

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

**COMMERCECONNECT MEDIA HOLDINGS,
INC., et al.,¹**

Debtors.

)
) **Chapter 11**

)
) **Case No. 09-**

)
) **Joint Administration Pending**

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO HONOR CERTAIN PRE-PETITION OBLIGATIONS
TO CUSTOMERS AND TO OTHERWISE CONTINUE IN THE ORDINARY COURSE
OF BUSINESS THEIR CUSTOMER PROGRAMS AND PRACTICES**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors” or “Cygnus”) file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the Debtors to honor certain prepetition obligations to their Customers (as hereinafter defined) in the ordinary course of the Debtors’ businesses and to continue their Customer Programs (as hereinafter defined) on a postpetition basis. The facts and circumstances supporting this Motion are set forth in the Affidavit of James Ogle in Support of First Day Motions (the “Ogle Affidavit”), filed concurrently herewith. In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. On the date hereof (the “Petition Date”), the Debtors commenced their respective bankruptcy cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the bankruptcy code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). No creditors’ committee has yet been appointed in the Chapter 11 Cases by the United States Trustee. The

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: CommerceConnect Media Holdings, Inc. (1749), Cygnus Business Media, Inc. (0832), Cygnus New Business Launches, Inc. (0713) and Cygnus Interactive New Business Launches, Inc. (1283). The address for each of the Debtors is: 1233 Janesville Avenue, Fort Atkinson, Wisconsin 53538.

Debtors are continuing in possession of their respective properties and are operating their respective businesses, as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. The statutory bases for the relief requested herein are sections 105(a), 363, 1107(a), and 1108 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

Introduction

4. As described in more detail below, the Chapter 11 Cases have been commenced to effectuate a negotiated out-of-court restructuring plan that has previously been agreed to by all but one of the Debtors’ senior secured lenders, all of the Debtors’ junior secured lenders, the holders of all of CommerceConnect Media Holdings, Inc.’s (“CCMH”) Series A Preferred Stock and the holders of a majority in interest of CCMH’s voting equity. The Debtors do not intend the Chapter 11 Cases to have any effect on the allowed claims of general unsecured creditors, but rather, to permit such claims to effectively “ride through” the Chapter 11 process and be paid in full without any impact by the bankruptcy on the relative rights, obligations and defenses of the parties. While the Debtors had hoped to avoid the cost of the Chapter 11 Cases by restructuring consensually out-of-court, one (1) hold out senior lender has refused to consent, apparently seeking to extract further value from the companies or its co-lenders. For this reason, the Debtors were forced to modify the consensual restructuring into a prepackaged plan of reorganization (the “Plan”). Approximately 96% of the Debtors’ senior secured lenders and

100% of the Debtors' junior secured lenders have voted in favor of the Plan, representing approximately \$200 million of the approximately \$206 million in secured debt owed to these institutional creditors. The Debtors have therefore commenced these Chapter 11 Cases to confirm the Plan, and will be seeking to do so expeditiously.

A. The Debtors' Businesses.

5. Cygnus is a leading business-to-business ("B2B") publisher and communications company, distributing content to diverse audiences in the construction, public safety, industrial and manufacturing, security, technology, transportation and aviation industries. Cygnus employs approximately 680 people, including 430 salaried and hourly employees and 250 independent contractors, all of whose livelihoods depend in some significant measure upon the successful continuation of the Debtors' business enterprise. These employees and independent contractors are essential to the Debtors' business operations and perform a variety of critical functions.

6. Several magazines published by Cygnus have been published for more than 40 years. Cygnus' market-leading brands include *Qualified Remodeler*, *Firehouse*, *Equipment Today*, *Kitchen and Bath Design News*, and the *CPA Technology Advisor*. Cygnus' breadth of content is internationally-recognized, reaching millions of business professionals who rely on Cygnus' proprietary content to make critical business decisions. Cygnus reaches business professionals by utilizing three media platforms: publishing, interactive and expositions.

