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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11
: :
CRABTREE & EVELYN, LTD., : :
: :
Debtor. : Case No. 09- _____ (___)
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: :
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**MOTION FOR AN ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 6004 AUTHORIZING THE
DEBTOR TO PAY PREPETITION CLAIMS OF CERTAIN FOREIGN CREDITORS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the “Debtor”),¹

respectfully represents:

BACKGROUND

General

1. On the date hereof (the “Petition Date”), the Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is authorized to operate its businesses and manage its properties as debtor in

¹ The last four digits of the Debtor’s federal tax identification number are 1685.

possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors' committee has been appointed in this chapter 11 case.

The Debtor's Businesses

2. Crabtree & Evelyn has evolved from a small, entrepreneurial business, to a company with worldwide manufacturing and distribution capabilities, worldwide distribution channels and 126 retail locations in the United States, making it well-known and respected for its English-style elegance. Through a multi-channel sales strategy, including sales through retail, wholesale, export, affiliate and internet channels, the Debtor manufactures and distributes its products worldwide.

3. Founded as a purveyor of fine soaps from around the world, products were first sold under the Crabtree & Evelyn name starting in approximately 1972.² During nearly four decades Crabtree & Evelyn has expanded its product offerings from fine soaps to include personal care products and related accessories, fragrances, comestibles (*i.e.*, food products including cookies, teas and jams), products for the home and gift arrangements. The Debtor also sells Vera Bradley (purses and related accessories) products in its retail store locations. Crabtree & Evelyn manufactures and distributes more than twenty-five product lines, including LaSource®, Gardeners, India Hicks Island Living® and Naturals and its products have been frequently mentioned in numerous magazines, including Vogue, Glamour, and Lucky. In 1977, Crabtree & Evelyn opened its first retail store, and its retail business has gradually expanded to include a manufacturing and distribution facility, as well as 126 stores in the United States. In 1996, Kuala Lumpur Kepong Berhad purchased 100 percent of the equity of the Debtor. The

² The name of the Debtor is inspired from (i) the crabapple tree, the original species from which all cultivated apple trees have derived, and (ii) John Evelyn, the seventeenth century renaissance Englishman, who wrote one of the first works on conservation of forests and timber.

Debtor is incorporated in Connecticut, and its headquarters, distribution center, manufacturing facility, and warehouse are located in Woodstock, Connecticut.

4. The Debtor's primary assets include inventory, contract rights, intellectual property rights, and accounts receivable for goods sold. The Debtor also owns its headquarters, manufacturing facility, distribution center and warehouse in Woodstock, Connecticut. In addition, the Debtor leases a significant number of retail stores located in 34 states.

JURISDICTION

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

RELIEF REQUESTED

6. By this Motion, the Debtor requests, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), entry of an order authorizing but not directing the Debtor to pay, in the ordinary course, and in the Debtor's discretion and business judgment, prepetition claims of certain foreign vendors who have released certain goods for shipment to the Debtor, but continue to remain in possession of the original documentation, including bills of lading, related to such goods (collectively, the "Foreign Creditors"). In order to obtain physical possession of the goods, not only must the Debtor pay certain common carrier and U.S. custom charges (discussed in greater detail in a separate motion filed contemporaneously herewith), but the Debtor must also present the original documentation at the appropriate port in order to facilitate release of the goods. Absent the Debtor's receipt of such documentation, the Debtor will be unable to acquire physical possession of the goods, which, when combined with the manufacturing components associated therewith, are saleable for \$2 million.

Foreign Creditors

7. In the ordinary course of its businesses, the Debtor sources finished goods and component parts from vendors located outside the United States. The Debtor estimates that, as of the Petition Date, it has approximately \$65,194 in outstanding obligations to Foreign Creditors who remain in possession of the original documentation associated with goods in transit which are required to release such goods to the Debtor (the “Foreign Creditor Claims”). By this Motion, the Debtor requests authorization to pay such Foreign Creditor Claims, provided that such amount will not exceed \$65,194 in the aggregate. The Foreign Creditors have the documentation, including bills of lading, related to goods in transit. If the Foreign Creditor Claims are not paid, the Foreign Creditors may refuse to supply the documents necessary for the Debtor to acquire physical possession of such goods upon their arrival in the United States. The estimated total sales from goods currently held by the Foreign Creditors (when combined with manufacturing components) total approximately \$2 million. The goods provided by the Foreign Creditors are integral to the operation of the Debtor’s businesses and, specifically, are integral to the Debtor’s preparation for the holiday season.

8. The Debtor believes that it is in the best interest of its estate, creditors, and other parties in interest, including its customers, to satisfy prepetition obligations to the Foreign Creditors. The failure to satisfy obligations to the Foreign Creditors could be disruptive to the Debtor’s businesses and could have an extremely adverse effect on the Debtor’s efforts to reorganize. Accordingly, the Debtor submits that ample cause exists for the Court to authorize such payment.

