

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

DEEL, LLC, *et al.*,¹

Post-Confirmation Debtors.

Chapter 11

Case No. 10-11310 (BLS)
(Substantively Consolidated)

KDW Restructuring & Liquidation Services,
LLC, liquidating trustee of the Deel Liquidating
Trust,

Plaintiff,

vs.

Propensity Media, LLC,

Defendant.

Adv. Pro. No. 12-_____

**COMPLAINT TO AVOID AND RECOVER TRANSFERS
PURSUANT TO 11 U.S.C. §§ 544, 547, 548, 549 AND 550 AND
TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502**

KDW Restructuring & Liquidation Services, LLC, liquidating trustee of the Deel Liquidating Trust (“Liquidating Trustee” or “Plaintiff”), in support of its Complaint to avoid and recover preferential, fraudulent and/or unauthorized post-petition transfers against Propensity Media, LLC (the “Defendant”) and to disallow any claims held by Defendant, hereby alleges as follows:

NATURE OF THE CASE

1. This action is commenced pursuant to sections 544, 547, 548, 549 and 550 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) to avoid and recover preferential, fraudulent, and/or unauthorized post-petition transfers made by the Debtors to, or for the benefit of Defendant.

¹ The post-confirmation debtors in these cases are: Deel, LLC (f/k/a Magic Brands, LLC), Brosna, Inc. (f/k/a Fuddruckers, Inc.), Atlantic Restaurant Ventures, Inc., King Cannon, Inc., and KCI, LLC (each, a “Debtor” and, collectively, the “Debtors”).



2. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against any of the Debtors or that has been scheduled for Defendant. Plaintiff does not waive but hereby reserves all of its rights to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. § 1334 and Article XIII of the Plan (as defined below). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. Venue in this district is proper pursuant to 28 U.S.C. § 1409.

BACKGROUND AND PARTIES

5. On April 21, 2010 (the "Petition Date"), the Debtors commenced their chapter 11 bankruptcy cases (the "Bankruptcy Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. On June 16, 2011, this Court entered an order (the "Confirmation Order") confirming the *Debtors' Amended Consolidated Chapter 11 Plan of Liquidation* (the "Plan"), which became effective on June 30, 2011 (the "Effective Date").

7. On June 26, 2011, as contemplated by the Plan and Confirmation Order, the Debtors and Plaintiff entered into that certain Liquidating Trust Agreement and Declaration of Trust (the "Liquidating Trust Agreement").

8. In accordance with the Plan and the Confirmation Order, the Deel Liquidating Trust (the "Trust") was established effective on the Effective Date of the Plan. Pursuant to the Liquidating Trust Agreement, Plaintiff was appointed Liquidating Trustee of the Trust, and

authorized to cause the Trust to pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon or resolve all Avoidance Actions.

9. The Debtors owned, operated and franchised fast casual dining establishments under the trademarks Fuddruckers™ and Koo Koo Roo™. Prior to the Petition Date, the Debtors owned and operated 85 Fuddruckers™ restaurants and 13 Koo Koo Roo™ restaurants and franchised 135 Fuddruckers™ restaurants in 33 states, the District of Columbia, Puerto Rico and Canada. In 1998, Michael Cannon acquired the Fuddruckers restaurant chain in a stock purchase. In 2003, the Debtors acquired the Koo Koo Roo restaurant chain, which operated exclusively in the Southern California area. In connection with Mr. Cannon's acquisition of the Fuddruckers business, all of the intellectual property relating to Fuddruckers was acquired by Magic Brands, LLC (now known as Deel, LLC), a wholly-owned subsidiary of KCI, LLC, while all of the Debtors' tangible assets, including their restaurants, continued to be held by Fuddruckers (now known as Brosna, Inc.), a wholly-owned subsidiary of King Cannon, Inc. As of the Petition Date, both KCI, LLC and King Cannon, Inc. were wholly-owned by Fuddruckers International, LLC, a non-debtor, which is in turn wholly-owned by Mr. Cannon. As of the Petition Date, the Debtors maintained their corporate headquarters in Austin, Texas.

10. The Debtors' cash management system was an integrated network of bank accounts organized to collect, record and transfer funds generated by the Debtors, as well as to disburse funds to satisfy the obligations of the Debtors. The Debtors maintained thirteen (13) bank accounts at JP Morgan Chase Bank, including main operating concentration account numbered *2844 (the "Concentration Account") and main disbursement account numbered *0056 held in the name of Fuddruckers, Inc (the "Disbursement Account"). The Debtors made

payments on certain tax, bank fee, and vendor payables from the Concentration Account and the Disbursement Account.