7. Publishing. Cygnus publishes 42 leading trade publications in 13 major markets, reaching over three million professionals, manufacturers and retail subscribers regularly. Cygnus' publications are staffed with award-winning, industry-recognized writers and editors.

8. Interactive. With 38 website destinations, Cygnus' interactive division is a leading online provider of essential news, information, utilities and e-commerce services to 13 unique markets, providing industry news and information to over two million B2B professionals

annually. Cygnus offers its interactive customers a full complement of updated industry news and award-winning editorial as well as video, webinars, online catalogs, e-newsletters and digital supplements and editions. In 2008, Cygnus interactive websites generated over 180 million page views with nearly two million unique visitors per month.

9. Expositions. Cygnus' exposition division is a leader in producing industry expositions, consistently providing solutions for doing business successfully. It produces approximately 32 trade shows and events annually, managing hundreds of thousands of square feet for thousands of exhibitors and tens of thousands of attendees each year. Additionally, Cygnus is at the forefront in producing electronic show dailies which include broadcast components, and Cygnus also produces custom programming from expo clients for use at trade shows.

B. Economic Performance and Other Challenges.

10. Cygnus' capital structure is highly leveraged, with approximately \$206 million in total funded debt (inclusive of accrued interest) as of June 30, 2009. Cygnus' funded debt consists primarily of (i) not less than \$173 million of senior, first lien debt under a credit agreement (the "Prepetition Credit Agreement") dated as of July 13, 2004, having General Electric Capital Corporation ("GECC") as agent; and (ii) approximately \$33 million of junior, second lien debt under a term loan dated as of July 13, 2004, having Barclays Bank PLC ("Barclays") as agent. In addition, Cygnus has issued approximately \$81 million of Series A Redeemable Preferred Stock (as of June 30, 2009, including accretion), approximately \$109,820 of Series B Preferred Stock (as of June 30, 2009), and approximately \$4,252 of Series C Preferred Stock (as of June 30, 2009).

11. Based on 2008 EBITDA of \$23 million, the total leverage ratio (secured debt) is approximately 8.9x and the aggregate leverage is 12.5x (including Series A but excluding Series B and Series C Preferred Stock).

12. Since the second quarter of 2008, Cygnus has been unable to meet its total leverage ratio covenants and has been in default under its financing agreements. The result of the covenant default was that lenders denied the company use of the \$13 million of availability under the Prepetition Credit Agreement, and Cygnus' liquidity has become constrained. Cygnus has been unable to make regular debt service payments to either the senior secured lenders or junior secured lenders, and has been operating under a nonbinding forbearance from the lenders. Further, as a result of these events, Cygnus' credit rating has been downgraded by Moody's and Standard & Poor's.

13. Additionally, Cygnus faces certain challenges that are not specific to it, but rather are being seen across the B2B industry. In addition to decreased advertising arising from the current economic climate, the B2B industry specifically has undergone a fundamental change driven by enhanced functionality of online advertising and tools causing traditional advertisers to reduce their allocation of resources to B2B publications and increase spending in their marketing budgets on their own websites.

14. Finally, Cygnus has been negatively affected by the overall shift away from print media. Although Cygnus has three media platforms, the majority of the business is devoted to and revenue is derived from print media. The management team continues to believe that in order to be more successful, the Cygnus model needs to continue to shift toward interactive media and away from print, providing the most appropriate balance for Cygnus' advertisers.

C. Sale Efforts; Negotiations with Lenders.

15. More than three years ago, the Board of Directors of Cygnus engaged a well-known, leading investment bank to conduct a process to broadly market the company. This marketing process was unsuccessful in producing a credible bid that satisfied the Board of Directors. After a change in management teams and approximately twelve months later, the Board of Directors retained a nationally recognized boutique investment bank focused on media companies to again market the company through a solicitation process where numerous parties were contacted. During this period Cygnus undertook a considerable internal restructuring designed to address the business challenges facing all print media companies.

