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Network Distribution International Inc.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re:</b>	)	<b>Case No. 08-10152 (JMP)</b>
	)	<b>(Jointly Administered)</b>
<b>Quebecor World (USA) Inc., et al.,</b>	)	
	)	<b>Chapter 11</b>
<b>Debtors.</b>	)	
_____	)	<b>Judge James M. Peck</b>

**OBJECTION TO DEBTORS' MOTION FOR AN ORDER TO AUTHORIZE THE  
ESTABLISHMENT AND IMPLEMENTATION OF EXCLUSIVE, GLOBAL  
PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

Day International, Inc. and its affiliates Varn International Inc. and Network Distribution International Inc. (collectively, "Day"), by and through their undersigned counsel, Baker & McKenzie LLP, hereby file this Objection (the "Objection") to the Motion for an Order to Authorize the Establishment and Implementation of Exclusive, Global Procedures for Treatment of Reclamation Claims (the "Motion"). In support of this Objection, Day respectfully states as follows:

## **PRELIMINARY STATEMENT**

Day objects to the Motion because the relief proposed by the Debtors in the Motion (a) impermissibly provides substantial benefits to the Debtors by permitting the Debtors an unfettered opportunity to consume or otherwise dispose of goods subject to reclamation demands; (b) imposes no obligations on the Debtors; (c) eradicates the absolute right of sellers to reclaim their goods without providing any protection or remedy to such reclaiming sellers; and (d) potentially permits the Debtors to cherry-pick among reclamation claimants and treat similarly situated creditors differently. Day respectfully requests this Court deny the Motion.

## **BACKGROUND**

1. On January 21, 2008 (the “Petition Date”), the above-captioned Debtors, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. Prior to the Petition Date, Day supplied the Debtors with goods, including flat blankets, printer sleeves, printing chemicals, and related products (the “Goods”) for use in printing presses in the ordinary course of the Debtors’ business operations.

3. On January 29, 2008, pursuant to sections 503 and 546 of title 11 of the United States Code (the “Bankruptcy Code”), Day made its written reclamation demand to the Debtors (the “Reclamation Demand”) demanding reclamation and return of all goods received by the Debtors within 45 days prior to the Petition Date.

4. The Reclamation Demand seeks reclamation of Goods, as described in the Demand, which total \$1,225,783.39. The Reclamation Demand also instructed the Debtors to immediately inventory the Goods subject to the Demand, keep them separate from all other inventory, and make arrangements for the return of the Goods at the Debtors’ expense. The

Demand also asserted an administrative expense claim for the value of goods received by the Debtors within twenty days before the Petition Date.

### **THE MOTION**

5. The Debtors filed the Motion on January 22, 2008, requesting that this Court enter an order establishing and implementing exclusive procedures for the reconciliation and treatment of all reclamation claims asserted against the Debtors (the “Reclamation Procedures”).

6. These proposed Reclamation Procedures provide that the Debtors will have 120 days after the Petition Date (the “Review Period”) to review and evaluate the validity of reclamation demands and to file a Reclamation Notice – although the Reclamation Procedures do not obligate the Debtors to file such a notice. The Debtors further propose that the Reclamation Procedures be the sole and exclusive method for the handling of reclamation claims and ask this Court to prohibit all holders of reclamation claims from seeking relief from the automatic stay or taking any other action for the resolution or treatment of their claims that does not conform to the Reclamation Procedures.

7. Most significantly, there is nothing in either the Reclamation Procedures or the Motion which prohibits the Debtors from consuming or otherwise disposing of any goods subject to the Reclamation Demand during or after the Review Period. Nor do the proposed procedures require the Debtors to do anything during or after the Review Period, including addressing the treatment of reclamation claims, other than stating that the treatment of such claims shall be reserved.

## OBJECTION TO MOTION

8. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended section 546(c) of the Bankruptcy Code. This amendment eliminated the ability of a court to deny a seller who complied with the provisions of the statute the right to reclaim goods.

9. Section 546(c) provides:

(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods –

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the commencement of the case, if the 45-day period expires after the commencement of the case.

(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

11 U.S.C. § 546(c).

10. Thus, a seller which complies with the provisions of the statute has an absolute right to reclaim goods received by a debtor within 45 days prior to the Petition Date provided that the debtor was insolvent when it received such goods. Absent an agreement amongst the parties, the Debtors are required under section 546(c) to return such goods to sellers who make a demand in compliance with the Bankruptcy Code.

11. The proposed Reclamation Procedures, however, would eradicate Day's statutory right to reclaim the Goods by (a) providing the Debtors with an unfettered opportunity during the Review Period to consume or otherwise dispose of the Goods subject to Day's Demand, (b) preventing Day from taking any actions to preserve their right to reclaim during the Review

Period, and (c) providing Day with neither assurance that after the expiration of the Review Period that Day's Goods will be returned nor assurance that Day will be compensated for any Goods consumed by the Debtors.

12. If the Debtors need time to evaluate the reclamation demands, the Debtors should be required to (a) inventory, segregate, and hold in trust all goods subject to reclamation demands and provide adequate protection to the holders of such reclamation demands against the diminution of value of such goods while in the Debtors' possession; and (b) provide for treatment of reclamation claims that are determined to be valid in the form of allowed administrative claims.

13. Furthermore, to the extent any other party or creditor who made a reclamation demand receives more favorable treatment of their reclamation demand from the Debtors, Day objects to such treatment. Pursuant to the Bankruptcy Code, similarly situated creditors must be treated the same. See In re Iridium Operating LLC, 478 F.3d 452, 464 (2d Cir. 2007).

14. For the reasons set forth above, the Reclamation Procedures proposed by the Debtors impermissibly provide substantial benefits to the Debtors, impose no obligations on the Debtors, and eradicate the absolute right of sellers to reclaim their goods without providing any protection or remedy to such reclaiming sellers.

WHEREFORE, Day respectfully requests (a) that the Debtors' Motion for an Order to Authorize the Establishment and Implementation of Exclusive, Global Procedures for Treatment

