

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Urban Brands, Inc., et al.,

Debtors.

Chapter 11

Case No. 10-13005 (KJC)

(Jointly Administered)

REPORT OF CONSUMER PRIVACY OMBUDSMAN

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Alan Chapell, the Consumer Privacy Ombudsman, duly appointed pursuant to section 332 of the Bankruptcy Code,¹ respectfully submits this Report to the Court and states:

Introduction

1. On October 13, 2010, the United States Trustee filed the *Notice of Appointment of Consumer Privacy Ombudsman*, along with the Ombudsman's verified statement of disinterestedness.

2. The Ombudsman has prepared this Report in accordance with Section 363(b)(1)(B) of the Bankruptcy Code to assist the Court in its consideration of the facts, circumstances, and conditions of the sale by Debtor of its customers' Personally Identifiable Information ("PII").

3. The purpose of this Report is to provide the Court with the information specified in section 332(b) of the Bankruptcy Code and to assist the Court in understanding the "applicable nonbankruptcy law" referenced in section 363(b)(1)(B)(ii) of the Bankruptcy Code.²

4. In preparing this Report, the Ombudsman has, among other things:

- a. Reviewed the *Asset Purchase Agreement and Agency Agreement*;
- b. Reviewed the Ashley Stewart Privacy Statement currently posted online at the Debtor's website, www.AshleyStewart.com, attached as **Exhibit A**;
- c. Reviewed the Ashley Stewart Privacy Statement from July of 2008 posted online via the Internet Archive www.archive.org, attached as **Exhibit B**;
- d. Reviewed the Ashley Stewart Privacy Statement from February of 2007 posted

¹ 11 U.S.C. §332 (2006).

² Pursuant to the Bankruptcy Code, the Consumer Privacy Ombudsman may provide this Court with information relating to (1) the Debtors' privacy policy; (2) the potential losses or gains of privacy to consumers if a sale or lease is approved by the Court; (3) the potential costs or benefits to consumers if a sale or lease is approved by the Court; and (4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers. 11 USC § 332 (2006).

- online via the Internet Archive www.archive.org, attached as **Exhibit C**;
- e. Reviewed the Ashley Stewart Privacy Statement from April of 2003 posted online via the Internet Archive www.archive.org, attached as **Exhibit D**;
 - f. Reviewed the Ashley Stewart Privacy Statement from August of 2002 posted online via the Internet Archive www.archive.org, attached as **Exhibit E**;
 - g. Reviewed the Ashley Stewart Model Application from 2010 provided by Debtor's counsel, attached as **Exhibit F**;
 - h. Reviewed the Ashley Stewart Shopping Spree Brochure from 2010 provided by Debtor's counsel, attached as **Exhibit G**;
 - i. Reviewed the Ashley Stewart Credit Card Applications from 2010 provided by Debtor's counsel, attached as **Exhibit H**;
 - j. Examined the data collection functions of Debtor's website www.AshleyStewart.com, including but not limited to Ashley Stewart Website Registration Form, attached as **Exhibit I**;
 - k. Discussed, via email and telephone conversations with Debtor's Counsel, Debtor's PII-collection activities, practices, and the structure of its customer databases; and
 - l. Researched applicable United States federal and state privacy laws.

Summary of Findings and Recommendation

5. It is the Consumer Privacy Ombudsman's understanding that Urban Brands, Inc., et al (hereafter "Debtor" or "Ashley Stewart") seeks to sell all customer information to GB Merchant Partners, LLC ("GBMP" or "GB Merchant Partners") which includes:
- a. All customer information obtained via Debtors websites, including www.AshleyStewart.com;

- b. All customer information obtained via the Ashley Stewart model application form and the Ashley Stewart Shopping Spree brochure offered offline via Ashley Stewart retail locations;
 - c. Certain customer information obtained via Ashley Stewart credit card applications, but not including the actual credit card numbers;
 - d. All customer information obtained via Debtor's catalog orders, via Debtor's phone orders, and via point of sale at Debtor's retail stores.
6. It is the Consumer Privacy Ombudsman's understanding that there is overlap in the collection points for customer information. For example, a customer may visit the website and provide his name and email address while requesting emails from Ashley Stewart, and later may provide additional information to an Ashley Stewart call center agent when placing an order.
7. It is the Consumer Privacy Ombudsman's further understanding that most customer information is stored within one centralized customer database;

The Debtor's Websites

8. It is the Consumer Privacy Ombudsman's understanding that Ashley Stewart seeks to transfer information obtained via Debtors websites, including www.AshleyStewart.com;
9. Debtor's websites collected the following information:
- a. Sensitive personally identifiable information, including: credit card numbers;
 - a. Personally identifiable information, including: names, mailing address, phone, and email address;
 - b. Demographic information such as date of birth and gender.

10. Debtor's website does collect "personally identifiable information" ("PII") as defined by Section 101(41A) of the Bankruptcy Code.³

11. Debtor's website does not collect the PII of non-US data subjects.

12. Debtor collected, maintained and used the PII collected from the websites pursuant to a privacy policy that limits or restricts the transfer of such assets.

Ashley Stewart Credit Card Program

13. It is the Consumer Privacy Ombudsman's understanding that Ashley Stewart seeks to transfer certain information obtained via Ashley Stewart credit card applications;

14. Debtor and/or Debtor's credit card partner⁴ collected the following information in connection with the Ashley Stewart Credit Card Program:

- a. Sensitive personally identifiable information, including: social security numbers, date of birth and credit card numbers;
- b. Personally identifiable information, including: names, mailing address, home and business phone, and email address;
- c. Limited non-PII such as credit limit;

15. Debtor's Credit Card Program collects PII as defined by Section 101(41A) of the Bankruptcy Code.

³ '[P]ersonally identifiable information' means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

“(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

“(ii) the geographical address of a physical place of residence of such individual ...”

11 U.S.C. §101(41A) (2006).

⁴ World Financial Network National Bank a financial services company to which Debtor licenses the Ashley Stewart brand.

16. However, none of the sensitive PII is retained by Debtor; rather World Financial Network National Bank processes all applications, administers the credit card program, and periodically transfers certain customer information back to Debtor, including: names, mailing address, home and business phone, and email address of customers having an Ashley Stewart Credit Card account;

17. Debtor's credit card program collects only the PII of US data subjects;

18. Debtor collected, maintained and used the PII collected in connection with its credit card program pursuant to a privacy policy that limits or restricts the transfer of such assets.

Catalog, Call Center and Point of Sale

19. It is the Consumer Privacy Ombudsman's understanding that Ashley Stewart seeks to transfer information obtained via Debtor's catalog orders, via phone orders at Debtor's call centers, and via point of sale at Ashley Stewart retail stores, including but not limited to information collected via the Ashley Stewart model application form;

20. Debtor collected the following information in connection with catalog, phone and point of sale orders:

- a. Sensitive personally identifiable information, including: customer credit card numbers;

- b. Personally identifiable information, including: names, mailing address, phone, and email address;

21. In connection with its catalog, call center and retail stores, Debtor collects PII as defined by Section 101(41A) of the Bankruptcy Code.

22. In connection with its catalog, call center and retail stores, Debtor may have collected the

PII of non-US data subjects, including data subjects from Canada and the European Union. However, only the personally identifiable information of U.S. data subjects is stored in Debtor's customer databases.

23. Debtor collected, maintained and used such PII without providing a privacy policy that limits or restricts the transfer of such assets.

Additional Background Information and Recommendations

24. Debtor maintains all customer information within a central company database maintained by their vendor Topica.

25. Moreover, certain customer records contain PII that were collected at different times and under different privacy statements; and in some instances, information was collected without the benefit of a privacy statement. As a result, it may be difficult to reliably segment information that was collected pursuant to a privacy statement (e.g., information collected via www.AshleyStewart.com) and treat that information different from information collected without a privacy statement (e.g., information collected via Debtor's retail stores). Moreover, most of the PII that is subject to transfer in this proceeding was collected pursuant to a privacy statement that assured consumers that their PII would not be transferred to third parties. Debtor's privacy statements dating back eight years had consistently communicated this to Ashley Stewart customers. Therefore, the Privacy Ombudsman is treating all customer and prospect PII collected by Debtor as if it were collected pursuant to a privacy statement that promised that PII would not be transferred to third parties.