16. The second marketing process concluded with the leading party providing a bid that failed to satisfy the secured creditors of the company and would not provide a recovery for other constituents. As noted above, the sale processes occurred at a time when print media businesses were (and continue to be) in considerable upheaval, and when the economy as a whole has been subject to considerable decline.

17. Due to these disappointing marketing process results, Cygnus engaged Miller Buckfire & Co., LLC ("Miller Buckfire") to assist the company's efforts to address its liquidity constraints and its overleveraged balance sheet. Miller Buckfire is an investment banking firm with considerable expertise in distressed scenarios, including ones such as those faced by the company where the value of a company is less than its secured debt.

18. Miller Buckfire has performed a number of tasks simultaneously, including resoliciting the leading bidder noted above, soliciting interest from potential investors and strategic partners and conducting negotiations with Cygnus' secured lenders and preferred equity holders regarding an internal restructuring of the company's balance sheet. There have been a

number of sit down meetings with and/or management presentations to interested parties and extensive negotiations with the senior secured and junior secured lenders.

19. Unfortunately, the multiple sales processes did not produce a buyer who could or would purchase Cygnus for an amount necessary to satisfy even the company's senior secured debt. As a result, Miller Buckfire and Cygnus turned their attention to the various restructuring possibilities. After examining the options, including both a chapter 11 bankruptcy filing and an out-of-court restructuring, Miller Buckfire and Cygnus concluded that an out-of-court restructuring presented the most viable option for the Debtors, as it likely would have the least impact on the Debtors' going concern value, the lowest cost of implementation and potentially could be consummated more quickly than the other alternatives. These factors translated into the best potential return for the Debtors' stakeholders.

20. The result is that Miller Buckfire and Cygnus developed, along with GECC, the other senior lenders, Barclays, the holders of the Series A Preferred Stock and the holders of a majority in interest of the Debtors' voting equity, a proposed restructuring that would convert a large portion of the existing senior secured debt, and all of the existing junior secured debt, into equity and warrants, respectively (the "Out-of-Court Restructuring").

D. Need for Relief.

21. The Out-of-Court Restructuring was intensely negotiated over a series of months, among the Debtors, GECC, the other senior lenders, Barclays, the holders of the Series A Preferred Stock and the holders of a majority in interest of the Debtors' voting equity. Throughout the process, each of GECC and Barclays has been in nearly constant contact with the registered holders of the senior secured debt and junior secured debt. Information and

documentation has been made available in real time to all senior lenders, including, in the case of the senior secured lenders, through an on-line document database (*Intralinks*).

22. Until the week of July 13, 2009, the Out-of-Court Restructuring had been proceeding apace. As early as Monday of that week, all of the parties were hopeful that the Out-of-Court Restructuring would close on July 16, 2009, and in fact, the professionals had already begun to collect the signatures of the parties to the Out-of-Court Restructuring agreements when an unexpected obstacle arose.

23. On July 14, 2009, the Debtors were informed by GECC that one of the 21 holders of the not less than \$173 million of senior, first lien debt, may refuse to consent to the Out-of-Court Restructuring. That holder, Genesis CLO 2007-2 Ltd. ("Leichtman Fund"), a fund managed by Levine Leichtman Capital Partners ("Levine Leichtman"), holds approximately \$6.4 million of the not less than \$173 million of senior, first lien debt, which is less than 4% of the dollar amount of the claims in that class. Nonetheless, on an out-of-court basis, the Prepetition Credit Agreement requires unanimous consent of the holders to effectuate the transactions required. See Prepetition Credit Agreement, § 11.2(c).

24. Since that time, each of the Debtors, GECC and Barclays, and their respective professionals, have attempted to obtain Levine Leichtman's consent – with no success. Levine Leichtman's refusal to consent has therefore made an out-of-court solution impossible. Given the foregoing factors, the Debtors have determined that a chapter 11 prepackaged plan affords them the best option to preserve and realize upon the value of the companies and is the only remaining option to implement the agreed upon restructuring.

