

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

In re:

XENTEL INC., *et al.*¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 13-10888 (KG)

Jointly Administered

Hearing Date: November 22, 2013 at 10:00 a.m. (ET)

Objection Deadline: November 15, 2013 at 4:00 p.m.
(ET)

**FOREIGN REPRESENTATIVE'S MOTION FOR ENTRY OF AN ORDER
(I) ENFORCING CANADIAN SALE ORDER, (II) APPROVING THE SALE OF
DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS, AND (III) GRANTING RELATED RELIEF**

IMarketing Solutions Group, Inc. ("IMSG"), as authorized foreign representative (the "Foreign Representative") of Xentel Inc. ("Xentel"), Wellesley Corporation Inc. ("Wellesley"); GWE Consulting Group (USA) Inc. ("GWE"); US Billing Inc. ("US Billing"); American Graphics & Design Inc. ("AG&D"); Courtesy Health Watch Inc. ("CHW"); and Target Outreach Inc. ("Target" and, together with, Xentel, Wellesley, GWE, US Billing, AG&D and CHW, the "Debtors") in proceedings (the "Canadian Proceedings") under Canada's *Companies' Creditors Arrangement Act* (R.S.C. 1985 c. 36) (the "CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court"), hereby moves (the "Motion") this Court, pursuant to sections 105(a), 363, 1501, 1507, 1520, 1521, 1525 and 1527 of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.* as amended, the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and

¹ The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Xentel Inc. (6267); Wellesley Corporation Inc. (4092); GWE Consulting Group (USA) Inc. (2629); US Billing Inc. (7752); American Graphics & Design Inc. (7772); Courtesy Health Watch Inc. (1403); and Target Outreach Inc. (9046). The Debtors' main corporate address is 481 University Ave., Toronto, Canada M5G 2E9.

Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for entry of an order, substantially in the form annexed hereto as **Exhibit A** (the "Proposed Order"): (i) recognizing and enforcing the Approval and Vesting Order entered by the Ontario Court ("Canadian Sale Order"); (ii) authorizing and approving the sale (the "Sale") of substantially all of the Debtors' assets (the "Assets"), pursuant to the terms and conditions of that certain Asset Purchase Agreement ("APA") between IMSG and certain of its affiliates (together with IMSG, the "Sellers") and IMKT Direct Solutions Corporation and iMarketing Acquisition, LLC (collectively, the "Purchaser"), free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature whatsoever (collectively, the "Liens"), to the Purchaser; and (iii) granting such other and further relief as the Court deems just and proper. In support of the Motion, the Foreign Representative respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. These matters are core proceedings within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. § 1410.
3. The statutory bases for the relief requested herein are sections 105(a), 363, 1520, 1521, 1525 and 1527 of the Bankruptcy Code, Rules 2002, 6004, and 6006 of the Bankruptcy Rules and Rule 6004-1 of the Local Rules.

BACKGROUND

4. On April 12, 2013, IMSG and certain of its affiliates sought and were granted protection under the CCAA. Also on that date, the Honorable Mr. Justice Newbould of the Ontario Superior Court of Justice (the "Canadian Court") entered an order appointing Duff &

Phelps Canada Restructuring Inc. as the monitor (the "Monitor") and Illumina Partners Inc. as chief restructuring officer (the "CRO") in the Canadian Proceedings.

5. Also on April 12, 2013 (the "Chapter 15 Petition Date"), the Foreign Representative commenced the Debtors' chapter 15 cases (this "Chapter 15 Cases"), seeking recognition of the Canadian Proceedings as foreign main proceedings.

6. On May 17, 2013, this Court entered its Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief on a Final Basis (the "Recognition Order") [D.I. No. 26].

7. Pursuant to the Order of the Ontario Court dated May 7, 2013 (the "SIP Order"), the Ontario Court approved a process by which the CRO, under the supervision and with the assistance of the Monitor, could conduct a sale and investment process with a view to obtain offers to (i) acquire all, substantially all, or a portion of the property and assets of the Sellers; or (ii) make an investment in the Debtors' business. To allow the CRO and the Monitor to thoroughly market the Assets, the original deadlines for the execution of an asset purchase agreement, approval of any transaction contemplated therein by the Canadian Court and the U.S. Court and the closing of any transaction were extended multiple times. The assets, properties, and undertakings of the Sellers were made available for purchase in accordance with the procedures outlined in the SIP Order.