BASIS FOR RELIEF REQUESTED

Authorization to Satisfy Obligations to Certain Foreign Creditors Is Justified and in the Best Interests of the Debtor's Estate and Creditors

A. The Foreign Creditor Claims May Be Secured or Priority Claims Under the Bankruptcy Code

9. If the Foreign Creditor Claims are not paid by the Debtor, the Debtor believes that the goods held by the Foreign Creditors will be subject to possessory liens under applicable state law. Typically, state laws grant an entity that furnishes services or materials with respect to goods a possessory lien on such goods in order to secure payment for such charges and related expenses, if such entity retains possession of the goods at issue.³ Also, a number of states grant similar possessory liens to parties that enhance goods in their possession.

10. Additionally, the act of perfecting such state law liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. See 11 U.S.C. § 362(b)(3). Section 546(b)(1)(A) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession's avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection" 11 U.S.C. § 546(b)(1)(A). Accordingly, notwithstanding the automatic stay imposed by section 362(a) of the Bankruptcy Code, the Foreign Creditors may (i) be entitled to assert and perfect liens against the Debtor's property, which would entitle them to payment ahead of other general unsecured

³ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part:

A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law...

U.C.C. § 7-307(a).

creditors, and (ii) hold the property subject to the asserted liens pending payment, to the direct detriment of the Debtor, its estate and other parties in interest.

11. Further, section 9-310 of the Uniform Commercial Code grants to creditors, such as parties holding possessory liens, a priority in payment over consensual lien creditors. Thus, as secured creditors under the Bankruptcy Code, the Foreign Creditors are entitled to receive payment in full for the Foreign Creditor Claims pursuant to any confirmed plan of reorganization in this chapter 11 case. Consequently, payment of such charges and fees would give the Foreign Creditors no more than that to which they are already entitled. On the other hand, absent payment of the amounts owed, goods having an approximate aggregate saleable value of \$2 million (when combined with their manufacturing components) are in danger of being retained by the Foreign Creditors as security for payment of approximately \$65,194 in outstanding prepetition Foreign Creditor Claims.

12. Furthermore, pursuant to section 506(b) of the Bankruptcy Code, fully secured creditors are entitled to receive postpetition interest and other costs accruing on such claims to the extent that such claims are oversecured. See 11 U.S.C. § 506(b). Therefore, entry of an order authorizing, but not directing, the Debtor to pay the Foreign Creditor Claims will prevent these creditors from asserting liens and disrupting the Debtor's businesses by refusing to deliver raw materials, finished products and other goods, will likely provide them with no more than that to which they otherwise would be entitled to pursuant to a plan of reorganization, and will save the Debtor the interest costs that otherwise might accrue on their claims.

13. At this critical point in the Debtor's business operations, any interruption to the supply of merchandise (particularly merchandise for the holiday season) would have a detrimental effect on the Debtor's businesses. Because it is essential to the Debtor's businesses

that the flow of merchandise to the Debtor's stores and customers continues uninterrupted during the pendency of this chapter 11 case, the interests of the Debtor and all parties in interest will best be served by an order of this Court permitting the payment of these prepetition claims. The Debtor submits that these amounts are modest in comparison to the value that the Debtor's estate will receive from an uninterrupted supply of merchandise.

B. Payment of the Foreign Creditor Claims Is Warranted Under Section 105(a)

14. Although section 362 of the Bankruptcy Code provides that the filing of a chapter 11 petition "operates as a stay, applicable to all entities," of creditor remedies (the "Automatic Stay"), the power of a United States court to enforce its jurisdiction against an entity without a presence in the United States is dubious. Indeed, in the circumstances of these cases, as many of the Foreign Creditors lack minimum contacts with the United States, the Court may be unable to prevent such Foreign Creditors from acting in contravention or violation of the Automatic Stay by pursuing remedies against the Debtor's property located outside of the United States if they are not paid on a timely basis. The Debtor is seeking authority to pay prepetition obligations owed to those Foreign Creditors the Debtor reasonably determines lack minimum contacts with the United States and remain in possession of critical documentation required to release physical possession of valuable goods to the Debtor..

15. Absent payment of their prepetition obligations, certain Foreign Creditors may refuse to provide the original documentation required to release physical possession of the goods in transit, until their claims are paid in full. In such event, substantial value would be lost, and the Debtor's reorganization efforts would be undermined to the detriment and prejudice of all parties in interest. If the value of the Debtor's assets is to be preserved, the Debtor must be allowed to fund and maintain foreign operations by paying the Foreign Creditors.

16. Moreover, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)).

C. Payment of the Foreign Creditor Claims Comports with the Debtor’s Business Judgment

17. The Debtor submits that the relief requested is reasonable and necessary under the circumstances and is justified by applicable law, even if the Foreign Creditor Claims were not secured claims. Section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., et al., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing Ionosphere Clubs, 98 B.R. at 177).

