

ARTICLE 9 GIVES SUN & SKIN CARE DAYLIGHT FOR A DEAL

By Lisa Allen

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Fearful of being burned by a November product delivery deadline, Sun & Skin Care Research LLC and its financial adviser, Carl Marks Advisory Group LLC co-founder and partner Warren Feder, are taking an innovative approach to a fast sale – Article 9 of the Uniform Commercial Code.

Cocoa, Fla.-based Sun & Skin Care, which produces sunscreen brands Bull Frog, NO-AD, and Ocean Potion, wasn't manufacturing its products efficiently, and it needed to find a buyer who could solve that problem before November, when the next round of shipments to retailers is slated to begin.

"If we missed the 2016 season, the value of the company would have diminished significantly," Feder explained in a phone interview.

To meet that deadline, Sun & Skin Care Research accessed a process rarely used for an operating company of its size. Article 9 sets out a process for a foreclosure proceeding, under which Sun & Skin Care Research is allowed to sell itself for less than the par value of its debt outside of bankruptcy court, Feder explained.

SolSkyn Personal Care LLC, which manufactures personal care products, has agreed to acquire Sun & Skin Care Research's assets, Feder told The Deal.

The sale price was north of \$20 million, according to a source familiar with the situation.

Timing wasn't the only factor complicating matters. Sun & Skin Care Research had \$28 million in debt in the form of a revolving credit

facility from Ares Management LP, which inherited the loan through its acquisition of First Capital Holdings Inc., and a term loan from business development corporation Capitala Finance Corp., Feder said, adding that these loans had been subject to a string of forbearance agreements.

"It was clear that the lenders would be taking some level of a haircut to get the deal consummated, and that opened up different deal structures," he asserted. "I started thinking about Article 9 very early on."

Feder explained that Article 9 is cheaper, quicker, and more certain for the buyer than a sale in bankruptcy court, but there's a reason why we don't see more companies of Sun & Skin Care Research's size pursuing it.

"There are a lot of variables that raise their heads in larger situations that make Article 9 a more difficult process to actually execute," Feder said. "Essentially, something happens, and you end up in bankruptcy."

Article 9 sales are designed to transfer assets, but contracts can't be transferred, which is a challenge for some companies that might otherwise be interested. Furthermore, larger companies tend to have more complex capital structures, which increases the likelihood that a dissatisfied creditor will put a company into an involuntary bankruptcy, Feder said.

He was pleased that Sun & Skin Care Research and its lenders, as well as all of the advisers in the matter, got on board with the Article 9 plan quickly.

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"In my experience, in general, most lawyers and advisers prefer to stick to a structure that's been done over and over again, which in this case would be a stalking-horse bid [and] 363 sale in bankruptcy," Feder continued. "I was very gratified that the advisers in this case were able to think a little bit out of the box and see why this structure made sense in this transaction."

While everyone involved agreed to an Article 9 sale, however, there was still the matter of finding a buyer.

"The third step was finding a buyer who would be comfortable buying the assets without the court order you would get in a Section 363 sale," Feder said.

To do that, Feder talked to more than 200 potential buyers. Among them were companies that buy brands, private equity firms that specialize in consumer products, and distress-focused financial sponsors. He sent books out to more than 80 interested parties and received 20 bids for Sun & Skin Care Research, all of which came in at less than the par value of its debt.

SolSkyn stood out because it was on board with an Article 9 sale, didn't need to raise third-party financing to swing the deal, and has related companies that can take over the manufacturing that has been so problematic for Sun & Skin Care Research, Feder explained.

In the sunscreen business, maintaining credibility with retailers is crucial. It's a seasonal business, and once it gets cold outside, retailers return unsold products to their makers and get money back from them, Feder explained. Under this model, the retailers must have confidence in the seller's financial health, or else worries will arise about getting credit for the unsold sunscreen they'll be returning in the fall, he noted.

Sun & Skin Care Research's brands appear in supermarkets, drugstores, and specialty retailers in the U.S. and abroad. The company brought in more than \$40 million in revenue during 2014, Feder said.

Berger Singerman LLP was Sun & Skin Care Research's legal counsel.

K&L Gates LLP provided legal counsel to the lenders.

Sun & Skin Care Research's chief restructuring officer was Gregg F. Stewart of Jenson Beach, Fla., strategic and turnaround advisory firm Rinnovo Management LLC.