8. The CRO received offers and expressions of interest prior to the offer deadline. In conjunction with the Monitor, the CRO reviewed the offers received under the SIP and determined that the offer to purchase submitted by the Purchaser was the superior offer.

9. The Purchaser, made up of IMKT Direct Solutions Corporation, a British Columbia corporation and iMarketing Acquisition, LLC, a Delaware LLC, is not affiliated with

the Debtors or any insiders of the Debtors. The APA with the Purchaser is the product of extensive, good faith arms-length negotiations between the Purchaser and the Debtors, which were conducted by the Debtors in consultation with the Foreign Representative. The APA contemplates the sale of the Debtors' Canadian and U.S. assets as a going concern.

10. On October 18, 2013, the Debtors filed in the Canadian Proceeding their motion for entry of a Sale Approval and Vesting Order (the "Canadian Sale Motion"). The Canadian Sale Motion was heard on October 25, 2013 and the Canadian Court entered an order approving the sale (the "Canadian Sale Order"). A true and correct copy of the Canadian Sale Motion and exhibits thereto is attached as Exhibit A to the Transmittal Affidavit of Domenic E. Pacitti filed concurrently herewith (the "Pacitti Affidavit"), and a redacted copy of the APA² is attached as Exhibit B to the Pacitti Affidavit. A certified copy of the Canadian Sale Order is attached as Exhibit C to the Pacitti Affidavit.

11. Additional background regarding the Debtors' operations and the events related to petitions for relief and the sale process are detailed in the Verified Chapter 15 Petition for Recognition of Foreign Proceedings and Related Relief [D.I. No. 1] and the Foreign Representative's Statement in Support of Chapter 15 Petitions for Recognition of Foreign Proceeding [D.I. No. 4].

12. In support of this Motion, the Foreign Representative submits the Affidavit of Andrew Langhorne Sworn To On October 18, 2013, including the exhibits thereto (the "Langhorne Affidavit") and the Sixth Report of the Monitor dated October 21, 2013 (the

² The version of the APA that was filed in the Canadian Proceedings was entirely redacted and filed on a sealed basis. The form of APA attached as Exhibit B to the Pacitti Affidavit redacts only the most sensitive information as it relates to the sale price. An unredacted copy of the APA will be made available to this Court for *in camera* review at the Sale Hearing or at any other time as requested by this Court.

“Monitor Report”) true and correct copies of which are attached to the Canadian Sale Motion filed with the Pacitti Affidavit.

RELIEF REQUESTED

13. By this Motion, the Foreign Representative seeks entry of an order (a) recognizing the Canadian Sale Order, (b) finding that the APA is commercially reasonable and in the best interests of the Debtors’ estates and creditors, and authorizing the Sale of the Assets free and clear of all Liens, with such Liens attaching to the proceeds generated from the Sale, and (c) granting such other and further relief as the Court deems just and proper.

14. The Foreign Representative believes that the Sale will maximize value for all stakeholders and provide a higher recovery to creditors than would otherwise be received if the Sale Order is not entered. Absent the relief requested herein, the Debtors and their estates will potentially suffer significant harm through a loss of the going concern value of the Assets.

A. The APA³

15. Below is a summary of the material terms and conditions of the APA:

Purchased Assets	All right, title and interest of the Vendor (as defined in the APA) in and to its property, assets and undertaking of whatsoever nature and kind, legal and equitable, tangible and intangible, as further described therein, and for further explanation do not include the Excluded Assets.
Purchase Price	The Debtors moved in the Canadian Proceeding to seal certain terms of the APA set out at APA §§2.03 and 2.04. See Pacitti Affidavit, Exhibit A, Tab 3. An unredacted APA will be available for <i>in camera</i> review by the Court at the hearing on this Motion or at such time as requested by the Court.
Closing and Other Deadlines	The APA includes an October 25, 2013 deadline for entry of the Canadian Sale Order and a November 25,

³ Pursuant to Local Rule 6004-1(b)(iv), a Sale Motion (as defined in the Local Rules) must highlight certain provisions. Accordingly, the relevant provisions implicating Local Rule 6004-1(b)(iv) are included in this summary. This summary is for informational purposes only. To the extent there is any inconsistency between the descriptions herein and the actual terms and conditions of the APA, the actual terms and conditions of the APA will control. All capitalized terms used in this section but not defined in this section or elsewhere herein shall have the meanings ascribed thereto in the APA.

