

Hostess Brands Look Appetizing To Rivals, PE Firms

By **Jake Simpson**

Law360, New York (November 16, 2012, 8:31 PM ET) -- The liquidation of bankrupt Hostess Brands Inc., owner of the iconic Twinkie and Wonder Bread brands, will attract immediate interest from competitors and private equity firms looking to scoop up trademark rights and goodwill for the brands at a bargain price, attorneys said Friday.

Hostess, which filed for Chapter 11 bankruptcy protection in New York federal court in January, announced on Friday morning that it was liquidating the firm and winding down operations after it was unable to quickly end an employee strike, which was organized by the Bakery Workers union and affected two-thirds of Hostess' 33 bakeries nationwide. The food company has indicated in bankruptcy filings that it will seek to sell off the brands one by one in separate, smaller "going concern" asset sales.

The food maker's most recent valuation put its overall assets at roughly \$981 million, which includes the company's 33 bakeries, 565 distributions centers and 5,500 delivery routes. Roughly \$134.6 million of that figure is the estimated value of Hostess' intellectual property, brand recognition and goodwill.

"A valuation of \$134.6 million is within the realm of reason," Locke Lord LLP attorney Jason Mueller, who specializes in IP and trademark issues, told Law360. "Whether or not they can get more will depend on the competitive ability of those brands."

The obvious suitors for Hostess' brands are its competitors in the food industry, such as Kraft Foods Inc. or Tasty Baking Co., the Philadelphia company that makes Tasty Cakes. Publicly traded Mexican bakery conglomerate Grupo Bimbo — which unsuccessfully tried to buy Hostess during its first trip through bankruptcy — is also leading candidate to acquire some or all of the brands.

Hostess competitors could assimilate the popular brands within their own product lines and leverage the multigenerational brand recognition associated with names like Twinkie, according to Anderson Kill & Olick PC Shareholder Todd E. Duffy, who heads the firm's bankruptcy and restructuring group.

"I could see a way for them to expand their market by including these types of brand names," Duffy said of the other food companies. "There's a deep affection for these kinds of things, and there's a market out there for them."

Hostess' investment banker, Perella Weinberg Partners LP, had been looking during bankruptcy proceedings for a way to package all of the brands and associated infrastructure together, according to several attorneys. But any sale of trademarks or goodwill that includes bakeries or distribution centers may be troublesome because the Bakery Workers union and the Teamsters union will be looking for a way to collect some or all of the roughly \$2 billion in unfunded pension liability they claim is owed to Hostess employees.

"Even if you get a free-and-clear sale and avoid successor liability challenges, that does not preclude the union from striking," said McGuireWoods LLP partner Michael J. Roeschenthaler. "I don't think any buyer wants to put real money into a deal, and then deal with the headaches and logistical challenges that come with mass striking."

Most of the attorneys interviewed said they expected the brands to be sold piecemeal to avoid that concern. In some cases, buyers may opt to acquire just the IP rights and associated goodwill and brand recognition and avoid any physical assets.

"To pick up the brand name and product formula is much more clean than picking up an entire division of the company," said Paul Llewellyn, co-head of Kaye Scholer LLP's trademark, copyright and false advertising practice. "There could be a lot of value just in the trademark value."

Other potential suitors are private equity firms that will look to find value in one or more of the Hostess brands. Mueller said that the plethora of brands is "absolutely an opportunity for private equity," but noted that the holding time for an IP portfolio could be different from PE firms' general investment strategy.

The potential suitors have a short window to survey the playing field, as Hostess plans to first auction its perishables and going-out-of-business products. But several attorneys said brand sales will likely happen in the next few months, if not sooner. Once sales are complete, the acquiring companies will have to bring Twinkies, Ding Dongs and Ho Hos to the masses in their own way.

"The value of the brands post-acquisition will depend on the purchaser's ability to make and sell products that live up to the lore — including the taste, look and style — of the iconic, some would say legendary, Hostess-style snacks," said Faegre Baker Daniels LLP partner Amie Peele Carter.

--Editing by John Quinn.