26. It is the Privacy Ombudsman's understanding that the transfer of PII is to a "Qualified Buyer." A "Qualified Buyer" means an entity that: (i) concentrates in the same business and

market as Debtor; (ii) expressly agrees to be Debtor's successor-in-interest as to the customer information; (iii) agrees to be responsible for any violation of that policy following the date of purchase; and (iv) shall not disclose, sell, or transfer customers' PII to any third party in a manner inconsistent with Debtor's Privacy Policy;

27. Based on the foregoing, the Ombudsman respectfully submits the following recommendations to the Court.

28. First, the Court should approve the transfer of all consumer PII from Ashley Stewart to GBMP, except PII collected from customers indicated that their age was under 13 at the time their PII was provided;

29. Second, in accordance with governing law permitting the transfer of PII, the Court should require that:

- a. As the transfer of PII is to a "Qualified Buyer": A "Qualified Buyer" means an entity that: (i) concentrates in the same business and market as Debtor; (ii) expressly agrees to be Debtor's successor-in-interest as to the customer information; (iii) agrees to be responsible for any violation of that policy following the date of purchase; and (iv) shall not disclose, sell, or transfer customers' PII to any Third Party (defined below) in a manner inconsistent with Debtor's Privacy Policy without obtaining each customer's prior affirmative ("Opt-in") consent;
- b. GBMP agrees to be bound by and meet the standards established by Debtor's Privacy Policies, including but not limited to honoring any opt-out requests submitted by customers;
- c. GBMP further agrees that for the purposes of Paragraph 29(a), the definition of Third Party includes, but is not limited to other consumer brands controlled and/or

owned, in whole or in part, by GBMP;

- d. Debtor and GBMP agree to provide notice to any consumer whose PII is being transferred, including: on the Debtor's websites, by email, and via posted notices at each of Debtor's retail locations; and
- e. As part of the notification process, Debtor and the GBMP agree to provide those consumers with an opportunity to opt-out of any future use of their PII.

30. Any information collected from persons under the age of 13 should be destroyed, and GBMP must ensure that www.AshleyStewart.com is in full compliance with The Children's Online Privacy Protection Act COPPA within 90 days.

31. Finally, the Order approving the sale of PII in this instance should also (i) require GBMP to file with the Court a statement under oath that it has fully complied with the conditions imposed to protect the PII; (ii) direct the Ombudsman to file a supplemental report confirming such compliance; or (iii) both.

Applicable Consumer Privacy and Data Protection Laws

32. In the United States, the "privacy" of consumers' personally identifiable information is primarily regulated by the Federal Trade Commission ("FTC") under the FTC Act, the Children's Online Privacy Protection Act of 1998 ("COPPA"), and the Gramm- Leach-Bliley Act ("GLBA").

U.S. Laws

33. The FTC Act - Section 5 of the FTC Act declares unfair or deceptive practices in commerce as unlawful.⁵ To determine whether section 5's prohibition against deception has

⁵ 15 USC §45 (2006).

been violated, the FTC will first identify what “express claims,” and “implied claims,” have been made by a company.⁶ An “express claim” refers to a factual assertion made in an advertisement or promotion or other publicly available statement such as a corporate policy. An “implied claim” refers to the net impression conveyed by all elements of a company’s policies or statements “including an evaluation of such factors as the entire document, the juxtaposition of various phrases in the document, the nature of the claim, and the nature of the transactions.” Section 5 is violated when an express or implied claim is “likely to affect a consumer’s choice of or conduct regarding a product” and is “likely to mislead reasonable consumers under the circumstances.”⁷ In addition, an act or practice may be considered “unfair” if it causes, or is likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.⁸

34. The FTC has explicitly applied section 5’s prohibitions against deceptive acts and practices to corporate privacy statements made on the Internet and elsewhere in more than a dozen consent orders.⁹ The order against *Toysmart* has particular significance here, as it

⁶ FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 FTC 110, 174 (1984), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> (last viewed July 18, 2009).

⁷ *Id.*

⁸ See generally FTC Policy Statement on Unfairness, *appended to International Harvester Co.*, 104 FTC 949, 1070 (1984) available at <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm> (last viewed July 18, 2009).

⁹ See, e.g., *United States v. ChoicePoint, Inc.*, Stipulated Final Judgment and Order (N.D. Ga. 2006) available at <http://www.ftc.gov/os/caselist/choicepoint/0523069stip.pdf> (last viewed July 18, 2009); *In the Matter of Vision I Properties d/b/a CartManager International*, Agreement Containing Consent Order (FTC 2004) available at <http://www.ftc.gov/os/caselist/0423068/050310agree0423068.pdf> (last viewed July 18, 2009); *In the Matter of Petco Animal Supplies, Inc.*, Decision and Order (FTC 2005) available at <http://www.ftc.gov/os/caselist/0323221/050308do0323221.pdf> (last viewed July 18, 2009); *In the Matter of Gateway Learning Corp.*, Decision and Order (FTC 2004) available at <http://www.ftc.gov/os/caselist/0423047/040917do0423047.pdf> (last viewed July 18, 2009); *In the Matter of Tower Records*, Decision and Order (FTC 2004) available at <http://www.ftc.gov/os/caselist/0323209/040602do0323209.pdf> (last viewed July 18, 2009); *In the Matter of Guess?*,

brought about the amendment to the bankruptcy code that now requires the appointment of the privacy ombudsman.

35. The Privacy Policy Enforcement in Bankruptcy Act (“PPEBA”) changed the Bankruptcy Code to create the position of Consumer Privacy Ombudsman and provide for the appointment of such Ombudsman.

36. This amendment to the Bankruptcy Code came as a result of the Federal Trade Commission’s (“FTC”) action against Toysmart.com, and incorporated aspects of the final (proposed) Stipulation and Order from that case.

37. A casualty of the bursting of the Dot-Com bubble, Toysmart.com (“Toysmart”) had been engaged in the advertising, promotion, and sale of toys on the Internet.¹⁰ In the course of doing business, Toysmart collected information from its customers, including, among other things, its customers’ names, addresses, billing information, and shopping preferences.

Toysmart’s website included a privacy policy which assured customers that Toysmart “never shared [its customers’ PII] with a third party.”¹¹

38. When Toysmart sought to sell the PII of its customers as part of its Plan of Liquidation,

Inc. and Guess.com, Inc., Decision and Order (FTC 2003) available at <http://www.ftc.gov/os/2003/06/guessagree.pdf> (last viewed July 18, 2009); *In the Matter of Educational Research Center of America, Inc and Student Marketing Group, Inc.*, Decision and Order (FTC 2002) available at <http://www.ftc.gov/os/2003/01/ercaconsent.htm> (last viewed July 18, 2009); *In the Matter of the National Research Center for College and University Admissions, Inc.*, Decision and Order, (FTC 2003) available at <http://www.ftc.gov/os/2003/01/nrcuamuncedo.htm> (last viewed July 18, 2009); *In the Matter of Microsoft Corporation*, Decision and Order (FTC 2002); *In the Matter of Eli Lilly and Company*, Decision and Order (FTC 2002) available at <http://www.ftc.gov/os/2002/05/elilillydo.htm> (last viewed July 18, 2009); *FTC v. Reverseauction.com, Inc.*, Decision and Order (FTC 2000) available at <http://www.ftc.gov/os/2000/01/reverseconsent.htm> (last viewed July 18, 2009); *In the Matter of Liberty Financial Co.*, Decision and Order (FTC 1999) available at <http://www.ftc.gov/os/2000/01/reverseconsent.htm> (last viewed July 18, 2009); *In the Matter of Geocities*, Decision and Order (FTC 1999) available at <http://www.ftc.gov/os/1999/02/9823015.do.htm> (last viewed July 18, 2009).

¹⁰ See First Amended Complaint, Civil Action No. 00-11341 at ¶ 6 (D. Mass. 2000) available at <http://www.ftc.gov/os/2000/07/toysmartcomplaint.htm> (last viewed July 18, 2009).

¹¹ *Id.* at ¶ 7.

in direct contravention of its privacy policy, the FTC charged Toysmart with engaging in a deceptive trade practice, in violation of Section 5 of the FTC Act,¹² and with violating COPPA,¹³ because its customer data included the PII of children under the age of 13.

39. Although the FTC entered into a Stipulation and Settlement that would enable Toysmart to sell its customers' PII under certain conditions, forty-six (46) States' Attorneys General (and two of the FTC's own commissioners) objected, arguing that "never" (as represented in Toysmart's privacy policy) should mean "never" and that Toysmart should not be permitted to sell its customers' PII under any circumstances.¹⁴

40. Ultimately, Toysmart withdrew the sale, and one of its equity owners, Disney, paid \$50,000 for the data and destroyed them. Despite this unhappy conclusion for Toysmart, the terms of the Stipulation and Settlement into which it had entered with the FTC established the criteria to determine the propriety of the transfer of customer PII assets in a bankruptcy proceeding, where the privacy policy does not address that situation.

41. The Stipulation and Settlement provided that Toysmart's customers' PII would be sold only to a "Qualified Buyer," an entity that (a) concentrates in the same business and market as Toysmart; (b) expressly agrees to be Toysmart's successor-in-interest as to the customer information; (c) agrees to be responsible for any violation of that policy following the date of purchase; (d) will use the PII only to fulfill customer orders and to personalize customers' experience on the website; and (e) shall not disclose, sell, or transfer customers' PII to any

¹² 15 U.S.C. §§45 *et seq.*

¹³ Discussed below.

¹⁴ The States' objections rested primarily upon their own "mini-FTC Acts," which prohibited deceptive acts or practices.

third party without giving the customers notice and an opportunity to opt-in to the transfer.¹⁵

For the Court's convenience, a true and accurate copy of the FTC's proposed Stipulation and Settlement with Toysmart is attached hereto as **Exhibit L**.