25. In consultation with their professionals, and after careful examination, the Debtors' Boards of Directors, the Debtors, GECC and Barclays have determined that chapter 11,

combined with the prepackaged Plan, is the best and most efficient way to maximize a return for the Debtors, their estates, and all parties-in-interest. Additionally, the Debtors have entered into a cash collateral agreement with GECC which, subject to Bankruptcy Court approval, allows the Debtors' the use of cash collateral to ensure that the Debtors will have sufficient liquidity to complete the Chapter 11 process and effectuate the Plan.

26. Consistent with the terms of the Out-of-Court Restructuring previously agreed to by the Debtors, all but one of the holders of the senior, first lien debt and all of the holders of the junior, second lien debt, the Plan seeks to impair only the not less than \$173 million of senior, first lien debt under a Prepetition Credit Agreement (Class 3), the approximately \$33 million of junior, second lien debt (Class 4), any intercompany obligations (Class 6) and the existing equity interests in the Debtors (Class 7 and 8). Holders of other secured claims and general unsecured claims will have their allowed claims reinstated, or, at the option of the Debtor, paid in full. The result is that the Plan provides for no impairment of virtually all the going-concern obligations of the Debtors, as well as the conversion of a large portion of the existing senior secured debt, and all of the existing junior secured debt, to equity and warrants, respectively. The conversion of debt to equity results in a greatly reduced debt service and a largely deleveraged balance sheet.

27. On July 27, 2009, the Debtors solicited votes for or against the Plan from Class 3 and 4, the only Classes entitled to vote under the Plan. As noted above and contained in the voting affidavit of Garden City Group² filed contemporaneously herewith, approximately 95% in number and approximately 96% in dollar amount of Class 3 creditors (all but the Leichtman Fund) have accepted the Plan and 100% in number and dollar amount of Class 4 creditors have voted to accept the Plan. Class 7 and Class 8 creditors were not solicited as they are receiving no distributions on account of their claims/interests and are deemed to have rejected the Plan.

² The Garden City Group is the Debtors' proposed Claims, Noticing and Balloting Agent.

28. The existence of a Plan that has been overwhelmingly approved by the voting Classes, as well as the cash collateral agreement between GECC and the Debtors, will allow the Debtors to transition through bankruptcy as smoothly and as quickly as possible. The Debtors' publications, interactive web site and expositions should be virtually unaffected. Further, out of an abundance of caution, the Debtors seek approval as part of their "first day motions" relief which will allow the Debtors' obligations to employees and critical vendors to be honored in the ordinary course of business until such time as the Plan is confirmed and the obligations reinstated.

29. The Chapter 11 Cases have therefore been instituted to enable the Debtors to effectively take these steps and otherwise maximize the value of their assets.

Relief Requested

30. Prior to the Petition Date and in the ordinary course of their business operations, the Debtors offered and engaged in certain practices and programs, as described herein (collectively, the "Customer Programs"), for the benefit of the Debtors and the success of their businesses and also for the benefit of certain of their customers, subscribers, tradeshow exhibitors and attendees, and vendors (collectively, the "Customers"). The Customer Programs have benefited the Debtors' businesses by augmenting their positive reputation and goodwill in the marketplace, increasing their sales and, in some cases, by reducing their expenses. The Customer Programs, which the Debtors estimate involve approximately 144,500 Customers, include reimbursements and deliveries related to prepaid advertising and subscriptions, adjustments for advertising and billing errors, advance deposits from tradeshow exhibitors and attendees, providing customized webinars and publishing for Customers and barter agreements between the Debtors and certain of their Customers.

