IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2013

IN RE FOODSTAR, INC.,
Debtor

FOODSTAR, INC.,
Petitioner,

V.

RAVI VOHRA,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR PETITIONER

Team P 17
Counsel for the Petitioner
QUESTIONS PRESENTED

1. Whether a licensee may continue using a trademark despite the debtor-licensor’s rejection of the trademark licensing agreement under 11 U.S.C. § 365?

2. Whether the application of 11 U.S.C. § 365 to a trademark licensing agreement owned by a U.S. debtor and licensed abroad is precluded by the presumption against extraterritoriality of statutes?
TABLE OF CONTENTS

QUESTIONS PRESENTED ........................................................................................................ i

TABLE OF CONTENTS .......................................................................................................... ii

TABLE OF AUTHORITIES ................................................................................................... v

OPINIONS BELOW ................................................................................................................ x

STATEMENT OF JURISDICTION .......................................................................................... x

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .......................................... x

STATEMENT OF FACTS ......................................................................................................... 1

SUMMARY OF THE ARGUMENT .......................................................................................... 3

ARGUMENTS .......................................................................................................................... 5

I. A DEBTOR-LICENSOR’S REJECTION OF A LICENSING AGREEMENT TERMINATES THE LICENSEE’S RIGHT TO CONTINUE USING THE LICENSED PROPERTY ........................................... 5

   A. A DEBTOR-LICENSOR’S REJECTION OF A TRADEMARK LICENSING AGREEMENT TERMINATES THE LICENSEE’S RIGHTS TO USE THE TRADEMARK .............................................. 6

      1. THE Bankruptcy Code grants debtors the right to reject executory contracts and converts future performance obligations into unsecured claims for monetary damages. ................................................................. 6

      2. A LICENSING AGREEMENT is a contract in which a property owner agrees to permit a certain use of its property for a certain term. ................................................................. 8

      3. A DEBTOR-LICENSOR’S REJECTION OF A LICENSING AGREEMENT FREES THE DEBTOR TO REVOKE THE LICENSE, TERMINATING THE RIGHTS GRANTED THEREIN .................. 10

      4. THE court below misinterpreted the operation of the debtor’s rejection because it confused a license with an asset transfer. ................................................................. 12

   B. CONGRESS AND THE MAJORITY OF COURTS HAVE DECLINED TO MAKE AN EXCEPTION TO THE GENERAL EFFECT OF REJECTION FOR TRADEMARKS ................................................. 13

      1. CONCERNS ABOUT PROTECTING INCENTIVES TO INNOVATION WERE THE DRIVING FORCE BEHIND Congress’ enactment of Section 365(n), and those concerns do not apply in the trademark context .................................................. 14
2. The policies and principles underlying both bankruptcy law and trademark law support a debtor-licensor’s ability to terminate a licensee’s trademark.

   a. Trademark law imposes substantial duties on licensors that are not required in other intellectual property contexts.

   b. Terminating licensee rights post-rejection promotes both debtor reorganization and equitable distribution among creditors.

   c. Terminating licensee rights post-rejection promotes consumer welfare by protecting the integrity of trademarks.

3. A majority of the existing case law supports the view that rejection of a trademark licensing agreement by the debtor-lessee terminates the license.

II. The Application of Section 365 to a Trademark Licensing Agreement Owned by a U.S. Debtor Is Not Barred by the Presumption Against Extraterritoriality of Statutes.

   A. The presumption against extraterritoriality does not apply to the Vohra license because the license has a significant connection to the United States.

   B. Congress explicitly excepted Section 365 from the presumption against extraterritoriality.

      1. Congress gave the United States courts exclusive jurisdiction over all the debtor’s property, wherever located.

      2. Bankruptcy Code applications that administer property of the estate are exempt from the presumption against extraterritoriality.

   C. Both the United States and Eastlandia rejected territorial principles in favor of universalism when they adopted the Model Law on Cross-Border Insolvency.

      1. This Court has held that non-textual sources may help determine whether the presumption against extraterritoriality applies in a particular context.

      2. In its adoption of the Model Law, Congress embraced a universalist approach to cross-border insolvency that favors the extraterritorial application of Section 365.
3. It is an incorrect interpretation of the Model Law to suggest the debtor initiate ancillary proceedings to decide the fate of the Vohra Agreement.

CONCLUSION

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

APPENDIX G

APPENDIX H
## TABLE OF AUTHORITIES

**Cases**

<table>
<thead>
<tr>
<th>Case</th>
<th>Volume</th>
<th>Citation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred E. Mann Found. for Scientific Research v. Cochlear Corp.</td>
<td></td>
<td>604 F.3d 1354</td>
<td>9</td>
</tr>
<tr>
<td>(Fed. Cir. 2010)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dawn Donut Co. v. Hart’s Food Stores, Inc.</td>
<td></td>
<td>267 F.2d 358 (2d Cir. 1959)</td>
<td>16, 18</td>
</tr>
<tr>
<td>Dee-K Enters., Inc. v. Heveafil Sdn. Bhd.</td>
<td></td>
<td>299 F.3d 281 (4th Cir. 2002)</td>
<td>21, 22</td>
</tr>
<tr>
<td>Dolan v. City of Tigard</td>
<td></td>
<td>512 U.S. 374 (1994)</td>
<td>9</td>
</tr>
<tr>
<td>E. I. DuPont de Nemours &amp; Co. v. Celanese Corp. of Am.</td>
<td></td>
<td>167 F.2d 484 (C.C.P.A. 1948)</td>
<td>16</td>
</tr>
<tr>
<td>Harris v. Emus Records Corp.</td>
<td></td>
<td>734 F.2d 1329 (9th Cir. 1984)</td>
<td>9, 13</td>
</tr>
<tr>
<td>Hong Kong &amp; Shanghai Banking Corp. v. Simon (In re Simon)</td>
<td></td>
<td>153 F.3d 991 (9th Cir. 1998)</td>
<td>24</td>
</tr>
<tr>
<td>In re ABC Learning Centres Ltd.</td>
<td></td>
<td>728 F.3d 301 (3d Cir. 2013)</td>
<td>20, 28, 29, 31</td>
</tr>
<tr>
<td>In re Bear Stearns High-Grade Structured Credit Strategies</td>
<td></td>
<td>374 B.R. 122</td>
<td>29, 30</td>
</tr>
<tr>
<td>In re Carp</td>
<td></td>
<td>340 F.3d 15 (1st Cir. 2003)</td>
<td>6</td>
</tr>
<tr>
<td>(Bankr. N.D.Cal. 2002)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In re Centura Software Corp.</td>
<td></td>
<td>281 B.R. 660</td>
<td>19</td>
</tr>
<tr>
<td>In re CFLC, Inc.</td>
<td></td>
<td>89 F.3d 673 (9th Cir. 1996)</td>
<td>6</td>
</tr>
<tr>
<td>In re Chipwich, Inc.</td>
<td></td>
<td>54 B.R. 427 (Bankr. S.D.N.Y. 1985)</td>
<td>19</td>
</tr>
<tr>
<td>In re Convenient Food Mart No. 144, Inc.</td>
<td></td>
<td>968 F.2d 592 (6th Cir. 1992)</td>
<td>9</td>
</tr>
<tr>
<td>In re French</td>
<td></td>
<td>440 F.3d 145 (4th Cir. 2006)</td>
<td>21, 23, 24</td>
</tr>
<tr>
<td>In re Grand Jury Proceedings</td>
<td></td>
<td>40 F.3d 959 (9th Cir. 1994)</td>
<td>22</td>
</tr>
<tr>
<td>In re HQ Global Holdings, Inc.</td>
<td></td>
<td>290 B.R. 507 (Bankr. D.Del. 2003)</td>
<td>19</td>
</tr>
</tbody>
</table>
In re Maxwell, 170 B.R. 800 (Bankr. S.D.N.Y. 1994), aff’d, In re Maxwell Commc’n Corp., 93 F.3d 1036 (2d Cir. 1996) .................................................................................................................. 26

In re McLean Indus., 68 B.R. 690 (Bankr. S.D.N.Y. 1986) .................................................................................................................. 25

In re Millenium Global Emerging Credit Master Fund, Ltd., 458 B.R. 63 (Bankr. S.D.N.Y. 2011) .................................................................................................................. 29

In re Old Carco LLC, 406 B.R. 180 (Bankr. S.D.N.Y. 2009), aff’d, mem., 420 Fed. App’x 89 (2d Cir. 2011) .................................................................................................................. 18, 19

In re Pacat Fin. Corp., 295 F. 394 (S.D.N.Y. 1923) .................................................................................................................. 21

In re Penn Traffic Co., 524 F.3d 373 (2d Cir. 2008) .................................................................................................................. 6, 8

In re Ran, 607 F.3d 1017 (5th Cir. 2010) .................................................................................................................. 29


Indep. Wireless Tel. Co. v. Radio Corp. of Am., 269 U.S. 459 (1926) .................................................................................................................. 9


Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013) .................................................................................................................. 28

