

MRO H-26-02

05-02-2002

Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)



U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
CIT Group/Business Credit Inc.

Individual(s)       Association  
 General Partnership       Limited Partnership  
 Corporation-State Delaware  
 Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: CW Gifts, LLC  
Internal  
Address: \_\_\_\_\_  
Street Address: 100 Plaza Drive  
City: Seacaucus State: NJ Zip: 07094

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other Delaware Limited Liability Co.  
If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
 (Designations must be a separate document from assignment)  
 Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment       Merger  
 Security Agreement       Change of Name  
 Other Release of Security Interest

Execution Date: December 7, 1999

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s)  
 B. Trademark Registration No.(s)  
 1542841, 2146072, 2110003

Additional number(s) attached  Yes  No

6. Total number of applications and registrations involved: 3


5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Andrew Cheng  
 Internal Address: Cravath, Swaine & Moore  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Street Address: Worldwide Plaza  
 825 Eighth Avenue  
 City: New York State: NY Zip: 10019

7. Total fee (37 CFR 3.41).....\$ 210.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
 \_\_\_\_\_  
 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Joseph Albanese            April 26, 2002  
 Name of Person Signing      Signature      Date

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Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

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01 FC:481      40.00 OP  
02 FC:482      50.00 OP  
03 FC:484      120.00 OP

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Counsel to the Debtors

**FILED**  
JAMES J. WALDRON, CLERK  
DEC - 7 1999  
U.S. BANKRUPTCY COURT  
NEWARK, N.J.  
BY \_\_\_\_\_ DEPUTY

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:  
  
GENESIS DIRECT, INC. and CW GIFTS, LLC, *et al.*  
  
Debtors.

Case No. 99-39299 (RG)  
Chapter 11  
Administratively Consolidated  
Hearing Date: December 7, 1999 at 11:00 a.m.

**ORDER AUTHORIZING THE DEBTORS TO:  
(A) SELL SUBSTANTIALLY ALL OF THE ASSETS OF CW GIFTS, LLC  
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES;  
AND (B) ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS  
IN CONJUNCTION WITH SUCH SALE**

Upon the motion, dated November 5, 1999 (the "Motion"), of the above-captioned Debtors and Debtors-in-Possession (the "Debtors"), including Genesis Direct, Inc. ("GDI"), Little Genesis, Inc. ("LGI"), and CW Gifts, LLC ("CW"), for entry of an Order: (i) pursuant to §§ 105, 363(b), (f) and (m), 365 and 1146(c) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P."), authorizing the Debtors to sell substantially all of the assets of CW (the "Sale Assets"), free and clear of all liens, claims, encumbrances, options, rights of first refusal and other interests (the "Sale"), with such liens, claims, encumbrances, options, rights of first refusal and other

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interests to transfer, affix and attach to the proceeds of such Sale, pursuant to and as described in the asset purchase agreement, dated as of November 5, 1999, as amended by Amendment to Asset Purchase Agreement, dated December 7, 1999 (the "Asset Purchase Agreement") between CW, as seller (and its security holders, GDI and LGI) and Dr. Leonard's Healthcare Corp. ("Healthcare"), as purchaser; and (ii) pursuant to §§ 365(a), (b) and (f) of the Bankruptcy Code and Fed.R.Bankr.P. 6006, authorizing the Debtors to assume and assign certain executory contracts and unexpired leases as set forth on Exhibit A annexed hereto (the "Contracts") in conjunction with such Sale, free and clear of liens, claims, encumbrances, options, rights of first refusal and other interests (except those expressly assumed by Healthcare pursuant to the Asset Purchase Agreement); and upon a hearing held on November 16, 1999 (the "Bid Procedures Hearing"), and this Court having entered an Order, dated November 18, 1999 (the "Bidding Procedures Order") approving the form and notice of a hearing to consider the Sale pursuant to an auction (the "Auction"), approving bidding and scheduling a hearing on the Motion (the "Sale Hearing"); and due notice of the Motion, the Bid Procedures Hearing and the Sale Hearing having been given; and it appearing that no other or further notice need be given; and upon the Auction conducted and the Sale Hearing held before this Court on December 7, 1999; and upon the record of Bid Procedures Hearing; and upon the evidence presented or proffered at the Sale Hearing; and the appearances of all interested parties and all responses and objections to the Motion, if any, having been fully noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, the Motion, said responses and objections, the arguments of counsel and the record in these cases; and the Court having heard competing offers for the purchase of the Sale Assets, if any; and it appearing that the highest and best offer for the Sale Assets being conveyed pursuant to the Motion and the Bidding Procedures Order was made by Healthcare (the "Purchaser"); and it appearing that the relief sought by the Debtors is necessary and

