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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
JENNIFER CONVERTIBLES, INC.,[1]	Case No. 10-13779 (ALG)
Debtors.	(Jointly Administered)

JOINDER OF HAINING MENGNU GROUP CO. LTD. IN DEBTORS' REPLY TO THE OBJECTION OF ASHLEY HOMESTORES, LTD. TO THE DEBTORS' MOTION PURSUANT TO 11 U.S.C. § 365 FOR APPROVAL OF ASSUMPTION OF EXECUTORY CONTRACTS WITH LICENSOR, EFFECTIVE AS OF THE EFFECTIVE DATE OF A PLAN OF REORGANIZATION

Haining Mengnu Group Co. Ltd. ("Mengnu"), by its counsel, Neiger LLP, files the instant Joinder in support of the reply (the "Reply") of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") to the objection (the "Objection") of Ashley HomeStores, Ltd. ("Ashley") to the Debtors' Motion pursuant to 11 U.S.C. § 365 for approval of the assumption of executory contracts with licensor, effective as of the effective date

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

of a Plan of Reorganization (the "Motion to Assume").[2] In support of this Joinder, Mengnu respectfully states as follows:

BACKGROUND

1. Jennifer Convertibles, Inc. owns the largest group of sofabed specialty retail stores and leather specialty stores in the United States, and six full-line furniture stores operated under the Ashley Furniture HomeStore brand (the "Ashley Stores").

2. On July 18, 2010 (the "Petition Date"), Jennifer Convertibles, Inc. and its affiliates filed voluntary bankruptcy petitions in accordance with chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. As of the Petition Date, the Debtors had one hundred and thirty stores operated by the Jennifer segment and seven Ashley Stores. Since the Petition Date, the Debtors closed approximately fifty of their store locations, including one Ashley Store.

4. On December 3, 2010, the Debtors filed their Motion to Assume, therein seeking entry of an Order pursuant to section 365 of the Bankruptcy Code authorizing the Debtors to assume, as of the effective date of a Chapter 11 Plan of Reorganization, six Trademark Usage Agreements ("TUAs") between Ashley and debtor Hartsdale Convertibles, Inc. ("Hartsdale"), which are guaranteed by the Debtors' parent entity, Jennifer Convertibles, Inc. As expressed in greater detail in the Motion to Assume, preservation of the Debtors' business relationship with

[2] Capitalized terms used but not defined herein shall have the meanings set forth in the Motion to Assume.

Ashley is a crucial part of the Debtors' ability to reorganize, and the Debtors are ready, willing and able to satisfy the requirements of section 365 of the Bankruptcy Code.

5. On January 4, 2011, Ashley filed its Objection, wherein it argues that absent its consent, the TUAs cannot be assumed by the Debtors because they cannot be assigned. This is contrary to established precedent in the Southern District of New York. Ashley also wrongly argues that the Debtors cannot cure purported nonmonetary defaults, even though Ashley failed to timely advise the Debtors of these purported defaults or seek recourse in connection with same. Finally, Ashley argues that it lacks adequate assurance of future performance. This argument is not based in reality, due to, among other things: (i) the Debtors made timely payments to Ashley post-petition; (ii) Ashley is specifically provided for in the Plan, and (iii) the Debtors' financial projections show evidence of profitability.

6. A hearing was scheduled to take place before the Bankruptcy Court on January 11, 2011, which was adjourned to January 14, 2011.

7. Mengnu files the instant Joinder in support of the Motion to Assume and in opposition to the Response, and agrees with the Reply in all respects. Quite simply, the Debtors stand ready, willing and able to cure all defaults, as is necessary and required by the Bankruptcy Code, and have provided adequate assurance of future perfomance. Ashley provided no basis, in law or in fact, for precluding the assumption of the TUAs, which is crucial to the success of the Debtors' reorganization.