L.R.S.C. Co. v. Rickel Home Ctr.s (In re Rickel Home Ctr.s, Inc.), 209 F.3d 291 (3d Cir. 2000) .................................................................................................................. 6, 26

Lubrizol Enter.s, Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043 (4th Cir. 1985) .................................................................................................................. 5, 19

Marrone v. Wash. Jockey Club of D.C., 227 U.S. 633 (1913) .................................................................................................................. 9, 10


Midway Motor Lodge of Elk Grove v. Innkeepers’ Telemangement & Equip. Corp., 54 F.3d 406 (7th Cir. 1995) .................................................................................................................. 7


Newnham v. United States, 813 F.2d 1384 (9th Cir. 1987) .................................................................................................................. 11


vi
Phillips Petroleum Co. v. Jones, 176 F.2d 737 (10th Cir. 1949) ................................................................. 9
Rite-Hite Corp. v. Kelley Co., 56 F.3d 1538 (Fed. Cir. 1995) ................................................................. 9
Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff),
Spindelfabrik Suessen-Schurr, Stahlecker & Grill GmbH v. Schubert & Salzer Maschinenfabrik Aktiengesellschaft, 829 F.2d 1075 (Fed. Cir. 1987) .................................................................................................................. 10
Sunbeam Prod.s, Inc. v. Chicago Am. Mfg., LLC, 686 F.3d 372 (7th Cir. 2012), cert. denied,
133 S. Ct. 790 (2012) ....................................................................................................................... 7, 19
TransCore, LP v. Elec. Transaction Consultants Corp., 563 F.3d 1271 (Fed. Cir. 2009) ............ 10
Tudisco v. United States (In re Tudisco), 183 F.3d 133 (2d Cir. 1999) ......................................................... 5
Twentieth Century Fox Film Corp. v. Marvel Enter.s, Inc., 155 F. Supp. 2d 1 (S.D.N.Y. 2001),
aff’d in part and remanded, 277 F.3d 253 (2d Cir. 2002) ........................................................................ 9
United States v. Inslaw, Inc., 932 F.2d 1467 (D.C. Cir. 1991) ................................................................. 26
United States v. Weingarten, 632 F.3d 60 (2d Cir. 2011) ........................................................................... 28
(E.D. Tenn. Dec. 17, 2013) ............................................................................................................................... 11

Statutes

11 U.S.C. § 101 ............................................................................................................................................. 6, 11, 14
11 U.S.C. § 365 ............................................................................................................................................. 5, 6, 7, 11, 13, 14
11 U.S.C. § 502 ............................................................................................................................................. 5, 7, 12
11 U.S.C. § 541 ........................................................................................................................................... 20, 23, 26
11 U.S.C. § 1107 ........................................................................................................................................... 6
11 U.S.C. § 1520 ........................................................................................................................................... 28, 29
28 U.S.C. § 1334........................................................................................................... 20, 22, 23

Other Authorities

3 Collier on Bankruptcy ¶ 365.10 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013) .... 7
4 Collier on Bankruptcy ¶ 541.06 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013) .. 26
4 Collier on Bankruptcy ¶ 541.10 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013) .. 26

Black’s Law Dictionary (abr. 7th ed. 2000)................................................................................. 8


Practice of the S. Comm. of the Judiciary, 100th Cong. (1988) ................................................. 17

(2012) .................................................................................................................................... 31

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(2000) ..................................................................................................................................... 28


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(1996) ..................................................................................................................................... 21

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Mar. 2010 .................................................................................................................................. 10

M.L. Cross, Annotation, Abandonment of Trademark or Tradename, 3 A.L.R. 2d 1226
(1949) .................................................................................................................................. 16


Restatement (Third) of Foreign Relations Law § 403(3) (1987) ................................................. 22


U.S. Const., art. I, § 8, cl. 8......................................................................................................................... 15

OPINIONS BELOW

The decisions and orders of the U.S. Bankruptcy Court for the District of Moot and of the U.S. District Court for the District of Moot are unreported and therefore unavailable. The decision for the U.S. Court of Appeals for the Thirteenth Circuit in Case No. 13-4080, dated October 14, 2013, is incorporated into the record on appeal (“R.”).

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutory provisions listed below are relevant to determine the present case and are reproduced in Appendices A through H.

U.S. Const. art. I, § 8, cl. 8;


STATEMENT OF FACTS

Respondent, Ravi Vohra (“Vohra”) refuses to discontinue use of a trademark owned by Petitioner, Foodstar, Inc. (“Foodstar”), instead seeking to compel Foodstar’s continued performance under the contract despite specific performance not being an available remedy in bankruptcy. Vohra claims the Bankruptcy Code does not apply to his use of Foodstar’s worldwide property within the country of Eastlandia. This Court must now decide two issues: (1) whether Vohra will be granted specific performance of an executory contract, despite the debtor having rejected that contract, and (2) whether the United States courts have jurisdictional authority over foreign use of the debtor’s worldwide property.

Foodstar is franchisor of the popular fast food restaurant chain Burger Bites. (R. 3). Burger Bites found success in the highly competitive fast food industry with its miniature hamburgers, which distinguished Burger Bites from its competitors and established a devoted worldwide following. (R. 3). In an attempt at diversification, Foodstar acquired the rights to Minicakes, a brand of miniature cupcakes. (R. 3). Foodstar attempted to merge the Minicakes and Burger Bites chains through franchised stores selling both food items, but was unsuccessful, leaving Foodstar deeply in debt. (R. 3). Foodstar filed for Chapter 11 bankruptcy in the District of Moot, initially seeking a plan for reorganization but later deciding to liquidate due to a lack of available financing. (R. 3).

Foodstar’s primary asset is the Burger Bites trademark, which it now seeks to sell. (R. 3–4). The trademark is registered in 27 countries, including the United States and Eastlandia. (R. 4). Foodstar acquired the trademark from an Eastlandian citizen, Viraj Deshmukh (“Deshmukh”), who had established the first Burger Bites restaurant in Eastlandia. (R. 4). After acquisition, Foodstar expanded the Burger Bites franchise into 26 other countries. (R. 5).
The conflict in this case arises from a contract that Foodstar acquired when it purchased the Burger Bites trademark, a licensing agreement under which Deshmukh granted Vohra exclusive use of the trademark in Eastlandia for twenty years. (R. 4). The licensing agreement is governed by Eastlandian law, which like U.S. trademark law requires the licensor to perform significant quality control functions over the licensee’s use of the trademark. (R. 4).

In bankruptcy, Foodstar found itself unable to bear the financial burden of performing the quality control requirements under the licensing agreement, and so moved to reject the Vohra licensing agreement. (R. 5). Vohra appeared in the bankruptcy case and filed an objection to the motion, arguing it was his right to continue using the trademark in Eastlandia in spite of the debtor’s election to reject executory contracts under 11 U.S.C. § 365. (R. 5). In support of his argument, Vohra cited the presumption against extraterritoriality of statutes, claiming his agreement with a United States corporation regarding a trademarked brand well established within the United States had no connection to the United States. (R. 5). Vohra acknowledged that the trademark licensing agreement was an executory contract, but claimed Foodstar could not reject it because rejection would not terminate Vohra’s license. (R. 5).

At the hearing on the motion for rejection, the parties jointly stipulated to the following facts: (1) the licensing agreement was an executory contract, (2) the Burger Bites trademark would sell for 10 to 15 percent less if Vohra’s rights to the license remained intact despite rejection, (3) Eastlandian law permits rejection of trademark licenses but does not terminate the licensee’s rights to use the trademark, and (4) Eastlandia has adopted the UNCITRAL Model Law on Cross-Border Insolvency. (R. 5). The U.S. Bankruptcy Court for the District of Moot entered a judgment finding rejection was in the best interest of the estate because it would maximize the value of estate assets. (R. 5). Vohra timely appealed the order to the U.S. District
Court for the District of Moot and meanwhile refused to cease use of the trademark in Eastlandia. (R. 5–6).

To protect the value of its trademark for the benefit of all creditors, Foodstar filed an adversary proceeding in the bankruptcy court seeking to prevent Vohra’s further infringement. (R. 6). The bankruptcy court granted summary judgment for Foodstar and entered an order terminating Vohra’s rights under the license and enjoining his further use of the Burger Bites trademark. (R. 6). Vohra appealed that decision also, and the bankruptcy court stayed the injunction pending the outcome of this appeal. (R. 6). The district court combined both appeals and affirmed without an opinion. (R. 6). A divided Thirteenth Circuit Court of Appeals reversed, and this appeal followed. (R. 14).

**SUMMARY OF THE ARGUMENT**

This case presents the Court with two issues: (1) whether a licensee may continue using a trademark to the detriment of similarly situated creditors despite rejection of that licensing agreement by a debtor under 11 U.S.C. § 365, and (2) whether the United States courts have jurisdictional authority over foreign use of the debtor’s worldwide property.

