

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

In re:)	Chapter 11
)	
DAN RIVER INC., et al.)	Case Nos. 04-10990 through 04-10993
)	Jointly Administered
)	
Debtors.)	Judge Drake
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**DEBTOR’S MOTION TO ASSUME LICENSE AGREEMENTS WITH WARNER BROS.
CONSUMER PRODUCTS AS MODIFIED BY THE PARTIES**

Dan River Inc. (the “Debtor”) files this motion to assume its license agreements with Warner Bros. Consumer Products (“Warner”) as modified by the parties, respectfully showing the Court as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On March 31, 2004 (the “Petition Date”), the Debtor filed a voluntary petition for relief under the Bankruptcy Code.

3. The Debtor is authorized to operate its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors was appointed on April 12, 2004.

4. Prior to the Petition Date, and in accordance with the Debtors' usual business practices, the Debtor was a party to multiple license agreements with Warner (the "Warner Licenses"). The Warner Licenses allow the Debtor to market products using trademarks owned by Warner, and as a group, the Warner Licenses generate positive cash proceeds for the Debtor. A list of the Warner Licenses is attached as Exhibit A.

5. Since the Petition Date, the Debtor has been in negotiations with Warner regarding the possibility of extending the term of certain of the Warner Licenses, the possibility of extending the due date on certain payments required to be made by the Debtor under the Warner Licenses, and the payment of cure costs that would be required to assume the Warner Licenses.

6. As a result of these negotiations, the Debtor and Warner have reached the following agreement:

- a. All of the Warner Licenses will be assumed by the Debtor, subject to the modifications described herein;
- b. The amount required to cure all pre-petition defaults (the "Cure Amount") under the Warner Licenses is \$98,217.91;
- c. The Debtor will pay the Cure Amount to Warner upon the effective date of a plan of reorganization;
- d. The "annual minimum guarantee" payment schedule for the "MUCHA LUCHA!" (U.S.), "LOONEY TUNES" (U.S.), and "LOONEY TUNES" (Canada) licenses will be extended for six months such that the annual minimum guarantee payment otherwise due on July 1, 2004 will not be paid until January 1, 2005;
- e. The term for the "MUCHA LUCHA!" (U.S.), "LOONEY TUNES" (U.S.), and "LOONEY TUNES" (Canada) licenses, will be extended for one year beyond the current expiration date; and,
- f. The term for the "SCOOBY-DOO" (U.S.) and "SCOOBY-DOO" (Canada) licenses will be extended for six months beyond the current expiration date.

Basis for Relief

7. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts have uniformly deferred to the business judgment of the debtor to determine whether the debtor’s decision to assume or reject contracts is appropriate under section 365(a) of the Code. *See, e.g., In re Orion Pictures Corp.*, 4 F.3d 1095, 1098-99 (2d Cir. 1993), *cert. dismissed*, 511 U.S. 1026 (1994); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Gucci*, 193 B.R. 411, 414-15 (S.D.N.Y. 1996); *In re III Enterprises, Inc. V*, 163 B.R. 453, 468-69 (Bankr. E.D. Pa.), *aff’d*, 169 B.R. 551 (E.D. Pa. 1994). Thus, to the extent that sound business reasons justify the assumption of a particular unexpired executory contract, assumption should be approved by the Court.

8. Similarly, to the extent the modification of the Warner Licenses is considered to be outside the ordinary course of the Debtor’s business, the Debtor should be authorized to make the modifications pursuant to Section 363(b)(1) of the Bankruptcy Code. The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized under Section 363(b)(1) when there is a “sound business purpose” that justifies the requested action. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Big Shanty Land Corp. v. Comer Properties, Inc.*, 61 B.R. 272, 278 (N.D.Ga. 1985); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991). In essence, this inquiry amounts to a “business judgment test.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147 (D.Del. 1999) (citations omitted).

9. In the instant matter, this standard is met with respect to the assumption of the Warner Licenses, as amended, because the Debtor has determined as a matter of sound business

judgment that the terms embodied in the Warner Licenses, as amended, are favorable to the Debtor and its estate. The Debtor's ability to market goods with the various Warner marks will generate positive cash proceeds for the Debtor's estate. The Cure Amount that must be paid by the Debtor in connection with this assumption will only be payable upon the effective date of a plan of reorganization.