	2013 deadline for entry of an Order on the instant Motion.
Agreements with Management	The Sale involves the sale of the Debtors' assets as a going concern, and it is expected that a majority of the employees including certain key employees will be offered employment by the Purchaser.
Auction	The solicitation and marketing process contemplated by the SIP having been completed, an auction is not contemplated.
Record Retention	Books and records are included in the Sale, but the Foreign Representative will have reasonable access post-sale to the books and records necessary to enable it to administer these cases.
Sale of Avoidance Actions	The Sale does not include the sale of avoidance actions under chapter 5 of the Bankruptcy Code.
Successor Liability	The Purchaser and its affiliates and their respective successors, assigns, members, partners, principals and shareholders (or equivalents) shall have no obligations with respect to any liabilities of the Debtors other than those liabilities expressly assumed under the APA.
Relief from Bankruptcy Rule 6004(h)	The Foreign Representative seeks relief from Bankruptcy Rule 6004(h).

BASIS FOR RELIEF

16. The Foreign Representative commenced these Chapter 15 Cases in order to obtain recognition of the Canadian Proceedings. The Foreign Representative's goal is to maximize the value of the Debtors' estates through the orderly administration of the Debtors' insolvency cases in one main Canadian proceeding, aided by the ancillary chapter 15 proceedings before this Court. The Foreign Representative believes that a going-concern sale of the Assets to a purchaser secured in accordance with the SIP will maximize the sale proceeds received by the estates, which is the paramount goal in any proposed sale of property of the estates. *In re Dura Automotive Sys., Inc.*, 2007 Bankr. LEXIS 2764, at *253 (Bankr. D. Del. 2007) ("The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.").

A. Recognition of the Proposed Canadian Sale Order is Authorized under Sections 1521, 1525, and 1527 of the Bankruptcy Code

17. Section 1521 of the Bankruptcy Code sets forth various forms of relief that may be granted upon recognition of a foreign proceeding. Specifically, section 1521(b) of the Bankruptcy Code provides, in pertinent part, that “[u]pon recognition of a foreign proceeding ... the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative.” 11 U.S.C. § 1521(b).

18. Further, sections 1525 and 1527 of the Bankruptcy Code, when read in conjunction, direct the Court to “cooperate to the maximum extent possible” with the Ontario Court regarding the “coordination of the administration and supervision” of the Debtors’ assets and affairs. 11 U.S.C. §§ 1525, 1527(3); *see also In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010) (generally recognizing orders entered in a Canadian insolvency proceeding on the basis of the statutory provisions of chapter 15 and the principles of comity). Indeed, a Bankruptcy Court is not required to “make an independent determination about the propriety of individual acts of a foreign court ... The key determination required by [U.S. Bankruptcy Courts] is whether the procedures used in Canada meet our fundamental standards of fairness.” *Id.* at 697.

19. The Ontario Court had the opportunity to scrutinize the APA and the proposed Sale. After consultation with the Monitor, the Debtors’ advisors and the advisors of significant stakeholders in these cases, and in light of the marketing process conducted in accordance with the SIP approved by the Canadian Court, the Foreign Representative has determined that the Sale provides the highest and best return to the Debtors’ estates and their

creditors that is available under the circumstances. The Canadian Sale Order recognizes as much.

20. The Canadian Sale Order authorizes the Sale to the Purchaser, in accordance with the APA, and provides the Purchaser with absolute, clear, and unencumbered title in the Assets free and clear of all Liens, with such Liens and claims attaching to the proceeds generated from the sale of the Assets in the order of their priority, with the same validity, force, and effect which they now have against the Assets.