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in the best interests of CW's creditors and CW's estate and other parties in interest and due deliberation having been had, and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS AND DETERMINES that:<sup>1</sup>**

A. The court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are §§ 105(a), 363(b), (f), and (m), 365 and 1146(c) of the Bankruptcy Code and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014.

C. As evidenced by the affidavits of service and affidavits of publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing: (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing and the Sale has been provided in accordance with §§ 102(1) and 363 of the Bankruptcy Code and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 and in substantial compliance with the Bidding Procedures Order, dated November 18, 1999; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale or the Auction shall be required.

D. On August 19, 1999 (the "Petition Date"), the Debtors filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code.

E. By Order of the Bankruptcy Court dated August 19, 1999, the Chapter 11 cases of the Debtors were administratively consolidated.

F. Since the Petition Date, the Debtors have continued in possession and

<sup>1</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as

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management of their businesses and properties as debtors-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code.

G. No trustee or examiner has been appointed in the Debtors' cases.

H. Proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale and the Auction was provided to all parties entitled thereto in accordance with §§102(1), 363(b) and (f), and 365(a) of the Bankruptcy Code and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014, including all creditors who have asserted or who could assert Liens and Claims (as hereinafter defined). No other or further notice of the Motion, the Sale Hearing, the Sale, the Auction or of the entry of this Order is necessary.

I. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including: (i) the United States Trustee; (ii) the creditors' committee appointed in these cases; (iii) all entities known to have expressed an interest in a merger or acquisition transaction regarding CW, the Sale Assets during the past twelve (12) months; (iv) all entities known to have, or to have asserted, any lien, claim, encumbrance, option, right of first refusal, or other property interest in or upon any of the Sale Assets that are to be sold pursuant to the Asset Purchase Agreement; (v) all entities that had filed a notice of appearance and request for service of papers in these cases on or before November 18, 1999; (vi) all parties to written executory contracts or unexpired leases proposed to be assumed and assigned under the Asset Purchase Agreement; and (vii) all other known creditors of CW, as reflected in the books and records of, and Schedules filed by, CW or its affiliates.

J. CW has demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to 11 U.S.C.

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findings of fact when appropriate. See Fed.R.Bankr.P. 7052.

§363(b) prior to, and outside of, a plan of reorganization in that, among other things:

(i) the Debtors have insufficient liquidity and financing to continue to operate all of their businesses in the long term;

(ii) in the absence of a sale of one or more of their businesses, the Debtors may have no alternative but to discontinue operations of some or all of their businesses;

(iii) The Debtors have determined in their business judgment that the business of CW does not fit into their long term plans to reorganize around their sports merchandise business.

K. Without an expeditious sale of the Sale Assets, there will be a substantial diminution in the value of the Sale Assets to the detriment of all creditors and parties in interest.

L. Due to limited availability under the DIP Financing Agreement, the Debtors' ability to purchase inventory for CW has been severely restricted.

M. The Debtors' inability to maintain adequate inventory levels at CW has begun to erode customer confidence in CW's ability to fill orders on a timely basis.

N. The Debtors' inability to provide adequate funding to and to maintain inventory levels of CW has also begun to erode employee confidence in CW's ability to continue as a going concern.

O. CW is the sole and lawful owner of the Sale Assets.

P. The offer of Purchaser to purchase the Sale Assets is the highest and best offer received by the Debtors after a period in which third parties had ample opportunity to seek information and enter into discussions or negotiations with CW, GDI, and LGI concerning a sale of the Sale Assets, and the purchase price stated on the record of the Sale Hearing is fair and reasonable and in the best interest of CW, its creditors and estate, and the purchase price constitutes

full and adequate consideration and reasonably equivalent value for the Sale Assets. The Sale and Auction conducted by the Debtors was non-collusive, fair and reasonable and conducted in good faith.

