

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE:**  
**BRUNO'S SUPERMARKETS, LLC,**  
  
**Debtor.**

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**Chapter 11  
Case No. 09-00634-BGC-11**

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**DEBTOR'S MOTION FOR ORDER AUTHORIZING DEBTOR TO MODIFY CASE  
CAPTION**

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**COMES NOW**, Bruno's Supermarkets, LLC ("Bruno's" or "Debtor"), as debtor and debtor-in-possession, by and through its undersigned counsel, and moves this Court (this "Motion") to issue an order authorizing Debtor to modify the case caption of this bankruptcy case. In support of this Motion, Debtor states as follows:

**JURISDICTION AND VENUE**

1. On February 5, 2009 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. Debtor continues to operate its business and manage its assets as debtor in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor's chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**FACTUAL BACKGROUND**

3. Pre-petition, Debtor owned and operated approximately sixty-six grocery stores in Alabama and Florida. For a detailed description of Debtor, its operations, and its assets and



liabilities, Debtor respectfully refers this Court and parties-in-interest to the *Affidavit of James Grady in Support of Chapter 11 Petition and First Day Orders*, which was filed on the Petition Date. [Docket No. 13]

4. Debtor's bankruptcy filing has been precipitated by a variety of factors that have led to a deterioration in Bruno's business and a lack of liquidity. Through the filing of this Bankruptcy proceeding, Debtor seeks to reorganize Debtor's business in order to maximize the recovery to all of Debtor's estate and creditors, whether secured, unsecured, or with priority pursuant to the Bankruptcy Code.

5. This Court has previously entered an Order authorizing Debtor to sell all or substantially all of its assets (the "Assets") free and clear of all liens, interests, and encumbrances either as a going concern or to a buyer who will conduct a liquidation sale of the Assets in accordance with the Form Agreements and Amended Bidding Procedures. [Docket No. 652].

6. Said Order also authorized Debtor to conduct an auction (the "Auction"), in accordance with the Amended Bidding Procedures on April 29, 2009. [Docket No. 652].

7. During the Auction process, Debtor entered into an asset purchase agreement with Southern Family Markets Acquisition II LLC ("Southern Family"), whereby Southern Family agreed to purchase Debtor's interest in certain assets owned by Debtor (the "Southern Family APA"). The Debtor determined that the Southern Family APA was the highest and best offer received for the Debtor's assets at the Auction.

8. This Court set a hearing on May 4, 2009 to review and approve the Southern Family APA. [Docket No. 802]. Subsequent to the hearing, the Court entered an order approving the Southern Family APA. [Docket No. 821]. In accordance with Section 2.1 of the Southern Family APA, Debtor agreed to sell to Southern Family all of its Acquired Assets.

Expressly incorporated in the definition of Acquired Assets, pursuant to Section 2.1(i) of the Southern Family APA, are all Debtor owned intellectual property. Section 2.1(i) more particularly provides for the conveyance of:

(i) Intellectual Property. All Company Owned Intellectual Property and all Company Used Intellectual Property, including, but not limited to, any trademarks, service marks, trade names, domain names, websites, logos or designs of Seller including, without limitation, the Banners and all associated rights thereto; including, without limitation, any signage, labels, bags, and other equipment or supplies using the name or logo of the Banners wherever located, rights to sell private label inventory, and licenses necessary for purposes of any liquidating sales;

9. In light of the entry of the Sale Order, and in accordance with the Company Owned Intellectual Property and Company Used Intellectual Property, the Debtor seeks to amend its name to BFW Liquidation, LLC effective upon an entry of an order granting this Motion.

#### **RELIEF REQUESTED**

10. By this Motion, Debtor is requesting the Court to order that the caption of the case be modified in light of the Southern Family APA's covenant to convey all Debtor's Company Owned Intellectual Property (as defined in the Southern Family APA) and all Company Used Intellectual Property (as defined in the Southern Family APA) to Southern Family as the continued use of such current case caption could be seen as a violation of said Southern Family APA. Accordingly, the name of the Debtor is in the process of being changed from Bruno's Supermarkets, LLC to BFW Liquidation, LLC.