21. The Foreign Representative seeks recognition and enforcement by this Court of the Canadian Sale Order that has been entered by the Ontario Court, so that it is effective under the laws of the United States. Effective coordination and administration of the Canadian Proceeding and these Chapter 15 Cases can only be achieved through recognition of the Canadian Sale Order in the United States. Moreover, the nature of the sale and marketing process, carried out by the Debtors, under the supervision of the Monitor and with assistance from their advisors, and overseen by the Ontario Court and the Foreign Representative, ensures that a fair result is achieved by the Sale. Accordingly, the Foreign Representative respectfully requests that this Court recognize and give full effect and force under the laws of the United States to the findings, authorities, and provisions set forth in the Canadian Sale Order as entered by the Ontario Court.

B. The Proposed Sale is a Product of the Debtors' Reasonable Business Judgment

22. Section 1520 of the Bankruptcy Code provides, in pertinent part, that “[u]pon recognition of a foreign proceeding that is a foreign main proceeding, [section 363 of the Bankruptcy Code applies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States.” 11 U.S.C. § 1520(a)(2). Section 363(b)(1) of the

Bankruptcy Code, in turn, provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1).

23. Moreover, section 1507 of the Bankruptcy Code further provides that “[s]ubject to the specific limitations stated elsewhere in [chapter 15 of the Bankruptcy Code] the court, if recognition is granted, may provide additional assistance to a foreign representative under [chapter 15] or under other laws of the United States.” 11 U.S.C. § 1507(a).

24. Similarly, section 1521 of the Bankruptcy Code provides, in relevant part, that “[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of [chapter 15 of the Bankruptcy Code] and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including . . . granting any additional relief that may be available to a trustee” with certain inapplicable exceptions. 11 U.S.C. § 1521(a)(7).

25. A proposed sale of assets of a debtor under section 363 of the Bankruptcy Code outside the ordinary course of business is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the debtor. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions”); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting a “sound business purpose” test and a good faith test); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test).

26. Generally, courts have applied four factors in connection with the “sound business purpose” test: (1) whether a sound business reason exists for the proposed transaction; (2) whether fair and reasonable notice has been provided to interested persons; (3) whether the debtor has obtained a fair and reasonable price and (4) whether the transaction has been proposed and negotiated in good faith. *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *Delaware & Hudson Ry.*, 124 B.R. at 176. The proposed Sale to the Purchaser satisfies all four conditions, and therefore should be approved by this Court.

27. Further, section 105(a) of the Bankruptcy Code provides the Court with broad powers in the administration of a chapter 15 case, providing that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

28. The Foreign Representative submits that ample business justification exists to sell the Assets to the Purchaser. The Foreign Representative believes that the Sale presents the best opportunity to realize the maximum value of the Assets. The SIP approved by the Ontario Court was reasonably designed to ensure that the Debtors obtain the highest or otherwise best value for the Assets. The Sale offers the ability to maximize value of the Debtors’ estates for the benefit of creditors.

29. Second, fair and reasonable notice has been provided to interested parties. Notice of this Motion and the Sale hearing will be provided to all parties that filed a request under Bankruptcy Rule 2002, all known holders of liens or interests in the Assets, all known creditors of the Debtors, and the office of the United States Trustee. As a result, creditors and parties in interest will be notified of (a) the terms and conditions of the Sale, (b) the time for

filing objections thereto and (c) the time and place to attend a hearing to approve the Sale. Accordingly, the Foreign Representative has provided “notice that is reasonably calculated, under the circumstances” to appraise any interested party of the pending Sale. *See In re Snug Enter, Inc.*, 169 B.R. 31, 33 (Bankr. E.D. Va. 1994) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950) (noting that notice should be “reasonably calculated, under the circumstances, to appraise an interested party of the pendency of an action”).

30. Third, the Foreign Representative believes that the purchase price represents a fair and reasonable value for the Assets and that the good faith requirement is satisfied. The APA is the product of extensive, good faith, arm’s-length negotiations between the Purchaser and the Debtors, conducted in consultation with the Foreign Representative, under the supervision of the Monitor, with respect to the purchase price and other terms. The purchase price is reasonable and the terms of the APA that have been redacted for public filing were made available to the Canadian Court and will be provided to this Court upon request. The Foreign Representative, therefore, believes that the Sale has been proposed in good faith.