Q. Purchaser is not an insider as that term is defined in § 101(31) of the Bankruptcy Code. Purchaser is a purchaser in good faith with respect to the Sale Assets, as that term is used in § 363(m) of the Bankruptcy Code. The Asset Purchase Agreement was negotiated, proposed and entered into by the parties in good faith, from arm's length bargaining positions and without collusion, and the Purchaser is entitled to the protections of § 363(m) and (n) of the Bankruptcy Code with respect to all of the Sale Assets.

R. CW has advanced sound business reasons for executing, delivering and performing the Asset Purchase Agreement and to sell the Sale Assets, as set forth in the Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of CW's business judgment to execute, deliver and consummate the Asset Purchase Agreement with Purchaser and to perform its obligations thereunder. Such business judgment includes, but is not limited to, the facts that: (i) there is a grave risk of immediate and irreparable deterioration in the value of the Sale Assets if the sale is not consummated quickly; (ii) the Asset Purchase Agreement constitutes the highest and best bid for the Sale Assets; and (iii) the consummation of the Asset Purchase Agreement presents the best opportunity to realize the value of the Sale Assets and avoid further decline and devaluation thereof. After consideration of the circumstances described in the Motion, the Court has determined that the sale and bidding procedures outlined in the Bidding Procedures Order and the Asset Purchase Agreement present the best opportunity for CW's estate to realize the highest distribution possible to creditors and will provide a greater recovery for its creditors than would be provided by any other practical alternative available.

S. CW has advanced sound business reasons for seeking the assumption and assignment of the Contracts. All defaults shall be cured under the assumed Contracts and adequate assurance of future performance has been provided under the Asset Purchase Agreement.

T. CW may sell the Sale Assets (including the Contracts) free and clear of all Liens and Claims (as defined below) because, in each case, one or more of the standards set forth in § 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those (i) holders of Liens and Claims (as defined below) and (ii) non-debtor parties to the Contracts who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to § 363(f)(2) of the Bankruptcy Code. Those (i) holders of Liens and Claims (as defined below) and (ii) non-debtor parties to the Contracts who did object fall within one or more of the other subsections of § 363(f) of the Bankruptcy Code and are adequately protected by having their Liens and Claims (as defined below), if any, attach to the cash proceeds of the Sale ultimately attributable to the property in which they assert a Lien or Claim (as defined below).

U. The terms and conditions of the Asset Purchase Agreement, including the total consideration to be realized by CW pursuant to the Asset Purchase Agreement, are fair and reasonable and the transactions contemplated by the Asset Purchase Agreement are in the best interest of CW, its creditors and estate.

V. A valid business purpose exists for approval of the transaction contemplated by the Motion pursuant to §§ 105, 363(b), (f), and (u) and 365(a), (b) and (f) of the Bankruptcy Code. CW may sell, transfer and assign the Sale Assets (including the Contracts) free and clear of all liens claims, interests, encumbrances, options, rights of first refusal and other interests, in accordance with §§ 105, 363 and 365 of the Bankruptcy Code. As



a condition to purchasing the Sale Assets, Purchaser requires that, except as explicitly set forth in Section 1.5 of the Asset Purchase Agreement: (a) the Sale Assets (including the Contracts) be sold free and clear of all liens, claims, encumbrances, options, rights of first refusal and other interests; and (b) Purchaser shall have no liability whatsoever for any obligations of or claims (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors or their affiliates. ~~Purchaser would not enter into the Asset Purchase Agreement and consummate the Sale, thus adversely affecting CW's estate, if the sale to Purchaser was not free and clear of all liens, claims encumbrances, options, rights of first refusal and other interests or if Purchaser was or would be liable for any obligations of or claims (as defined in § 101(5) of the Bankruptcy Code) against the Debtors, except as otherwise explicitly provided in the Asset Purchase Agreement.~~

W. An injunction against creditors and third parties pursuing any Liens and Claims (as hereinafter defined) is necessary to induce Purchaser to close under the Asset Purchase Agreement; the issuance of such injunction is therefore necessary to avoid irreparable injury to CW's estate, and will benefit all the creditors.

X. CW and Purchaser have at all times acted in good faith and in accordance with applicable law. Purchaser is a purchaser in good faith within the meaning of § 363(m) of the Bankruptcy Code, and Purchaser will be acting in good faith pursuant to § 363(m) of the Bankruptcy Code in closing the transaction contemplated by the Asset Purchase Agreement at any time on or after entry of this Order. The sale of the Sale Assets (including the Contracts) to Purchaser is a sale in good faith within the meaning of § 363(m) of the Bankruptcy Code.

Y. The transfer of the Sale Assets (including the Contracts) to the Purchaser is or will be a legal, valid and effective transfer of the Sale Assets (including the Contracts), and will vest the Purchaser with all right, title and interest of CW in and to the Sale Assets (including

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the Contracts), free and clear of all Liens and Claims (as defined below), except those explicitly and expressly assumed by the Purchaser in the Asset Purchase Agreement.

Z. The (i) transfer of the Sale Assets (including the Contracts) to the Purchaser and (ii) assumption and assignment to, and assumption by, the Purchaser of the Contracts do not and will not subject the Purchaser to any liability by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based in whole or in part, directly or indirectly, on any theory of law, including without limitation, any theory of antitrust or successor or transferee liability.

AA. The transfer of the Sale Assets (including the Contracts) to the Purchaser is a transfer pursuant to 11 U.S.C. § 1146(c), and accordingly shall not be taxed under any law imposing a stamp tax or similar tax.

BB. CW has demonstrated that it is an exercise of its sound business judgment to assume and assign the Contracts to the Purchaser in connection with the consummation of the Sale, and the assumption and assignment of the Contracts is in the best interests of CW, its estate, and its creditors. The Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Sale Assets being purchased by the Purchaser and, accordingly, such assumption and assignment of Contracts is reasonable, enhances the value of the estate, and does not constitute unfair discrimination.

CC. CW has: (i) cured, or has provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(A), and (ii) provided compensation or adequate assurance of compensation to any party other than CW for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B).

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and the Purchaser has provided adequate assurance of future performance of the Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(C).

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

1. The Motion is granted, as further described herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.
3. The Asset Purchase Agreement and the transactions contemplated thereby be, and hereby are, approved, and CW is hereby authorized, empowered and directed to enter into, and to perform its obligations under, the Asset Purchase Agreement and to take such action as is necessary to effectuate the terms of the Asset Purchase Agreement.
4. CW is hereby authorized, empowered and directed, pursuant to §§ 105 and 363(b) and (f) of the Bankruptcy Code, to sell the Sale Assets (including the Contracts) to Purchaser pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement, and pursuant to §§ 105 and 363 of the Bankruptcy Code, title to the Sale Assets (including the Contracts) shall pass to Purchaser at closing, subject to the provisions of paragraph 8 hereof, free and clear of any and all liens (including mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), security interests, encumbrances and claims (as defined in § 101(5) of the Bankruptcy Code), reclamation claims, mortgages, pledges, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, rights of first refusal, contracts, offsets, recoupment, rights of recovery, judgments, orders, claims for reimbursement, contribution, indemnity or exoneration, and

decrees of any Court or foreign or domestic governmental entity, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities and claims, to the fullest extent of the law, in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "Liens and Claims"), including, subject to the provisions of paragraph 8 hereof, but not limited to the Liens and Claims, if any, of The CIT Group/Business Credit, Inc., GE Private Investment Placement Partners II, and Global Internet Fund, Inc., with all such Liens and Claims to attach only to the proceeds of the Sale with the same priority, validity, force and effect as they now have in or against the Sale Assets (including the Contracts).

5. Except as otherwise provided in this Order or in the Asset Purchase Agreement, all parties and/or entities asserting Liens and Claims against the Sale Assets (including the Contracts) or CW are hereby permanently enjoined and precluded from pursuing such Liens and Claims, including any actions with respect to any claim (as defined in § 101(5) of the Bankruptcy Code) against CW from (i) asserting, commencing or continuing in any manner any action against Purchaser (or any of its subsidiaries or affiliates) or any director, officer, agent, representative or employee of Purchaser or any lender to or investor in the foregoing entities (collectively, the "Protected Parties") or against any Protected Party's assets or properties; (ii) the enforcement, attachment, collection or recovery, by any manner or means, of any judgment, award or decree or order against the Protected Parties or any assets or properties

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of the Protected Parties; (iii) creating, perfecting or enforcing any encumbrance of any kind against the Protected Parties or any properties or assets of the Protected Parties; (iv) asserting any set off, right of subrogation or recoupment of any kind against any obligations due to the Protected Parties; and (v) any action, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Order or the Asset Purchase Agreement.