42. The Children's Online Privacy Protection Act ("COPPA"). In addition to the FTC Act, COPPA prohibits unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from and about children under age 13 obtained via the Internet.¹⁶ COPPA requires that companies that collect information from children provide notice on their websites concerning what information they collect, how they will use that information, and what disclosure practices they apply to that information.¹⁷

COPPA also requires that regulated companies obtain verifiable parental consent prior to the collection of information from children.¹⁸ Pursuant to the FTC's rules interpreting COPPA, a company must, among other things, obtain parental consent "to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented."¹⁹

The FTC has also interpreted COPPA as also applying to operators of websites that have actual knowledge that they are "maintaining" PII from children.²⁰

43. In operating the website, <http://www.AshleyStewart.com>, the Debtors meet the definition of an "operator," under both COPPA and the FTC's rule promulgated pursuant thereto. An "operator" under COPPA is "any person who operates a website located on the Internet or an

¹⁵ See Stipulation and [Proposed] Order Establishing Conditions on Sale of Customer Information, Civil Action No. 00-13995 (Bkr. D. Mass. 2000) available at <http://www.ftc.gov/os/2000/07/toysmartbankruptcy.1.htm> (last viewed July 18, 2009)

¹⁶ 15 U.S.C. § 6501, *et seq.* (2006); 16 C.F.R. § 312 (2006). See also Children's Online Privacy Protection Rule, Final Rule, 64 Fed. Reg. 59888 (Nov. 3, 1999) (explaining basis and purpose of the Act).

¹⁷ 15 U.S.C. 6502(b)(1)(A) (2006); 16 C.F.R. § 312.3(a) (2006).

¹⁸ 15 U.S.C. 6502(b)(1)(A) (2006);

¹⁹ 16 C.F.R. § 312.5(a) (2006).

²⁰ 16 C.F.R. § 312.3 (2009).

online service and who collects or maintains personal information from or about the users of or visitors to such website or online service ... where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving [interstate] commerce”²¹

44. Debtor’s privacy statements going as far back as 2002 have maintained that “AshleyStewart.com is not directed at children under the age of thirteen.”²² And even today, the privacy statement located on Debtor’s website clearly states that the website isn’t directed to Children; and claims that the websites does not collect information from children under 13.²³ Moreover, the Privacy Ombudsman was unable to find a mechanism by which Debtor would obtain verifiable parental consent in the event that Debtor were to collect the PII of a child under 13.

45. Debtor’s website, www.AshleyStewart.com contains a web page on which consumers are able to enter PII such as their name, date of birth and email address to create and edit an account profile. Attached hereto as **Exhibit I** is a screen shot of the profile page. As **Exhibit I** demonstrates, when the Privacy Ombudsman provided PII via Debtor’s website registration form using a date of birth of January 1, 2000, the Ombudsman was able to create a profile on www.AshleyStewart.com that contained PII.

²¹ 15 U.S.C. §6501(2)(A)(i) and 16 C.F.R. §312.2.

²² See **Exhibit E**.

²³ See **Exhibit A**, “Ashley Stewart recognizes the importance of children's safety and privacy. The Website is not designed to attract children, and is not intended for use by any children under the age of 13. We do not request, or knowingly collect, any personally identifiable information from children under the age of 13. Children under the age of 18 may use the Website only under the supervision of a parent or legal guardian who agrees to be bound by the Terms of Use.”

46. In other words, the Ombudsman was unable to locate a process whereby Debtor would prevent a child under 13 from providing his PII to Debtor via the Ashley Stewart website. Further, the ombudsman could not find a process whereby Debtor sought to obtain verifiable parental consent once the PII of a child under 13 was provided.

47. Therefore, it is certainly possible that Debtor collected certain PII from children under 13 in violation of COPPA. For example, if there were instances where visitors to www.AshleyStewart.com were under 13 and did accurately input their birth years, the Debtors had “actual knowledge” that they were collecting information from children under 13, and failed to obtain verifiable parental consent.

48. Debtor’s Counsel has represented that Debtor’s database contains a time/date stamp so that Debtor may ascertain when a customer under the age of 13 had provided information via www.AshleyStewart.com.

49. The Ombudsman respectfully recommends that if any persons under 13 had provided PII via the website, that their records should be deleted from Debtor’s database, and not transferred to GB Merchant Partners pursuant to this proceeding. The Ombudsman also recommends that either Debtor or GB Merchant Partners get www.AshleyStewart.com into compliance with COPPA as soon as possible, and certainly within ninety (90) days.

50. The Gramm-Leach-Bliley Act (“GLBA”) regulates the privacy of personally identifiable, nonpublic financial information disclosed to non-affiliated third parties by financial institutions. Among other things, the

GLBA requires that regulated companies notify consumers of their privacy policies and provide them with notice and the opportunity to opt-out of changes to those policies. The Debtors have provided no information to indicate that they are a financial institution under the GLBA. Nevertheless, the FTC's rules, regulations, and interpretation of when the GLBA requires notification and opt-out may be informative in this situation.

51. During the FTC's consideration of its Privacy of Consumer Financial Information Rule, some entities that submitted comments requested guidance concerning "what notices are required in the event of a merger of two financial institutions or an acquisition of one financial institution by another."²⁴ In its comments on the final rule, the FTC indicated that in merger or acquisition scenarios

... [T]he need to provide new initial (and opt-out) notices to the customers of the entity that ceases to exist will depend on whether the notices previously given to those consumers accurately reflect the policies and practices of the surviving entity. If they do, the surviving entity will not be required under the rule to provide new notices.²⁵

The FTC's interpretation of the GLBA as not requiring notice (and opt-out) in situations in which an acquirer adopts the policies and practices of the former company is consistent with the FTC's stipulation and decree in *Toysmart*. Nevertheless, for reasons stated in this Report, the Ombudsman's position is that notice and choice requirements are appropriate here despite the fact that GB Merchant Partners has agreed to adhere to Debtor's privacy promises.

²⁴ Privacy of Consumer Financial Information, Final Rule, 65 Fed. Reg. 33660 (May 24, 2000).

²⁵ *Id.* at 33660-33661.

Applicable State Laws

52. Most states have consumer protection laws that are consistent with the FTC Act.
53. Debtor's PII contains addresses for consumers in every state.
54. If the proposed PII transfer satisfies the FTC transfer requirements, state laws should likewise be satisfied.

Non-U.S. Laws

55. Debtor's counsel represented that the Debtor did not collect the personally identifiable information of customers from non-U.S. data subjects. Accordingly, the "applicable nonbankruptcy law"²⁶ does not include the data protection laws of non-U.S. countries.

The Debtor's Consumer Privacy Policies and Practices

56. The privacy statement located at www.AshleyStewart.com is attached to this Report as **Exhibit A**. This privacy policy has not changed materially in several years.²⁷
57. Debtor's privacy policies do not contemplate the transfer of customer information in the context of a bankruptcy, merger or similar business transaction. The closest the any of the policies comes to this issue is in the context of data sharing on Debtor's credit card application privacy statement:

Our Affiliates also may use eligibility information about you, such as your payment history and credit account usage from us and credit information about you, to send you marketing solicitations. We will continue to share nonpublic information about you with nonaffiliated third parties as permitted by law and as described in paragraph 3, including sharing your information with the retailer(s)

²⁶ 11 USC §363(b)(1)(B)(ii) (2006)

²⁷ See **Exhibits B through G**. Debtor's privacy statements have consistently contained language assuring customer that "Ashley Stewart will not sell or release your email address to any other company."

where you may make purchases using your credit account opened by us.²⁸

58. However, even if the Privacy Ombudsman were to find that customer information collected via Debtor's credit card application were subject to a different set of rules than the rest of the information, Debtor's counsel has represented that all customer information is placed into the same central database and intermingled with other information which may be subject to different privacy statements. Therefore, the best course of action would be for the Debtors to treat all of this information the same, and notify customers prior to the sale and provide them with the opportunity to opt-out from the transfer.

59. None of the policies reviewed anticipate or address the type of transfer contemplated by the Asset Purchase Agreement. Accordingly, the transfer of Debtor's customer lists cannot be consistent with any of these policies. The Ombudsman therefore believes that the Debtors should notify their customers prior to the sale and to provide them with an opportunity to opt-out from the transfer. And at a minimum, GBMP should provide them with notice and the ability to opt-out of further use of their information.

Factors to Be Considered

60. Bankruptcy Code Section 332 suggests at least four factors as to which the Ombudsman may inform the Court: (a) Debtor's privacy policy; (b) potential losses or gains of privacy to consumers if a sale is approved; (c) the potential costs or benefits to consumers if such sale is

²⁸ See **Exhibit H**, Section 3.

approved; and (d) potential alternatives that would mitigate potential privacy losses or potential costs to consumers.²⁹

61. Debtor's Privacy Policies - As discussed above, none of Debtor's privacy policies specifically address the transfer of data in a bankruptcy proceeding.

