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Happy Kids Gets 3-Week Extension

By Terry Brennan

Happy Kids Inc. won Tuesday, Aug. 23, a three-week extension on its sole right to file a reorganization plan while it scrambles to liquidate.

The bankrupt children's apparel company also hopes the retention of fashion industry boutique bank Marketing Management Group Inc. will deflect a motion by secured creditor Deutsche Bank Trust Co. to appoint an examiner, said Sheldon Hirshon, New York debtor counsel at Proskauer Rose LLP. Deutsche Bank opposes the appointment of MMG and reportedly is seeking to place **Net Worth Solutions Inc. as an examiner to investigate possible insider trading.**

Judge Stuart Bernstein in U.S. Bankruptcy Court for the Southern District of New York in Manhattan set Sept. 1 for both MMG's retention and Deutsche Bank's motion for an examiner. Bernstein also extended Happy Kids' exclusivity to file a reorganization plan until Sept. 13.

"The court will hear the motion to retain MMG first on Sept. 1, and the outcome of that will determine to a great extent what the court will do with the later examiner motion," Hirshon said. "Deutsche Bank and the [creditors] committee may oppose MMG, but we don't know that now."

New York-based Happy Kids is actively negotiating with a buyer that it hopes to lock-in with an asset purchase agreement before the Sept. 13 hearing for further exclusivity, said Adam Friedman, creditors counsel at Olshan Grundman Frome Rosenzweig & Wolosky LLP.

"They have a tentative buyer but are still negotiating and hope to nail it down as a stalking-horse so they can present it to the court at the Sept. 13 hearing," Friedman said.

Deutsche Bank, whose defaulted \$23 million secured loan is primed by a \$53 million claim by debtor-in-possession lender CIT Group/Commercial Services Inc., has been at loggerheads with Happy Kids since its Jan. 3 Chapter 11 filing. Deutsche Bank has repeatedly blocked the company's bid for an exclusivity extension and even sought to file a rival plan, but the extra three weeks' time for exclusivity was consensual, Hirshon said.

Happy Kids and Deutsche Bank have been at odds over whether a stalking-horse bidder was necessary to insure an open Section 363 auction. Deutsche Bank has repeatedly argued that a stalking-horse offer isn't needed for an open sales process, and Happy Kids is hoping to meet its concern by locking in the bidder before the Sept. 13 hearing.

Happy Kids markets licensed clothing under the Calvin Klein and Izod brands by using third-party vendors in Asia to make most of its goods. The company lost money in each of the five years before it toppled into bankruptcy after defaulting with Deutsche Bank and others.

Happy Kids said in documents that it is on target to reach \$9 million in Ebitda for fiscal 2005, and Hirshon said Tuesday that it is meeting all its budget and DIP requirements.

Michael Luskin and Trevor Hoffman, Deutsche Bank's New York counsel at Luskin, Stern & Eisler LLP, didn't respond to calls.

F. Duffield Meyercord of Carl Marks Consulting Group LLC is chief restructuring officer for Happy Kids.

Edwin Ordway of Capstone Corporate Recovery LLC is Deutsche Bank's financial adviser.

Friedman and Michael Fox began the case as creditors counsel at Traub, Bonaquist & Fox LLP but took the case with them when they joined Olshan Grundman.

FTI Consulting Inc. is the financial adviser to the committee.