11. Defendant was, at all times material hereto, a vendor to or creditor of one or more of the Debtors, with its principal place of business located at 456 Knollwood Drive, Barrington, IL 60010. Plaintiff is informed and believes and on that basis alleges that Defendant is a Limited Liability Company residing in and subject to the laws of the State of Illinois.

12. Exhibit A reflects the Liquidating Trustee's current knowledge of all transfers made by or for the benefit of the Debtors to the Defendant on or during the ninety (90) day period immediately preceding the Petition Date and immediately subsequent to the Petition Date on account of pre-petition claims, in the amount of \$20,000.00. During the course of this proceeding, the Liquidating Trustee may learn of additional transfers made to Defendant during the Preference Period (as defined below), during the applicable time periods with respect to actions arising under sections 544 and 548 of the Bankruptcy Code, or subsequent to the Petition Date without Bankruptcy Code or Court authority therefor. It is the Liquidating Trustee's intention to avoid and recover all such transfers, whether such transfers presently are reflected in Exhibit A or not, and the Liquidating Trustee reserves all rights to supplement and amend the allegations of this Complaint accordingly. Collectively, all transfers made by or for the benefit of the Debtors of an interest of the Debtors in property to or for the benefit of Defendant during the Preference Period or made subsequent to the Petition Date without authority therefor (whether such transfers presently are reflected in Exhibit A or not) are referred to herein as the "Transfers."

FIRST CLAIM FOR RELIEF

(Avoidance and Recovery of Preferential Transfers – 11 U.S.C. §§ 547(b) and 550)

13. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

14. As more particularly described on Exhibit A attached hereto and incorporated herein, on or within the ninety days immediately prior to the Petition Date (the “Preference Period”), one or more of the Debtors made the Transfers to or for the benefit of Defendant in an aggregate amount of not less than \$20,000.00.

15. The Transfers were paid from the Concentration Account and/or the Disbursement Account described *supra*.

16. The Transfers constituted transfers of an interest in property of the transferring Debtor, Brosna, Inc. (f/k/a Fuddruckers, Inc.) (“Brosna”).

17. As more fully set forth on Exhibit A hereto, the Transfers were made on account of prior contractual obligations or invoices owed by Brosna to Defendant before the Transfers were made.

18. The Transfers were made in payment of goods sold and/or services provided by Defendant to Brosna in the nature of marketing related services.

19. The goods and/or services paid for by each of the Transfers were provided by Defendant to Brosna before each such Transfer was made.

20. The Transfers were made while the Debtors, including Brosna, were insolvent. Pursuant to 11 U.S.C. § 547(f), the Debtors are presumed to have been insolvent on and during the ninety days immediately preceding the Petition Date. Upon experiencing a significant decline in profits in 2006 and 2007, the Debtors hired a new management team to reestablish financial controls and corporate governance, tighten franchise controls and accountability, and

improve relationships across the franchise system. However, before the long term turnaround plan could be accomplished, the recession hit in 2008. Rising unemployment and a tightening of credit markets led to a dramatic cut in discretionary consumer spending which, in turn, had substantial negative impact on the Debtors' restaurant sales. At the same time, energy and beef costs increased, further negatively impacting the Debtors' profits. Primarily due to the economic downturn, the Debtors experienced significant decreases in gross revenues from corporate-owned and franchise operations in their fiscal year ending June 2009. Same store sales at corporate-owned and franchised restaurants experienced similar declines in the fiscal years ending June 2008 and June 2009. Further, same store sales for the period July to December 2009 declined by 10.3%. The Debtors' financial performance leading up to the Petition Date was also adversely impacted by the cost related to a credit card fraud perpetrated on the Debtors in the second half of 2008, which cost the Debtors in excess of \$1.5 million. As evidenced by the Debtors' Schedules and various first day pleadings filed in the Bankruptcy Cases, the Debtors' financial difficulties continued up through the Petition Date.

21. The Transfers enabled Defendant to receive more than it would have received if (i) the Bankruptcy Cases were cases under chapter 7 of the Bankruptcy Code, (ii) the Transfers had not been made, and (iii) Defendant received payment of such debt to the extent provided by the provisions of the Bankruptcy Code. As evidenced by the Debtors' schedules filed in the Bankruptcy Cases as well as proofs of claim that have been received to date, the Debtors' liabilities exceed their assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors' bankruptcy estates.