31. By this Motion, the Debtors request entry of the Proposed Order, pursuant to sections 105(a), 363, 1107 and 1108 of the Bankruptcy Code, authorizing the Debtors to (a) continue to perform and honor their obligations under the Customer Programs, including obligations arising pre-petition, as they determine appropriate in the ordinary course of business, and (b) continue, renew, replace, implement new and/or terminate Customer Programs as they deem appropriate, in the ordinary course of business, without further order of the Court, in order to maximize the value of the Debtors' estates for the benefit of creditors and other parties in interest.³

32. Moreover, because the Debtors will not be treating their Customers as creditors in these Chapter 11 Cases, and in order to preserve goodwill and avoid massive confusion and resulting administrative expenses that may otherwise occur, the Proposed Order provides that the Customers, and their agreements with the Debtors in respect of Customer Programs, need not be separately listed or identified in the Debtors' Schedules or Statement of Financial Affairs, as may be filed pursuant to Bankruptcy Rule 1007(b)(1). The Proposed Order also specifies that such Customers need not receive notice of the Chapter 11 Cases in respect of the Customer Programs barring the Debtors' request for authorization to alter or terminate the Customer Programs outside of the ordinary course of business. As such, the Debtors intend not to provide notice to the Customers of the Chapter 11 Cases as the Debtors do not intend to alter or terminate the Customer Programs outside of the ordinary course of business.

33. Although it would be difficult if not impossible to state with specificity the actual costs of each Customer Program, the Debtors anticipate that the monetary value of their

³ Nothing contained herein shall constitute, nor shall it be construed as, a request to assume or adopt any executory contract with respect to any Customer. The Debtors expressly reserve all rights with respect to the continuation, cessation, assumption, adoption, modification or rejection of any executory contract with any Customer. The Debtors also reserve the right to contest the amounts claimed to be due, if any, by any Customer in the ordinary course of business.

obligations in respect of all of the Customer Programs, as of the Petition Date, may be estimated in the approximate amount of \$7,685,000, consisting of approximately \$1,850,000 for reimbursements and deliveries related to prepaid advertising and subscriptions (the “Make-Good Program”), approximately \$35,000 in credits for advertising and billing adjustments, which estimate is based on past results (the “Billing Adjustments”), approximately \$5,000,000 received as deposits from exhibitors and attendees for upcoming tradeshows (the “Prepaid Tradeshow Deposits”), approximately \$300,000 for the services provided by Cygnus’ custom group (the “Custom Group”), and approximately \$500,000 for various barter agreements (the “Barter Agreements”), all as described more fully below.

34. For the reasons set forth herein, the Debtors believe it is in the best interests of the Debtors and their estates to continue to perform their Customer Programs in the ordinary course of business.

The Debtor’s Customer Programs

35. The Debtors’ receipt of authority to continue to perform their obligations under the Customer Programs in the ordinary course of business is necessary to preserve the Debtors’ critical business relationships and Customer goodwill in order to maximize the value of the Debtors’ estates for the benefit of their creditors and other parties in interest. The Customer Programs are vital to the Debtors’ businesses and allow the Debtors to meet competitive pressures, maximize sales, foster Customer satisfaction, and generate brand loyalty, which leads to retaining existing Customers, attracting new ones and ultimately enhancing earnings. The following are general descriptions of the Debtors’ Customer Programs.

A. The Make-Good Program.

36. The Debtors have sold approximately 1,372,000 subscriptions that were active as of the Petition Date for issues which Customers have paid for but not yet received in the ordinary

course of business (the “Prepaid Subscriptions”). If the Debtors were to cease to perform their obligations to their subscribers in respect of the Prepaid Subscriptions, the Debtors’ goodwill would be severely undermined and they may lose most if not all of these subscribers, which would harm their businesses by reducing sales. Indeed, even a suspension in the Debtors’ performance of their obligations on account of the Prepaid Subscriptions is likely to result in the loss of advertisers who purchase advertisements from the Debtors to run in such publications and could have a devastating effect on the Debtors’ future business prospects.

37. Moreover, as noted, the Debtors regularly print advertisements in their various publications. Despite the Debtors’ best efforts, from time to time advertisements are run with errors or are otherwise not to the advertiser’s reasonable satisfaction. To the extent such issues occur, the Debtors typically rerun the advertisement at no additional charge or, if an advertising error cannot be corrected (for example, if the advertisement was date sensitive), the Debtors issue credit on account of the error.

