

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
) FRIDAY, THE 14TH
JUSTICE MESBUR)
) DAY OF AUGUST, 2009

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF PRODUCT EXCELLENCE INC.



APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant, PRODUCT EXCELLENCE INC. ("PEI"), for an Order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between PEI and ACI Brands Inc. (the "Purchaser") made as of July 31, 2009 and appended to the Supplementary Report (the "Supplementary Report") to the First Report of Deloitte & Touche Inc. in its Capacity as Monitor (the "Monitor") dated August 11, 2009 (the "First Report"), and vesting in the Purchaser all of PEI's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, the First Report, the Supplementary Report and on hearing the submissions of counsel for PEI, counsel for the Purchaser, counsel for the Monitor, ~~counsel for the Royal Bank of Canada, and counsel for VDI Healthcare Logistics, and such other counsel as were present,~~ those persons on the service list having been properly served with the Motion Record herein, as appears from the affidavit of Kelly Barrett sworn August 10, 2009 filed: ✓
✓
per

1. THIS COURT ORDERS AND DECLARES that the Motion Record is properly served on those persons on the service list and that such service is hereby validated, such that the Motion is properly returnable today and the requirement for service of the Motion Record herein upon any party not served is hereby dispensed with.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The execution of the Sale Agreement by PEI is hereby authorized and approved as of the date of execution, and PEI is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of PEI's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Lederman, dated August 4, 2009; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the

sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, PEI is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in PEI's records pertaining to PEI's past and current employees, including personal information of those employees listed on Schedule "5.2(b)(i)" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by PEI.

7. THIS COURT ORDERS that notwithstanding paragraph 10.7 of the licence agreement between Selective Beauty Brands, LLC and PEI, dated December 12, 2007 (the "Licence Agreement"), the Licence Agreement be and is hereby assigned to the Purchaser, such that the Licence Agreement forms part of the Purchased Assets.

8. THIS COURT ORDERS that a copy of the Sale Agreement, along with all appraisals and valuations of the Purchased Assets, and the Supplementary Report shall be filed with the Court and shall remain sealed and not form part of the public record pending completion of the Transaction.

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of PEI and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of PEI;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of PEI and shall not be void or voidable by creditors of PEI, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "M. J. ...", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 14 2009

PER / PAR: TV

Schedule A – Form of Monitor’s Certificate

Court File No. 09-8306-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

*IN THE MATTER OF THE COMPANIES’ CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED*

*AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF PRODUCT EXCELLENCE INC.*

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Lederman of the Ontario Superior Court of Justice (the "Court") dated August 4, 2009, DELOITTE & TOUCHE INC. was appointed as the Monitor (the "Monitor") of PRODUCT EXCELLENCE INC. ("PEI").

B. Pursuant to an Order of the Court dated August 14, 2009, the Court approved the sale transaction (the "Transaction"), as contemplated by the agreement of purchase and sale made as of July 31, 2009 (the "Sale Agreement") between PEI and ACI Brands Inc. (the "Purchaser") and provided for the vesting in the Purchaser of all of PEI’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by PEI and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of PEI and of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and PEI has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by PEI and the Purchaser; and
3. The Transaction has been completed to the satisfaction of PEI and of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**DELOITTE & TOUCHE INC., in its capacity
as Monitor of PRODUCT EXCELLENCE
INC., and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

The Purchased Assets of the Vendor consist of the following:

- (a) all contracts, agreements and commitments, whether written or unwritten, including without limitation those licensing, manufacturing, distribution agreements, and customer agreements relating to the product lines listed in Exhibit A hereto (the “**Product Lines**”), as well as customer purchase orders related to the Product Lines which require fulfillment after the closing of the proposed transaction, but excluding, for greater certainty, all agreements with independent contractors and brokers;
- (b) all rights of the Vendor against third parties relating to the Product Lines and other Purchased Assets, whether known or unknown, contingent or non-contingent, and the full benefit of all warranties, warranty rights, indemnities and similar covenants (implied, express or otherwise) against manufacturers or sellers which apply to the Product Lines and other Purchased Assets;
- (c) all intellectual property relating to the Product Lines, together with the benefit of all goodwill associated therewith;
- (d) the exclusive right to the Purchaser to represent itself as selling the Product Lines in succession to the Vendor and the right to use any words indicating that such business is so carried on, including the exclusive right to use the name “Product Excellence” or any variation thereof;
- (e) all inventory of the Vendor related to the Product Lines which, for greater certainty includes finished products, packaging and shipping materials and any work in progress relating to the Product Lines which are not damaged or defective;
- (f) all customer lists and other books and records relating to the Product Lines, including, without limitation, inventory records, records pertaining to customers’ requirements, supplier lists and records and correspondence files (including such data and information stored electronically, in digital form or on computer related media);
- (g) all other property, assets and rights, tangible or intangible, used by the Vendor or to which it is entitled specifically in relation to the Product Lines other than the excluded assets specifically set out at Exhibit B hereto;
- (h) those prepaid expenses and deposits paid by the Vendor relating exclusively to a Product Line and in respect of which the Purchaser has determined, acting reasonably, it will receive the full tangible benefit thereof after the proposed transaction has closed; and
- (i) unprocessed returns of finished products relating to the Product Lines which have been returned to the Vendor by customers but which have not yet been processed or reprocessed by the Vendor prior to the closing of the proposed transaction.

Exhibit A

Product Lines

1. Ardell artificial lashes and eyebrows
2. Milani Cosmetics
3. Bye Bye Blemish
4. Preven's
5. HeadBlade
6. Clubman
7. 5 Seconds
8. Hennalucent
9. Streaks'n'Tips
10. Youthair
11. European Secret
12. Stila
13. Say It With Scent
14. Salon Selectives
15. Andrea waxes (women's), depilatories, bleaches
16. Andrea Eye Q's

Exhibit B

Excluded Assets

The following shall be specifically excluded from the Purchased Assets:

- (a) all cash, bank balances, monies in the possession of banks and other depositories, term or time deposits, guaranteed investment certificates, treasury bills, other securities and other similar cash or cash-equivalent items owned by the Vendor as of the date of the closing of the proposed transaction;
- (b) tax loss carry forwards;
- (c) accounts receivable of the Vendor;
- (d) all equipment and leasehold interests in real property;
- (e) inventory, trademarks, trade or brand names and other intellectual property rights and contracts related exclusively to product lines of the Vendor other than the Product Lines; and
- (f) all other assets of the Vendor not related to the Product Lines or otherwise included in the Purchased Assets.

Schedule C – Claims to be deleted and expunged from title to the Purchased Assets

All security interests in favour of Royal Bank of Canada registered under the Ontario Personal Property Security Registration System against Product Excellence Inc., with File Numbers 613420911 and 893089908

All security interests in favour of Next Paradigm Inc. registered under the Ontario Personal Property Security Registration System against Product Excellence Inc., with File Numbers 614708289 and 603667368

All security interests in favour of PEI Investments Inc. registered under the Ontario Personal Property Security Registration System against Product Excellence Inc., with File Number 893195973

All security interests in favour of PEI Holdings Inc. registered under the Ontario Personal Property Security Registration System against Product Excellence Inc., with File Number 893196054

Court File No. 09-8306-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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PROCEEDINGS COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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