

Hearing Date: **June 19, 2008 at 10:00 a.m.**  
Objection Deadline: **June 17, 2008 at 4:00 p.m.**

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**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

**MOTION OF THE DEBTORS FOR AUTHORITY TO ENTER INTO AMENDMENTS  
TO A PRINTING AGREEMENT WITH DEX MEDIA INC. AND TO ASSUME THE  
PRINTING AGREEMENT AS AMENDED**

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 them to enter into certain amendments to a printing agreement between Debtor Quebecor World (USA) Inc. (“QWUSA”) and Dex Media, Inc. (“Dex”), and to assume the printing agreement as thereby amended. In support of this Motion, the Debtors rely on the Declaration of Sean M. Twomey 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 are section 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 6006 and 9019 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 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 (the “Creditors’ Committee”) 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 Dex Printing Agreement**

10. This motion relates to a Master Agreement for Printing Services (the “Printing Agreement”) dated as of March 31, 2005, between QWUSA and Dex, on behalf of itself and its subsidiaries Dex Media EAST LLC and Dex Media West LLC.

11. Dex publishes white pages and yellow pages print telephone directories in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Dex was acquired in 2006 by R.H. Donnelley Corporation, one of the leading Yellow Pages publishers in the United States.

12. The Printing Agreement provides for QWUSA to print telephone directories for Dex, on terms and conditions set forth in the Printing Agreement, through December 31, 2014. The Printing Agreement calls for QWUSA to print these directories at its Loveland, Colorado plant and at its network of North American directory facilities. The sales volume of the Printing Agreement over the course of its term was estimated at approximately \$200 million. The parties have performed under the Printing Agreement for over three years, and the Debtors have met all of their obligations under the Printing Agreement.

13. Recently, as a result of significant developments since the Printing Agreement was entered into, the parties have discussed and agreed to certain additional modifications to the Printing Agreement to meet their respective business needs. These modifications are set forth in Amendment 1 and Amendment 2 to Master Agreement (the “Amendments”) which, collectively, will correct certain errors in the initial agreement, modify the schedules to the Printing Agreement and expand the scope of the business relationship.

14. Under this expanded agreement, the Printing Agreement will be extended by one year, through December 31, 2015, there are certain modifications to the schedules set forth in the Agreement, and the Amendments provide for the expansion of the products to be manufactured by QWUSA for Dex. Incremental sales associated with these additional products are forecast at greater than \$25 million over the term of the Printing Agreement. The Amendments also resolve certain open issues between the parties related to the timing of future scheduled work.

15. Amendment 2 specifically provides that it is subject to QWUSA's obtaining this Court's approval for the amendment,<sup>3</sup> which is being sought through this Motion. As the Amendments modify an existing executory contract, the Debtors also seek authority to assume that Printing Agreement, as amended by the Amendments.

16. As the Debtors have performed all of their obligations under the Printing Agreement, and are not in default thereunder, the Debtors do not have any cure payments or obligations to satisfy in connection with the assumption of the Printing Agreement, as amended by the Amendments.

17. The specific terms of the Printing Agreement are confidential business terms. However, the Debtors will make those terms, the Printing Agreement itself and the Amendments, available on a confidential basis to the professional advisors for each of the Creditors' Committee, the Ad-Hoc Group of Noteholders, and the Administrative Agent for the Debtors' Prepetition Lenders, and those documents<sup>3</sup> can also be provided to the Court *in camera*.

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<sup>3</sup> Amendment 1, which makes less material amendments to the Printing Agreement than does Amendment 2, does not specifically require Court approval. Nonetheless, for the sake of completeness, the Debtors

### **Relief Requested**

18. The Debtors request authorization to enter into the Amendments and to assume the Printing Agreement as thereby amended.

### **Basis for Relief Requested**

19. Dex has requested that the Debtors obtain Court approval of Amendment 2 in order to avoid any question as to whether or not the Debtors' entry into said Amendment is an "ordinary course" transaction for purposes of section 363 of the Bankruptcy Code. Although Court approval of the Amendments is not required if they are in the ordinary course of business, nothing in the Bankruptcy Code or Bankruptcy Rules prevents such approval of ordinary course agreements when necessary to provide assurances to important counterparties, such as Dex, and to facilitate agreements with the Debtors.