38. The Make-Good Program, which consists of the Debtors’ performance of the foregoing obligations, is intended to ensure the satisfaction of the Debtors’ subscribers and advertisers and to retain their goodwill and long-term business. Without the Make-Good Program, the Debtors would lose subscribers and advertisers. Such Customer flight would be devastating for the Debtors’ businesses. Accordingly, the Make-Good Program is essential to maximizing the value of the Debtors’ estates, and by this Motion the Debtors request authority to continue to honor all pre-petition obligations related to the Make-Good Program in the ordinary course of business.

B. Billing Adjustments.

39. Despite the Debtors’ best efforts, from time to time in the ordinary course of the Debtors’ businesses, subscribers, advertisers and other Customers are invoiced in error for

amounts that they do not actually owe or overpay their obligations to the Debtors. When a Customer pays for amounts that are billed in error, the Debtors correct the billing errors through Billing Adjustments which generally take the form of reimbursements or credits.

40. To preserve their Customers' business and goodwill, it is essential that the Debtors be authorized to continue to issue Billing Adjustments and honor prepetition amounts owed in connection therewith. Therefore, by this Motion, the Debtors request authority to continue the Billing Adjustments and honor all prepetition obligations related thereto in the ordinary course of business.

C. Prepaid Tradeshow Deposits.

41. In the Debtors' tradeshow business, the Debtors regularly receive Tradeshow Deposits from Customers and attendees in the form of deposits for booth space and attendance at future tradeshows. As of the Petition Date, the Debtors have received approximately 63,300 Tradeshow Deposits from approximately 62,000 unique Customers in an estimated aggregate amount of approximately \$5,000,000. Such Tradeshow Deposits reflect amounts paid for booth space and attendance at 30 tradeshows occurring within the next 9 to 12 months. The most significant portion of these Tradeshow Deposits are for shows planned for the third quarter of calendar year 2009.

42. The Debtors require the authority to accommodate their Customers who have made Tradeshow Deposits in order to avoid losing these Customers and to encourage past and prospective Customers to pay Tradeshow Deposits in the future. Indeed, given the nature of a Tradeshow Deposit, where a Customer makes a payment to participate at an upcoming event as an exhibitor or attendee, which payment may be substantial to the Customer, the Debtors anticipate that their non-performance of such obligations may foreclose the opportunity for many of these Customers to participate in the subject tradeshows and be highly disruptive to the

business plans of many of their Customers. Such non-performance would engender ill will and may generate a variety of claims against the Debtors' estates. Accordingly, it is in the best interests of the Debtors' estates and their creditors and other interested parties that the Debtors perform their obligations with respect to the Tradeshow Deposits in the ordinary course of business. Accordingly, by this Motion, the Debtors request the authority to honor their prepetition obligations with respect to the Tradeshow Deposits in the ordinary course of business.

D. Barter Agreements.

43. In the ordinary course of Debtors' tradeshow and publications businesses, the Debtors enter into the Barter Agreements with certain Customers and vendors under which the Debtors effectuate a set-off with certain Customers and vendors whereby the Debtors trade, in the case of the tradeshows, booth space, and in the case of the publications business, advertising, for various goods and services, including, for example, apparel, equipment, promotional services and merchandise, such as cups and mugs. The Debtors estimate that they are party to approximately 1,200 Barter Agreements with an estimated obligation value, as of the Petition Date, of not more than approximately \$500,000.

44. Unless the Debtors continue to accommodate their Customers and vendors under the Barter Agreements, the Debtors are likely to suffer reduced sales, increased costs (where payment was otherwise made in barter), as well as impairment to the value of their goodwill. Such damage to the Debtors' businesses would likely be far in excess of the costs to the Debtors' estates of performing their obligations under the Barter Agreements. Accordingly, it is in the best interests of the Debtors and their estates and creditors that the Debtors continue to perform their obligations under the Barter Agreements. By this Motion, the Debtors request the authority to honor their prepetition obligations with respect to the Barter Agreements in the ordinary course of business.