22. Defendant was the initial transferee of the Transfers, or the entity for whose benefit the Transfers were made.

23. Based upon the foregoing, Plaintiff is entitled to an order and judgment against Defendant: (i) avoiding the Transfers under section 547(b) of the Bankruptcy Code; and (ii) entitling Plaintiff to recover the Transfers or the value of the Transfers from Defendant under section 550(a) of the Bankruptcy Code, together with the award of pre and post-judgment interest thereon from the date of demand to the date of payment or other satisfaction of such order and judgment.

SECOND CLAIM FOR RELIEF
(Avoidance and Recovery of Postpetition Transfers – 11 U.S.C. §§ 549 and 550)

24. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

25. As more particularly described on Exhibit A attached hereto and incorporated herein, Brosna made Transfers to or for the benefit of Defendant in an aggregate amount of not less than \$20,000.00.

26. Based upon the foregoing, Plaintiff is entitled to an order and judgment against Defendant: (i) under section 549 of the Bankruptcy Code avoiding any of the Transfers to Defendant that occurred after the Petition Date that were not authorized by the Bankruptcy Code or by this Court or were authorized only under section 542(c) of the Bankruptcy Code; and (ii) under section 550(a) of the Bankruptcy Code recovering from Defendant such Transfers or the value of such Transfers, together with the award of pre and post-judgment interest thereon from the date of demand to the date of payment or other satisfaction of such order and judgment.

THIRD CLAIM FOR RELIEF
(Avoidance and Recovery of Fraudulent Transfers – 11 U.S.C. §§ 544, 548 and 550)

27. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

28. Brosna made Transfers or a portion thereof to or for the benefit of Defendant in an aggregate amount of not less than \$20,000.00 on or within two years prior to the Petition Date. Necessarily, such Transfers were also made within four years prior to the Petition Date or other limitations period prescribed by the applicable state fraudulent transfer law.

29. Upon information and belief, Brosna received less than reasonably equivalent value in exchange for some or all of the Transfers, either because the goods and/or services were in fact less in value than the Transfers or because Brosna was not the Debtor incurring the debt.

30. Upon information and belief, on the date of each Transfer, Brosna: (i) was insolvent or became insolvent as a result of such Transfer; (ii) was engaged in business or a transaction, or about to engage in business or transactions, for which any property remaining with Brosna was an unreasonably small capital at the time of, or as a result of the Transfers; and/or (iii) intended, at the times relevant to this Complaint, to incur, or believed that Brosna would incur, debts that would be beyond its ability to pay as such debts matured.

31. Upon information and belief, at all times relevant to this Complaint, there were actual creditors of the Debtors holding unsecured claims allowable within the meaning of sections 502 and 544(b) of the Bankruptcy Code that could have avoided the Transfers under applicable state fraudulent transfer law, including but not limited to, the Delaware Fraudulent Transfer Act, Del. Code Ann. tit. 6, § 1301 *et seq.*, the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code Ann. § 24.001 *et seq.*, the Virginia Uniform Fraudulent Conveyance Act, Va. Code § 55-80, the Illinois Uniform Fraudulent Transfer Act, 740 Ill. Comp. Stat. 160/1 *et seq.*, and the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act as adopted by the relevant state(s).

32. Defendant may also have received additional avoidable Transfers which may be discovered during the discovery process.

33. Based upon the foregoing, Plaintiff is entitled to an order and judgment against Defendant: (i) avoiding the Transfers under section 544(b) of the Bankruptcy Code pursuant to applicable state fraudulent transfer law; (ii) avoiding the Transfers under section 548(a)(1)(B) of the Bankruptcy Code; and (iii) entitling Plaintiff to recover the Transfers or the value of the Transfers from Defendant under section 550(a) of the Bankruptcy Code, together with the award of pre and post-judgment interest thereon from the date of demand to the date of payment or other satisfaction of such order and judgment.

FOURTH CLAIM FOR RELIEF
(Disallowance of Claims – 11 U.S.C. §§ 502(d) and (j))

34. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

35. Defendant is a transferee of Transfers avoidable pursuant to section 544, 547, 548 and/or 549 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

36. Defendant has not paid the amount of the Transfers or turned over such property for which Defendant is liable under section 550 of the Bankruptcy Code.

37. Pursuant to section 502(d) of the Bankruptcy Code, any and all claims of Defendant against any of the Debtors must be disallowed until such time as Defendant pays Plaintiff the amount equal to the aggregate amount of all of the Transfers, plus interest thereon.