Notice

10. Notice of this motion has been provided to Warner and the parties listed on the Master Service List. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

Conclusion

For the foregoing reasons, the Debtor respectfully requests that this Court enter an order authorizing the assumption of the Warner Licenses, subject to the modifications described herein, and granting such further relief as the court deems just and proper.

This 24th day of June, 2004.

Respectfully submitted,

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ATTORNEYS FOR THE DEBTOR

EXHIBIT A
LIST OF WARNER LICENSES TO BE ASSUMED

License Agreement dated July 24, 2003, Contract No. 149072-WBLT/BIA, for “LOONEY TUNES: BACK IN ACTION” (Canada)

License Agreement dated June 4, 2003, Contract No. 14010-WBLT/BIA, for “LOONEY TUNES: BACK IN ACTION” (United States)

License Agreement dated June 4, 2003, Contract No. 14011-WBLT, for use of “LOONEY TUNES” in Flannel Bedding Products (U.S.)

License Agreement dated June 4, 2003, Contract No. 14009-SCOO, for use of “SCOOBY-DOO” in Flannel Bedding Products (U.S.)

License Agreement dated August 18, 2003, Contract No. 14320-SDM2, for use of “SCOOBY-DOO MOVIE 2” (U.S.)

License Agreement dated July 24, 2003, Contract No. 149071- WBLT, for “LOONEY TUNES” (Canada)

License Agreement dated June 4, 2003, Contract No. 14008-WBLT, for “LOONEY TUNES” (U.S.)

License Agreement dated June 14, 2002, Contract No. 13445-PPG/PPGMP, for “POWERPUFF GIRLS” (U.S.)

License Agreement dated December 16, 2003, Contract No. 149078-SCOO for “SCOOBY-DOO” (Canada)

License Agreement dated June 4, 2003, Contract No. 14007-SCOO for “SCOOBY-DOO” (U.S.)

License Agreement dated August 4, 2003, Contract No. 14319-MUL “ MUCHA LUCHA!” (U.S.)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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In re:)	Chapter 11
)	
DAN RIVER INC., et al.)	Case Nos. 04-10990 through 04-10993
)	Jointly Administered
)	
Debtors.)	Judge Drake

**ORDER GRANTING DEBTOR’S MOTION TO ASSUME LICENSE AGREEMENTS
WITH WARNER BROS. CONSUMER PRODUCTS AS MODIFIED BY THE PARTIES**

This matter is before the Court on the motion of Dan River Inc. (the “Debtor”) dated June 24, 2004 for authority under Bankruptcy Code Section 365 to assume its license agreements with Warner Bros. Consumer Products (“Warner”) as modified by the parties (the “Motion”). (Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the Motion.).

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to all parties on the Master Service List and to Warner; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtor, its estate, and its creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion is GRANTED.
2. Effective immediately, the Debtor is authorized to assume the Warner Licenses, amended as follows:

- a. The “annual minimum guarantee” payment schedule for the “MUCHA LUCHA!” (U.S.), “LOONEY TUNES” (U.S.), and “LOONEY TUNES” (Canada) licenses will be extended for six months such that the annual minimum guarantee payment otherwise due on July 1, 2004 will not be paid until January 1, 2005;
 - b. The term for the “MUCHA LUCHA!” (U.S.), “LOONEY TUNES” (U.S.), and “LOONEY TUNES” (Canada) licenses, will be extended for one year beyond the current expiration date; and,
 - c. The term for the “SCOOBY-DOO” (U.S.) and “SCOOBY-DOO” (Canada) licenses will be extended for six months beyond the current expiration date.
3. The amount required to cure all pre-petition defaults (the “Cure Amount”) under the Warner Licenses is \$98,217.91;
4. The Debtor will pay the Cure Amount to Warner upon the effective date of a plan of reorganization.
5. To the extent necessary, the ten (10) day stay period provided in Federal Rules of Bankruptcy Procedure 6004(g) and 6006(d) or any other applicable stay shall not apply to this Order and, thus, this Order shall be effective and enforceable immediately upon its entry.
6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

SO ORDERED.

At Newnan, Georgia this ____ day of _____, 2004.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

Prepared and presented by:

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