

Hearing Date: **March 20, 2008 at 10:00 a.m.**  
Objection Deadline: **March 18, 2008 at 4:00 p.m.**

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

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

**MOTION OF THE DEBTORS PURSUANT TO 11 U.S.C. § 365 TO ASSUME AN  
EXECUTORY CONTRACT WITH GOSS INTERNATIONAL AMERICAS, INC. FOR  
ONE (1) UNIVERSAL 45 FOUR-HIGH TOWER ADD ON WITH RELATED  
EQUIPMENT**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move this Court (the “Motion”) for the entry of an order substantially in the form of Exhibit A hereto, authorizing the assumption of an executory contract pursuant to which Debtor Quebecor World Waukee Inc. (“Waukee”) and Goss International Americas, Inc. (“Goss”) agreed upon terms under which Waukee would purchase a Universal 45 Four-High Tower Add-On with related equipment. In support of this Motion, the Debtors rely on the Declaration of Roswell Dennison submitted herewith. In further support of the Motion, the Debtors state as follows:

## **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief requested herein is section 365 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **Background**

4. On January 21, 2008 (the “Petition Date”), the 53 Debtors filed their voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).
5. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this case.
6. On January 31, 2008, an Official Committee of Unsecured Creditors was appointed.
7. On January 20, 2008, the Debtors’ corporate parent, Quebecor World, Inc. (“QWI”), together with each of the Debtors, commenced a proceeding before the Superior Court, Commercial Division, for the Judicial District of Montreal (the “Canadian Court”) for a plan of compromise or arrangement (the “Canadian Proceeding”) under the Canadian Companies’ Creditors Arrangement Act (“CCAA”).<sup>1</sup> Each of the Debtors was joined in the Canadian

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<sup>1</sup> The Canadian Court appointed Ernst & Young, Inc. to serve as Monitor for the Canadian Proceeding, and UBS Investment Bank is serving as QWI’s financial advisor.

Proceeding in order that each Debtor may obtain the protection of a stay under the CCAA as well as under the Bankruptcy Code.

### **The Debtors' Business**

8. The Debtors collectively operate the second largest commercial printing business in the United States, maintaining approximately 78 facilities in 29 states. QWI is a Canadian corporation and the corporate parent of the Debtors, having been incorporated on February 23, 1989 pursuant to the Canada Business Corporations Act to combine the assets constituting what was then the printing division of Quebecor Inc. (QWI, together with the Debtors and all of QWI's debtor and non-debtor subsidiaries and affiliates are referred to herein as "QW World").

9. QW World's key customers include the largest publishers, retailers and catalogers in the geographic areas in which QW World operates. In the magazine group, QW World prints magazines for publishers, including, for example, 15 magazine titles for Time, Inc.,<sup>2</sup> Cosmopolitan for Hearst Corp., *Elle* for Hachette-Filippachi Magazines US, *ESPN the Magazine* for Walt Disney Corp., *Forbes* for Forbes Inc. and *In Touch Weekly* for Bauer Publishing USA, while QW World's retail insert group includes customers such as CVS, Sears, JC Penney, Kohl's, and Walgreens. QW World's operations also encompass (a) catalogs for customers such as Williams-Sonoma, Oriental Trading Company, Victoria's Secret, IKEA, Cabelas and Bass Pro, (b) books for McGraw-Hill, Scholastic, Simon & Schuster, Thomas Nelson, Time-Warner and Pearson Education, (c) directories for Yellow Book USA, RH Donnelly, Windstream and Frontier in the United States, the Yellow Pages Group in Canada, as well as Telemex and Telefonica in Latin America and (d) direct mail services.

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<sup>2</sup> These include *Time*, *Fortune*, *Money*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *Southern Living*, *Cooking Light* and *Coastal Living*.

### **The Agreement to Purchase Tower for Printing Press**

10. The contract that is the subject of this Motion pertains to an agreement between Waukee and Goss for the purchase of one Universal 45 four-high tower add-on with related equipment (the “Tower”). The Tower would be added as an additional tower to an existing Goss Universal 45 press (the “Goss U45 Press”) at the Debtors’ facility in Waukee, Iowa. The Goss U45 Press is used primarily in the Debtors’ telephone directory business. The Tower would provide additional page and color capability to the existing Goss U45 Press. Increasing the range of page and color capability that the Debtors are able to offer to their customers will substantially increase their ability to generate revenue in the telephone directory business.

11. Beginning mid-April 2008, the Waukee facility will lose a substantial amount of earnings each week the Tower is not operational, as it will have to outsource a substantial amount of work produced on the Goss U45 Press. Installation of the Tower was scheduled for March-April because the facility is less busy during this time and could more easily afford to take the Goss U45 Press offline for the time it will take to complete the installation and testing for the Tower. As of the date of this Motion, the Tower has been manufactured and shipped to Waukee, and Goss has represented to the Debtors that it is prepared to begin installation of the Tower immediately following assumption of the Agreement (defined below).

12. The contract pursuant to which Waukee and Goss agreed on the terms of Waukee’s purchase of the Press Tower consists of (i) a purchase and security agreement stating the terms of the sale and the general sales conditions, dated March 21, 2007 and (ii) a contract amendment dated September 25, 2007, pursuant to which the price and equipment specifications were amended (together, the “Agreement”).

13. Waukee is obligated to make payments in accordance with the payment terms set forth in the Agreement. Waukee made the payments due in July 2007 and October 2007. The Debtors did not make a prepetition payment of \$705,458 that was due on January 2, 2008. The Debtors did, however, make the subsequent postpetition payment that was due under the Agreement.

14. As of the date of this Motion, the Debtors have made down payments and installment payments totaling 45% of the total purchase price. The unpaid amount currently due and owing on account of the Tower is \$705,458 (the payment that was due on January 2, 2008), which is the amount that would be required to cure the Debtors' defaults under the Agreement pursuant to section 365(b) of the Bankruptcy Code (the "Cure Amount").

#### **Relief Requested**

15. The Debtors request authorization to assume the Agreement, pay the Cure Amount to cure existing defaults and provide Goss with adequate assurance of future performance. At the present time, the Debtors' only cure obligation under the Agreement is the Cure Amount, as set forth above. The Tower is necessary to the Debtors' telephone directory business and will allow the Debtors to avoid outsourcing work related to that line of business. Moreover, because the Debtors have already installed the Goss U45 Press at their Waukee facility, Goss is the only manufacturer that produces a tower add-on that is compatible with the Debtors' existing equipment. Finally, the generally favorable terms of the Agreement make it a valuable asset of the Debtors' bankruptcy estates. Accordingly, the Debtors seek authorization to cure defaults and assume the Agreement.

### **Basis for Relief Requested**

16. Section 365 of the Bankruptcy Code authorizes a debtor to assume, assume and assign or reject its executory contracts and unexpired leases subject to the approval of the Court.

The relevant provisions of section 365 provide as follows:

(a) Except as provided 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 . . . ;

(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 . . . .

See 11 U.S.C. §§ 365(a) and (b)(1). Accordingly, section 365 of the Bankruptcy Code authorizes assumption of the Agreement provided that defaults are cured and the debtor provides adequate assurance of future performance.

17. Courts approve motions to assume, assume and assign or reject executory contracts or unexpired leases where the debtor shows that its decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993) (section 365 of the Bankruptcy Code "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the

debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject”); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts under section 365 is that of “business judgment”); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) (“A bankruptcy court reviewing a trustee’s decision to assume or reject an executory contract should apply its ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it.”).

18. Courts generally will defer to a debtor’s business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See In re Dana Corp., 358 B.R. 567, 581 n.20 (Bankr. S.D.N.Y. 2007) (“A court may approve motions to assume, assume and assign or reject executory contracts upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment.”); In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (“The decision to assume or reject an executory contract is within the sound business judgment of the debtor-in-possession . . . and in reviewing such a decision the bankruptcy court merely ‘reviews the trustee’s or debtor’s decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.’”) (citing In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993)); In re Footstar, Inc., 323 B.R. 566, 568 (Bankr. S.D.N.Y. 2005) (“The standard to be applied by a court in determining whether an executory contract or unexpired lease should be assumed is the ‘business judgment’ test, which is premised upon the debtor’s business judgment that assumption would be beneficial to the estate.”); In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”).

19. The “business judgment” test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the

debtor's estate. See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) (“In reviewing a debtor’s decision to assume or reject an executory contract, the court must examine the contract and circumstances and apply its best ‘business judgment’ to determine if the assumption or rejection would be beneficial or burdensome to the estate.”).