31. Furthermore, recognition of the Canadian Sale Order by this Court will permit the Foreign Representative to proceed with the Sale in the Canadian Proceeding without disruption, which will inure to the benefit of the Debtors’ estates. Absent the relief requested herein, the Debtors will likely suffer irreparable harm from the Foreign Representative’s inability to sell the Assets as a going concern, because entry of the Proposed Order of this Court recognizing the Canadian Sale Order is a condition precedent to the Closing of the APA. (*See* APA, sec 4.01(d).

32. In contrast, granting the relief requested herein fulfills the public policy embodied in chapter 15 of the Bankruptcy Code, which is “to provide effective mechanisms” to

promote cooperation in cross-border insolvency cases. 11 U.S.C. § 1501(a). Entry of the Proposed Order approving the relief requested in this Motion will permit the Foreign Representative to sell the Assets in the Canadian Proceeding without disruption, in a timely and efficient manner that will maximize value for the benefit of the Debtors' estates and the creditors thereof.

33. Relief similar to that requested in this Motion related to the approval of the Proposed Sale has been entered in other chapter 15 cases in this District. *See, e.g., In re Cinram International Inc.*, Case No. 12-11882 (KJC) (Bankr. D. Del July 25, 2012) (Docket No. 98); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. Apr. 17, 2012) (Docket No. 119); *In re Wellpoint Sys. Inc.*, Case No. 11- 10423 (MFW) (Bankr. D. Del. Feb. 25, 2011) (Docket No. 30); *In re EarthRenew IP Holdings LLC*, Case No. 10-13363 (CSS) (Bankr. Del. Feb. 18, 2011) (Docket No. 68); *In re Grant Forest Prods., Inc.*, Case No. 10-11132 (PJW) (Bankr. D. Del. Apr. 26, 2010) (Docket No. 57); *In re Fraser Papers Inc.*, Case No. 09- 12123 (KJC) (Bankr. D. Del. Jan. 5, 2010) (Docket No. 122); *In re Destinator Techs. Inc.*, Case No. 08-11003 (CSS) (Bankr. D. Del. July 8, 2008) (Docket No. 63).

34. For all of the foregoing reasons, the Foreign Representative respectfully submits that there is ample justification for the Court to (a) recognize and enforce the Canadian Sale Order, and (b) authorize and approve the Sale pursuant to section 363 of the Bankruptcy Code.

C. The Proposed Sale Satisfies the Requirements of Section 363(f) for a Sale Free and Clear of Claims

35. Under Bankruptcy Code section 363(f), a debtor may sell property free and clear of any interest in such property of an entity other than the estate. Satisfaction of any one of the five requirements listed in section 363(f) is sufficient to permit the Sale of the Assets

free and clear of all interests, liens, claims, encumbrances, pledges, mortgages, security interests, charges, options and other interests, including any right of setoff. *See Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132 (6th Cir. 1991); *In re Elliot*, 94 B.R. 343 (E.D. Pa. 1988) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; the court may approve a sale "free and clear" provided that at least one of the subsections is met).

36. The Foreign Representative seeks authority for the transfer of the Debtors' rights, interests and title in the Assets free and clear of all interests, except as set forth in the APA, with such liens and interests to attach to the proceeds of sale. Any entity holding liens, encumbrances or other known interests on the Assets will receive notice of this Motion and the Sale hearing. Accordingly, all parties in interest will be given sufficient opportunity to object to the relief requested herein. Failure to object should be deemed consent, thereby satisfying Bankruptcy Code section 363(f)(2). *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) ("It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold.") (internal citations omitted); *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims, and encumbrances satisfies section 363(f)(2)). Moreover, any party asserting a lien, claim, or interest could be compelled to accept a money satisfaction for such interest, thereby satisfying section 363(f)(5) of the Bankruptcy Code. 11 U.S.C. § 363(f)(5). Several courts have also held that they have the equitable power to authorize

sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re TWA*, 322 F.3d 283, 290 (3d Cir. Del. 2003).

37. A sale free and clear of liens and other interests is necessary to maximize the value of the Assets and is required pursuant to the APA. Therefore, the Foreign Representative submits that the proposed Sale should be approved free and clear of all liens and other interests pursuant to section 363(f) of the Bankruptcy Code.

D. The Purchaser is Entitled to the Protections of Section 363(m)

38. The Foreign Representative additionally requests that the Court apply the protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale. Section 363(m) of the Bankruptcy Code provides, in relevant part:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11U.S.C. 363(m).

39. While the Bankruptcy Code does not define “good faith purchaser,” courts have stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Diaries*, 788 F.2d at 147. Generally, parties have acted in good faith with respect to a proposed sale if the purchase price is adequate and reasonable and the terms of the sale are disclosed fully. *Id.* at 149-50. Courts have held that in order to demonstrate a lack of good faith, a party would have to show “fraud or collusion between the purchaser and [seller] or an attempt to take grossly unfairly advantage [of other potential purchasers].” *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997).

40. The Foreign Representative submits that the APA is not tainted by self-dealing, collusion, or manipulation as it was negotiated in good faith, executed by the Debtors and the Purchaser in an arm's-length transaction, and the Foreign Representative, Debtors and the Purchaser have fully disclosed all material information. Similarly, the Purchaser's proposed consideration for the Assets was made in good faith.

41. Given the foregoing, and because the SIP creates a fair, equitable, transparent and competitive sale process, the Purchaser is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. Accordingly, the Foreign Representative requests that the Court make a finding that the Purchaser will be purchasing the Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protections of section 363(m) of the Bankruptcy Code.

E. Relief from the Fourteen-Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

42. To achieve the highest and best value for the Assets, the Foreign Representative must be afforded the opportunity to promptly sell the Assets in accordance with the Canadian Sale Order and the APA without undue disruption or delay. Time is of the essence under the APA, and the Foreign Representative requests that any order approving the Sale be made effective immediately by providing that the 14-day stay under Bankruptcy Rules 6004(h) and 6006(d) is waived in this instance.

NOTICE

43. The Foreign Representative will serve this Motion on all parties that have filed a request under Bankruptcy Rule 2002, all known holders of liens or interests in the Assets, all known creditors of the Debtors, and the office of the United States Trustee. The Foreign Representative respectfully submits that no further notice of this Motion is required.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court (i) grant this Motion and the relief requested herein; (ii) enter the Proposed Order substantially in the form attached hereto as Exhibit A; and (iii) grant such other and further relief as it deems just and proper.

Dated: November 1, 2013
Wilmington, Delaware

/s/ Domenic E. Pacitti

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Representative*

EXHIBIT A

(PROPOSED FORM OF ORDER)

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

In re:

XENTEL INC., *et al.*¹

Debtors in a Foreign Proceeding.

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(II) AUTHORIZING AND APPROVING THE SALE OF DEBTORS' ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,
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Upon the motion of iMarketing Solutions Group, Inc. ("IMSG"), as authorized foreign representative (the "Foreign Representative") of Xentel Inc. ("Xentel"), Wellesley Corporation Inc. ("Wellesley"); GWE Consulting Group (USA) Inc. ("GWE"); US Billing Inc. ("US Billing"); American Graphics & Design Inc. ("AG&D"); Courtesy Health Watch Inc. ("CHW"); and Target Outreach Inc. ("Target" and, together with, Xentel, Wellesley, GWE, US Billing, AG&D and CHW, the "Debtors") in proceedings (the "Canadian Proceedings") under Canada's *Companies' Creditors Arrangement Act* (R.S.C. 1985 c. 36) (the "CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court"), for Entry of an Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief, filed on November 1, 2013 (the "Motion"), seeking entry of an Order, pursuant to sections 105(a), 363, 1501, 1507, 1520, 1521, 1525 and 1527 of title 11 of the United States

¹ The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Xentel Inc. (6267); Wellesley Corporation Inc. (4092); GWE Consulting Group (USA) Inc. (2629); US Billing Inc. (7752); American Graphics & Design Inc. (7772); Courtesy Health Watch Inc. (1403); and Target Outreach Inc. (9046). The Debtors' main corporate address is 481 University Ave., Toronto, Canada M5G 2E9.

Code, (11 U.S.C. §§ 101 *et. seq.* as amended, the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”); (i) recognizing the Approval and Vesting Order sought by the Debtors from the Ontario Court on October 25, 2013 (“Canadian Sale Order”); (ii) authorizing and approving the sale (the “Sale”) of substantially all of the Debtors’ assets (the “Assets”), pursuant to the terms and conditions of that certain Asset Purchase Agreement (the “APA”) between the Debtors and IMKT Direct Solutions Corporation and iMarketing Acquisition, LLC (collectively, the “Purchaser”), free and clear of all liens, claims (as defined in section 101(5)) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature whatsoever (collectively, the “Liens”), to Purchaser, and (iii) granting related relief; and the Court having considered any objections filed to the Motion; and the Court having scheduled a hearing (“Hearing”) for November 22, 2013, at 10:00 a.m. to consider the Motion and any objections thereto; and good cause having been demonstrated for granting the relief sought in the Motion; based on the foregoing, this Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (P). Venue is proper in this District pursuant to 28 U.S.C. § 1410 (1) and (3).

(B) Notice of the Hearing was sufficient and no further notice of, or hearing on, the Motion is necessary or required.

(C) The relief sought by the Foreign Representative is authorized under Bankruptcy Code sections 1520 and 1521.

(D) The relief requested by the Motion and the entry of this Order is in the best interest of the Debtors, their estates, and the creditors and other parties in interest.

(E) The Foreign Representative has demonstrated that the terms of the Sale are fair and reasonable and were entered into in good faith by the Debtors and the Purchaser.

(F) The transaction contemplated by the APA are undertaken by the Debtors and the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is GRANTED.
2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the Hearing, or by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits, except as expressly provided herein.
3. The Canadian Sale Order is hereby recognized and affirmed in all respects, and shall be fully enforceable pursuant to its terms.
4. The APA, and the transactions contemplated thereby, are hereby approved. Pursuant to sections 105, 363, 1507, 1520 and 1521 of the Bankruptcy Code, the Foreign Representative and the Debtors are authorized to enter into and perform all of their obligations under the APA and consummate the Sale, pursuant to and in accordance with the terms and conditions of the APA, the Canadian Sale Order and this Order, and to take any and all actions necessary and appropriate to implement the APA, the Canadian Sale Order and this Order.

5. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

6. The Debtors' transfer of the Assets to the Purchaser pursuant to the terms and conditions of the APA shall be free and clear of all Liens pursuant to section 363(f) of the Bankruptcy Code. The Debtors may sell the Assets free and clear of any Liens because one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Parties who did not object to or withdrew their objections to the Motion or the Sale of the Assets are deemed to have consented to the Motion and the Sale of the Assets. Parties who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens attach to the proceeds ultimately attributable to the Assets against or in which such Liens are asserted, subject to the terms of such Liens, with the same validity, force, and effect, and in the same order of priority that such Liens have against such Assets or their proceeds as of the closing of the Sale, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto or as otherwise provided herein. The term "Liens" as used in this Order shall not include liens securing tax obligations assumed by the Purchaser pursuant to the terms of the APA.

7. If any Person or entity that has filed financing statements, mortgages, mechanic's Liens, *lis pendens* or other documents or agreements evidencing Liens against or in the Assets shall not have delivered to the Debtors prior to the closing of the Sale, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all Liens that the Person or entity has with respect to the Assets, then (i) the Debtors or the Purchaser are hereby authorized to execute and file such statements,

instruments, releases, and other documents on behalf of the person or entity with respect to the Assets, (ii) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens of any kind or nature against or in the Assets; and (iii) the Purchaser may seek relief in this Court or any other court of appropriate jurisdiction to compel the appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Liens with respect to the Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Assets free and clear of Liens shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order.

8. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 6006(g), this Order shall not be stayed after the entry of this Order and shall be effective immediately upon entry.

9. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

Dated: _____, 2013
Wilmington, Delaware

HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE