Preemptive Strategies for Minimizing COVID-19’s Impact on the Retail Industry

Compounding the preexisting challenges and uncertainty faced by many in the retail industry, COVID-19 is causing economic disruption for companies at all stages of the supply chain. Retailers, fashion brands, and manufacturers are set to see production delays, delayed or reduced shipping and freight options, halted factory operations, store closures and impediments to distribution, while drops in revenue may prevent companies from meeting their baseline costs and expenses. A systematic, preemptive response to the economic consequences of COVID-19 may help companies gain early traction and resist a downward slide.

Employee Issues

- Create clear and transparent workforce plans during COVID-19 and when health crisis abates
- Create healthy and safe workplaces for employees and customers
- Implement CDC and other health protocols and guidelines
- Consider workforce reductions, leaves of absences, related notices and cost savings
- Be cognizant of applicable legal requirements and regulations relating to the foregoing, as well as government and alternative support programs

Business Plans

- Identify and mitigate business disruptions and revise business plan to navigate current disruptions
  - Sales, distribution and operational disruptions will likely continue and may worsen
  - Supply chain disruptions will continue
- Anticipate and prepare contingency plans for further disruptions and length of COVID-19 impacts
- Reduce costs, discuss payment plans with vendors and creditors, manage and control spending and prepare to be in strongest position possible when COVID-19 disruptions abate
- Reinforce relationships with retailers, focus on online retailers
- Manage inventory and raw materials spent

Contractual Obligations

- Review contracts, licenses and leases to assess parties contractual rights and obligations
- Assess “force majeure” or “act of God” clauses that may give rise to a legal basis that excuses a party’s nonperformance under the contract or lease
- Negotiate rent abatements and extensions of other payments
• Ascertain if any claims to recover losses for non-delivery or other supply disruption and assess requirements of notices and potential waivers
• Ascertain cancellation and return rights of purchaser orders
• Maintain documentation of any losses your company suffers to support damage claims
• Evaluate and implement strategies to resolve issues if the business is not able to comply with contractual obligations to minimize consequences of a breach
• Analyze consequences of a potential breach
• Analyze any existing or new regulations that may require altering contractual obligations
• Consult experienced legal, financial, accounting and tax advisers as soon as possible

**Distress/Bankruptcy**

Where the market environment leaves no immediate alternatives, retailers, manufacturers and fashion brands facing credit, liquidity or operational problems should evaluate and consider:

• Developing detailed analysis of liquidity position, debt covenants and obligations and other potential bankruptcy and insolvency triggers
• Seek to secure debtor in possession financing options to finance the reorganization process and exit where applicable
• Engage experienced legal counsel and financial advisors/investment bankers to evaluate market opportunities in short and long term and potential strategic or financial buyers
• Take steps to maintain goodwill and value of brand/IP and business, reviewing all relevant contractual rights and obligations of various interested parties
• Analyze profitability of stores and valuable leases and determine an exit strategy
• If bankruptcy becomes unavoidable or the proper path forward for other reasons, diligently work with investment bankers to seek to secure potential stalking horse bidder to enable the company to conduct a Section 363 sale on the filing of bankruptcy
  – Allows sale of part or substantially all of its assets free and clear of claims and encumbrances, including business lines, contracts, leases, intellectual property, brands and accounts
• Consider lease rejection and, where applicable, going out of business sales for unprofitable stores, utilize online channels where possible

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