18. Similar relief has been granted by courts in this and other jurisdictions, as courts have recognized that the payment of prepetition obligations to foreign vendors and

creditors may be critical to a debtor's rehabilitative efforts.⁴ See, e.g., In Lenox Sales, Inc., et al., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2009) (authorizing payment of \$150,000 of prepetition obligations to foreign creditors); In re Silicon Graphics, Inc., et al., Case No. 06-10977 (ALG) (Bankr. S.D.N.Y. May 10, 2006) (authorizing payment of \$2.1 million of prepetition obligations to foreign creditors); In re Footstar, Inc., Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. March 2, 2004) (authorizing payment of \$50.8 million of prepetition obligations to foreign creditors); In re Loral Space & Communications Ltd., et al., Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. July 15, 2003) (authorizing payment of \$5 million of prepetition obligations to foreign creditors); In re WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. July 22, 2002) (authorizing payment of \$35 million of prepetition obligations to foreign creditors); In re Global Crossing, Ltd., et al., Case No. 02-40188 (REG) (Bankr. S.D.N.Y. Jan. 28, 2002) (authorizing payment of \$25 million of prepetition obligations to foreign creditors); In re Enron Corp., et al., Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 3, 2001) (authorizing payment of \$19 million of prepetition obligations to foreign creditors).

**Request for Authority for Banks to Honor
and Pay Checks Issued and Electronic Funds
Transferred to Foreign Creditors**

19. The Debtor further requests that the Court authorize and direct all Banks to receive, process, honor and pay any and all checks drawn or electronic funds transferred to pay claims arising from the Foreign Creditor Claims, whether such checks were presented prior to or after the Petition Date; provided that such checks or electronic transfers are identified by the Debtor as relating directly to the authorized payment of claims arising from the Foreign Creditor Claims. The Debtor also seeks authority to issue new postpetition checks, or effect new

⁴ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon request of Debtor's counsel, including at the hearing to consider this Motion.

electronic fund transfers, on account of claims arising from the Foreign Creditor Claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Debtor's chapter 11 case. The Debtor submits that it has sufficient liquidity to pay such amounts as they become due in the ordinary course of the Debtor's business.

20. Furthermore, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

21. Authorization of the payment of all prepetition Foreign Creditor Claims requested herein shall not be deemed to constitute postpetition assumption or adoption of any of the related agreements pursuant to section 365 of the Bankruptcy Code, and the Debtor reserves all of its rights under the Bankruptcy Code with respect thereto. Nothing in this Motion shall be an admission as to any possessory lien.

22. Finally, nothing in this Motion should be construed as impairing the Debtor's rights to contest the amount or validity of the obligations owed to the Foreign Creditors, and the Debtor expressly reserves all its rights with respect thereto.

23. Based upon the foregoing, the Debtor submits that the relief requested herein is essential, appropriate, and in the best interest of the Debtor's estate and creditors, and therefore should be granted in this chapter 11 case.

NOTICE

24. The Debtor has served notice of this Motion on: (i) the Office of the United States Trustee for the Southern District of New York (Attn: Serene Nakano, Esq.), (ii) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, and (iii) the Debtor's

40 largest unsecured creditors. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

25. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and appropriate.

Dated: July 1, 2009
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11**
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CRABTREE & EVELYN, LTD., :
 :
 : **Case No. 09-_____ (___)**
Debtor. :
 :
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**ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 6004 AUTHORIZING THE DEBTOR TO PAY
PREPETITION CLAIMS OF CERTAIN FOREIGN CREDITORS**

Upon the motion, dated July 1, 2009 (the “Motion”)¹ of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the “Debtor”),² for an order, pursuant to sections 105(a) and 363(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing but not directing the Debtor to pay certain prepetition claims (the “Foreign Creditor Claims”) of foreign creditors (the “Foreign Creditors”) all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York (Attn: Serene Nakano, Esq.), (ii)

¹ Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Motion.

² The last four digits of the Debtor’s federal tax identification number are 1685.

SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, and (iii) the Debtor's 40 largest unsecured creditors, and it appearing that no other or further notice need be provided; and the Court having determined that the relief requested in the Motion being in the best interests of the Debtor, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted to the extent provided herein; and it is further

ORDERED that pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not directed, to pay the Foreign Creditor Claims, in the Debtor's sole discretion and in accordance with any negotiated terms of such obligations; provided, however, that the aggregate amount of such payments pursuant to this Order shall not exceed \$65,194; and it is further

ORDERED that nothing in this Order nor any action taken by the Debtor in furtherance of the implementation thereof shall be deemed (i) an approval of the assumption or rejection of any executory contract pursuant to section 365 of the Bankruptcy Code or (ii) a waiver of any claims or causes of action which may exist against the Foreign Creditors; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing the Debtor's rights to dispute or contest the amount of or basis for any Foreign Creditor Claims; and it is further

ORDERED that notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the notice requirements of Bankruptcy Rule 6004(a) are waived; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order; and it is further

ORDERED that notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion.

Dated: _____, 2009
New York, New York

UNITED STATES BANKRUPTCY JUDGE