The Thirteenth Circuit Court of Appeals erred in finding a licensee may continue to use a trademark after a debtor-licensor has rejected the trademark licensing agreement. The debtor in bankruptcy has a right to reject burdensome executory contracts. The effect of rejection is to release the debtor from its contractual obligations. A licensing agreement is a contract in which the licensor is obligated to permit a specified use of its intellectual property for a specified period of time. When the licensor rejects that contract, it is no longer obligated to permit the licensee’s use of its property. Without the licensor’s permission, the licensee has no right to use the licensor’s property. Therefore, absent statutory exception, the result of a debtor-licensor’s
rejection of an intellectual property contract is termination of the licensee’s rights to use the property.

Due to policy concerns related to encouraging innovation and creation, Congress enacted a provision in the Bankruptcy Code, Section 365(n), which prevents this result for patents, copyrights, and trade secrets. However, Congress explicitly omitted trademarks from this statutory exception, as trademarks do not implicate the policy concerns behind the legislation. Without an exception, the result of a debtor-licensor’s rejection of a trademark license agreement, like the result of any other contract rejection, is to release the debtor from its contractual obligations. A debtor-licensor who is no longer bound to permit use of its trademark may terminate a licensee’s rights and enjoin future trademark infringement.

The rejection of a trademark licensing agreement and subsequent termination of a foreign licensee’s use of a trademark under Section 365 is not barred by the presumption against extraterritoriality of statutes. For the presumption to prevent application of law to an agreement, the agreement must first be considered foreign. Courts consider an application of U.S. law extraterritorial only if a foreign country’s interests in the legal application at issue are clearly greater than domestic interests, which is not the case here.

Where an application of law is extraterritorial, the presumption does not control when Congress expresses its affirmative intent that a statute apply extraterritorially. Congress expressed its intent that any Bankruptcy Code provision affecting property of the estate apply extraterritorially when it gave the United States courts exclusive jurisdiction over all property of the estate, wherever located, in 28 U.S.C. § 1334(e)(1) and 11 U.S.C. § 541(a). Congress further expressed its intent that the Bankruptcy Code apply extraterritorially in cross-border insolvency cases when it adopted the Model Law on Cross-border Insolvency as Chapter 15 of the
Bankruptcy Code, and Eastlandia’s adoption of the Model Law evidences a similar intent. It is not within the purview of this Court to substitute its judgment for the expressed desire of Congress that a statute apply extraterritorially.

This Court should reverse the decision of the Court of Appeals for the Thirteenth Circuit and hold that: (1) rejection of a trademark licensing agreement in bankruptcy terminates the licensee’s right to continue using the trademark, and (2) Section 365 of the Bankruptcy Code applies to any executory contract affecting the debtor’s worldwide property.

ARGUMENTS

In a civil appeal, this Court engages in a *de novo* review of the decisions of the bankruptcy court on conclusions of law and utilizes a clear error standard when reviewing findings of fact. *Tudisco v. United States (In re Tudisco)*, 183 F.3d 133, 136 (2d Cir. 1999).

I. A DEBTOR-LICENSOR’S REJECTION OF A LICENSING AGREEMENT TERMINATES THE LICENSEE’S RIGHT TO CONTINUE USING THE LICENSED PROPERTY.

The effect of rejection of an executory contract is to relieve the debtor of future performance. 11 U.S.C. § 365(g). The counterparty is compensated with a claim for monetary damages, but by general rule in bankruptcy may not obtain an order for specific performance of the contract. 11 U.S.C. § 502(g); *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984). In the intellectual property context, this means that absent statutory exception a debtor-licensor is relieved of its obligation to continue permitting a licensee to use its property. *Lubrizol Enter.s, Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1048 (4th Cir. 1985). Because a licensee’s right of use derives solely from a licensor’s permission, a debtor-licensor’s rejection necessarily terminates a licensee’s usage rights. No statutory exception applies to trademarks, so a debtor-licensor’s rejection of a trademark license
necessarily terminates the licensee’s rights. See 11 U.S.C. §§ 101(35A), 365(n) (allowing an exception to Section 365 for certain, non-trademark forms of intellectual property). The debtor-licensor’s rejection of a trademark licensing agreement terminates the licensee’s rights to use the trademark.

A. A DEBTOR-LICENSEOR’S REJECTION OF A TRADEMARK LICENSING AGREEMENT TERMINATES THE LICENSEE’S RIGHTS TO USE THE TRADEMARK.

The Bankruptcy Code \(^1\) endows debtors with the right to reject executory contracts when doing so increases the overall value of the estate. 11 U.S.C. § 365. A licensing agreement obligates a licensor to allow the licensee use of the licensed property. In re CFLC, Inc., 89 F.3d 673, 677 (9th Cir. 1996). Unless an exception applies, the result of a debtor-lessor’s release from this obligation is termination of the licensee’s rights, and no exception applies for trademarks.

1. THE BANKRUPTCY CODE GRANTS DEBTORS THE RIGHT TO REJECT EXECUTORY CONTRACTS AND CONVERTS FUTURE PERFORMANCE OBLIGATIONS INTO UNSECURED CLAIMS FOR MONETARY DAMAGES.

The debtor has a right to reject burdensome executory contracts. \(^2\) 11 U.S.C. § 365(a); In re Penn Traffic Co., 524 F.3d 373, 378 (2d Cir. 2008). This right furthers the twin pillars of bankruptcy policy: it maximizes the estate to increase distribution to creditors, and it allows the debtor flexibility to reorganize into a successful enterprise. In re Carp, 340 F.3d 15, 25 (1st Cir. 2003). In a liquidation case, Section 365 enables the debtor to “maximize the value of the . . . estate by assuming executory contracts . . . that benefit the estate and rejecting those that do not.” L.R.S.C. Co. v. Rickel Home Ctr.s (In re Rickel Home Ctr.s, Inc.), 209 F.3d 291, 298 (3d Cir. 2000). In a reorganization, Section 365 enables the debtor to look to the future in

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\(^1\) 11 U.S.C. §§ 101 et. seq.

\(^2\) While Section 365(a) vests this power in the trustee, a debtor in possession in a Chapter 11 case may exercise all of the trustee’s powers. 11 U.S.C. § 1107(a).
following a vision of what the company could be, without being tied down by contractual 
vestiges of an unsuccessful business model.

Rejection of an executory contract relieves the debtor of future performance and leaves 
the counterparty with an unsecured claim for monetary damages. 11 U.S.C. § 502(g). Section 
365(g) of the Bankruptcy Code sets forth the general rule that rejection of an executory contract, 
not previously assumed by the debtor, constitutes a breach of contract immediately before the 
date of the filing of the petition. 11 U.S.C. § 365(g). The counter-party is then able to file a 
claim for any damages resulting from the rejection, and those damages are treated as a pre-
petition general unsecured claim. 3 Collier on Bankruptcy ¶ 365.10 (Alan N. Resnick & Henry 

After rejecting a contract, a debtor is not subject to an order of specific performance. Bildisco, 465 U.S. at 531; Midway Motor Lodge of Elk Grove v. Innkeepers’ Telemanagement & Equip. Corp., 54 F.3d 406, 407 (7th Cir. 1995); Sunbeam Prod., Inc. v. Chicago Am. Mfg., LLC, 
686 F.3d 372, 377 (7th Cir. 2012), cert. denied, 133 S. Ct. 790 (2012). The rule against specific 
performance is rooted in the dual policies of bankruptcy law: the fresh start and the equality 
principle. Requiring specific performance would frustrate a debtor’s ability to begin anew, 
diverting key debtor resources to operations the debtor has found to be unprofitable. To 
maximize the likelihood of successful reorganization, debtors must be allowed to terminate 
executory contract obligations and compensate counterparties on the same pro rata basis as 
similarly situated creditors. A grant of specific performance would entitle the receiving creditor 
to a disproportionate share of the debtor’s resources, with the debtor essentially paying the 
counterparty in full while similarly situated creditors receive only tiny bankruptcy dollars. 
Furthermore, the total pool available for unsecured creditors would be reduced by the amount
required to fulfill the debtor’s contractual duties. In the worst-case scenario, a debtor with great prospects of reorganization could be forced to liquidate as the result of the onerous demands of a single contract.

The right to assume or reject an executory contract does not turn on the effect of assumption or rejection to the non-debtor party. *In re Penn Traffic*, 524 F.3d at 382. The satisfaction of claims at less than their full non-bankruptcy value is common in bankruptcy proceedings, as is the disruption of creditors’ expectations of profitable business arrangements. *Id.* While some injury to creditors is inevitable, Section 365 works to ensure the pain is equally distributed by converting the rejected contracts into pre-petition claims for monetary damages to be paid out pro-rata.

2. A LICENSING AGREEMENT IS A CONTRACT IN WHICH A PROPERTY OWNER AGREES TO PERMIT A CERTAIN USE OF ITS PROPERTY FOR A CERTAIN TERM.