6. This Order and the Asset Purchase Agreement shall be binding upon, and shall inure to the benefit of, CW and Purchaser, and their respective successors and assigns, including without limitation, any chapter 11 trustee hereinafter appointed for CW's estate or any trustee appointed in a chapter 7 case if CW's case is converted from chapter 11.

7. This Court shall retain exclusive jurisdiction to enforce the provisions of this Order and the Asset Purchase Agreement and to resolve any dispute concerning this Order, the Asset Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Asset Purchase Agreement and this Order, including, but not limited to, interpretation of the terms, conditions and provisions thereof, and the status, nature and extent of the Sale Assets (including the Contracts), and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Sale Assets (including the Contracts) free and clear of Liens and Claims.

Debtors are authorized and directed to pay to CITBC, at closing of the Sale, the ~~Net Proceeds~~ (as defined in the Revolving Credit Agreement among the Debtors and CITBC, dated as of August 20, 1999 (the "DIP Agreement") it being understood that Net Proceeds shall be net of cure amounts required to be paid to effectuate an assumption and assignment of the Contracts pursuant to this Order) generated ~~from~~ the Sale pursuant to the terms of the DIP Agreement in order to affect a discharge and release of CITBC's Liens and Claims. It

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shall be an unwaivable condition to closing of the Sale that the Net Proceeds be paid in full in cash to CITBC and concurrently the Liens of CITBC shall be released as of such date. After making such payment of the Net Proceeds to CITBC, the Debtors be and hereby are authorized to pay all liquidated and undisputed administrative expense claims incurred by CW in the ordinary course of business post-petition. Any disputed or unliquidated administrative claims shall not be paid except upon further order of this Court.

9. Pursuant to §§ 105(a) and 365 of the Bankruptcy Code and subject to and conditioned upon the Closing (as defined in the Asset Purchase Agreement) of the Sale, CW's assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the Asset Purchase Agreement, of the Contracts is hereby approved, and the requirements of § 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

10. CW is hereby authorized and directed in accordance with §§ 105(a) and 365 of the Bankruptcy Code to: (a) assume and assign to the Purchaser, effective upon the Closing of the Sale, the Contracts free and clear of all Liens and Claims, except those expressly assumed pursuant to the Asset Purchase Agreement; and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Contracts to the Purchaser.

11. The Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, excluding and notwithstanding any provision in any such Contract (including those described in §§ 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer to the Purchaser. Pursuant to 11 U.S.C. § 365(k), CW shall be relieved from any

liability with respect to the Contracts that arises after such assumption and assignment to the Purchaser.

12. All defaults or other obligations of CW under the Contracts arising or accruing prior to the date of this Order (without giving effect to any acceleration clauses or any default provisions of the kind specified in § 365(b)(2) of the Bankruptcy Code) have been cured or shall promptly be cured by CW, such that the Purchaser shall have no liability or obligation with respect to any default or obligation from the proceeds of sale, on arising or accruing prior to the date of the Closing of the Sale, except to the extent otherwise expressly provided in the Asset Purchase Agreement.

13. Each non-debtor party to a Contract is hereby barred from asserting against CW or the Purchaser any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

14. The failure of CW or the Purchaser to enforce at any time one or more terms or conditions of any Contract shall not be a waiver of such terms or conditions, or of CW's and Purchaser's rights to enforce every term and condition of the Contracts.

15. On the date of the Closing of the Sale (the "Closing Date"), each of CW's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to, subject to the provisions of paragraph 8 hereof, release its Liens and Claims against or in the Sale Assets (including the Contracts) or the Business, if any, as such Liens and Claims may have been recorded or may otherwise exist.

16. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

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17. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Liens and Claims against or in the Sale Assets (including the Contract) shall not have delivered to CW prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens and Claims that the person or entity has with respect to the Sale Assets (including the Contracts) or otherwise, CW is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Sale Assets (including the Contracts).

18. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Sale Assets are hereby directed to surrender possession of the Sale Assets to the Purchaser on the Closing Date.

