

Citigroup Gets Freeze On \$175M 'Mistake' Payment To Brigade

By **Mike LaSusa**

Law360 (August 18, 2020, 10:01 PM EDT) -- Citigroup Inc. won a bid Tuesday in New York federal court to temporarily freeze \$175 million the financial giant says Brigade Capital Management LP refused to return after Citigroup mistakenly transferred the amount as part of a \$900 million payment to Revlon Inc. lenders.

U.S. District Judge Jesse M. Furman said Brigade is temporarily barred from "removing, withdrawing, transferring, assigning, or otherwise disposing" of the \$174,651,497.63 that Citibank apparently sent by mistake to Brigade on Aug. 11.

Judge Furman set a hearing for the morning of Aug. 31 at which Brigade will seek to convince him not to issue an order forcing it to send the money back to Citibank until the case is resolved.

Citigroup brought the suit on Monday, saying the payment was made as a complete accident and was a transfer intended to pass through as an interest payment from Revlon on a loan for which Citibank acts as an administrative agent.

Brigade, it said, decided to seize the payment for itself despite "crystal-clear evidence" it was a mistake.

Citigroup's lawsuit comes after UMB Bank on behalf of lenders including Brigade sued Revlon, Citigroup and others last week accusing the cosmetics giant of unlawfully shifting its collateral trademarks away from a group of creditors that extended nearly \$1.8 billion to the cosmetics giant.

The collateral pledged to the 2016 lenders was shifted to others, starting with a 2019 deal with co-defendant Ares Management Corp., according to the UMB suit. That \$200 million deal was closed by moving the intellectual property associated with Revlon's American Crew brand to a new subsidiary. Ares then received a first-priority lien on the American Crew IP, and the new subsidiary then leased back the right to use the American Crew IP to co-defendant Revlon Consumer Products Corp., according to the UMB suit.

Citigroup's lawsuit said an "operational mistake" caused it to transfer about \$900 million of its own money to parties not entitled to the funds, but after asking for the money back, Brigade "unlawfully attempted to capitalize on the mistake" and convert nearly \$175 million of the payment it received for its own use. Brigade has taken the "baseless position" that the transfer served to pay off Revlon's entire principal balance, Citigroup said.

"The credit agreement itself, which governs the payment schedules under the lending facility, makes clear that no such payment was then due, and that any prepayment would have required three-days' advance written notice," Citibank said. "Revlon, too, stated publicly that it had made no principal payment on its debt."

Brigade also has not offered a "reasonable explanation" for why it will not return the funds and in response to Citibank said that it is "not at all clear that the funds were sent as a result of 'clerical mistake,'" Citibank said.

The suit includes causes of action for unjust enrichment and conversion.

Counsel for Brigade didn't respond on Tuesday to requests for comment. Citigroup declined to comment on the order.

Citigroup is represented by Matthew D. Ingber, Christopher J. Houpt, Michael Rayfield, Luc W. M. Mitchell and Anjanique M. Watt of Mayer Brown LLP.

Brigade is represented by Michael Barry Carlinsky, Robert Scott Loigman, Adam Michael Abensohn, Benjamin Isidore Finestone, Bennett Murphy and Zachary Ryan Russell of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Citibank N.A. v. Brigade Capital Management LP, case number 1:20-cv-06539, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Craig Clough. Editing by Amy Rowe.