A licensing agreement is often referred to as a “license,” but these two terms, strictly understood, embody two distinct concepts. A license, in real property or intellectual property, is a unilateral permission of conditional use that a property owner grants to a third party. When the licensor agrees to extend a license for a specified period in exchange for consideration paid by the licensee, a licensing agreement is formed.

Black’s Law Dictionary defines a license as: “[a] revocable permission to commit some act that would otherwise be unlawful; esp[ecially], an agreement (not amounting to a lease or profit à prendre) that it will be lawful for the licensee to enter the licensor’s land to do some act that would otherwise be illegal . . . .” *Black’s Law Dictionary* 743 (abr. 7th ed. 2000). The concept of license is rooted in the common law of real property: “[A] license is an authority to do a particular act, or series of acts, upon another’s land, without possessing any estate therein.”
While the concept of license has expanded beyond real property to encompass intellectual property, the limited nature of the permission granted remains unchanged.

A license, unlike a lease or profit à prendre, is not a property interest. *Marrone v. Wash. Jockey Club of D.C.*, 227 U.S. 633, 636 (1913); *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1334 (9th Cir. 1984). The legal concept of property is often described as a “bundle of rights,” which can be separately conveyed as individual property interests. *Dolan v. City of Tigard*, 512 U.S. 374, 384 (1994). A lease conveys a possessory interest and generally includes a “right to exclude.” *In re Convenient Food Mart No. 144, Inc.*, 968 F.2d 592, 594 (6th Cir. 1992). A license, on the other hand, does not: a licensee must rely on the licensor to sue for infringement. *Indep. Wireless Tel. Co. v. Radio Corp. of Am.*, 269 U.S. 459, 467–68 (1926). This is true even for an exclusive license within a specified territory.³ *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1563 (Fed. Cir. 1995). A profit à prendre conveys the right to the products of property and the corresponding right of entry to access those products. *Phillips Petroleum Co. v. Jones*, 176 F.2d 737, 739 (10th Cir. 1949). A trademark license does not convey this right either: the natural product of a trademark is the goodwill that it continually builds over time, and that goodwill belongs solely to the licensor despite the licensee’s assistance in its creation. *Twentieth Century Fox Film Corp. v. Marvel Enter.s, Inc.*, 155 F. Supp. 2d 1, 20 (S.D.N.Y. 2001), *aff’d in part and remanded*, 277 F.3d 253 (2d Cir. 2002).

Because a license in the strict sense is a unilateral permission, not requiring consideration, offer, or acceptance, it also bestows no contractual rights on a licensee. A license

³ When a license is exclusive worldwide, on the other hand, the licensee may have standing to sue. *Alfred E. Mann Found. for Scientific Research v. Cochlear Corp.*, 604 F.3d 1354, 1359 (Fed. Cir. 2010).
in itself is therefore not binding and can be revoked at any time without giving rise to a damages claim. John G. Cameron, Jr., What You Should Know About Easements, Prac. Real Est. Law., Mar. 2010, at 9, 10 (“Licenses are revocable at the will of the licensor . . . .”). As a result, a licensor’s revocation of a license necessarily terminates the licensee’s rights. See Marrone, 227 U.S. at 636 (upholding a racetrack owner’s right to revoke a license implied in an admission ticket and therefore exclude the ticketholder).

When supported by offer, acceptance, and consideration, a license becomes a licensing agreement, under which the licensor agrees not to revoke the permission for a specified period in exchange for consideration in the form of royalties. A licensing agreement has accordingly been defined as a “promise . . . not to sue.” TransCore, LP v. Elec. Transaction Consultants Corp., 563 F.3d 1271, 1275 (Fed. Cir. 2009) (quoting Spindelfabrik Suessen-Schurr, Stahlecker & Grill GmbH v. Schubert & Salzer Maschinenfabrik Aktiengesellschaft, 829 F.2d 1075, 1081 (Fed. Cir. 1987)). This definition bespeaks the debtor’s primary obligation under a licensing agreement: to continue permitting the licensee’s use, giving up its common-law power to revoke the license at will.

3. **A DEBTOR-LICENSEOR’S REJECTION OF A LICENSING AGREEMENT FREES THE DEBTOR TO REVOKE THE LICENSE, TERMINATING THE RIGHTS GRANTED THEREIN.**

A licensing agreement, in summary, is a contract in which a property owner agrees to continue to permit the licensee’s use of its property, without granting any ownership interest in the property. Consequently, the result of breaching a licensing agreement is to free the licensor to revoke its permission, terminating the licensee’s rights of use. While this result is straightforward as a conceptual manner—rights arising from the owner’s permission are
terminated when that permission is revoked—the practical matter of the licensee’s continued use is complicated by the operation of contract remedies.

Outside of bankruptcy, the possibility exists that a court could grant a licensee the specific performance remedy of requiring the licensor to continue permitting the licensee’s use of its property. This result, however, could never attain in bankruptcy, where specific performance remedies are not available. *Bildisco*, 465 U.S. at 531. No exception to this rule applies to trademarks. See 11 U.S.C. §§ 101(35A), 365(n) (providing an exception to Section 365 for certain intellectual property, not including trademarks). Therefore, the Bankruptcy Code ensures that a debtor-licensor may revoke a trademark license, terminating the licensee’s rights.

Intellectual property assets are by definition unique—they are registered as identifiable, proprietary goods. See *Virtual Studios, Inc. v. Beaulieu Grp., LLC*, 1:11-CV-359, 2013 WL 6629040, at *8 (E.D. Tenn. Dec. 17, 2013) (“intellectual property is unique and infringement of intellectual property rights creates a unique harm.”). Outside of bankruptcy, specific performance may be available for unique goods. See U.C.C. § 2-716(1) (2002) (“Specific performance may be decreed where the goods are unique or in other proper circumstances.”). The purpose of the specific performance remedy is to compensate parties to a breached contract who are unable to effectively mitigate their losses by obtaining replacement goods or services. See *Newnham v. United States*, 813 F.2d 1384, 1386 (9th Cir. 1987) (“the remedy of specific performance is available to purchasers of land precisely because land is considered so unique that a money judgment does not suffice for a remedy.”). In the trademark context, for example, a licensee may not always be able to effectively mitigate with similar intellectual property in the event the licensor terminates its rights. The licensee’s business may hinge on its association with a particular trademark. And though its operations could be
converted to be compatible with use of a different trademark, the change could render the licensee’s operations unprofitable. For example, market demand associated with the original trademark might exceed supply in the licensee’s region, while the market associated with the new trademark might be saturated. Outside of bankruptcy, it therefore makes sense that such a licensee may deserve specific performance.

Within bankruptcy, however, the fairness considerations that may weigh in favor of specific performance for licensees are outweighed by the unfairness of compensating licensees so highly above other unsecured creditors. Furthermore, the difficulty courts occasionally face in calculating monetary damages resulting from unique losses is greatly reduced in bankruptcy, as the Bankruptcy Code specifically provides that all damages may be estimated. See 11 U.S.C. § 502(c) (“There shall be estimated for purpose of allowance . . . (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or (2) any right to payment arising from a right to an equitable remedy for breach of performance.”). The Bankruptcy Code thus disallows specific performance as a general rule. Bildisco, 465 U.S. at 531.

4. THE COURT BELOW MISINTERPRETED THE OPERATION OF THE DEBTOR’S REJECTION BECAUSE IT CONFUSED A LICENSE WITH AN ASSET TRANSFER.

The Thirteenth Circuit Court of Appeals erred, as the dissent noted, by “confus[ing] asset transfers with licenses and leases.” (R. 19 n.7). This fundamental error led to greater confusion about the meaning of rescission in the trademark licensing context. The court correctly identified the effect of rejection as breach, and correctly noted that one party’s breach cannot rescind rights that have already passed to its counterparty, i.e., asset transfers. (R. 8). However, it incorrectly judged the nature of a licensing agreement when it held that the licensee under a
trademark agreement has, upon contract formation, acquired a right to use the trademark for the entire term of the agreement. (R. 7). As the common law of licenses makes clear, no property transfer takes place at the formation of a licensing agreement. *Harris*, 734 F.2d at 1334. Instead, the licensee has acquired only the licensor’s promise that it will continue to allow the licensee’s ongoing use, in consideration for ongoing payments. *Id.*

The licensor is not rescinding any previously granted right by ceasing to allow future use of its trademark, because the licensee’s future rights of use are fully dependent upon the licensor’s continued performance under the contract. An analogy to a requirements contract may help illustrate this concept. If instead of bargaining for intellectual property, Vohra had contracted for Foodstar to supply it with hamburger ingredients, Vohra could not characterize its expectation that Foodstar will supply it with ingredients in the future as a contract right that survives beyond Foodstar’s rejection of the vendor contract. The court’s misunderstanding resulted in its mischaracterization of Foodstar’s revocation of Vohra’s right to use the trademark after breach as the effective rescission of the contract. Rescission of the contract would occur if Foodstar were able to revoke the validity of Vohra’s *pre-rejection* usage rights. This, however, is not what Foodstar is attempting. Foodstar is merely attempting to relieve the estate of a post-rejection obligation, and compensate Vohra on an equal basis with other creditors of his class.

