

Hearing Date: **August 14, 2008 at 10:00 a.m.**  
Objection Deadline: **August 12, 2008 at 4:00 p.m.**

ARNOLD & PORTER LLP  
399 Park Avenue  
New York, New York 10022-4690  
Telephone: (212) 715-1000  
Facsimile: (212) 715-1399  
Michael J. Canning  
Joel M. Gross

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

**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 PURSUANT TO 11 U.S.C. §§ 363 AND 365 FOR  
AUTHORITY TO ENTER INTO MEMORANDUM OF AGREEMENT AMENDING A  
PRINTING AGREEMENT WITH PARADE PUBLICATIONS 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 a memorandum of agreement amending a printing agreement between Debtor Quebecor World Printing (USA) Corp. (“QW Printing”) and Parade Publications, a division of Advance Magazine Publishers Inc. (“Parade”), and to assume the printing agreement as thereby amended. In support of this Motion, the Debtors rely on the Declaration of Brian Freschi 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 predicates for the relief requested herein are sections 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (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 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 these cases.
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

---

<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.

---

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

## **The Parade Printing Agreement**

10. This motion relates to a Printing Agreement between QW Printing and Parade dated as of July 1, 1995 and amended on August 31, 1995, September 7, 1997, February 23, 2001, May 18, 2001, October 2, 2002, July 16, 2003, January 4, 2004, October 1, 2004, February 7, 2005, March 10, 2005, January 4, 2007, March 8, 2007 and January 14, 2008 (collectively, the “Printing Agreement”).

11. Parade publishes a weekly magazine, known as PARADE magazine. The Printing Agreement provides for QW Printing to print Parade’s entire requirement of work for PARADE magazine, on terms and conditions set forth in the Printing Agreement, through early 2011. The parties have performed under the Printing Agreement for over thirteen years.

12. In order to respond to new printing requirements by Parade, 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 a Memorandum of Agreement (the “MOA”) dated July 30, 2008 which will, among other things, extend the term of the Printing Agreement for several additional years.

13. The MOA specifically provides that it is subject to QW Printing obtaining this Court’s approval of QW Printing’s entry into the MOA and assumption of the Printing Agreement, both of which are being sought through this Motion.

14. 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 MOA.

15. Many terms and conditions of the Printing Agreement and the MOA constitute confidential business information of the Debtors and Parade, the public disclosure of which may have a negative impact on their respective business operations in light of the competitive nature of the printing industry. The Debtors have made those terms, the Printing Agreement itself and the MOA, 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 can also be provided to the Court *in camera*.

### **Relief Requested**

16. The Debtors request authorization to (i) enter into the MOA and (ii) assume the Printing Agreement as amended by the MOA.

### **Entry Into the MOA**

17. In light of the importance of the MOA to the Debtors' ongoing business relationship with Parade and the significance of certain terms and conditions of the MOA, the Debtors and Parade have determined that it is advisable to obtain court approval of their decision to enter into the MOA.

18. 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 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.

19. The Debtors have determined that entry into the MOA is in their best interests and will have a positive impact on their business operations. The MOA maintains, expands and extends a critically important relationship with one of the leading weekly magazine publishers in the United States, and the Debtors have determined that the MOA will provide QW Printing with substantial revenue and earnings. The MOA contains terms which are fair and reasonable in light of the economic magnitude of the Printing Agreement and its importance to Parade and the Debtors.

## **Assumption of the Printing Agreement**

20. To avoid any confusion or uncertainty as to the status of a postpetition amendment to a prepetition contract, the Debtors also seek authority to assume the Printing Agreement, as amended by the MOA, pursuant to section 365 of the Bankruptcy Code.

21. 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).

22. 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.”).

23. 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”).

24. 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.”).

25. The Debtors have met the requirements for assumption of the Printing Agreement, as amended by the MOA. First, assumption of the Printing Agreement is a sound exercise of the Debtors’ business judgment. The Debtors have a longstanding relationship with Parade, and Parade is a valued and high-profile customer of the Debtors. Moreover, the Printing Agreement provides substantial annual revenues to the Debtors. Assuming the Printing Agreement, as amended by the MOA, will provide both the Debtors and Parade 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.

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

#### **Memorandum Of Law**

27. 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**

28. Notice of this Motion has been provided to Parade 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' claim and noticing agent, Donlin, Recano & Company, Inc. at [www.donlinrecano.com](http://www.donlinrecano.com).

**No Prior Request**

29. 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 MOA to the Printing Agreement, and to assume the Printing Agreement, as amended by the MOA, and granting such other and further relief as the Court deems just and appropriate.

Dated: August 4, 2008  
New York, New York

Respectfully submitted,

/s/ Michael J. Canning  
Michael J. Canning  
ARNOLD & PORTER LLP  
399 Park Avenue  
New York, New York 10022-4690  
Telephone: (212) 715-1000  
Facsimile: (212) 715-1399  
*Counsel for the Debtors  
and Debtors In Possession*

**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. §§ 363 AND 365 AUTHORIZING THE DEBTORS  
TO ENTER INTO MEMORANDUM OF AGREEMENT AMENDING A PRINTING  
AGREEMENT WITH PARADE PUBLICATIONS 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 a Memorandum of Agreement amending a Printing Agreement between Debtor Quebecor World Printing (USA) Corp. (“QW Printing”) and Parade Publications, a division of Advance Magazine Publishers Inc. (“Parade”), and to assume the Printing Agreement as amended; the Court having reviewed the Motion and considered the statements of counsel at a hearing before the Court (the “Hearing”); 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 reviewed the Declaration of Brian Freschi and 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:**

---

\* 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 to take all steps and perform all acts necessary to enter into the MOA with Parade and to perform all of their obligations thereunder.
3. The Debtors are authorized pursuant to 11 U.S.C. § 365 to assume the Printing Agreement as amended by the MOA. The Printing Agreement, as amended, shall be deemed assumed and effective as of the date of the entry of this Order.
4. The ten day stay set forth in Bankruptcy Rule 6004(h) is hereby abrogated and this order shall be effective immediately upon entry.
5. 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.
6. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.
7. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August\_\_\_\_\_, 2008

---

United States Bankruptcy Judge