11. Section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under title 11. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of

its section 105(a) power is proper. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props, Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of their creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws”).

12. In conjunction with the Southern Family APA, Debtor seeks to have the current case caption set forth above modified to reflect the case caption set forth on Exhibit A, attached hereto, to accurately reflect the terms of the Southern Family APA as set forth above. This modification would not affect the administration of the case.

13. Accordingly, Debtor believes that authorization of the name change is in the best interest of the Debtor, its estate, and its creditors.

14. No previous motion for relief requested herein has been made to this or any other court.

#### **NOTICE**

15. Notice of this Motion will be given to the Master Service List.

**WHEREFORE**, for the foregoing reasons, Debtor respectfully requests that this Court enter an order substantially in the form annexed hereto as Exhibit B authorizing Debtor to modify the case caption currently used in this bankruptcy case to reflect the case caption set forth is Exhibit A, and to grant such other and further relief as this Court may deem just and proper.

/s/ Marc P. Solomon

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**EXHIBIT A**

**NEW CASE CAPTION REQUESTED BY DEBTOR**

**IN RE:  
BFW LIQUIDATION, LLC**

**Debtor.**

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)

**Chapter 11  
Case No. 09-00634-BGC-11**

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# **EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE:**  
**BRUNO'S SUPERMARKETS, LLC,**  
  
**Debtor.**

)  
)  
)  
)  
)

**Chapter 11  
Case No. 09-00634-BGC-11**

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**ORDER AUTHORIZING DEBTOR TO MODIFY CASE CAPTION**

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This matter came to be heard upon the motion (the "Motion") of Bruno's Supermarkets, LLC ("Bruno's" or "Debtor") for this Court to issue an order authorizing Debtor to modify the case caption for this matter. Upon consideration of the Motion, and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and having determined that the relief requested in the Motion is in the best interests of Debtor, its estate, its creditors, and other parties in interest; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby **ORDERED, ADJUDGED, AND DECREED THAT:**

The Motion is **GRANTED**; and it is further,

**ORDERED**, that the case caption set forth above shall be and is hereby modified as set forth on Exhibit A attached hereto; and nothing contained herein shall affect the administration of Debtor's case.

SO ORDERED on this \_\_\_ day of \_\_\_\_\_, 2009.

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**UNITED STATES BANKRUPTCY JUDGE**



**EXHIBIT A**

**NEW CASE CAPTION REQUESTED BY DEBTOR**

<b>IN RE:</b>	)	
<b>BFW LIQUIDATION, LLC</b>	)	
	)	<b>Chapter 11</b>
<b>Debtor.</b>	)	<b>Case No. 09-00634-BGC-11</b>
	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon the attached Master Service List by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 8th day of May, 2009:

/s/ Marc P. Solomon \_\_\_\_\_  
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*In re: Bruno's Supermarkets, LLC | Chapter 11 | Case No. 09-00634*  
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*In re: Bruno's Supermarkets, LLC* | Chapter 11 | Case No. 09-00634  
updated 05/07/2009

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*In re: Bruno's Supermarkets, LLC* | Chapter 11 | Case No. 09-00634  
updated 05/07/2009

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*In re: Bruno's Supermarkets, LLC* | Chapter 11 | Case No. 09-00634  
Main Document Page 16 of 19  
updated 05/07/2009

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**Mobile County License Commissioner**

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*In re: Bruno's Supermarkets, LLC | Chapter 11 | Case No. 09-00634*  
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Brandon, FL 33510-3945

**C&S Wholesale Grocers Inc.**

Attn: Tim D. Ludlow  
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**Vertis Inc.**

Attn: Luke Brandonisio  
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**Buffalo Rock Company**

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