**B. CONGRESS AND THE MAJORITY OF COURTS HAVE DECLINED TO MAKE AN EXCEPTION TO THE GENERAL EFFECT OF REJECTION FOR TRADEMARKS.**

Congress has enacted only four exceptions to the general rule that a debtor may cease performance of executory contract obligations and compensate its contractual counterparty with an unsecured damages claim. Those exceptions grant additional rights to counterparties of the debtor who are: (1) tenants of the debtor’s real property, 11 U.S.C. § 365(h)(1); (2) purchasers of
the debtor’s timeshare interests, 11 U.S.C. § 365(h)(2); (3) purchasers of the debtor’s real estate, 11 U.S.C. § 365(i); and (4) licensees of certain types of intellectual property of the debtor, 11 U.S.C. § 365(n). The exception for intellectual property licenses does not apply to trademarks because trademarks are excluded from the Bankruptcy Code’s definition of “intellectual property,” which includes patents, copyrights, and trade secrets. 11 U.S.C. § 101(35). This was not Congressional oversight. In enacting Sections 365(n) and 101(35), Congress expressly elected not to include trademarks. See S. Rep. No. 100-505, at 5 (1988), reprinted in 1988 U.S.C.C.A.N 3200, 3204 (“Since these [trademark] matters could not be addressed without more extensive study, it was determined to postpone congressional action in this area . . . .”). As none of the exceptions apply to trademark licenses, the general rule of Section 365 applies to Vohra’s license, and Foodstar’s rejection constitutes a pre-petition breach that is payable as a general unsecured claim.

1. Concerns about protecting incentives to innovate were the driving force behind Congress’ enactment of Section 365(n), and those concerns do not apply in the trademark context.

In 1988, Congress inserted Section 365(n) into the Bankruptcy Code, which preserves certain licensees’ intellectual property rights in bankruptcy. Pub. L. No. 100-506, 102 Stat. 2538 (codified at 11 U.S.C. §§ 101, 365 (2005)). Congress was primarily concerned with protecting incentives to innovate. See S. Rep. No. 100-505, at 3 (referring to the possibility of a debtor terminating a licensee’s use of intellectual property as “a fundamental threat to the creative process that has nurtured innovation in the United States.”). As including trademarks would not have furthered this policy, it is logical that Congress declined to expand the statutory exception to include trademarks.
Trademark rights, unlike rights in other intellectual property such as patents and copyrights, are not rooted in a policy of promoting innovation, but in a policy of protecting consumers. See Bilski v. Kappos, 130 S. Ct. 3218, 3229 (2010) (describing the policy basis of patent law); Golan v. Holder, 132 S. Ct. 873, 890 (2012) (describing the policy basis of copyright law). This distinction is reflected in the wholly separate legal foundation of trademarks from that of other intellectual property. Both patent and copyright law find their origin in the Constitution of the United States, U.S. Const., art. I, § 8, cl. 8, whereas trademark law grew out of competition law. Justice Brennan described the evolution of trademark law from a system in which only products from a single source could bear a single mark, to today’s licensing system: “Not until the 1930’s did a trend develop approving of trademark licensing—so long as the licensor controlled the quality of the licensee’s products—on the theory that a trademark might also serve the function of identifying product quality for consumers.” K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 314 (1988).

2. **THE POLICIES AND PRINCIPLES UNDERLYING BOTH BANKRUPTCY LAW AND TRADEMARK LAW SUPPORT A DEBTOR-LICENSOR’S ABILITY TO TERMINATE A LICENSEE’S TRADEMARK.**

The policy goals behind both trademark law and bankruptcy law support the conclusion that a debtor-licensor may terminate a licensee’s trademark rights by rejecting a trademark licensing agreement. Because trademark law requires more ongoing obligations of a licensor than the law of other intellectual property, a debtor-licensor whose limited resources make meeting contractual obligations difficult is at greater risk of inadvertent breach than in other intellectual property contexts, and inadvertent breach is more likely to damage the estate. Therefore, protecting a debtor’s right to free itself of contractual obligations is especially important in the trademark context. Protecting this right also furthers trademark policy, because
in addition to risking diminution of the estate, a debtor’s difficulty meeting its contractual obligations could harm consumers.

a. **Trademark law imposes substantial duties on licensors that are not required in other intellectual property contexts.**

A trademark licensor has an affirmative duty to exercise control over the nature and quality of goods sold by its licensees. *Dawn Donut Co. v. Hart’s Food Stores, Inc.*, 267 F.2d 358, 366 (2d Cir. 1959); *E. I. DuPont de Nemours & Co. v. Celanese Corp. of Am.*, 167 F.2d 484, 487 (C.C.P.A. 1948); M.L. Cross, Annotation, *Abandonment of Trademark or Tradename*, 3 A.L.R. 2d 1226, 1277–82 (1949). Without this requirement of control, the right of a trademark owner to license its mark would create the danger that products bearing the same trademark might be of diverse qualities. *Dawn Donut*, 267 F.2d at 366. Consequently, if the licensor does not actively police quality, it risks losing all rights to the trademark. *Id.* This is referred to in trademark law as “abandoning” a trademark. *Id.*; 15 U.S.C. § 1064(3).

b. **Terminating licensee rights post-rejection promotes both debtor reorganization and equitable distribution among creditors.**

Bankruptcy policy strongly supports the debtor’s ability to choose whether to reject or assume each executory contract. Providing the debtor with this choice promotes maximization of the estate for the benefit of all creditors by relieving the debtor of unbalanced obligations in favor of a single creditor. The overall benefit that rejection of an executory contract can provide to an estate is especially evident in the trademark context, as the case at bar illustrates. In the instant case, Vohra’s interests in the trademark are small compared to its overall value, but Foodstar’s failure to monitor Vohra’s use could deprive the estate of its single largest asset. See 15 U.S.C. § 1064(5) (cancellation of a registered mark may be filed “at any time . . . on the
ground that the registrant does not control or is not able legitimately to exercise control over, the use of such mark. .’’). Furthermore, the substantial duties of control required of trademark owners are here a significant drain on the estate’s resources. To protect its mark, Foodstar is required to keep abreast of Eastlandian trademark law and monitor quality in a faraway place. These obligations are especially difficult because Foodstar does not operate the Burger Bites franchise in Eastlandia, as it does in the rest of the world. Therefore, Foodstar cannot monitor quality in Eastlandia through the franchise procedures it typically utilizes.

Section 365 was created to provide a remedy for such unbalanced use of resources, allowing the debtor to reject its burdensome obligations. If Vohra’s continued use of the Burger Bites trademark is permitted despite rejection, however, Foodstar must continue to prioritize its contractual obligations at the expense of the other creditors and the estate as a whole, or risk losing its greatest asset. It is hard to imagine a situation in which a debtor-licensor’s rejection of a licensing agreement would ever benefit the estate if it did not terminate the licensee’s usage rights. Consequently, interpreting Section 365 so as to preserve licensee rights in this context would effectively deprive debtor-licensors of the right to reject. Moreover, it would essentially grant licensees specific performance, “a right to drain the debtor’s assets to the detriment of other unsecured creditors.” *Hearing on S. 1626, S. 1358, S. 1863, and S. 2279 Before the Subcomm. on Courts & Admin. Practice of the S. Comm. of the Judiciary*, 100th Cong. 285 (1988) (statement of Thomas M.S. Hemnes).

To prevent this and like inequities and to preserve the integrity of debtors’ right to reject executory contracts, it is essential this Court recognize the termination of a licensee right to use a trademark upon a debtor-licensor’s rejection of the licensing agreement. This result allows debtors to limit the scope of their licensing obligations to those for which it has resources
available for monitoring, protecting valuable trademark assets and promoting successful reorganization. Trademark licenses are most visible in the franchise context, and it is in this context that the necessity of allowing debtors to terminate licensee rights may be most evident. The high-profile bankruptcy of Chrysler provides a dramatic example. See In re Old Carco LLC, 406 B.R. 180, 193–96 (Bankr. S.D.N.Y. 2009), aff”d. mem., 420 Fed. App’x 89 (2d Cir. 2011) (affirming the debtor’s business decision to reduce its dealership network). Chrysler effectuated a successful reorganization only because Chapter 11 provided it with Section 365’s mechanism to cull its sprawling, unmanageable dealership network into a well-oiled machine. The American automotive industry remains viable today in no small part due to this flexibility, and the same flexibility should inure here.

c. Terminating Licensee Rights Post-Rejection Promotes Consumer Welfare by Protecting the Integrity of Trademarks.