19. The Purchaser shall have no liability or responsibility for any liability or other obligation of CW arising under or related to the Sale Assets (including the Contracts) or the business of CW other than for: (a) the Purchase Price (as defined in the Asset Purchase Agreement); and (b) those liabilities or responsibilities expressly assumed by the Purchaser under the Asset Purchase Agreement.

20. Nothing contained in any plan of reorganization (or liquidation) confirmed in these cases or the order of confirmation confirming any such plan shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.

21. The Asset Purchase Agreement is not a *sub rosa* chapter 11 plan for which approval has been sought without the protections a disclosure statement would afford, and in violation of creditors' and equity security interest holders' voting rights.



22. Consummation of the Asset Purchase Agreement does not effect a *de facto* merger of CW and Purchaser, and nothing disclosed at the Sale Hearing would support a finding that Purchaser is the alter-ego or a successor-in-interest to CW, or is otherwise liable for CW's debts and obligations. The transfer of the Sale Assets (including the Contracts) pursuant to the Sale shall not subject the Purchaser to any liability for claims against CW by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability.

23. Purchaser shall be entitled to the protection of § 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal. The purchase by Purchaser is a purchase in good faith for fair value within the meaning of § 363(m) of the Bankruptcy Code, and Purchaser is entitled to the protection of § 363(m) of the Bankruptcy Code.

24. The sale approved by this Order is not subject to avoidance pursuant to § 363(n) of the Bankruptcy Code.

25. The transfer of the Sale Assets (including the Contracts) is a transfer pursuant to § 1146(c) of the Bankruptcy Code. Accordingly, pursuant to § 1146(c) of the Bankruptcy Code, the making, delivery, filing and recording of various instruments of transfer to be recorded in connection with the sale by CW of the Sale Assets (including the Contracts) to Purchaser shall not be taxed under any law imposing a recording tax, stamp tax, transfer tax or similar tax, and all filing and recording officers are hereby directed to accept for filing or recording all instruments of transfer to be filed and recorded in connection with CW's sale of the Sale Assets (including the Contracts) to Purchaser, without the payment of any such taxes.

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26. Immediately upon closing on the sale of the Sale Assets, CW be and hereby is authorized and directed to change its name to Genesis Direct 43, LLC, and the Debtors and their affiliates be and hereby are authorized and directed to amend the caption of the within administratively consolidated cases to replace all references to CW with Genesis Direct 43, LLC.

27. The Debtors are hereby authorized and empowered to execute and deliver any and all instruments as may be required to effectuate the terms of the Asset Purchase Agreement and this Order. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, with the consent of the creditor's committee appointed in these cases, and in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

28. This Order shall be binding upon, and shall inure to the benefit of CW and Purchaser and their respective successors and assigns.

29. From and after the closing, Purchaser shall have the right to sell the Sale Assets (including the Contracts) free from any and all liens and claims of any creditor of CW or other party in interest, including, without limitation, Liens and Claims.

30. Pursuant to §§ 105 and 363 of the Bankruptcy Code, any and all creditors of CW or other parties in interest shall be barred, estopped and enjoined from taking any action of any kind against Purchaser and/or the Sale Assets (including the Contracts).

31. As provided by Fed. R. Bankr. P. 7062, this Order shall be effective and enforceable immediately upon entry.

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32. The provisions of this Order are nonseverable and mutually dependent.

Dated: December 7<sup>th</sup>, 1999

**ROSEMARY GAMBARDELLA  
CHIEF JUDGE**

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Hon. Rosemary Gambardella  
Chief United States Bankruptcy Judge

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**EXHIBIT A**

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Schedule 1.1(a)