38. Pursuant to 11 U.S.C. § 502(j), any and all previously allowed claims of Defendant against any of the Debtors, including any and all claims assigned by Defendant, must

be reconsidered and disallowed until such time as Defendant pays to Plaintiff the amount equal to the aggregate amount of all of the Transfers, plus interest thereon and costs.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court grant the following relief against Defendant:

A. On Plaintiff's First Claim for Relief, judgment in favor of Plaintiff and against Defendant, avoiding the preferential Transfers and directing Defendant to return to Plaintiff the amount of the preferential Transfers, pursuant to 11 U.S.C. §§ 547(b) and 550(a), plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

B. On Plaintiff's Second Claim for Relief, judgment in favor of Plaintiff and against Defendant, avoiding the post-petition Transfers and directing Defendant to return to Plaintiff the amount of the post-petition Transfers, pursuant to 11 U.S.C. §§ 549 and 550(a), plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

C. On Plaintiff's Third Claim for Relief, judgment in favor of Plaintiff and against Defendant, avoiding the fraudulent Transfers and directing Defendant to return to Plaintiff the amount of the fraudulent Transfers, pursuant to 11 U.S.C. §§ 544(b), 548(a)(1)(B) and 550(a), plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

D. On Plaintiff's Fourth Claim for Relief, judgment in favor of Plaintiff and against Defendant disallowing any claims filed or otherwise held by Defendant and/or its assignee against any of the Debtors until Defendant returns the Transfers to Plaintiff pursuant to 11 U.S.C. § 502(d) and (j); and

E. Granting Plaintiff such other and further relief as this Court may deem just and proper.

Dated: Wilmington, Delaware
April 18, 2012

Local Counsel

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- and -

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*Attorneys for KDW Restructuring & Liquidation Services,
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Defendant: Propensity Media, LLC
Bankruptcy Case: DEEL, LLC et al.
Preference Period: January 21, 2010 – April 21, 2010

EXHIBIT A

Invoice Number	Invoice Date	Invoice Amount	Check/Wire Number	Check/Wire Date	Check/Wire Clear Date	Check/Wire Amount	Debtor
FUD01	2/1/10	\$20,000.00	0004138372	2/12/10	2/17/10	\$20,000.00	Brosna, Inc. (f/k/a Fuddruckers, Inc.)
					Total:	\$20,000.00	

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NOTICE OF DISPUTE RESOLUTION ALTERNATIVES

As party to litigation you have a right to adjudication of your matter by a judge of this Court. Settlement of your case, however, can often produce a resolution more quickly than appearing before a judge. Additionally, settlement can also reduce the expense, inconvenience, and uncertainty of litigation.

There are dispute resolution structures, other than litigation, that can lead to resolving your case. Alternative Dispute Resolution (ADR) is offered through a program established by this Court. The use of these services are often productive and effective in settling disputes. The purpose of this Notice is to furnish general information about ADR.

The ADR structures used most often are mediation, early-neutral evaluation, mediation/arbitration and arbitration. In each, the process is presided over by an impartial third party, called the "neutral."

In mediation and early neutral evaluation, an experienced neutral has no power to impose a settlement on you. It fosters an environment where offers can be discussed and exchanged. In the process, together, you and your attorney will be involved in weighing settlement proposals and crafting a settlement. The Court in its Local Rules requires all ADR processes, except threat of a potential criminal action, to be confidential. You will not be prejudiced in the event a settlement is not achieved because the presiding judge will not be advised of the content of any of your settlement discussions.

Mediation/arbitration is a process where you submit to mediation and, if it is unsuccessful, agree that the mediator will act as an arbitrator. At that point, the process is the same as arbitration. You, through your counsel, will present evidence to a neutral, who issues a decision. If the matter in controversy arises in the main bankruptcy case or arises from a subsidiary issue in an adversary proceeding, the arbitration, though voluntary, may be binding. If a party requests *de novo* review of an arbitration award, the judge will rehear the case.

Your attorney can provide you with additional information about ADR and advise you as to whether and when ADR might be helpful in your case.

Dated: April 18, 2012

/s/ David D. Bird
Clerk of Court

¹ The post-confirmation debtors in these cases are: Deel, LLC (f/k/a Magic Brands, LLC), Brosna, Inc. (f/k/a Fuddruckers, Inc.), Atlantic Restaurant Ventures, Inc., King Cannon, Inc., and KCI, LLC (each, a "Debtor" and, collectively, the "Debtors").