Trademark policy is also furthered by the ability of debtor-licensors to terminate licensee use of estate property through rejection of executory contracts. The primary policy goal of trademark law is to ensure uniformity and promised quality to consumers. K Mart, 486 U.S. at 314. When a debtor cannot fulfill its duties to maintain quality, consumers are harmed. A debtor who attempts to monitor more licensees than its resources can bear risks harming not only its creditors through loss of its trademark, but, critically, consumers. See Dawn Donut, 267 F.2d at 367 (“[U]nless the licensor exercises supervision and control over the operations of its licensees the risk that the public will be unwittingly deceived will be increased . . .”). By contrast, allowing a debtor to limit licenses enables it to monitor within its resources and ensures the high quality and consumer protection fundamental to trademark law.
3. **A MAJORITY OF THE EXISTING CASELAW SUPPORTS THE VIEW THAT REJECTION OF A TRADEMARK LICENSING AGREEMENT BY THE DEBTOR-LESSOR TERMINATES THE LICENSE.**

The leading case establishing the rule that a debtor-licensor’s rejection of an intellectual property licensing agreement terminates the licensee’s ability to use the intellectual property is *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.),* 756 F.2d 1043, 1048 (4th Cir. 1985). The vast majority of cases involving rejection of a trademark licensing agreement by a debtor-lessor have followed *Lubrizol.* See, e.g., *In re Chipwich, Inc.,* 54 B.R. 427, 431 (Bankr. S.D.N.Y. 1985) (holding that a debtor-licensor’s rejection of a trademark license terminated the licensee’s right to sell dairy products using the debtor’s trademark); *In re Centura Software Corp.,* 281 B.R. 660, 674–75 (Bankr. N.D.Cal. 2002) (terminating the licensee’s right to sell software products under the debtor-licensor’s trademark after rejection); *In re HQ Global Holdings, Inc.,* 290 B.R. 507, 513 (Bankr. D. Del. 2003) (terminating franchisees of the debtor’s office support services business from using the debtor’s trademarks after rejection); *In re Old Carco,* 406 B.R. at 211 (finding that rejection of a trademark license by a debtor auto manufacturer terminated an auto dealership’s continued use of the trademark).

Courts have followed *Lubrizol* because the rule it articulated works for trademark licensing agreements. Recently, the Seventh Circuit Court of Appeals came to the opposite conclusion from that expressed in *Lubrizol,* holding that intellectual property owners retain usage rights despite a debtor’s rejection of the licensing agreement. *Sunbeam,* 686 F.3d at 377—78. The Thirteenth Circuit Court of Appeals, in the decision below, adopts the *Sunbeam* view. (R. 2–3). The decision to reject the *Lubrizol* holding is not only contrary to the Bankruptcy Code, but is unwarranted and unwise as a practical matter. In almost thirty years since the decision in
Lubrizol, the United States has seen no evidence of a reduction in trademark licenses in favor of assignments, a chilling of franchise agreements, or a decrease in quality for consumers. In fact, the opposite is true. A robust industry thrives around trademarks, and consumers are able to trust the quality of the brands they love.

II. THE APPLICATION OF SECTION 365 TO A TRADEMARK LICENSING AGREEMENT OWNED BY A U.S. DEBTOR IS NOT BARRED BY THE PRESUMPTION AGAINST EXTRATERRITORIALITY OF STATUTES.

The Thirteenth Circuit Court of Appeals erred when it found the presumption against extraterritorial application of statutes bars application of Section 365 to the Vohra licensing agreement, because: (1) the application to the licensing agreement is not extraterritorial, and (2) Congress intended the Bankruptcy Code to have extraterritorial application.

It is presumed that legislation of the U.S. Congress applies only within the territorial jurisdiction of the United States, unless a contrary intent appears. E.E.O.C. v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991) (“ARAMCO”). Despite the presumption, Congress has authority to enforce its laws extraterritorially, and whether Congress has exercised that authority is a matter of statutory construction. Id. at 261. Congress explicitly excepted Section 365 from the presumption against extraterritoriality when it gave the United States courts exclusive jurisdiction over all property of the debtor, wherever located. 11 U.S.C. § 541(a); 28 U.S.C. § 1334. In addition, Congress endorsed universalist principles, which support extraterritorial application of Section 365, when it adopted the Model Law on Crossborder Insolvency as Chapter 15 of the Bankruptcy Code. In re ABC Learning Centres Ltd., 728 F.3d 301, 306 (3d Cir. 2013).
A. THE PRESUMPTION AGAINST EXTRATERRITORIALITY DOES NOT APPLY TO THE
VOHRA LICENSE BECAUSE THE LICENSE HAS A SIGNIFICANT CONNECTION TO
THE UNITED STATES.

As a preliminary matter, before a court may consider Congressional intent as to the effect
of the presumption against extraterritoriality on a particular law, it must consider whether, under
the specific facts, application of the law would even be considered extraterritorial. In other
words, a court must determine whether the application of the U.S. law at issue would regulate
primarily foreign conduct. *In re French*, 440 F.3d 145, 149 (4th Cir. 2006). Courts have
recognized that defining foreign conduct is particularly challenging in cases, like this one, which
involve a mixture of foreign and domestic elements. *Id.; Dee-K Enters., Inc. v. Heveafil Sdn.
Bhd.*, 299 F.3d 281, 286 (4th Cir. 2002).

The fact that conduct has a foreign element does not necessarily make an application of
U.S. law to that conduct an “extraterritorial application.” *In re French*, 440 F.3d at 149 (citing
Jay L. Westbrook, *The Lessons of Maxwell Communications*, 64 Fordham L. Rev. 2531, 2538
(1996)). An application of U.S. law to a transaction involving only minor contact with a foreign
country is not automatically considered extraterritorial. *In re French*, 440 F.3d at 149; *Maxwell
Commc’n Corp. PLC v. Societe Generale PLC (In re Maxwell Commc’n Corp.)*, 186 B.R. 807,
817 (S.D.N.Y. 1995). Likewise, minimal contact with the United States does not automatically
render a transaction domestic. *In re Maxwell*, 186 B.R. at 817. Courts must look to the facts of
each case to determine whether the center of gravity of the transaction exists outside the United

The inquiry into whether an application of U.S. law is extraterritorial looks to the “place
of the regulated conduct.” *In re French*, 440 F.3d at 149. The focus of the inquiry should be on
whether “the participants, acts, targets, and effects involved in the transaction at issue are
primarily foreign or primarily domestic.” Id. (quoting Dee-K Enters., 299 F.3d at 294). Only if the foreign interests substantially outweigh the domestic interests will the application be considered extraterritorial. Restatement (Third) of Foreign Relations Law § 403(3) (1987); see also In re Grand Jury Proceedings, 40 F.3d 959, 967 (9th Cir. 1994) (recognizing U.S. over foreign jurisdiction unless foreign interests are “clearly greater”).

Here, Eastlandia’s interests are not clearly greater than the United States’ interests. The parties to the contract at issue are equal parts foreign and domestic. Petitioner Foodstar is a U.S. corporation, while Vohra is a citizen of Eastlandia. (R. 4). The acts involved are also both foreign and domestic. Vohra exercises his rights to use the trademark in Eastlandia, while Foodstar conducts its duties of quality control from its domestic headquarters. (R. 4). Finally, the targets and effects of the application of Section 365 to the trademark licensing agreement are both foreign and domestic. If Section 365 applies, both the foreign activity of Vohra in using the trademark and the domestic activity of Foodstar in exercising quality control over the trademark will be affected. (R. 4). In light of these facts, it is evident that Eastlandia’s interest in the application of Section 365 to the Vohra license is not clearly greater than the United States’ interest. Foodstar has a clear interest in the Burger Bites trademark, the largest estate asset, which Vohra’s license affects in two ways: by reducing the trademark’s current sale value, and by increasing the risk that Foodstar could lose its trademark rights. Vohra has a clear interest in the trademark use privileges granted to him under the license, which add value to the restaurants in Eastlandia operating under the Burger Bites name.

The balancing of the contacts, activities, and interests of the parties related to the Vohra license all establish that the license is at least as domestic in nature as it is foreign. Therefore,
the application of Section 365 to the license is not an application to extraterritorial conduct, and
the presumption against extraterritorial application of U.S. law does not apply.

B. Congress explicitly excepted Section 365 from the presumption against extraterritoriality.

Even if the application of Section 365 were extraterritorial under these facts, Congress
expressed its affirmative intent that Section 365 apply internationally, and the presumption
against extraterritoriality “must give way when Congress exercises its undeniable ‘authority to
enforce its laws beyond the territorial boundaries of the United States.’” In re French,
440 F.3d at 151 (quoting ARAMCO, 499 U.S. at 248). In fact, Congress expressed this intention
not once, but twice within the Bankruptcy Code. First, Congress gave the United States courts
exclusive jurisdiction over all property of the estate, wherever located, in 28 U.S.C. § 1334.
Second, Congress defined “property of the estate” as including all of the debtor’s property,

1. Congress gave the United States courts exclusive jurisdiction over all the debtor’s property, wherever located.

Congress explicitly granted the United States courts “exclusive jurisdiction . . . of all of
the property, wherever located, of the debtor . . . and of property of the estate.”
28 U.S.C. § 1334(e)(1). With use of the specific, jurisdictional language “wherever located,”
Congress intentionally expanded jurisdiction of the bankruptcy court extraterritorially to any
location where the debtor’s property is affected. Id.

