

Citigroup Says Brigade Won't Return 'Mistake' \$175M Payment

By Craig Clough

Law360 (August 17, 2020, 9:48 PM EDT) -- Citigroup Inc. filed a lawsuit Monday in New York federal court against Brigade Capital Management LP, seeking the return of the hedge fund manager's \$175 million share of a nearly \$900 million payment that Citigroup said it mistakenly transferred to Revlon Inc. lenders and that Brigade is refusing to return.

According to Citigroup, 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.

"Brigade has no claim to Citibank's money," Citibank said. "It was not expecting Citibank's money. It should have known that a surprise repayment of principal could not be made under the governing credit agreement. And it was well aware that virtually no company, let alone a distressed retail and consumer company such as Revlon, would ever make such a substantial prepayment while dealing with the significant financial consequences caused by the ongoing pandemic."

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 was then provided with 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 approximately \$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.

Brigade declined to comment and and counsel for Citigroup did not immediately respond to a request for comment.

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

Counsel for Brigade was not immediately available.

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.

--Editing by Gemma Horowitz.