20. Whether a debtor has provided a counterparty with “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective assignee of a lease from a debtor has financial resources to perform and has expressed a willingness to devote sufficient funding to its business to do so; chief determinant of adequate assurance under a lease is whether it appears that the rent will be paid).

21. The Debtors have met the requirements for assumption of the Agreement. First, assumption of the Agreement is a sound exercise of the Debtors’ business judgment. The Debtors have entered into an agreement to purchase equipment that is integral to the Debtors’ ability to be a viable competitor in the telephone directory business, and represents a key element of the Debtors’ efforts to retool and modernize their facilities and provide state-of-the-art service

to their customers. Finally, the Debtors have already paid approximately 45% of the total purchase price under the Agreement.

22. The Debtors will satisfy their obligations under section 365(b) of the Bankruptcy Code to cure defaults under the Agreement by paying Goss the Cure Amount promptly upon the Court's approval of this Motion. The Debtors' prepetition and postpetition performance under the Agreement demonstrates adequate assurance of their future ability to perform under the Agreement. Prior to the payments due on January 2, 2008, the Debtors made substantial payments and have timely paid the postpetition installment due under the Agreement.

23. The Debtors' representatives have held discussions with Goss to inform Goss of the Debtors' intent to assume the Agreement, and have provided the Goss with assurance of their ability to perform under the Agreement in the future. Goss has informed the Debtors that it consents to the assumption of the Agreement, and has demonstrated its willingness to continue to perform by delivering the Tower to the Debtors' Waukee facility.

24. Accordingly, assumption of the Agreement is a sound business decision that ensures that the Debtors will receive the equipment necessary for the ongoing operation of their businesses and on account of which they have already advanced substantial sums. In addition, the Debtors will cure existing defaults under the Agreement, have generally performed in accordance with the Agreement's terms and have access to sufficient funds to support their future performance. Accordingly, the Debtors request that the Court enter an order authorizing their assumption of the Agreement.

### **Memorandum Of Law**

25. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

### **Notice**

26. Notice of this Motion has been provided to all parties on the Notice List as set forth in the Case Management Order. A copy of the Motion is also freely available on the website of the Debtors' proposed claim and noticing agent, Donlin, Recano & Company, Inc. at [www.donlinrecano.com](http://www.donlinrecano.com).

### **No Prior Request**

27. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request an entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to assume the Agreement and cure existing defaults thereunder.

Dated: March 10, 2008  
New York, New York

Respectfully submitted,

/s/ Michael J. Canning  
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**EXHIBIT A**

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

In re

Quebecor World (USA) Inc., et al.,

Debtors.

Chapter 11

Case No. 08-10152 (JMP)  
Jointly Administered

Honorable James M. Peck

**ORDER PURSUANT TO 11 U.S.C. § 365 AUTHORIZING THE  
ASSUMPTION OF AN EXECUTORY CONTRACT WITH GOSS  
INTERNATIONAL AMERICAS, INC. FOR ONE (1) UNIVERSAL 45  
FOUR-HIGH TOWER ADD ON WITH RELATED EQUIPMENT**

Upon the motion (the “Motion”) of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing the Debtors to assume an executory contract with Goss International Americas, Inc. (“Goss”) for the purchase of a Universal 45 Four-High Tower Add-On with related equipment; the Court having reviewed the Motion and considered the statements of counsel at a hearing before the Court (the “Hearing”); and the Court having found that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion was appropriate under the circumstances, (e) the conditions for assumption of the Agreement (as defined in the Motion) under section 365 of the Bankruptcy Code, including the cure of any existing defaults thereunder, have been or will promptly be satisfied by the Debtors and (f) the Debtors have provided Goss with adequate assurance of their future performance under the Agreement; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish grounds for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized pursuant to 11 U.S.C. § 365 to assume the Agreement pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006. The Agreement shall be deemed assumed and effective as of the date of the entry of this Order.
3. Upon the entry of this Order, the Debtors are authorized to cure existing defaults under the Agreement, including making the payment of past due installments under the Agreement.
4. The requirement set forth in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.
5. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.
6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: March \_\_\_\_\_, 2008

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United States Bankruptcy Judge