ASSIGNEE

ELAN-POLO, INC.

By: Fred B. Hunt, Jr.

Name: Fred B. Hunt, Jr.

Title: Attorney for Elan Polo, Inc

Date: 6/8/00

EXHIBIT C

ASSIGNMENT

WHEREAS, Venture Stores, Inc. (hereinafter "Assignor"), a corporation duly organized under the laws of the State of Delaware, having its principal place of business at 871 Midpoint Drive, O'Fallon, Missouri 63366, is the owner of U.S. Registration No. 2,202,884, for the mark STONE MESA, as well as the goodwill of the business associated therewith:

WHEREAS, ELAN-POLO, Inc. (hereinafter "Assignee"), a corporation duly organized under the laws of the State of Missouri, having its principal place of business at 630 Melrose Avenue, Nashville, Tennessee desires to acquire all right, title and interest in and to the aforesaid registered trademark, together with the goodwill of the business associated therewith;

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby sell, assign and transfer unto Assignee all of its right, title and interest in and to said trademark and service marks, together with the goodwill of the business symbolized by said trademark and service marks and the registration thereof, and the right to sue for past infringement thereof.

This Agreement shall inure to the benefit of, and be binding upon, the parties, their heirs, successors and assigns.

Executed effective as of the 20th day of July, 2000.

ASSIGNOR

VENTURE STORES, INC.

By: Teresa S Hanger

Name: Teresa S Hanger

Title: Vice President

Date: 7/20/00

ASSIGNEE

ELAN-POLO, INC.

By: Fred D. Hunt, Jr.

Name: Fred D. Hunt, Jr.

Title: Attorney for Elan Polo Inc.

Date: 6/8/00

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