E. Custom Group.

45. The Debtors' Custom Group is a business unit of the company that provides customized publications and webinars to Cygnus' largest Customers. Customers rely on the Custom Group to prepare different publications that are geared specifically to that particular Customer. Accordingly, it is in the best interests of the Debtors and their estates and creditors that the Custom Group continue to perform their obligations to their Customers. Without this Customer Program, Customers would be forced to find new avenues in which to obtain customized services, which would not only be a detriment to Cygnus' Customers but also to Cygnus, whose reputation and operations would suffer without the ability to continue the Custom Group programs. Accordingly, the services provided by the Custom Group are essential to maximizing the value of the Debtors' estates, and by this Motion the Debtors request authority to continue to honor all prepetition obligations related to the Custom Group in the ordinary course of business.

Basis for Relief

46. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor-in-possession to continue to operate its businesses. Further, section 363(c) of the Bankruptcy Code authorizes a debtor-in-possession operating its businesses pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or a hearing. The Debtors submit that continuing, renewing, replacing, initiating, and/or terminating their Customer Programs in the ordinary course of business is permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code.

47. In addition, to the extent that the Debtors' obligations under the Customer Programs are considered prepetition obligations, the Debtors should be authorized to honor and continue the Customer Programs pursuant to section 363(b)(1) of the Bankruptcy Code. See In

re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). In order to do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors” Ionosphere Clubs, 98 B.R. at 175.

48. Here, the continued loyalty of the Debtors’ Customers and the Debtors’ ability to attract new Customers is critical to their continued operations and the success of their restructuring. If the Debtors are prohibited from honoring and maintaining the Customer Programs consistent with their past business practices, then Customers’ lost confidence in the Debtors will damage the Debtors’ business to an extent that far exceeds the costs associated with honoring and continuing such practices. At this critical time, the Debtors cannot afford to lose the loyalty of their Customers or to be placed at a competitive disadvantage with respect to prospective Customers. The Proposed Order will protect the Debtors’ goodwill and going concern value during this restructuring process by authorizing the Debtors to perform their Customer Programs, which, in turn, will enhance the Debtors’ ability to generate revenue, thereby directly benefiting their estates, creditors and other parties in interest.

49. Additionally, section 105(a) of the Bankruptcy Code authorizes a court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The purpose of section 105(a) of the Bankruptcy Code is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 COLLIER ON BANKRUPTCY 105.01 (15th ed. rev. 2003). The Debtors submit that the relief requested in this Motion is critical to the Debtors’ reorganization and is justified under section 105(a) of the Bankruptcy Code.

50. Moreover, the Debtors anticipate that most of the Customer Programs constitute ordinary business practices for which no particular authorization may be required. Nevertheless,

out of an abundance of caution, the Debtors seek authority from this Court to honor their pre-petition obligations arising from the Customer Programs in the ordinary course of business.

51. Consistent with Bankruptcy Rule 6003(b), immediate entry of an order approving the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates. As mentioned above, the success and viability of the Debtors' businesses are dependent upon the loyalty and confidence of their Consumers. The continued support of the Customers is essential to the survival of the Debtors' businesses and the Debtors' ability to reorganize. Any delay in honoring various Customer Programs or discontinuation of Customer Programs as a result of the commencement of these cases will severely and irreparably harm the Debtors' relations with Customers at a time when the loyalty and support of such Customers are required in order to maximize the value of the Debtors' estates for the benefit of their creditors and other parties in interest. The Debtors' creditors also will benefit from the relief sought herein because the value of the Debtors' estates will be maximized as a result of the Debtors' honoring their obligations under the Customer Programs.