62. Potential Losses, Gains and/or Costs to Privacy if the Sale is Approved - Moreover, the transfer of consumer PII contemplated here will have a minimal impact upon consumers. GB Merchant Partners has agreed to continue to operate the Ashley Stewart brand. In addition to the specter of FTC action, GB Merchant Partners has significant incentive – including but not limited to the strong incentive of maintaining the value of Debtor's customer friendly brand - to protect the transferred PII and abide by the Debtor's most restrictive privacy policy.

Therefore, the transfer of PII to GB Merchant Partners would only result in a loss of privacy to the consumers involved if GB Merchant Partners were to adopt significantly different privacy practices from that employed by Debtor.

63. Mitigating Potential Privacy Losses - The best way in which to mitigate potential privacy losses to Debtor's customers is to require GB Merchant Partners to continue to meet consumers' privacy expectations. The general outline of those requirements has been provided in FTC guidance and cases such as *Toysmart*. The proposed requirements with respect to Debtor's proposed transfer are set forth below.

Recommendations

64. Based on the foregoing, the Ombudsman respectfully submits the following recommendations to the Court.

²⁹ 11 U.S.C. §332.

65. First, the Court should approve the transfer of all consumer PII from Ashley Stewart to GBMP, except PII collected from customers indicated that their age was under 13 at the time their PII was provided;

66. Second, in accordance with governing law permitting the transfer of PII, the Court should require that:

- a. As the transfer of PII is to a “Qualified Buyer”: A “Qualified Buyer” means an entity that: (i) concentrates in the same business and market as Debtor; (ii) expressly agrees to be Debtor’s successor-in-interest as to the customer information; (iii) agrees to be responsible for any violation of that policy following the date of purchase; and (iv) shall not disclose, sell, or transfer customers’ PII to any Third Party (defined below) in a manner inconsistent with Debtor’s Privacy Policy without obtaining each customer’s prior affirmative (“Opt-in”) consent;
- b. GBMP agrees to be bound by and meet the standards established by Debtor’s Privacy Policies, including but not limited to honoring any opt-out requests submitted by customers;
- c. GBMP further agrees that for the purposes of Paragraph 66(a), the definition of Third Party includes, but is not limited to other consumer brands controlled and/or owned, in whole or in part, by GBMP;
- d. Debtor and GBMP agree to provide notice to any consumer whose PII is being transferred, including: on the Debtor’s websites, by email, and via posted notices at each of Debtor’s retail locations; and
- e. As part of the notification process, Debtor and the GBMP agree to provide those consumers with an opportunity to opt-out of any future use of their PII.

67. Any information collected from persons under the age of 13 should be destroyed, and GBMP must ensure that www.AshleyStewart.com is in full compliance with The Children's Online Privacy Protection Act COPPA within 90 days.

68. Finally, the Order approving the sale of PII in this instance should also (i) require GBMP to file with the Court a statement under oath that it has fully complied with the conditions imposed to protect the PII; (ii) direct the Ombudsman to file a supplemental report confirming such compliance; or (iii) both.

Dated: October 27, 2010

/s/Alan Chapell
ALAN CHAPELL

EXHIBIT A

ASHLEY STEWART

Sizes That Compliment Every Curve

[Sign in/Register](#) | [My Account](#) | [Store Locator](#) | [Shopping Bag \(0\)](#)

 Search:
[New & Hot](#) | [Tops](#) | [Bottoms](#) | [Dresses](#) | [Denim](#) | [Suits & Separates](#) | [Outerwear](#) | [Intimates](#) | [Accessories](#) | [Ext. Sizes](#) | [Sale](#) | [Clearance](#)

PRIVACY POLICY

Ashley Stewart believes it is important to let visitors to ashleystewart.com (the "Website") know what types of information we collect online, and how we may use and share that information. In this online Privacy Policy, "we", "our" or "us" refers to Ashley Stewart, and "you" or "your" refers to each visitor to the Website. Except for the section titled Your California Privacy Rights, this Privacy Policy applies only to information that we collect about you on the Website.

- What Information We Collect
- Why We Collect Information
- When We Disclose Information
- Your Choices about the Information We Collect
- Privacy of Children Who Visit the Web Site
- Your California Privacy Rights
- Visitors to the Website Outside of the United States
- Updating Personal Information
- Links
- Security
- Questions/Changes in Policy

What Information We Collect:

Shopping:

When you shop at ashleystewart.com, we will collect the information necessary to complete your order, such as your name, e-mail address, shipping address, payment information (including credit card number and/or debit card number) and billing address. You may also choose to provide us with your gender and birth date. If you create an Account, we will collect information about your purchases and payment methods, as well as the shipping addresses that you add to your Address Book, in order to make future shopping experiences faster and more convenient. You may change or delete the saved information anytime. Simply go to My Account, and log in with your email address and password. You may edit or delete whatever personal information you wish.

Ashley Stewart Credit Card:

If you apply online for an Ashley Stewart credit card, you will be providing your personal information directly to the issuing bank for the Ashley Stewart credit card. However, your name, address, phone number, birth date and credit card account number, as well as any additional information necessary for us to provide you with the bonuses and benefits of an Ashley Stewart credit card, may be provided to us by the card issuer.

General Browsing:

We gather navigational information about where visitors go on the Website and information about the technical efficiencies of our Website and services (i.e., time to connect to the Website, time to download pages, etc.). This information allows us to see which areas of our Website are most visited and helps us better understand our visitors' experiences at ashleystewart.com. This helps us improve the quality of the Website by recognizing and delivering more of the features, areas and services our visitors prefer. In this process of gathering navigational information, non-personally identifiable information (for example, domain type, browser version, service provider and IP address) may be collected.

Use of Cookies:

The Website uses a browser feature known as a cookie, which assigns a unique identification to your computer. Cookies are typically stored on your computer's hard drive and are used to help track clicks as you go through the pages within our Website. We may also use cookies to tell us whether you have previously visited ashleystewart.com. You can set your browser not to accept cookies or to notify you when you are sent a cookie, giving you the opportunity to decide whether or not to accept it. Turning off cookies will not prevent you from placing your order.

Use of Pixel Tags and JavaScript Tags:

We also use "pixel tags" (also called "web beacons" or "clear gifs") and JavaScript tags, placed on our Website and in our emails, but not on your computer. These tags help us analyze our customers' online behavior and measure the effectiveness of our Website and our advertising. We work with service providers that help us track, collect, and analyze this information.

The tags on our Website may be used to collect information about your visit, including the pages you view, the features you use, the links you click, and other actions you take in connection with our Website. This information may include your computer's internet protocol (IP) address, your browser type, your operating system, date and time information, and other technical information about your computer. We may also track certain information about the identity of other websites that you visit. Pixel tags, JavaScript tags and cookies in our emails may be used to track your interactions with those messages, such as when you receive, open, or click a link in an email message from us.

If you have turned off cookies and disabled JavaScript, the pixel tags and JavaScript tags will only detect you as an anonymous visitor to our Website.

We also work with third-party companies that use tracking technologies to serve advertisements on our behalf across the internet. These companies may collect information about your visits to our Website and your interaction with our advertising and other communications. If you would like more information about this practice and to know your choices about not having your information used by these companies, please visit www.networkadvertising.org/managing/opt_out.asp.

We may combine the information we collect through cookies, pixel tags and JavaScript tags with other information we have collected from you. This information may be used to improve our Website, to personalize your online experience, to tailor our communications with you, to determine the

effectiveness of our advertising, and for other internal business purposes.

Why We Collect Information:

We collect information at ashleystewart.com to allow you to purchase merchandise from us, to improve your online viewing, and to improve your shopping experiences at ashleystewart.com and at Ashley Stewart stores. The information we collect online is also used to deliver services and information about our products to you. The information we receive from the issuer of the Ashley Stewart credit card is used by us to deliver information about our products to you and to provide you with the bonuses and benefits of an Ashley Stewart credit card, such as contacting you about upcoming in-store promotions and sending you a mailing during your birthday month.

When We Disclose Information

Ashley Stewart does not sell, rent or trade your e-mail address to unaffiliated third parties. However, your name and mailing address will be added to the ashleystewart.com database, and unless you notify us otherwise as described in Your Choices about the Information We Collect, we may share your name and mailing address with unaffiliated third parties to help process and ship your orders when you purchase merchandise from us. We also may use third parties to help us provide new or better products and services to you, and to monitor site activity, conduct surveys, and administer e-mails, drawings or contests. We require these third parties to maintain the confidentiality and security of personally identifiable information (i.e. name, address, e-mail address, telephone number) that they receive.

We may disclose specific information about you if necessary to do so by law, or based on our good faith belief that it is necessary to conform or comply with the law. We also may disclose information to prevent fraud to reduce credit risks, to cooperate with police and other governmental authorities, or to protect the rights, property or safety of visitors to the Website or the public.

We may disclose information about you if there is a sale of all or part of our business, or if we go through a reorganization or merger.

Your Choices about the Information We Collect

If you do not wish to receive e-mails about special offers, new fashion trends, contests and other promotions from ashleystewart.com click the unsubscribe link at the bottom of our emails, or if you do not wish to receive other marketing materials by regular mail from ashleystewart.com, please call us at 1-877-221-9501.