I. THE DEBTORS' ANALYSIS THAT THE TUAs COULD BE ASSUMED IS CORRECT

8. For the reasons set forth in the Debtors' Motion to Assume and Reply, the Debtors correctly argue that the TUAs could and should be assumed. As set forth more fully

below, the facts, the law and the equities of the case militate in favor of the Debtors assuming the TUAs.

A. The Law of the Southern District of New York allows for assumption of non-assignable executory contracts, such as the TUAs, and the Debtors are not precluded from assuming the TUAs by any non-binding decisions from other Federal Judicial Circuits to the contrary.

9. The Debtors seek to assume Hartsdale's TUAs with Ashley. The Debtors are not seeking authority to assign the TUAs. Ashley nonetheless seeks to impose the non-binding judicial gloss applied to section 365 of the Bankruptcy Code by Courts in other Federal Judicial Circuits as the primary basis for its objection to the assumption of the TUAs.

10. Ashley's position is contrary to the decisions of courts construing section 365 in the Southern District of New York, as set forth more fully in the Reply. The Honorable Bankruptcy Judge Hardin in Footstar, engaged in a rigorous analysis of the relevant statutory language on analogous facts, and explained:

> The basic objective of Section 365(c) – to protect the contract counterparty from unlawful assignment of the contract – simply is not implicated when a debtor in possession itself seeks to assume, but not assign, the contract.
>
> This conclusion comports with the "plain meaning" of all of the words employed in Section 365(c)(1) and gives full effect to that section and to the provisions and objectives of Chapter 11, which are designed to foster, not frustrate, the reorganization and the economic well-being of debtors in possession. And it avoids the perverse and anomalous consequence of the "hypothetical test" rule under which a debtor may lose the benefits of a non-assignable contract vital to its economic future solely because it filed for bankruptcy.

In re Footstar, Inc., Case No. 04 B 22350 (ASH), Decision on Motion to Assume Executory Contracts, dated February 16, 2005, at 11-12.

11. Two years after the Footstar decision, the Honorable Bankruptcy Judge Gerber gave its holding a ringing endorsement in Adelphia, remarking:

> This Court has been on record for many years as having held that the interests of predictability in this District are of great importance, and that where there is no controlling Second Circuit authority, it follows the decisions of other bankruptcy judges in this district in the absence of clear error. But to say that the Footstar decisions should be followed under that standard would be faint praise here. In this Court's view, Judge Hardin's analysis in those decisions was plainly correct.

In re Adelphia Communications Corp., Case No. 02-41729 (REG), Decision on Local Franchising Authority Issues, at 8, n.13, dated January 11, 2007.

12. Based on the foregoing decisions, their rationale, and their progeny, Mengnu respectfully submits that there is no legal authority in the Southern District of New York precluding assumption of the TUAs, which are not being assigned, and provide benefits key to the Debtors and their emergence from Chapter 11. As such, the Objection on these grounds should be readily rejected.

B. Purported nonmonetary defaults do not preclude the Debtors from assuming the TUAs.

13. Ashley fares no better in arguing that nonmonetary defaults preclude assumption of the TUAs. Ashley first argues that the closing of one Ashley Store triggered cross-default provisions of the six TUAs to be assumed, which provide for an event of default if Hartsdale "commits any act, that in the judgment of [AHL] or [AFI] impairs or detracts from any one or more of the [Trademarks] or the goodwill associated with any of the [Trademarks]." Objection, at 10. Mengnu need not elaborate further on the Debtors' sound argument that this is not a default.

14. Ashley then argues that the Debtors are precluded from assuming the TUAs because Hartsdale did not provide satisfactory financial reporting. As Ashley notes, this is something it complained about at the first day hearing. The Bankruptcy Court allowed Ashley to express its concerns, took them into consideration, and responded with an invitation to come back if there was a problem:

> So anybody can come back and seek further protection – maybe not adequate protection, so to speak, but can seek further protection and can seek to modify a cash management order. You can do that at any time, for cause shown. And they can certainly seek specific information from the debtor. But I have an order in front of me today. And I can't micromanage the information in it.
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> ****
>
> Well, I think the information issue, if there is an issue, should be addressed by a letter from – either from you, or better from your client to the company, asking for certain information. [B.] a response, and the businesspeople should be able to meet and consider that. And if at the end of a good-faith effort to provide your client with what it seems to want, that can't be done, then you can have your rights.
>
> ****
>
> I'm open for business.

