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

In re:

SKYMALL, LLC.,

Debtor.

Jointly Administered with:

XHIBIT CORP.  
XHIBIT INTERACTIVE, LLC  
FLYREPLY CORP.,  
SHC PARENT CORP.,  
SPYFIRE INTERACTIVE, LLC,  
STACKED DIGITAL, LLC  
SKYMALL INTERESTS LLC

In Proceedings under Chapter 11

Case No. 2:15-bk-00679-BKM

Jointly Administered with:

2:15-bk-00680  
2:15-bk-00682  
2:15-bk-00684  
2:15-bk-00685  
2:15-bk-00686  
2:15-bk-00687  
2:15-bk-00688

**UNITED STATES TRUSTEE'S MOTION  
FOR ORDER DIRECTING THE  
APPOINTMENT OF A CONSUMER  
PRIVACY OMBUDSMAN**

The United States Trustee for the District of Arizona (the "UST"), in furtherance of the administrative responsibilities imposed pursuant to 28 U.S.C. § 586(a), 11 U.S.C. §§ 101(41A), 307 and 363(b), hereby respectfully moves this Court for an Order directing the UST to appoint, not later than five (5) days before the commencement of any proposed sale hearing described herein, one (1) disinterested person to serve as the consumer privacy ombudsman ("Ombudsman") in this case. Further,

1 the Order should provide that notice of such sale hearing allow the Ombudsman sufficient time to  
2 adequately perform the assigned statutory duties. In support thereof, the UST states:

3 **I. FACTS**

4 1. SkyMall, LLC, Xhibit Corp., Xhibit Interactive, LLC, Flyreply Corp., SHC Parent Corp.,  
5 Spyfire Interactive, LLC, Stacked Digital, LLC and SkyMall Interests LLC (“Debtors”) commenced  
6 bankruptcy cases by filing voluntary petitions under chapter 11 of the Bankruptcy Code on January 22,  
7 2015. Subsequently, an order was entered by the Court authorizing and directing joint administration of  
8 the cases.

9 2. On January 23, 2015, Debtors filed a “Motion for Entry of Order: (I) Authorizing  
10 Bidding Procedures and Auction, (II) Scheduling Sale Hearing and Approving Notice Thereof, and (III)  
11 Authorizing Sale of Assets and (IV) Granting Related Relief” (the “Sale Motion”).

12 3. By their motion, the Debtors seek to sell the “Subject Assets” of debtor SkyMall LLC  
13 (“SkyMall”). Those assets are defined as follows:

14 The Subject Assets include, without limitation, SkyMall’s (i) intellectual property, (ii)  
15 furniture fixtures and equipment, (iii) inventory, (iv) customer lists, (v) accounts  
16 receivable, (vi) interests under contracts and unexpired leases, (vii) interests in real estate  
17 and fixtures, (viii) other assets comprising SkyMall’s going concern business. (Sale  
Motion, page 3, lines 18-23)

18 As set forth in the Sale Motion, the Subject Assets very specifically include SkyMall’s customer lists.

19 4. Debtor SkyMall provided a copy of its privacy policy (the “Privacy Policy”) to the United  
20 States Trustee. See Exhibit A. The Privacy Policy is posted on SkyMall.com.

21 5. As noted therein, Debtor SkyMall collects the following information from its customers:  
22 name, address, telephone number, and email address.<sup>1</sup>

23 6. The Privacy Policy states “your name, address, telephone number, and in some cases,  
24 email address with be shared with merchant partners who will fulfill your merchandise orders.” See  
25 Privacy Policy.

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26 <sup>1</sup> Although the SkyMall paper catalogue has been discontinued, the website Skymall.com remains active and  
27 continues to collect the information described from its customers.

1           7.     The Privacy Policy further provides an additional situation in which the customer  
2 information will be shared:

3  
4           Please keep in mind that, the foregoing policy and our best efforts notwithstanding, we  
5 cannot unconditionally guarantee that your information will never be disclosed to a third  
6 party. We may be obligated, in certain circumstances, to disclose information to the  
7 federal government in response to a warrant to official request. So, by using  
8 SkyMall.com, you do authorize us to disclose your personal information to law  
9 enforcement or other government officials as we, in our sole discretion, believe necessary  
10 or appropriate.

11           8.     Upon information and belief, the Privacy Policy referenced above was in effect on the  
12 Petition Date.

13           9.     The Privacy Policy referenced above has been disclosed to customers providing  
14 personally identifiable information to Debtor. The Privacy Policy continues to be available for viewing  
15 by customers at SkyMall.com.

16           10.    Customers providing personally identifiable information to the Debtor for services have  
17 done so for primarily for personal, household or family purposes.

18           11.    **Any proposed sale of customer lists would not be consistent with the Privacy Policy  
19 referenced above, which allows disclosure of such information *only* to 1) merchant partners who  
20 will fulfill the customer's merchandise order and 2) law enforcement or government officials  
21 pursuant to a warrant or official request.**

22           12.    The sale contemplated by the debtors is set for March 27, 2015.

## 23 **II.    LEGAL ANALYSIS**

24           Section 332 of the Bankruptcy Code was added by the Bankruptcy Abuse Prevention and  
25 Consumer Protection Act of 2005. If a hearing under section 363(b)(1)(B) is proposed, the Court is  
26 required by § 332 to order the UST to appoint, not later than five (5) days before the commencement of  
27 the sale hearing, one (1) disinterested person to serve as the consumer privacy ombudsman.

28           Section 363(b)(1) provides that the trustee may sell property of the estate, except where Debtor,  
in connection with offering a product or a service, discloses to an individual a policy, effective on the  
date of the commencement of the case, prohibiting the transfer of personally identifiable information to

1 persons who are not affiliated with Debtor. The trustee may not sell or lease personally identifiable  
2 information to any person unless the sale is consistent with the Privacy Policy or, where the sale is  
3 inconsistent with the Privacy Policy, until after appointment of a consumer privacy ombudsman. At the  
4 sale hearing, the court must give due consideration to the facts, circumstances and conditions of such  
5 sale as well as find that no showing is made that such sale violates applicable nonbankruptcy law before  
6 it can be approved.

7 The term “personally identifiable information” is defined at § 101(41A) as follows:

8 The term “personally identifiable information” means –

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

- 11 (i) the first name (or initial) and last name of such individual, whether given at birth or  
12 time of adoption, or resulting from a lawful change of name;
- 13 (ii) the geographical address of a physical place of residence of such individual;
- 14 (iii) an electronic address (including an e-mail address) of such individual;
- 15 (iv) a telephone number dedicated to contacting such individual at such physical place of  
16 residence;
- 17 (v) a social security account number issued to such individual; or
- 18 (vi) the account number of a credit card issued to such individual; or

19 (B) if identified in connection with 1 or more of the items of information specified in  
20 subparagraph (A)--

- 21 (i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or
- 22 (ii) any other information concerning an identified individual that, if disclosed, will result  
23 in contacting or identifying such individual physically or electronically.

24 The definition is applicable where an individual provides information as described in the said  
25 section to debtor in connection with obtaining a product or a service from debtor primarily for personal,  
26 family, or household purposes. In this case, the information provided to Debtor by customers falls  
27 within the definition of personally identifiable information, i.e., first and last name, residential address,  
28 home telephone number, cell phone number and an electronic address, as well as possibly other  
information concerning an identified individual that, if disclosed, could result in identifying, or  
contacting the consumer physically or electronically.

In the Sale Motion, Debtors boldly assert that “SkyMall’s policies to [*sic*] not prohibit the  
transfer of such information” and, accordingly, a consumer privacy ombudsman is not required.  
However, as set forth in paragraph 11 above and, indeed, on Exhibit A hereto, this is simply not true.

1 SkyMall's Privacy Policy allows for the transfer of such information *only* to 1) merchant partners who  
2 will fulfill customers' merchandise orders and 2) law enforcement pursuant to a warrant or official  
3 request. The proposed sale fits neither of these categories of permitted transfers of customers' personally  
4 identifiable information. Thus, the sale is clearly inconsistent with SkyMall's Privacy Policy and the  
5 appointment of a Consumer Privacy Ombudsman is required in this case before the sale may occur.

6 WHEREFORE, Movant requests that the Court enter an Order directing the UST to appoint, not  
7 later than five (5) days before the commencement of any sale hearing, one disinterested person to serve  
8 as the consumer privacy ombudsman in this case.

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10  
11 RESPECTFULLY SUBMITTED this 4th day of March 2015.

12 ILENE J. LASHINSKY  
13 United States Trustee  
14 District of Arizona

15 /s/ ECA (#10755)  
16 ELIZABETH C. AMOROSI  
17 Assistant United States Trustee

18 Copies of the foregoing emailed  
19 March 4, 2015, to:

19 John Harris  
20 Quarles & Brady, LLP  
21 Two North Central Avenue  
22 Phoenix, AZ 85004  
23 Attorneys for Debtors

22 Steve Jerome  
23 Snell & Wilmer  
24 One Arizona Center  
25 400 E. Van Buren  
26 Phoenix, AZ 85004  
27 Attorneys for Unsecured Creditors' Committee

28 /s/  
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# Exhibit A

## **Privacy Policy & CA Privacy Policy**

### **Our commitment to Privacy**

At SkyMall, we value and respect your privacy. This privacy policy describes what personal information we collect, why we collect it, how we use it, and when we share it with third parties.

It also describes the choices you can make about how we collect and use your information

We will ask you to provide us with the personal information we need to complete your transaction, to enable us to provide you with customer service, or so that you can register for special offers, benefit programs, email updates, or other services, contest, sweepstakes, or opportunities. If signing up for SMS messages, standard message and data rates may apply.

We require your name, address, telephone number, and email address to fulfill and confirm your order and to contact you regarding your purchases and shipments. We may also ask for optional interest or demographic information which will help us and our partners gain a better understanding of who we're serving, and therefore, improve our service to you. Your name, address, telephone number, and in some cases, email address, will be shared with the merchant partners who will fulfill your merchandise orders.

Any information you choose to provide to SkyMall.com will be protected by a password you set and which you alone retain. The information is stored on a secure server which is not accessible to the Internet.

If you have made a purchase at SkyMall, registered for one of our affiliated services or benefits programs, or signed up for another special offer or opportunity, we may occasionally update you via email of specific opportunities we feel may be of special interest to you, or we may supply your name and address to carefully screened companies who we feel may have products or services which will be of interest to you.

If you would prefer not to receive notice of such opportunities, simply indicate this during the checkout process: make sure the box next to the statement "SkyMall's partners may send me information about products and services which may be of interest to me" is not checked or contact us at [skymallprivacypolicies@skymall.com](mailto:skymallprivacypolicies@skymall.com) and request that your name be removed from our mailing list. If you have asked that we not share your information, we may still need to provide your contact information to third parties to ensure that you do not receive any marketing messages from them.

SkyMall.com collects statistical information which allows us to track the frequency of visits to our different merchants and departments. We also collect information associated with visits and purchases. The information is collected for statistical purposes only, does not contain any personally identifiable information, and may be shared with third parties only in the aggregate.

Like most major web sites, SkyMall.com uses "cookies" to enable us to serve you. A cookie is a small data file which is written to your hard drive when you visit, which assigns you a unique ID and allows us to save selections made and information entered during your time at our site, and to recognize you when you return. The cookie does not collect any personally identifiable information. SkyMall.com also uses cookies to determine if you have been referred to SkyMall.com from a particular link, banner, or partner site and to allow third-parties to help us serve targeted product recommendations. These companies may use data about you in order to provide recommendations for products and services that might be of interest to you. To learn more about this behavioral advertising practice or to opt out of this type of advertising, you can visit [networkadvertising.org](http://networkadvertising.org).

### **Children's Privacy**

If you are a minor, please only use this site in conjunction with your parents or guardians. If you are under the age of 13, please do not provide any Personally Identifiable Information to us. We do not knowingly collect, use, or disclose Personally Identifiable Information about visitors under the age of 13. If we learn that we have collected the personal information of a child under 13, we will take steps to delete the information as soon as possible.

### **Your California Privacy Rights**

California Civil Code Section 1798.83 permits customers of SkyMall who are California residents to request certain information regarding our disclosure of personal information to third parties for their direct marketing purposes.

**To make such a request, please write to us at the following address:**

- [skymallprivacypolicies@skymall.com](mailto:skymallprivacypolicies@skymall.com)

OR

- SkyMall  
Attn: Customer Service - California Privacy Rights  
1520 E Pima St  
Phoenix, AZ 85034

Please keep in mind that, the foregoing policy and our best efforts notwithstanding, we cannot unconditionally guarantee that your information will never be disclosed to a third party. We may be obligated, in certain circumstances, to disclose information to the federal government in response to a warrant or official request. So, by using SkyMall.com, you do authorize us to disclose your personal information to law enforcement or other government officials as we, in our sole discretion, believe necessary or appropriate.



Further, the foregoing policy notwithstanding, third parties may unlawfully intercept or access private communications despite every best effort made by SkyMall, using industry-standard measures, to prevent such an occurrence.

It is our constant intent to provide the safest and most secure shopping experience possible. Since offerings and technologies change, we must reserve the right, at our discretion, to change, modify, add, or remove portions of the policy at any time. Please check this page for changes.

**If you have any questions, or would like further clarification on any of our policies, please e-mail us at:**

**[skymallprivacypolicies@skymall.com](mailto:skymallprivacypolicies@skymall.com)**