

Expect Personal-Care M&A In 2010, Attorney Says; "Now Is The Time To Buy"

Corporate and securities attorney Andrew M. Apfelberg expects merger and acquisition activity in the personal-care sector to accelerate in 2010 as more companies capitalize on "unprecedented" opportunities for expansion in the current market.

In an Oct. 27 interview, the partner at Los Angeles-based Rutter Hobbs & Davidoff told "The Rose Sheet," "I think you'll see a lot of activity in 2010."

"There are a lot of people sniffing around right now, trying to figure it out," he said. "Because in 2009 they've done their layoffs, they've done their introspection, they've had their freak-outs and now they're feeling a little bit more comfortable that we've bottomed out and maybe are climbing out."

In this climate, forward-looking companies are trying to "figure out a way to accelerate out of this recession and leapfrog [their] competitors," according to Apfelberg, whose client list includes professional nail-care firm OPI Products and Kate Somerville Skin Health Experts.

Prior to pursuing a law degree Apfelberg worked for investment bank Houlihan Lokey Howard & Zukin. Speaking to the current economy, the attorney said he has "never really seen a period where it's just this perfect storm of factors all hitting at once."

"It allows you, in essence, to buy much more company than you could've otherwise, largely because of factors that have nothing to do with the health of the company. It can still be that same great company as it was before – it's not that its product is flawed or its marketing off-target – it's simply a matter of consumer spending being down," he said.

Apfelberg compared the situation in personal care, in which quality brands are going up for sale at lower prices than might be expected, to the housing market.

"It's the same house down the street from you that it was before, it's the same great neighborhood, it's just that there are less people knocking on the door. ... It has nothing to do with the foundation being shaky or the windows busted out."

"If you've got the cash, you can get in and get much more house or much more company than you ever could've before," he concluded.

Church & Dwight is one firm actively looking to scoop up brands at attractive prices, capitalizing on the scarcity of bidders in the current market ("The Rose Sheet" Feb. 9, 2009).

Stable Could Gain From Desperate-To-Shed

Rutter Hobbs & Davidoff notes in a recent release that "timing is everything when it comes to the success of mergers and acquisitions – and now is the time to buy."

"With plummeting sales, tightening budgets and increasing debt, many businesses are becoming desperate to shed their risk-laden assets," it adds.

Mounting pressure to sell creates opportunities for stable companies to expand their business and pick up assets that could help them ride out the economic slump and even put them ahead of the pack in the end, the firm suggests.

As to which companies are finding themselves on the "stable" side of the fence and which on the "desperate" side, Apfelberg said that in his experience, marketers of luxury products – high-end skin-care formulas specifically – seem to be holding up under the strain of the recession.

Consumers are willing to give up many things, Apfelberg noted, "but they're not so eager to give up the way their face looks. They might eat at a slightly lesser restaurant, but they want to make sure they look damned good when they're doing it."

Firms that target their beauty products to the Millennial Generation, or Generation Y, also are struggling less than others overall, the attorney said.

Compared with their parents and grandparents, the Millennial Generation "has never before been told no," Apfelberg said.

"It's the most entitled generation that we've ever seen," he observed, adding: "That's who's spending."

OPI's *Nicole* line of nail lacquers are geared toward younger consumers, Apfelberg noted.

Australian skin-care brand *Bellaboo* – touted as hip, natural and "created for teen girls by teen girls" –

recently launched in the U.S. with aspirations for further, rapid growth ("The Rose Sheet" Oct. 26, 2009).

Who's SWOT And Who's Not?

For companies that have the means to acquire, some self-analysis is crucial before any action is taken, Apfelberg suggested.

"I have clients come to me all the time and say, 'Hey, Andrew, I want to go buy so and so. Or I want to go buy a company that does 'x.' And my answer every single time is the same: 'Why?'"

"More often than not they say, 'Well, it's this really good opportunity; I heard they're for sale and I think we can turn them around.' Or, 'I think that by adding them to us we can conquer the world; we'll corner this or that aspect of the market.'"

Apfelberg says he typically encourages companies with growth ambitions to conduct a SWOT analysis, identifying their strengths, weaknesses, opportunities and threats before proceeding with an acquisition.

"When a client can go through this exercise and figure out their own stuff first, then they can see

how an additional piece can be added to the puzzle. But until you truly understand your own business ... you can't really figure out how this other company fits in and whether it's a good deal for you or not," the attorney said.

He estimated that about one out of three companies that perform the exercise end up deciding to pass on the opportunity before them, deeming it not right for their business at that time, while those who do go forward with an acquisition often do so for different reasons than they had in mind originally.

"At the end [of a SWOT analysis] if they can articulate, 'OK, we're weak in research and development and this company [for sale] has an amazing pipeline' – that makes a lot of sense. You're basically buying R&D instead of doing your own. You're going to be able to easily communicate that to your board, to your lenders, to the outside community," Apfelberg said.

"But if it's simply piling on in an area of strengths and leaving your flank totally open because you're ignoring an area of weakness – that gets harder to justify."

– Ryan Nelson (*r.nelson@elsevier.com*)

Schakowsky Preps Cosmetics Bill, Spooked By "Scary" Face-Paint Report

Rep. Jan Schakowsky (D-Ill.) plans to introduce a bill to "strengthen FDA oversight of cosmetics," spurred on by the Campaign for Safe Cosmetics' latest report, "Pretty Scary," based on an analysis of children's face paints.

Days before Halloween, CSC released findings from product testing suggesting that children's face paints on the market are tainted with lead and other heavy metals.

"Lead and other hazardous chemicals have no place in face paints kids use for dress-up and play on Halloween or any other day of the year," Schakowsky asserts in CSC's release. The congresswoman has been a vocal supporter of CSC's mission in the past.

"Strengthening our cosmetics laws and providing the ample resources are essential to ensure the FDA has the authority and tools it needs to protect the health of our children from chemicals in cosmetics,"

she says. Details of her bill are still being worked out, according to an office rep.

In its report, CSC says all 10 face paints it purchased and tested had trace levels of lead, and six contained nickel, cobalt and/or chromium.

Lead "can impact brain development at extremely low doses," according to the consumer group, while nickel, cobalt and chromium "can cause lifelong skin sensitization and contact dermatitis."

The metals are not listed in product labeling and are likely contaminants of the manufacturing process rather than deliberately added ingredients, CSC asserts.

It says the test results are further evidence that the cosmetics industry needs to be regulated more tightly. "The lack of cosmetic safety standards [for face paints] is a problem that extends to all cosmetics sold in the United States," the consumer watchdog says.