In re Jennifer Convertibles, Inc., Transcript of August 4, 2010 Hearing, included as Exhibit B to Objection, at 46, 48.

15. The Bankruptcy Court has indeed been open for business and has graciously made itself available to the parties, even in the face of difficult scheduling and timing issues. Ashley's complaint, on the eve of the confirmation hearing, about a request for information it made in August of 2010, is, at best, disingenuous. Having failed to seek a cash management order earlier, or otherwise call purported nonmonetary defaults, Ashley should not be allowed to kaibosh the Motion to Assume, and with it the Debtors' hope of reorganizing.

C. The Debtors have provided adequate assurance of future performance.

16. Ashley voices concerns about future performance, based in part on a request for information made in a letter in August of 2010. As explained above, Ashley has been dilatory in pursuing financial information. As such, this complaint comes late, and in the wrong procedural posture. Ashley also complains about the impact of substantive consolidation. This issue, if

indeed it is one, should be addressed in the context of plan confirmation, not in the context of the Motion to Assume.

17. The Debtors have shown that they stand ready, willing and able to provide adequate assurance of future performance. Jennifer Convertibles will remit payments to Ashley following the effective date of the Plan on a C.O.D. basis. Under this payment arrangement Ashley will not be extending credit. The absence of any credit exposure, combined with the financial projections showing (a) continued operations, (b) increased sales, and (c) profitability, provide adequate assurance of future performance.

18. To the extent that the Objection can be read as, ultimately, protesting Mengnu's ownership of the majority of the equity in Jennifer Convertibles, Inc. post Plan effective date, it is grasping at straws. Ashley cites to no change of control provisions in the TUAs because none exist. In seeking to invent and impose a heretofore non-existent protection for a given creditor, Ashley would cause fatal harm to the estate to the detriment of all other stakeholders.

II. A BALANCE OF THE EQUITIES MILITATES IN FAVOR OF ALLOWING THE DEBTORS TO ASSUME THE TUAs

19. As courts sitting in equity, bankruptcy courts will "balance the equities" related to issues that could have a significant impact on parties-in-interest. See, e.g., Enron Power Marketing, Inc. v. Pub. Utility Dist. No. 1 of Snohomish County (In re Enron Corp.), 364 B.R. 489, 508 (Bankr. S.D.N.Y. 2007).

20. In the Debtors' cases, the equities strongly favor granting the relief sought in the Motion to Assume in its entirety. Although Ashley was well aware of its purported rights under the TUAs and its ability to address concerns about financial reporting through a revised cash management order and other recourse, it sat on its purported rights. Further, the harm that Ashley would suffer if the Motion to Assume is granted is speculative and dubious.

21. On the other hand, denying the Debtors the relief they are entitled to under section 365 of the Bankruptcy Code would cause serious harm to the parties in interest. First, it would throw the Debtors' very emergence from bankruptcy into grave doubt, unwinding months of difficult, intense, and good faith negotiations between the various parties, and almost certainly lead to a liquidation of the Debtors in short order. Second, the Debtors will incur additional fees and expenses due to activity in their open chapter 11 cases, to the detriment of their stakeholders. Finally, and most importantly, the unsecured creditors will lose the hard-earned distribution they bargained for under the Plan.

CONCLUSION

Based on the foregoing and on the Reply of the Debtors, Mengnu respectfully requests that this Court approve the Motion to Assume and disallow Ashley's Objection in its entirety.

Dated: New York, New York
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