Congress further defined property of the estate as all of the debtor’s property, “wherever
located and by whomever held.” 11 U.S.C. § 541(a). Property of the estate includes, inter alia,
“all legal or equitable interests of the debtor in property as of the commencement of the case.”
11 U.S.C. § 541(a)(1). Congress intended property of the estate to be broad in scope, to

Courts have consistently held that property of the estate extends to the debtor’s worldwide property. See, e.g., Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon), 153 F.3d 991, 996 (9th Cir. 1998) (noting that property of the estate “includes property outside the territorial jurisdiction of the United States”); Nakash v. Zur (In re Nakash), 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996) (explaining that “wherever located” is broadly construed “to include property located in and outside of the U.S.”); Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff), 480 B.R. 501, 526 (Bankr. S.D.N.Y. 2012) (describing property of the estate as the debtor’s worldwide property).

This extraterritorial reach is not limited to the application of only Section 541 of the Bankruptcy Code. See In re French, 440 F.3d at 151 (finding Section 548 of the Bankruptcy Code has extraterritorial application through the “wherever located” language of Section 541). The explicit grant of jurisdiction over all of the debtor’s worldwide property reaches beyond Section 541 to any Bankruptcy Code section that involves or implicates property of the estate. Id. To find otherwise would frustrate the intent of Congress in granting extraterritorial jurisdiction over the debtor’s foreign property. It would be absurd for Congress to grant United States courts exclusive jurisdiction over the debtor’s worldwide property in Section 541, and then deny the courts the right to exercise that exclusive jurisdiction when administering the debtor’s property under Section 365. Rather, courts are to interpret related statutes together and give effect to both to the fullest extent possible, unless Congress expressed a clear intention that
one apply over the other. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1020 (1984). Congress has never indicated that Section 365 should not apply extraterritorially. To the contrary, Congress made clear not once, but twice within the Bankruptcy Code that it intended to except all property of the debtor from the presumption against extraterritoriality of statutes. To have effect, that exception necessarily must extend to any law that enables administration of the debtor’s property.

2. **Bankruptcy Code applications that administer property of the estate are exempt from the presumption against extraterritoriality.**

Courts have consistently found that those Bankruptcy Code applications that involve property of the estate are exempt from the presumption against extraterritoriality, whereas those applications that do not involve property of the estate are subject to the presumption. This is true regardless of the code section involved. For example, in *In re Mclean Industries*, the bankruptcy court for the Southern District of New York found that the presumption against extraterritoriality did not apply to the application of Section 362 of the Bankruptcy Code. *In re McLean Indus.*, 68 B.R. 690, 694 (Bankr. S.D.N.Y. 1986). *McLean* involved a voluntary Chapter 11 petition by a U.S. corporation whose business was international shipping services. *Id.* at 691. Ten days after the petition was filed, one of the corporation’s creditors filed an *in rem* admiralty action in the Supreme Court of Hong Kong to recover a pre-petition debt. *Id.* at 692. Hong Kong’s Supreme Court ordered a warrant of arrest on one of the debtor’s ships, then docked in the Hong Kong harbor. *Id.* In response, the *McLean* debtor filed suit against the creditor in U.S. court, alleging violation of the automatic stay. *Id.* The *McLean* court determined that extraterritorial application of Section 362 was appropriate, despite the ship’s location beyond the territorial borders of the United States because “Section 541(a) makes clear that property of the estate is
not so confined but consists of all property ‘wherever located’ in which the debtor has an interest.” *Id.* at 694.

Where an application of the Bankruptcy Code does not involve property of the estate, courts have found the presumption against extraterritoriality does control. The leading example of this is the avoidance provision in Section 547. *In re Maxwell*, 170 B.R. 800, 811 (Bankr. S.D.N.Y. 1994), *aff’d, In re Maxwell Commc’n Corp.*, 93 F.3d 1036 (2d Cir. 1996). In *Maxwell*, an English debtor that had filed a voluntary Chapter 11 petition sought extraterritorial application of Section 547 of the Bankruptcy Code. *Id.* at 801. Prior to filing, the debtor had made some large payments to three banks, two in the United Kingdom and one in France, which the debtor then sought to recover as preferential payments under Section 547 of the United States Bankruptcy Code. *Id.* The *Maxwell* court found that the transferred payments were not property of the estate until they had been recovered. *Id.* at 811. Because Section 541(a) only gives the United States bankruptcy courts jurisdiction over property of the estate, the Maxwell court concluded that the extraterritorial language of Section 541(a) did not apply to the transferred payments. supra *Id.*

Here, the Burger Bites trademark is clearly property of the estate. 11 U.S.C. § 541(a)(1). Property of the estate includes both executory contracts, *Rickel Home Ctr.s*, 209 F.3d at 300, and intellectual property such as trademarks, *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1471 (D.C. Cir. 1991). 4 *Collier on Bankruptcy* ¶¶ 541.06, 541.10 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013); see also H.R. Rep. No. 95-595 at 57 (“all property of the debtor

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4 Ultimately, Judge Brozman was reluctant to issue a ruling in *Maxwell* as broad as that characterized by the court below, qualifying her decision by saying, “To be clear, I do not hold today that no debtor may pursue a transfer overseas. What I do hold is that where a foreign debtor makes a preferential transfer to a foreign transferee and the center of gravity of that transfer is overseas, the presumption against extraterritoriality prevents utilization of section 547 to avoid the transfer.” *In re Maxwell*, 170 B.R. at 811.
becomes property of the estate”); S. Rep. No. 95-989 at 67 (property of the estate “includes all kinds of property, including tangible or intangible property”). Foodstar has a property interest in both the current and future value of the trademark that was licensed to Vohra. And while the licensing agreement did not grant Vohra a property right in the Burger Bites trademark, administration of the licensing agreement under Section 365 does affect the trademark, which is clearly property of the estate. Both parties agree that rejection of the trademark licensing agreement under Section 365 will result in an increase in value of the trademark of up to 15 percent. Additionally, any use of the trademark by Vohra affects the mark’s future value and the resulting goodwill which flows from use back to Foodstar. The United States courts therefore have exclusive jurisdiction per Section 541 to administer rights relating to the trademark under Section 365.

C. BOTH THE UNITED STATES AND EASTLANDIA REJECTED TERRITORIAL PRINCIPLES IN FAVOR OF UNIVERSALISM WHEN THEY ADOPTED THE MODEL LAW ON CROSS-BORDER INSOLVENCY.

In addition to explicit exceptions to the presumption against extraterritoriality, Congress’ adoption of the Model Law reflects a policy of universalism that is incompatible with the Thirteenth Circuit Court of Appeals’ limited reading of Section 365. A statute need not include a clear statement declaring “this law applies abroad” to rebut the presumption. In re Bernard L. Madoff, 480 B.R. at 526. When Congress adopted the Model Law on Cross-Border Insolvency as Chapter 15 of the Bankruptcy Code, it made a statement that it did not intend for the presumption to apply in international insolvency cases.
1. This Court has held that non-textual sources may help determine whether the presumption against extraterritoriality applies in a particular context.

When determining whether the presumption against extraterritorial application controls, the Supreme Court has made it clear that reference to non-textual sources is permissible. See *Sale v. Haitian Ctr. Council, Inc.*, 509 U.S. 155, 177 (1993) (looking to “all available evidence,” including Congressional history, when determining the extraterritorial application of the Immigration and Nationality Act of 1952). Additionally, statutory context may be consulted “in searching for a clear indication of statutory meaning.” *United States v. Weingarten*, 632 F.3d 60, 65 (2d Cir. 2011) (citing *Morrison v. Nat’l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2883 (2010)). Even the historical setting of the statutory language can aid in determining whether Congress intends a statute to apply extraterritorially. See *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013) (examining the historical background under which the Alien Tort Statute was enacted when inquiring into its extraterritorial reach). The Court should therefore look beyond the language of the statute itself and into legislative reports and other indicia of Congressional intent when determining whether Congress intended the presumption to apply in this context.

2. In its adoption of the Model Law, Congress embraced a universalist approach to cross-border insolvency that favors the extraterritorial application of Section 365.

Congress rejected territorialism in favor of principles of universalism when it adopted the Model Law as Chapter 15 of the Bankruptcy Code. See *In re ABC Learning*, 728 F.3d at 301 (“The Model Law reflects a universalism approach to transnational insolvency. . . . Chapter 15

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5 Practical realities have made a pure universalist system difficult, so the Model Law reflects a form of “modified universalism” which requires a coordination between the home country’s bankruptcy proceedings and the local court which enforces those findings locally. 11 U.S.C. § 1520; Jay L. Westbrook, *A Global Solution to Multinational Default*, 98 Mich. L. Rev. 2276, 2300-01 (2000).