Privacy of Children Who Visit the Web Site

Ashley Stewart recognizes the importance of children's safety and privacy. The Website is not designed to attract children, and is not intended for use by any children under the age of 13. We do not request, or knowingly collect, any personally identifiable information from children under the age of 13. Children under the age of 18 may use the Website only under the supervision of a parent or legal guardian who agrees to be bound by the Terms of Use.

Your California Privacy Rights

Ashley Stewart collects various types of personal information about you during the course of your relationship with Ashley Stewart as a customer. Under California law, if you are a resident of California, you may make a written request to Ashley Stewart about how we have shared your information with third parties for their direct marketing purposes. In response to your written request, Ashley Stewart is allowed to provide you with a notice describing the cost-free means to opt-out of our sharing your information with third parties with whom we do not share the same brand name, if the third party will use such information for its direct marketing purposes.

If you would like to exercise your rights under California law, please send your written request to the e-mail address or postal address below. Please include your postal address in your request. Within thirty (30) days of receiving your written request, Ashley Stewart will provide you with a Third Party Direct Marketing Opt-Out Form so you may request that your personal information not be disclosed to third parties for their direct marketing purposes.

E-mail Address:

help@ashleystewart.com

Postal Address:

Ashley Stewart
100 Metro Way
Secaucus, NJ 07094

Attn: Customer Service Department

Visitors to the Website Outside of the United States

If you are visiting the Website from a location outside of the U.S., your connection will be through and to servers located in the U.S. All information you receive from the Website will be created on servers located in the U.S., and all information you provide will be securely maintained on Web servers and systems located within the U.S.

Updating Personal Information

We prefer to keep your personal information accurate and up-to-date. If you would like to change your contact information, please go to My Account, and log in with your email address and password, or call us at 1-877-221-9501 Monday through Saturday, 10am - 7pm EST.

Links

For your convenience, the Website may contain links to other websites. Ashley Stewart is not responsible for the privacy practices, advertising, products, or the content of such other websites. None of the links should be deemed to imply that Ashley Stewart endorses or has any affiliation with the links.

Security

Ashley Stewart believes in providing a safe and secure experience for all of our online visitors. To that end, we have implemented security measures at ashleystewart.com to protect the information we have collected at the Website. For example, we limit access to your personal information to select employees and others with a valid business need for the information. In addition, we hold our employees responsible for upholding our privacy standards.

We use standard, well accepted data encryption technology when transferring and receiving your personal information. A solid key icon or a locked padlock icon at the lower portion of your Web browser window confirms the site is secured through Secure Sockets Layer (SSL). Pages requesting personal information should always have one of these icons. You can also confirm your data is being encrypted by looking at the URL line of your browser (the place where you type Website addresses). When accessing a secure server, the site address will change from "http" to "https".

While we use the foregoing security measures to protect your information, please note that no data

EXHIBIT B

Search: 
[New & Hot](#)
[Tops](#)
[Bottoms](#)
[Dresses](#)
[Denim](#)
[Suits & Separates](#)
[Outerwear](#)
[Intimates](#)
[Accessories](#)
[Ext. Sizes](#)
[Sale](#)
[Clearance](#)
PRIVACY POLICY

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- Questions/Changes in Policy

What Information We Collect:**Shopping:**

When you shop at ashleystewart.com, we will collect the information necessary to complete your order, such as your name, e-mail address, shipping address, payment information (including credit card number and/or debit card number) and billing address. You may also choose to provide us with your gender and birth date. If you create an Account, we will collect information about your purchases and payment methods, as well as the shipping addresses that you add to your Address Book, in order to make future shopping experiences faster and more convenient. You may change or delete the saved information anytime. Simply go to My Account, and log in with your email address and password. You may edit or delete whatever personal information you wish.

Ashley Stewart Credit Card:

If you apply online for an Ashley Stewart credit card, you will be providing your personal information directly to the issuing bank for the Ashley Stewart credit card. However, your name, address, phone number, birth date and credit card account number, as well as any additional information necessary for us to provide you with the bonuses and benefits of an Ashley Stewart credit card, may be provided to us by the card issuer.

General Browsing:

We gather navigational information about where visitors go on the Website and information about the technical efficiencies of our Website and services (i.e., time to connect to the Website, time to download pages, etc.). This information allows us to see which areas of our Website are most visited and helps us better understand our visitors' experiences at ashleystewart.com. This helps us improve the quality of the Website by recognizing and delivering more of the features, areas and services our visitors prefer. In this process of gathering navigational information, non-personally identifiable information (for example, domain type, browser version, service provider and IP address) may be collected.

Use of Cookies:

The Website uses a browser feature known as a cookie, which assigns a unique identification to your computer. Cookies are typically stored on your computer's hard drive and are used to help track clicks as you go through the pages within our Website. We may also use cookies to tell us whether you have previously visited ashleystewart.com. You can set your browser not to accept cookies or to notify you when you are sent a cookie, giving you the opportunity to decide whether or not to accept it. Turning off cookies will not prevent you from placing your order.

Use of Pixel Tags and JavaScript Tags:

We also use "pixel tags" (also called "web beacons" or "clear gifs") and JavaScript tags, placed on our Website and in our emails, but not on your computer. These tags help us analyze our customers' online behavior and measure the effectiveness of our Website and our advertising. We work with service providers that help us track, collect, and analyze this information.

The tags on our Website may be used to collect information about your visit, including the pages you view, the features you use, the links you click, and other actions you take in connection with our Website. This information may include your computer's internet protocol (IP) address, your browser type, your operating system, date and time information, and other technical information about your computer. We may also track certain information about the identity of other websites that you visit.

Pixel tags, JavaScript tags and cookies in our emails may be used to track your interactions with those messages, such as when you receive, open, or click a link in an email message from us.

If you have turned off cookies and disabled JavaScript, the pixel tags and JavaScript tags will only detect you as an anonymous visitor to our Website.


We also work with third-party companies that use tracking technologies to serve advertisements on our behalf across the internet. These companies may collect information about your visits to our Website and your interaction with our advertising and other communications. If you would like more information about this practice and to know your choices about not having your information used by these companies, please visit www.networkadvertising.org/managing/opt_out.asp.

We may combine the information we collect through cookies, pixel tags and JavaScript tags with other information we have collected from you. This information may be used to improve our Website, to personalize your online experience, to tailor our communications with you, to determine the effectiveness of our advertising, and for other internal business purposes.

Why We Collect Information:

We collect information at ashleystewart.com to allow you to purchase merchandise from us, to improve your online viewing, and to improve your shopping experiences at ashleystewart.com and at Ashley

EXHIBIT C

 Ashley Stewart Home Page

PRIVACY AND SECURITY POLICY

Ashley Stewart recognizes the importance of protecting your privacy when you visit our web site. Information we obtain from our web site is anonymous. It allows us to see which areas of our web site are most popular with our guests. This helps us to improve the quality of your online experience by recognizing and delivering more of the information and services you want. Information that you provide to us is maintained in private files on a secure web server. Ashley Stewart will not sell or release your e-mail address to any other company.

Ashley Stewart believes in providing a safe and secure internet experience for all of our guests. We provide only the most stringent of security measures available on the internet. We want you to feel comfortable that your personal information such as your name, address and credit card number will be kept safe when making any Ashley Stewart purchase online.

The credit card number that you use to make purchases from this web site will be used to obtain credit authorization for the transaction and will be protected by encryption.

The Children's Online Privacy Protection Act imposes certain requirements on web sites directed toward children under the age of thirteen. AshleyStewart.com is not directed towards children under the age of thirteen. It is Ashley Stewart policy not to knowingly collect personal information on any person under the age of thirteen.

Ashley Stewart reserves the right to make changes to our Privacy and Security Policy at any time. Please check this page periodically for changes.

EXHIBIT D



[COMPANY](#)
[CAREER](#)
[FREQUENT
QUESTIONS](#)
[CONTACT US](#)

[BACK](#)

PRIVACY AND SECURITY POLICY

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[Hi](#) [FASHION](#) [STORE LOCATOR](#) [PR](#) [SPECIAL OFFERS](#) [GIFT CERTIFICATE](#) [CON](#) [SPEAKUP](#) [GREAT CARD](#) [ARQ](#)

EXHIBIT E



PRIVACY AND SECURITY POLICY

Ashley Stewart recognizes the importance of protecting your privacy when you visit our website. Information we obtain from our website is anonymous. It allows us to see which areas of our website are most popular with our guests. This helps us to improve the quality of your online experience by recognizing and delivering more of the information and services you want. Information that you provide to us is maintained in private files on a secure web server. Ashley Stewart will not sell or release your e-mail address to any other company.

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Ashley Stewart reserves the right to make changes to our Privacy and Security Policy at any time. Please check this page periodically for changes.

EXHIBIT F

MODELSEARCH

HOW TO ENTER

Please mail all of the following to:

Perfect Model Search c/o Urban Brands, Inc.
100 Metro Way, Secaucus, NJ 07094
Attn: Marketing Department

Name: _____ FIRST _____ MIDDLE _____ LAST _____

Address: _____

Telephone#: (____) _____

Email: _____

Age: _____ Size: _____

Occupation: _____

Employer: _____

Address: _____

Telephone#: (____) _____

ASHLEY STEWART™
Where fashion and value fit

YOU ARE PERFECT

ASHLEY STEWART™
Where fashion and value fit

**MODELSEARCH
2010**

ASHLEY STEWART™
Where fashion and value fit

A) An official entry form of a 3" x 5" piece of paper, with your complete name, address (including zip code) daytime and evening telephone number, email address if available, age, size, occupation, employer and employer's address (print or type). B) A recent (within one year) 4" x 6" or larger, color photograph (full body shot only) preferably in Ashley Stewart Perfect Collection Merchandise. C) A brief essay, 500 words or less describing your accomplishments, and why you should be chosen as the next Ashley Stewart Perfect Model.

Preliminary and final judging will be based on the content of the essay submitted and your overall projection of the Ashley Stewart image. The contest begins on September 14, 2010 and ends 11:59 P.M. EST on October 10, 2010. Entries postmarked after October 10, 2010 will be ineligible. Limit one entry per person. All entries, essays and photographs will become the property of Ashley Stewart and will not be returned. Ashley Stewart is not responsible for entries which are received late, lost, stolen, illegible, mutilated, misdirected or postage due.

The essay may not infringe, misappropriate or violate the rights of any third party including, but not limited to, any intellectual property, publicity or privacy rights.

Entries will be judged by Bozoma Saint John (Ashley Stewart Marketing VP), Darius Baptist (Ashley Stewart Stylist) and Chris Kolk (Ashley Stewart Photographer) at Ashley Stewart's corporate offices. Their decisions on all matters relating to this contest are made in their sole discretion and are final. There will be ten finalists, from which one Grand Prize Winner will be chosen. The ten finalists will be chosen on October 12, 2010 and notified by telephone that day. Final judging to determine the Grand Prize winner will take place on or about October 15, 2010. The winner will be notified by telephone on October 18, 2010.

There will be one Grand Prize awarded, consisting of an all expense paid two-day trip for one to New York City, an opportunity to be in an Ashley Stewart photo shoot and a \$500 Gift Certificate to shop at Ashley Stewart with a Grand Prize Total of approximate retail value of \$2,500. The trip includes round-trip coach airfare at the time and date designated by Ashley Stewart to and from closest commercial airport near the winner's residences, meals and ground transportation. All sales, income and other taxes (and the reporting thereof) are the responsibility of the winners. No prize is redeemable for cash or transferable. No prize substitution is allowed. No more than the advertised number of prizes will be awarded.

Ashley Stewart is not responsible and shall have no liability for any winner notification that is lost, intercepted or not received by the potential winner for any reason or the inability of a winner to accept or use a prize for any reason, including, without limitation, the inability to travel to New York and/or appear at the photo shoot on the dates and times designated by Ashley Stewart. Any portion of a prize not accepted or used by the winner will be forfeited. Should Ashley Stewart determine, in its sole discretion, that any entrant has violated any of the provisions in these rules, it shall have no obligation to award any prize to such entrant or to any other entrant.

The contest is open to women 18 years of age or older who are legal residents of and physically located in the United States. Employees of Ashley Stewart and their immediate families are not eligible. No purchase is necessary to enter and a purchase will not improve a person's chance of winning. Void where prohibited by law.

By entering this contest, each entrant grants to Ashley Stewart, and any other party authorized by Ashley Stewart, the right to video and/or audio tape a winner with a prize or during a prize activity and to use, adapt, publish, edit and/or develop an entrant's name, address (city and state only), voice, likeness, photograph, biographical and the prize information, essay and/or statements about the contest for publicity, advertising, trade and promotional purposes in any and all media now known or hereafter discovered, worldwide, and on the world wide web without review, notification or approval, and without additional compensation, in perpetuity, except where prohibited by law. Potential prize winners must execute and return an Affidavit of Eligibility and Liability and Publicity Release to Ashley Stewart within 3 days of the prize notification or they may forfeit any prize that they otherwise might have received.

Each entrant, by participating in this contest, agrees that: (a) she will abide by and be bound by these rules, which are final and binding in all respects; (b) Ashley Stewart has not made any warranty, representation or guarantee, express or implied, in fact or in law, with respect to any prize and specifically disclaims all such warranties, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose; and (c) the prizes are awarded "AS IS" and WITHOUT WARRANTY OF ANY KIND.

If any provisions of these rules are determined to be invalid or unenforceable, the remaining provisions of these rules shall otherwise remain in effect and shall be construed in accordance with their terms as if the invalid or unenforceable provision were not contained herein.

Ashley Stewart reserves the right to modify the rules for clarification purposes without materially affecting the terms and conditions of the contest.

THE CONSTRUCTION, VALIDITY, INTERPRETATION AND ENFORCEABILITY OF THESE RULES OR THE RIGHTS AND OBLIGATIONS OF ENTRANTS OR ASHLEY STEWART IN CONNECTION WITH THE CONTEST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW JERSEY WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS THAT WOULD CAUSE THE APPLICATION OF ANY OTHER STATE'S LAWS.

Each entrant indemnifies and holds harmless Ashley Stewart and its affiliates, parents and subsidiaries from any and all liability for any damage or loss of any kind arising from or in connection with the contest or the award, acceptance, use or misuse, failure to use, possession or loss of any prize or any prize-related activity. Each entrant releases Ashley Stewart, affiliates, parent and subsidiaries from any and all liability for any loss, harm, damages, costs or expenses, including, without limitation, personal property and personal injury damages arising out of participation in the contest, prize acceptance, the use, misuse, failure to use, possession or loss of any prize, participation in any prize-related activity and for all claims based on rights of publicity or privacy, defamation or prize delivery. Failure to enforce any terms of these rules shall not constitute a waiver of any provision.

Any legally-required winners list may be obtained after October 18, 2010 and no later than November 1, 2010 by sending a self-addressed, stamped envelope to the sponsor of the contest c/o Ashley Stewart Perfect Model Search Contest, Urban Brands, Inc., 100 Metro Way, Secaucus, New Jersey 07094.

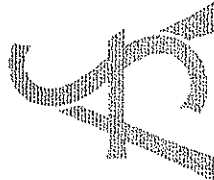


EXHIBIT G

Visit us online at ashleystewart.com to access the
suzannekane.com entry form. Enter in to once a day!

[illegible]

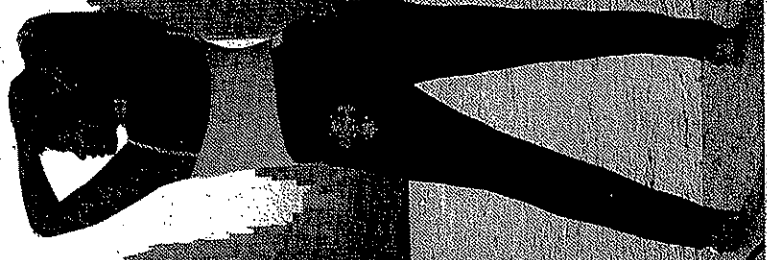
You may need to have your name and address removed from lists of names and addresses used by Ashley Stewart as direct mail contacts or solicitations. To do so, please mark off all such contacts or solicitations by Ashley Stewart in green ink.

If you would prefer a removal request containing your name and address to the following address, you must send a removal request containing your name and address to the following address through the U.S. mail, you must send a removal request containing your name and address to the following address:

Ashley Stewart
109 Main Street, Ste. 200
Newport, Rhode Island 02840

ASHLEY STEWART

win a **FIERCE**
\$5000 SHOPPING SPREE



charge it! with your



ASHLEY STEWART Credit Card*

*Offer good on purchases made with the Ashley Stewart Credit Card at Ashley Stewart stores only. Offer valid through 12/31/2011. See store for details.

ASHLEY STEWART

©2011 Ashley Stewart

EXHIBIT H

8

PLACE
STAMP
HERE

World Financial Network National Bank
P.O.Box 33873
Northglenn, CO 80233-0873

CREDIT CARD APPLICATION

ASHLEY STEWART
1224 5670 8901 0707
DOROTHY ELLIS

THE ASHLEY STEWART CREDIT CARD

TWO WAYS TO APPLY

1 ☐ To apply for INSTANT CREDIT today, complete the application and give it to a store associate.

2 ☐ To apply by MAIL, complete the application and mail. Your application will be processed immediately upon receipt.

Check the credit reference that applies to you and list it below. You must check at least one.

☐ American Express
☐ Discover

☐ JC Penney
☐ MasterCard

☐ Sears
☐ Visa

☐ Major Store Card

CREDITOR NAME

ACCOUNT NUMBER

EXPIRATION DATE

TELL US ABOUT YOURSELF YOU MUST BE AT LEAST 18 YEARS OLD TO APPLY.

FIRST NAME

MIDDLE INITIAL

LAST NAME

DATE OF BIRTH

MONTH

DAY

YEAR

SOCIAL SECURITY NUMBER

HOME ADDRESS: NUMBER & STREET

APT. NO.

CITY

STATE

ZIP CODE

PREVIOUS ADDRESS: NUMBER & STREET
(If at present address less than 2 years)

APT. NO.

CITY

STATE

ZIP CODE

HOME PHONE NUMBER
()

PHONE LISTED UNDER THE FOLLOWING NAME

BUSINESS PHONE NUMBER
()

EMAIL ADDRESS*

MONTH YOU WERE BORN

EMPLOYER NAME

ADDRESS

CITY

STATE

ZIP CODE

NAME OF ADDITIONAL CARD USER

RELATIONSHIP

ISSUE A CARD IN ADDITIONAL USER NAME?

☐ Yes ☐ No

SIGN HERE

By signing below, I represent that I am at least 18 years of age and that the information I have supplied on this application is true and correct. I agree that I am applying to World Financial Network National Bank (WFNNB) for an Ashley Stewart credit card account for personal, family or household use. I agree that a credit report may be obtained and used in making the credit granting decision. I agree to be bound by the terms of the Credit Card Agreement that I will receive upon approval.

X

APPLICANT'S SIGNATURE

DATE

Subject to credit approval. **There are costs associated with the use of this credit card account. To obtain information about these costs, call us at Ashley Stewart at 1-800-376-0581 (TDD/TTY 1-800-376-0591) or write to us at World Financial Network National Bank, P.O. Box 33873, Northglenn, CO 80233-0873.**

IMPORTANT INFORMATION ABOUT OPENING AN ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth or other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

The **Ohio** laws against discrimination require that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio civil rights commission administers compliance with this law. **California Residents:** If you are married, you may apply for a separate account. **New York Residents:** A consumer credit report may be ordered in connection with the processing of an application, or subsequently with the update, renewal or extension of

credit. Upon your request, you will be informed of whether or not a consumer credit report was ordered, and if it was, you will be given the name and address of the consumer-reporting agency that furnished the report. **Rhode Island and Vermont Residents:** A consumer credit report may be ordered in connection with the processing of an application, or subsequently of purposes of review or collection of the account, increasing the credit line on the account, or other legitimate purposes associated with the account. **Notice to Married Wisconsin Residents:** No provision of any marital property agreement, unilateral statement under Section 766.59 of the Wisconsin statutes or court order under 766.70 adversely affects the interest of the creditor, World Financial Network National Bank, unless the Bank, prior to the time credit is granted is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the Bank is incurred.

*By providing your email address, you consent to receive commercial emails from World Financial Network National Bank for solicitation, advertising and promotional offers related to your Ashley Stewart Credit Card Account. You also consent for World Financial Network National Bank to share your email address with Ashley Stewart for service and product offers.

Rev. 2/06

MOISTEN HERE, FOLD OVER TO **B**, SEAL AND MAIL

[illegible]

Annual Percentage Rate (APR) for Purchases	24.99%. The APR will vary with the market based on the Prime Rate. Your cash card is the choice of each cash cardholder. We will not charge you any late payments or any late fees unless notified by the card issuer.
How to avoid paying interest on Purchases	If you are charged interest, the charge will be no less than \$1.00. We have many factors to consider when applying for or using a credit card. Visit the website of the Federal Reserve Board at http://www.federalreserve.org/consumer
Minimum Interest Charge	0.00%
For Credit Card Visa from the Federal Reserve Board	0.00%

Fees	
Set up and Maintenance Fee	Name
• Annual Fee	Up to \$25
Parade Fees	Up to \$50
• Late Payment	Up to \$20
• Resumed Payment	

What We Will Calculate Your Balance: We use a method called "average daily balance" (including new purchases).

1. Your Application to Us
2. Your Application to Us

A very good example of the legal system at work is the *Accord and Satisfaction* clause in the Agreement of Sale. In the Agreement of Sale, the Seller agrees to sell the property to the Buyer. The Buyer agrees to pay the purchase price to the Seller. The Seller agrees to deliver the property to the Buyer. The Buyer agrees to take possession of the property. The Seller agrees to execute the necessary documents to transfer the property to the Buyer. The Buyer agrees to pay the purchase price to the Seller. The Seller agrees to deliver the property to the Buyer. The Buyer agrees to take possession of the property. The Seller agrees to execute the necessary documents to transfer the property to the Buyer.

Accountant has been conducted by 1996. For your reference, please note that we are not a member of the U.S. Trustee for Creditors' Benefit, Inc. (US Trustee). If you have any questions, please contact your local US Trustee office. For more information, please visit our website at www.uscourts.gov. We are not a member of the U.S. Trustee for Creditors' Benefit, Inc. (US Trustee). If you have any questions, please contact your local US Trustee office. For more information, please visit our website at www.uscourts.gov.

[illegible][illegible]

Credit Plan which harmonizes with a postpaid Credit Plan offering. The promotional Credit Plan period will end on the second anniversary of the date of the first purchase. The promotional Credit Plan balance will be transferred to your non-promotional Credit Plan. Any applicable promotional Credit Plan purchase will be applied to the promotional Credit Plan purchase in the promotional period.

The Supreme Court of the United States has ruled that the Federal Reserve Bank of New York is not a government agency and therefore is not subject to the Freedom of Information Act. The Court's decision was based on the fact that the Fed is an independent entity created by Congress to manage the nation's money supply and maintain financial stability. The Court held that the Fed's actions are not subject to judicial review and that it is not bound by the same rules as government agencies. This decision has raised concerns about the Fed's transparency and accountability, particularly in light of its role in the financial crisis and its ongoing efforts to regulate the financial system.

[illegible][illegible][illegible]

NOTE: If your Account balance is less than \$25.00, you must pay Account balance in full. Your Statement will tell you how much you must pay.

[illegible][illegible]

13. **What is the purpose of the "Change Request" form?**
The purpose of the "Change Request" form is to document any changes to the project plan, scope, or other project parameters. It is used to track changes and ensure that all changes are approved and implemented in a controlled manner.

14. **What is the purpose of the "Project Charter" form?**
The purpose of the "Project Charter" form is to define the project's purpose, objectives, and scope. It is used to gain approval for the project and to communicate the project's goals and objectives to the project team and stakeholders.

15. **What is the purpose of the "Project Plan" form?**
The purpose of the "Project Plan" form is to define the project's schedule, resources, and budget. It is used to track the project's progress and to ensure that the project is completed on time and within budget.

16. **What is the purpose of the "Project Status Report" form?**
The purpose of the "Project Status Report" form is to provide a regular update on the project's progress, including any changes to the project plan, scope, or other project parameters. It is used to communicate the project's status to the project team and stakeholders.

17. **What is the purpose of the "Project Risk Register" form?**
The purpose of the "Project Risk Register" form is to identify and track potential risks to the project. It is used to assess the impact of risks and to develop strategies to mitigate or avoid risks.

18. **What is the purpose of the "Project Communication Plan" form?**
The purpose of the "Project Communication Plan" form is to define the project's communication strategy, including the types of communication, the frequency of communication, and the roles and responsibilities of the project team and stakeholders.

19. **What is the purpose of the "Project Closure Form" form?**
The purpose of the "Project Closure Form" form is to document the project's completion and to provide a final report on the project's performance. It is used to close the project and to ensure that all project activities are completed and documented.

20. **What is the purpose of the "Project Review Form" form?**
The purpose of the "Project Review Form" form is to evaluate the project's performance and to identify lessons learned. It is used to improve the project management process and to ensure that future projects are completed more effectively.

Q. What happens if I don't have enough money in my account to cover my bill?

A. If you don't have enough money in your account to cover your bill, we will charge you a late fee. The late fee is \$35.00. If you don't pay your bill by the due date, we will also charge you a penalty fee. The penalty fee is 1.5% of your bill. We will also charge you a fee for each day you don't pay your bill. The fee is \$5.00 per day. We will also charge you a fee for each day you don't pay your bill. The fee is \$5.00 per day. We will also charge you a fee for each day you don't pay your bill. The fee is \$5.00 per day.

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the company's new 100-page *Handbook*, which is the first in a series of publications that will be published on a regular basis. The *Handbook* is the first of a series of publications that will be published on a regular basis. The *Handbook* is the first of a series of publications that will be published on a regular basis.

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and the other 100,000, which was not included in the sample, were not included in the sample. The results of the study are presented in Table 1. The results show that the majority of the sample (60%) was female, and the majority of the sample (60%) was aged 18-24. The majority of the sample (60%) was white, and the majority of the sample (60%) was married. The majority of the sample (60%) was employed, and the majority of the sample (60%) was a resident of the United States. The majority of the sample (60%) was a resident of the United States, and the majority of the sample (60%) was a resident of the United States.

only to our free data & only a negligible amount of postage and collection costs, if you do not comply

the fact that the company's stock price has risen 10% since the announcement. The company's stock price has risen 10% since the announcement. The company's stock price has risen 10% since the announcement.

[illegible]

12. Credit Reports. Will Member authorize us to investigate your credit rating. You agree that a credit report may be requested in connection with the processing of an application for credit, and any subsequent investigation in connection with any extension of credit, or any request to increase your credit limit, or any renewal or renewal of your Account, or to take collection action on the Account, or to improve the credit rating of the Account. If you say "no," we will not request a credit report. If you say "yes," we will request a credit report. We may request a credit report from a credit reporting agency, or we may request information about your credit rating from other sources. We may use the information obtained about your credit rating for other purposes.

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EXHIBIT I

EXHIBIT J

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In re:

TOYSMART.COM, LLC, Debtor.

**Chapter 11
Case No. 00-13995-CJK**

**STIPULATION AND ORDER ESTABLISHING CONDITIONS
ON SALE OF CUSTOMER INFORMATION**

This Stipulation is entered into this twentieth day of July, 2000, by and between, Toysmart.com, LLC, debtor and debtor-in-possession ("Debtor" or "Toysmart"), and the Federal Trade Commission ("FTC").¹

WHEREAS, on June 9, 2000, an involuntary petition was commenced against the Debtor under chapter 11 of 11 U.S.C. § 101, et seq. ("Code"). On June 23, 2000, the Debtor filed a consent to the order for relief under chapter 11 of the Code;

WHEREAS, the Debtor is a Delaware limited liability corporation involved in the "e-tail" business. The Debtor has, among other things, advertised, promoted, and sold toys on the Internet including through its Web site www.toysmart.com;

WHEREAS, the FTC is an independent agency of the United States government created pursuant to 15 U.S.C. § 41, et seq. ("FTC Act"). The FTC enforces § 5(a) of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce;

WHEREAS, the Debtor has collected personal customer information including, but not limited to, consumers' names, addresses, billing information, shopping preferences, and family profile information;

WHEREAS, from at least September 1999 to July 2000, the Debtor's Web site included a privacy statement ("Privacy Statement") stating that (1) "Personal information voluntarily submitted by visitors to our site, such as name, address, billing information and shopping preferences, is never shared with a third party. All information obtained by toysmart.com is used only to personalize your experience online," and (2) "When you register with toysmart.com, you can rest assured that your information will never be shared with a third party;"

¹ The FTC assents to this Court's jurisdiction solely for purposes of approval of this Stipulation. Should this Stipulation not be approved by the Bankruptcy Court, the FTC reserves the right to take all actions as it deems necessary and appropriate to protect its exercise of police and regulatory powers.

WHEREAS, on or about May 22, 2000, the Debtor announced that it had ceased operations and began to offer for sale customer information through advertisements appearing in the Wall Street Journal and the Boston Globe and through its Web site;

WHEREAS, on June 29, 2000, the Debtor filed the Debtor's Motion For Authority To Sell Assets (Excluding Inventory) By Public Sale Free And Clear Of Liens, Claims And Encumbrances ("Sale Motion") and related pleadings. Pursuant to the Sale Motion, the Debtor, among other things, seeks to sell a group of assets set forth in Category C and entitled "Web Site Applications, Names, Customer List, and Product Databases" consisting of the Debtor's right, title and interest in customer information, including contents of its customer databases including detailed customer lists and related information, as well as names, trademarks, goodwill, URL names, Web site source code, and data base schemas without content and publishable content located on its Web site (each and together, the "Goodwill"); and

WHEREAS, the FTC has filed a complaint in the United States District Court for the District of Massachusetts, Federal Trade Commission v. Toysmart.com, LLC, Civil Action No. 00-11341-RGS, which alleges that the proposed sale of the customer information would constitute a deceptive act or practice in or affecting commerce under § 5(a) of the FTC Act; and

WHEREAS, the Debtor disputes the FTC's allegations and further responds that it has never violated the Privacy Statement, but in any event, seeks to resolve this matter so as to preserve the value of the Debtor's assets for the benefit of its creditors.

NOW THEREFORE, in an effort to resolve this matter without further cost or delay, the parties hereby agree, subject only to the approval of this Court, as follows:

For the purposes of this Agreement, the following definitions shall apply:

>"Qualified Buyer" shall mean an entity that (1) concentrates its business in the family commerce market, involving the areas of education, toys, learning, home and/or instruction, including commerce, content, product and services, and (2) expressly agrees to be Toysmart's successor-in-interest as to the Customer Information, and expressly agrees to the obligations set forth in Paragraphs 2, 3 and 4, below. Nothing herein, however, shall create any liability for such Qualified Buyer as a result of any actions or omissions by the Debtor, as the Customer Information is to be sold free and clear of all liens, claims and encumbrances, except for the Qualified Buyer's obligations under the Privacy Statement.

"Customer Information" shall mean information of or relating to consumers collected by the Debtor, including, but not limited to, name, address, billing information, shopping preferences, order history, gift registry selection, family profile information about consumers' children, such as name, gender, birthday, and toy interests.

"Third Party" shall mean any individual, firm, or organization other than the Qualified Buyer and its successors, except to the extent that disclosure of Customer Information to such an individual, firm, or organization is necessary to maintain the technical

functioning of the Toysmart Web site or customer databases, or to fulfill a consumer's request. "Third Party" includes any affiliates of the Qualified Buyer.

"Privacy Statement" shall mean the privacy statement posted on the Toysmart Web site from at least September 1999 to July 2000, the terms of which are included in full in Exhibit 1.

The Debtor shall only assign or sell its Customer Information as part of the sale of its Goodwill and only to a Qualified Buyer approved by the Bankruptcy Court. In the process of approving any sale of the Customer Information, the Bankruptcy Court shall require that the Qualified Buyer agree to and comply with the terms of this Stipulation.

The Qualified Buyer shall treat Customer Information in accordance with the terms of the Privacy Statement and shall be responsible for any violation by it following the date of purchase. Among other things, the Qualified Buyer shall use Customer Information only to fulfill customer orders and to personalize customers' experience on the Web site, and shall not disclose, sell or transfer Customer Information to any Third Party.

If the Qualified Buyer materially changes the Privacy Statement, prior notice will be posted on the Web site. Any such material change in policy shall apply only to information collected following the change in policy. The Customer Information shall be governed by the Privacy Statement, unless the consumer provides affirmative consent ("opt-in") to the previously collected information being governed by the new policy.

In the event that an order is not entered on or before July 31, 2001, approving the sale of the Customer Information to a Qualified Buyer or approving a plan of reorganization, the Debtor shall, on or before August 31, 2001, delete or destroy all Customer Information in its possession, custody or control, and provide written confirmation to the FTC, sworn to under penalty of perjury, that all such Customer Information has been deleted or destroyed. Pending approval of any sale of the Customer Information to a Qualified Buyer or of a plan of reorganization, the Debtor shall handle Customer Information in accordance with the Privacy Statement.

This Stipulation and Order, after approval by the Bankruptcy Court, shall be attached to and incorporated in full into the terms of any plan of liquidation or reorganization that is ultimately approved in this bankruptcy case.

Of Counsel:

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(202) 326-3424/(202) 326-3296

TOYSMART.COM, LLC

David N. Lord
Chief Executive Officer

IT IS SO ORDERED.

Entered at Boston, Massachusetts, this ____ day of July, 2000.

Honorable Carol J. Kenner
United States Bankruptcy Judge

EXHIBIT 1

PRIVACY STATEMENT

Our promise

At toysmart.com, we take great pride in our relationships with our customers and pledge to maintain your privacy while visiting our site. Personal information voluntarily submitted by visitors to our site, such as name, address, billing information and shopping preferences, is never shared with a third party. All information obtained by toysmart.com is used only to personalize your experience online. This information is received via the following areas of our site: My toysmart and the Gift Center. When you place additional orders, our site will update your order history, which you can view in My toysmart. If you sign up for the gift registry, information you submit will be added to your personal profile. Other than these two instances, the information that you provide us is not supplemented in any way.

Your option

If you do not wish to receive emails containing promotional offers or contests from toysmart.com, please click the box located at the bottom of the "My toysmart" registration page. If you are already registered and would like to opt-out of such promotional offers, please go to "My toysmart," click on the "My Profile" icon, and unselect the email option located at the bottom of the page. When you register with toysmart.com, you can rest assured that your information will never be shared with a third party.

Editing your personal information

If you would like to edit your personal information, please click on the "My toysmart" button located on the top of our homepage. Then, simply click on the "My Profile" icon and update any of your information.

Contests

toysmart.com is committed to protecting the privacy of all children who enter contests on our site. We request only the child's first name and age be sent with the contest entry. We email every child's parent with notification that his or her child has entered the contest. Only winners' parents will be sent a release form, which requests a shipping

address as well a permission request to post the winning entry on our site. No entries will be posted without a parent or guardian's permission, and no prizes will be sent without written consent from the parent or guardian.

Your information is safe with us!

All personal information is encrypted on a separate server. Also, we give you the option of further securing your information with the use of a password. To create a personal password, simply go to "My toysmart." Shopping with toysmart.com is guaranteed to be 100% safe. That means we will guarantee your protection against any liability if unauthorized charges are made to your card as a result of shopping at toysmart.com. Simply stated, you are guaranteed a safe and secure transaction every time you shop with us. Visit our "Security" (http://www.toysmart.com/toysmart/ts_cs_security.asp) section for more details.

Questions regarding this statement should be directed to support@toysmart.com.