20. Even if the Amendments were not in the ordinary course of business, they should still be approved. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession to "use, sell, or lease, other than in the ordinary course of business, property of the estate" with court approval. See 11 U.S.C. § 363(b)(1). A debtor in possession's decision to use, sell, or lease assets outside the ordinary course of business must be based upon its sound business judgment. See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that court considering a section 363(b) application must find a good business reason to grant such application); see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (same); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (same); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is "good business reason"). The

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seek through this Motion approval to their entry into both Amendments.

business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Indeed, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently and appropriately have been reluctant to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld such decisions as long as they are attributable to any “rational business purpose.” In re Integrated Res., 147 B.R. at 656.

21. The Debtors have determined that entry into the Amendments is in their best interests and will have positive impacts on their business operations. The Amendments maintain, expand and extend a critically important relationship with one of the leading directory publishers in the United States, and the Debtors have determined that the Amendments will provide QWUSA with substantial revenue and earnings. They contains terms which are fair and reasonable in the industry and in light of the size and other circumstances of the Printing Agreement.<sup>4</sup>

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<sup>4</sup> To the extent Amendment 2 resolves certain open issues among the parties related to the timing of future scheduled work, it is also authorized by Bankruptcy Rule 9019 which empowers this Court to approve compromises and settlements if they are in the best interest of the debtor’s estate. The decision whether to approve a particular settlement is within the discretion of the court. See Anaconda-Ericsson Inc. v. Hessen (In re Teltronics Servs., Inc.), 762 F.2d 185, 189 (2d Cir. 1985). Here, the resolution of open issues is a critical component of extending and expanding the parties’ contractual relationship in a way which the Debtors have determined, in the exercise of their business judgment, is very much in the interests of the Debtors and their estates.

22. To avoid any confusion or uncertainty as to the status of a post-petition amendment to a pre-petition contract, the Debtors also seek authority to assume the Printing Agreement, as amended by the Amendments.

23. 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).

24. 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.”).

25. 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”).

26. 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.”).

27. The Debtors have met the requirements for assumption of the Printing Agreement, as amended by the Amendments. First, assumption of the Printing Agreement is a sound exercise of the Debtors’ business judgment. Dex is one of the Debtors’ major and most valued customers, and the Printing Agreement provides substantial annual revenues to the Debtors. Assuming the Printing Agreement, as amended by the Amendments, will provide both the Debtors and Dex with additional assurance that their longstanding relationship will continue as contemplated by the Printing Agreement. Moreover, there are no defaults under the Printing Agreement that are required to be cured in connection with the assumption. Finally, assumption of the existing agreement is an integral part of entering into the Amendments, which substantially modify the parties respective contractual obligations.

28. Accordingly, the Debtors request that the Court enter an order authorizing their assumption of the Printing Agreement, as amended by the Amendments.

### **Memorandum Of Law**

29. 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**

30. Notice of this Motion has been provided to Dex and 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**

31. No prior motion for the relief requested 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 enter into the Amendments to the Printing Agreement, and to assume the Printing Agreement, as amended by the Amendments.

Dated: June 9, 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 AUTHORIZING THE DEBTORS TO ENTER INTO AMENDMENTS TO A  
PRINTING AGREEMENT WITH DEX MEDIA INC. AND TO ASSUME THE  
PRINTING AGREEMENT AS AMENDED**

Upon the motion (the “Motion”)\* of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing them to enter into certain amendments to a printing agreement between Debtor Quebecor World (USA) Inc. (“QWUSA”) and Dex Media, Inc. (“Dex”), and to assume the printing agreement as thereby amended; 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; 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:

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\* Capitalized terms not defined in this Order shall have the meaning ascribed to them in the Motion.

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized pursuant to 11 U.S.C. §§ 363 and 365 to enter into Amendment 1 and Amendment 2 the Master Agreement for Printing Services with Dex, and to assume the agreement as thereby amended. The Master Agreement for Printing Services, as amended, shall be deemed assumed and effective as of the date of the entry of this Order.
3. The ten day stay set forth in Bankruptcy Rule 6004(h) is hereby abrogated and this order shall be effective immediately upon entry.
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: June\_\_\_\_\_, 2008

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United States Bankruptcy Judge