52. The Debtors will likely require minimal expenditure of estate funds in order to fulfill their obligations under the Customer Programs, when considering the revenue that is expected to be received provided the Customer Programs remain in place and anticipating that any cost of continuation of such programs will be funded principally (if not exclusively) by future income from the Customers' continued purchases of the Debtors' products. Accordingly, to preserve the value of their estates, the Debtors must be permitted, in the Debtors' sole discretion, to continue honoring the Customer Programs without interruption postpetition. In addition, to provide necessary assurances to the Debtors' Customers on a go-forward basis, the Debtors request authority to continue honoring or paying all obligations to Customers, whether

such obligations arise prior to or after the Petition Date in the ordinary course of the Debtors' businesses.

53. In similar circumstances, where retaining the loyalty and patronage of Customers is critical to a successful reorganization, courts in other cases, including cases in this District, have granted relief similar to that requested herein. See, e.g., In re The Fairchild Corporation, Case No. 09-10899 (CSS) (Bankr. D. Del. Mar. 20, 2009); In re Pierre Foods, Inc., No. 08-11480 (KG) (Bankr. D. Del. July 16, 2008); In re Tropicana Entm't, LLC, No. 08-10856 (KJC) (Bankr. D. Del. May 6, 2008); In re Leiner Health Prods. Inc., No. 08-10446 (KJC) (Bankr. D. Del. March 12, 2008); In re Tweeter Home Entm't Group, Inc., No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007). In addition, the Debtors expect to have sufficient resources available to maintain all Customer Programs, to the extent described herein.

54. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to: (a) pay and perform such of their pre-petition obligations under the Customer Programs as they deem appropriate, and (b) continue, renew, replace, implement, and/or terminate such of their Customer Programs as they deem appropriate, in the ordinary course of business without further application to, or order of, the Court.

55. Nothing contained herein is intended or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code.

56. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the

expiration of ten (10) days after entry of the order, unless the court orders otherwise.” As set forth above, the adequate assurance proposed herein is essential to prevent potentially irreparable damage to the Debtors’ operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the ten (10) day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

Notice

57. The Debtors shall provide notice of this Motion by facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors’ largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) counsel to the Debtors’ prepetition secured lenders; (iv) the Department of Justice; and (v) the Internal Revenue Service. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Del. Bankr. L.R. 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

No Prior Application

58. No prior application for the relief requested herein has been made to this Court or any other court.

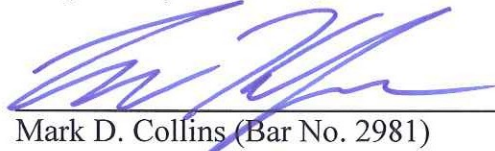
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Conclusion

WHEREFORE the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, (a) authorizing the Debtors to pay and perform such of their pre-petition obligations under the Customer Programs as they deem appropriate in the ordinary course of business; (b) authorizing the Debtors to continue, renew, replace, implement, and/or terminate such of their Customer Programs as they deem appropriate in the ordinary course of business without further application to the Court; and (c) granting such further relief as is just and proper.

Dated: August 3, 2009
Wilmington, Delaware

Respectfully submitted,



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*Proposed Co-Counsel for the
Debtors and Debtors-in-Possession*

EXHIBIT A

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors, in their business judgment, are authorized, but not directed, to honor and perform their obligations in regard to their Customer Programs, without regard to whether the Debtors' obligations under any such Customer Programs arose before or after the Petition Date.
3. The Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify and/or terminate such of their Customer Programs as they deem appropriate, in the ordinary course of business, without further application to, or order of, the Court.
4. Any payment or transfer made or service rendered by the Debtors pursuant to this Order is not, and shall not be deemed, an admission as to the validity of any claim, a waiver of any rights the Debtors may have to dispute such claim or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.
5. The Debtors need not separately list or identify their Customers, or their agreements in respect of Customer Programs, in the Debtors' Schedules or Statement of Financial Affairs, which may be filed pursuant to Bankruptcy Rule 1007(b)(1), and such Customers need not receive notice of the Chapter 11 Cases in respect of the Customer Programs barring the Debtors' request for authorization to alter or terminate the Customer Programs outside of the ordinary course of business.
6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted pursuant to this Order.

7. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

8. Notwithstanding the applicability of Bankruptcy Rule 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE