

**IN THE UNITED STATES BANKRUPTCY  
COURT FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	
GRACEWAY PHARMACEUTICALS, LLC, <i>et al.</i>	)	Case No.: 11-13036 (PJW)
	)	
	)	Chapter 11
	)	
METAPHOR, INC.	)	Adv. Proc. No.: _____ (PJW)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GRACEWAY PHARMACEUTICALS, LLC, <i>et al.</i>	)	
	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF RELATING  
TO THE DETERMINATION OF INTEREST IN PROPERTY**

COMES NOW ("Metaphor" or "Plaintiff"), by and through its undersigned counsel, hereby alleges as follows in support of their Complaint:

**Nature of Adversary Proceeding**

1. This is an adversary proceeding by Metaphor to obtain relief relating to certain advertising materials in which Metaphor holds copyrights, identified on Exhibit "A" hereto (the "Intellectual Property"). Metaphor seeks relief against the above-captioned debtor Graceway Pharmaceuticals ("Graceway") and its affiliated co-debtors (together, the "Debtors"), and requests an order of this Court declaring that Metaphor is the owner of the Intellectual Property. Further, Metaphor seeks a preliminary and permanent injunction against the Debtors from selling or otherwise impairing Metaphor's rights in the Intellectual Property absent Metaphor's consent.

### **The Parties**

2. Metaphor is a corporation of the State of New Jersey with corporate headquarters located at 119 Cherry Hill Road, Parsippany, New Jersey.

3. Graceway is a limited liability company of the State of Tennessee with their corporate headquarters located at 340 Martin Luther King Boulevard, Suite 500, Bristol, TN.

### **Jurisdiction and Venue**

4. The United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334(b) because this adversary proceeding arises in or under, and is related to, the above-captioned bankruptcy cases pending in this Court.

5. This adversary proceeding constitutes a "core" proceeding within the meaning of one or more subsections of 28 U.S.C. § 157(b)(2). Specifically, this is a core proceeding under 28 U.S.C. § 157(b)(2)(A)(B) &(N).

6. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

### **Factual Allegations**

7. On September 29, 2011 (the "Petition Date") the Debtors each filed for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

8. The Debtors cases are being jointly administered. The Debtors are operating their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

9. On the Petition Date, the Debtors filed a Motion for an Order approving the Debtor's sale of its certain of its assets to Galderma pursuant to Bankruptcy Code Section 363

pursuant to an Asset Purchase Agreement dated September 27, 2011 between Galderma, the Debtor and Graceway Canada and to establish and approve bidding procedures and procedures for a Section 363 auction [D.I. No. 12] (the "Sale Motion").

10. By way of the Sale Motion, the Debtors seek the authority to, *inter alia*, transfer substantially all of the Debtors' assets free and clear of all liens and encumbrances to the highest bidder.

11. Metaphor is a marketing, advertising, public relations and sales promotion company firm specializing in the healthcare industry.

12. Graceway is a pharmaceutical company focused on acquiring, in licensing, and developing brand name prescription pharmaceutical products.

13. For the past six (6) years, Metaphor has provided Graceway and its predecessor entity Chester Valley Pharmaceuticals, LLC with valuable services and products in the areas of marketing, advertising, sales and promotional support, web development, internet marketing and brand management.

14. In fact, Metaphor has created, prepared, designed and developed all advertising and promotional materials and campaigns for Zyclara and Aldara, Graceway's current and past best selling products.

15. Metaphor is not an employee of any of the Debtors.

16. Metaphor has no work for hire agreement in place with any of the Debtors.

17. Metaphor has no agreement of any kind with any of the Debtors transferring or assigning ownership of its copyrights in the Intellectual Property.

18. Despite the absence of a written transfer instrument, and contrary to the statutory requirements for the transfer of copyrights set forth in 17 U.S.C. § 101, the Debtors claim the Intellectual Property as their own.

19. Metaphor, as licensor, provided the Debtors with a non-exclusive license to use the Intellectual Property based upon the expectation that it continue to be paid and upon the continuing volume of business it received from Debtors.

20. The Debtors continue to use the Intellectual Property in all of its dealings with its customers including the general public, doctors, pharmacists and the pharmaceutical industry without Metaphor's approval or any payment for its post petition usage.

21. Upon information and belief, the Debtors intend to sell the Intellectual Property as part of their sale of assets.

**Count I**  
**(Declaratory Judgment of Ownership of the Intellectual Property)**

22. Plaintiff restates and realleges paragraphs 1 through 21 above, as though fully set forth herein.

23. Metaphor is the creator of the Intellectual Property identified on Exhibit A.

24. It is uncontested that there exists no written agreement transferring ownership of the Intellectual Property to the Debtors.

25. An actual controversy exists among the Debtors and Metaphor concerning the rights of the parties in the Intellectual Property, for which the Bankruptcy Court may grant a declaratory judgment pursuant to 28 U.S.C. §2201(a).

26. As the creator, and hence the holder of copyrights in the Intellectual Property, Metaphor is entitled to a judgment declaring that it is the owner of the Intellectual Property, the

Intellectual Property is not property of the Debtors' estates, and all other entities or individuals are barred from asserting any interest in the Intellectual Property.

**Count II**  
**(Preliminary and Permanent Injunction)**

27. Plaintiff restates and realleges paragraphs 1 through 26 above, as though fully set forth herein.

28. The Intellectual Property is unique and Metaphor would suffer irreparable harm if it is sold, disposed, conveyed, transferred or encumbered in any way.

29. Upon information and belief, Debtors intend to sell, dispose, convey, transfer and/or encumber the Intellectual Property in connection with the proposed sale of substantially all of the Debtors assets.

30. Metaphor has no adequate remedy at law.

31. The balance of the equities favors Metaphor.

32. The public interest would not be disserved by a permanent injunction.

33. Metaphor is entitled to a judgment permanently prohibiting and restraining Debtors, directly or through their agents and representatives, from: (a) agreeing to or selling, disposing, conveying, transferring or otherwise encumbering the Intellectual Property absent Metaphor's consent; and (b) taking any actions that could impair or damage Metaphors rights and interests in the Intellectual Property.

WHEREFORE, Metaphor respectfully requests that judgment be entered as follows:

- a) a judicial declaration that Metaphor is the owner of the Intellectual Property, the Intellectual Property is not property of the Debtors' estates, and all other entities or individuals are barred from asserting any interest in the Intellectual Property;

- b) a judgment permanently prohibiting and restraining Debtors, directly or through their agents and representatives, from: (a) agreeing to or selling, disposing, conveying, transferring or otherwise encumbering the Intellectual Property; and (b) taking any actions that could impair or damage Metaphor's rights and interests in the Intellectual Property; and
- c) such other and further relied as this Court deems just and proper.

Dated: November 17, 2011  
Wilmington, DE

CROSS & SIMON, LLC

By: 

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