

Edgar Filing: INNOVO GROUP INC - Form 8-K

Effective as of October 13, 2006, JD Design, LLC ("JD Design"), a California limited liability company and licensor of the Joe's Jeans brand (the "Brand") to Innoovo Group Inc. and its subsidiary, Joe's Jeans, Inc. (collectively, the "Company"), granted a security interest in and to the Brand to the CIT Group/Commercial Services, Inc. ("CIT"), the Company's current primary lender. Joe Dahan, the managing member of JD Design, is employed by the Company as the president of its Joe's Jeans Inc. subsidiary. This grant by JD Design was for the purpose of providing CIT additional collateral under its current factoring and inventory security agreements with the Company (the "Financing Facilities"), which will allow the Company to obtain additional working capital. CIT makes advances and purchases the Company's accounts receivables under the Financing Facilities in such percentage amounts that can be increased or decreased in its sole discretion. As previously disclosed in the Company's Quarterly Report on Form 10-Q for the period ended August 26, 2006, under the Financing Facilities, the Company obtained funds at 85% of factored invoices and under the inventory security agreement for up to \$1,000,000. Because JD Design entered into the agreements with CIT, CIT agreed to increase the maximum availability advanced on inventory at CIT's discretion.

In exchange for JD Design agreeing to provide this grant of a security interest to CIT, the Company entered into a Collateral Protection Agreement ("CPA") with JD Design to provide additional consideration to JD Design in the event that the guaranty is called upon or CIT enforces its security interest in the collateral. The CPA states that in the event (i) there is a default by the Company under its Financing Facilities which remains uncured for a period of thirty (30) days from written notice by CIT to the Company, (ii) demand is made to JD Design by CIT under the guaranty and demand is not withdrawn within 10 days of the date of receipt of such demand by JD Design, (iii) CIT commences an action to enforce its security interest in the collateral, (iv) there is a materially false, misleading, erroneous or incorrect representation or warranty made by the Company under or in connection with the CPA; or (v) the Company fails to perform or observe any term, covenant or undertaking in the CPA (collectively, an "Event of Default"), then the Company will be obligated to issue shares of its common stock to JD Design as consideration for JD Design satisfying its obligations to CIT. The Company reserved 6,834,347 shares as the maximum number of shares that could potentially be issued under the CPA (the "Default Reserve"), which represents 19.9% of its total shares outstanding. If an Event of Default occurs, then the amount of shares to be issued would be calculated by dividing the amount owed by the Company to CIT (not to exceed \$2,000,000) by the greater of (i) \$0.01 or (ii) the closing price of the Company's shares of common stock as reported by Nasdaq on the date that JD Design fulfills its obligations to CIT. The CPA affirmatively states that in no event shall the amount of shares issued to JD Design exceed the Default Reserve.

The CPA further provides for additional consideration to be paid to JD Design in certain instances, such as failure by the Company to obtain CIT's consent to terminate the agreements with JD Design by April 13, 2007. In the event that the agreements are not terminated by this date, the Company shall be obligated to issue to JD Design 200,000 shares of its common stock. Additionally, if on April 13, 2008, the agreements with JD Design

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are still in effect, then the Company shall be required to pay to JD Design \$25,000 for each quarterly period that the documents remain in effect. If one or both of these additional distributions are made, JD Design shall still be entitled to the default shares in the amount and instances described above. However, if the 200,000 shares are issued, the Default Reserve shall be reduced by 200,000.

In addition, the CPA also contemplates that JD Design shall be entitled to certain registration rights in the event that the default shares are issued. The Company would enter into a registration rights agreement with JD Design simultaneously with the issuance of the shares.

The CPA contains normal and customary representations and warranties, as well as certain covenants related to the preservation of the entity, membership interest, collateral and further assurances so long as the CPA or documents with CIT are in effect.

A copy of the CPA is expected to be filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended November 25, 2006 to be filed with the Securities and Exchange Commission on or before its due date.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

INNOVO GROUP INC.
(Registrant)

Date: October 19, 2006

By: /s/Marc B. Crossman
Marc Crossman
Chief Executive Officer,
President, Chief Financial
Officer and Director
(Principal Executive Officer
and Principal Financial
Officer)