This universalist approach is embodied in the UNCITRAL Model Law on Cross-Border Insolvency, promulgated in 1997 at a convention to which the United States sent several delegates. *In re Millenium Global Emerging Credit Master Fund, Ltd.*, 458 B.R. 63, 72 (Bankr. S.D.N.Y. 2011); Jay L. Westbrook, *Chapter 15 at Last*, 79 Am. Bankr. L.J., 713, 726 (2005). The United States adopted the Model Law as Chapter 15 of the Bankruptcy Code in 2004 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). *In re Ran*, 607 F.3d 1017, 1020 (5th Cir. 2010). In fact, the United States supported the universalist approach to such a degree that it adopted the Model Law nearly verbatim in an attempt to encourage other countries to do the same. *In re Millenium*, 458 B.R. at 72. The
United States wanted, with its adoption of Chapter 15, to create a system where it would give recognition to other countries’ bankruptcy laws and decisions, and receive the same recognition for its own proceedings. In this way, Chapter 15 “fosters comity and predictability, and benefits bankruptcy proceedings in the United States that seek to administer property located in foreign countries that have adopted the Model Law.” In re ABC Learning, 728 F.3d at 306.

With Chapter 15, the United States gives effect to other countries’ assertions of their substantive law over property located within U.S. borders, in hopes that those other countries will return the favor. When another country has adopted the Model Law, as Eastlandia has here, the United States can readily look forward to U.S. law being likewise recognized. This central policy goal, which underlies Congress’ codification of Chapter 15, is entirely negated if the presumption against extraterritoriality applies to the Bankruptcy Code as Vohra suggests.

Here, the United States is the clear center of Foodstar’s main interests. Foodstar’s registered office, headquarters, managers, and primary assets are all located within the United States, where its key operational decisions are made. See In re Bear Stearns, 374 B.R. at 128 (looking to the location of the debtor’s headquarters, the location of those who actually manage the debtor, and the location of the debtor’s primary assets for COMI placement). The United States is therefore the proper venue for Foodstar’s reorganization proceeding, and as such U.S. bankruptcy courts have jurisdiction over the debtor’s worldwide assets, including the Burger Bites trademark.

3. It is an incorrect interpretation of the Model Law to suggest the debtor initiate ancillary proceedings to decide the fate of the Vohra agreement.

The lower court suggested the presumption against extraterritoriality would require Foodstar to initiate ancillary proceedings in Eastlandia to administer the trademark there locally.
This type of approach to international insolvency proceedings is referred to as “territorialism” within cross-border insolvency. Territorialism, like the presumption against extraterritoriality of statutes, is rooted in traditional notions of national sovereignty. Hon. Allan L. Gropper, *The Arbitration of Cross-border Insolvencies*, 86 Am. Bankr. L. J. 201, 204–05 (2012). Territorialist theories view all people and all property within a nation’s borders as subject to that nation’s laws, allowing a nation to exercise exclusive jurisdiction over only those assets physically within its venue. *Id.*

Congress rejected such a territorialist approach in its adoption of the Model Law—and for good reason. See *In re ABC Learning*, 728 F.3d at 306 (describing territorialism as “requiring a debtor to initiate insolvency actions in each country where its assets are located”). The main shortfall of territorialism is its waste of resources in administering a multinational insolvency case on multiple fronts, before multiple courts. All parties are worse off economically under a territorialist system, as the many concurrent proceedings drain debtor, creditor, and judicial resources. As an adopter of the Model Law, it does not make sense for Congress to advocate universalism for other countries administering international insolvency proceedings domestically, yet require United States courts to conduct international insolvency proceedings under a piecemeal, territorialist regime. The better view recognizes that in rejecting territorialism, Congress embraced universalism on behalf of the United States, for the benefit of United States citizens seeking extraterritorial application of the Bankruptcy Code as much as for the benefit of foreign countries seeking application of their laws within the United States.

The Thirteenth Circuit Court of Appeals erred in ignoring Congress’ intention that Section 365 of the Bankruptcy Code apply to the debtor’s worldwide property, and thus impermissibly extended the presumption against extraterritorial application of statutes. This
court should protect the value of the debtor’s estate for the benefit of all creditors and reverse the decision below.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the judgment of the Thirteenth Circuit Court of Appeals and find that: (1) rejection of a trademark licensing agreement in bankruptcy terminates the licensee’s right to further use that trademark, and (2) Section 365 of the Bankruptcy Code applies extraterritorially to any executory contract that affects property of the debtor’s estate. Accordingly, the court should remand with instructions to reinstate the summary judgment and injunctive order of the bankruptcy court.

/Team P 17

Team P 17
Counsel for Petitioner
APPENDIX A


To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
APPENDIX B


... 

(35A) The term “intellectual property” means--

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law.

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APPENDIX C


(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee--

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to--

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance--

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(A) of the source of rent and other consideration due under such lease, and in the case of
an assignment, that the financial condition and operating performance of the proposed
assignee and its guarantors, if any, shall be similar to the financial condition and
operating performance of the debtor and its guarantors, if any, as of the time the debtor
became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof,
including (but not limited to) provisions such as a radius, location, use, or exclusivity
 provision, and will not breach any such provision contained in any other lease, financing
agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or
balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an
unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this
subsection, the trustee may not require a lessor to provide services or supplies incidental to
such lease before assumption of such lease unless the lessor is compensated under the terms of
such lease for any services and supplies provided under such lease before assumption of such
lease.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor,
whether or not such contract or lease prohibits or restricts assignment of rights or delegation of
duties, if--

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from
accepting performance from or rendering performance to an entity other than the debtor or the
debtor in possession, whether or not such contract or lease prohibits or restricts assignment of
rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial
accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or

(3) such lease is of nonresidential real property and has been terminated under applicable
nonbankruptcy law prior to the order for relief.


(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory
contract or unexpired lease of residential real property or of personal property of the debtor
within 60 days after the order for relief, or within such additional time as the court, for cause,
within such 60-day period, fixes, then such contract or lease is deemed rejected.

(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee’s obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor’s rights under such lease or under this title.

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

(5) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee’s obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on--

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(2) Paragraph (1) of this subsection does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--

(A)(i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(ii) such party does not consent to such assumption or assignment; or

(B) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(f)(1) Except as provided in subsections (b) and (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if--

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(3) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease.
lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.

(g) Except as provided in subsections (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease-

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title--

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of such rejection; or

(B) if before such rejection the case has been converted under section 1112, 1208, or 1307 of this title--

(i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or

(ii) at the time of such rejection, if such contract or lease was assumed after such conversion.

(h)(1)(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and--

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of
any obligation of the debtor under such lease, but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(C) The rejection of a lease of real property in a shopping center with respect to which the lessee elects to retain its rights under subparagraph (A)(ii) does not affect the enforceability under applicable nonbankruptcy law of any provision in the lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

(D) In this paragraph, “lessee” includes any successor, assign, or mortgagee permitted under the terms of such lease.

(2)(A) If the trustee rejects a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller and--

(i) if the rejection amounts to such a breach as would entitle the timeshare interest purchaser to treat the timeshare plan as terminated under its terms, applicable nonbankruptcy law, or any agreement made by timeshare interest purchaser, the timeshare interest purchaser under the timeshare plan may treat the timeshare plan as terminated by such rejection; or

(ii) if the term of such timeshare interest has commenced, then the timeshare interest purchaser may retain its rights in such timeshare interest for the balance of such term and for any term of renewal or extension of such timeshare interest to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the timeshare interest purchaser retains its rights under subparagraph (A), such timeshare interest purchaser may offset against the moneys due for such timeshare interest for the balance of the term after the date of the rejection of such timeshare interest, and the term of any renewal or extension of such timeshare interest, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such timeshare plan, but the timeshare interest purchaser shall not have any right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.

(2) If such purchaser remains in possession--

(A) such purchaser shall continue to make all payments due under such contract, but may,1 offset against such payments any damages occurring after the date of the rejection of such contract caused by the nonperformance of any obligation of the debtor after such date, but such purchaser does not have any rights against the estate on account of any
damages arising after such date from such rejection, other than such offset; and

(B) the trustee shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the debtor is rejected and under which such party is not in possession, has a lien on the interest of the debtor in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

(k) Assignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(10), leases of real property shall include any rental agreement to use real property.

(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect--

(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for--

(i) the duration of such contract; and

(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract--
(A) the trustee shall allow the licensee to exercise such rights;

(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

(C) the licensee shall be deemed to waive--

(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall--

(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall--

(A) to the extent provided in such contract or any agreement supplementary to such contract--

(i) perform such contract; or

(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

...
APPENDIX D


...  

(c) There shall be estimated for purpose of allowance under this section--

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

...  

(g)(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

...
APPENDIX E


(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

   (A) under the sole, equal, or joint management and control of the debtor; or

   (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--

   (A) by bequest, devise, or inheritance;

   (B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

   (C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

...
APPENDIX F


(a) Upon recognition of a foreign proceeding that is a foreign main proceeding--

(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.
APPENDIX G


A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title, by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this chapter.

(2) Within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title.

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

XIV
Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required.

Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (c)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.