Assumed Contracts

1. Letter of Agreement, effective August 1, 1997, between Carol Wright Gifts, Inc. and Oxford Colour, Inc.  
Purpose: Printing - Film and Service  
Term: February 1, 1999 - February 1, 2001  
Payment: Upon presentation of invoices \$45,000.00  
Pre-petition Arrearage: \$125,128.25 (settled for \$20,787.17)
2. Non-Exclusive License Agreement, dated May 15, 1995, between Koltov, Inc. and Carol Wright Sales, Inc., pursuant to which the Company is currently paying royalties of \$0.45 for each sale of the Company's item 9CR at a price less than \$9.95 and 4.5% of revenues on sales of item 9CR at a price over \$9.95. (Note: The term of this agreement has expired, but the parties are continuing to operate pursuant to the terms thereof.)  
Purpose: royalty contract for sale of goods  
Term: see above  
Pre-petition Arrearage: \$343.00
3. License Agreement, dated November 27, 1989, between Emily Steinberg and Carol Wright Sales, Inc., pursuant to which the Company is currently paying royalties of 2% of revenues on sales of the Company's item C7N and 1% of revenues on sales of PKB.. (Note: The term of this agreement has expired, but the parties are continuing to operate pursuant to the terms thereof.)  
Term: see above  
Pre-petition Arrearage: \$528.90
4. Oral agreement with Jay Imports pursuant to which the Company is currently paying royalties of 3% of revenues on sales of the Company item NX3.  
Term:  
Pre-petition Arrearage: \$16.48
5. Oral agreement with Don McKeone pursuant to which the Company is currently paying royalties of 1% of revenues on sales of the Company's Items P75 and NY4.  
Term:  
Pre-petition Arrearage: none

ASSET PURCHASE AGREEMENT, dated as of November 5, 1999, (the "Agreement") among CW GIFTS, LLC, a Delaware limited liability company ("Seller"), GENESIS DIRECT, INC., a Delaware corporation ("Genesis") and LITTLE GENESIS, INC., a Delaware corporation ("Little Genesis") and, together with Genesis, the "Securityholders") and DR. LEONARD'S HEALTHCARE CORP., a Delaware corporation ("Buyer").

WITNESSETH

WHEREAS, Seller is engaged in the business of catalog marketing to consumers of various products (the "Business");

WHEREAS, on August 19, 1999, the Seller and the Securityholders filed voluntary petitions for reorganization under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Jersey (the "Court"), Case No. 99-39299 (the "Bankruptcy Proceeding");

WHEREAS, Securityholders own all of the outstanding limited liability company interests of Seller;

WHEREAS, upon and subject to the terms and conditions set forth herein and subject to the approval of the Court, Buyer desires to buy and Seller desires to sell certain assets in connection therewith, and Buyer is willing to assume only those liabilities and obligations of Seller specifically assumed by Buyer, all as hereinafter set forth;

WHEREAS, Seller has or will promptly file with the Court several motions, including a motion seeking a Court Order (the "Sales Order"), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, authorizing the sale of certain of Seller's assets to the Buyer (the "Sale Motion") in the form attached hereto as Exhibit "A"; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereto, it is hereby agreed as follows:

1. Purchase and Sale of Assets: Assumption of Certain Liabilities

1.1. Transfer of Assets. On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction (or waiver by the party whose obligations hereunder are subject to such satisfaction) of the conditions set forth in this Agreement, on the Closing Date (as defined in Section 2.1), Seller shall sell, convey, assign, transfer and deliver to Buyer and/or Buyer's assigns, and Buyer shall purchase and acquire from Seller, the assets, rights, title, properties, claims and contracts of Seller as set forth below:

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(a) the contracts and agreements listed on Schedule 1.1(a) (the "Contracts");

(b) all Seller's right, title and interest in and to the following, including the physical materials and all intellectual property rights (including copyrights and trade secrets) therein or related thereto (including all rights to sue and recover for damages and proceeds for infringement or other impairment thereof prior to the Closing Date) (collectively, the "Intellectual Property");

(i) all of Seller's customer lists, customer files, Mailing Lists (as defined in Section 3.1(g)(ii)), list rental and exchange records and customer records and other data in any form or media, whether in draft or final form (collectively, "Customer Lists");

(ii) all of Seller's catalog artwork wherever located, including without limitation, all photography, graphics, drawings, fonts, separations, layouts, and digital files in any form or media whether in draft or final form;

(iii) all of Seller's books and records, including without limitation, the historical and planned marketing mail plans and catalog programs, the order flow of each of Seller's catalog programs, and the purchasing and merchandising books and records in any form or media, whether in draft or final form;

(iv) all United States, state and foreign registered and unregistered trademarks and service marks, trademark and service mark registrations, trademark and service mark applications for registration, trade names, corporate names, domain names, brand names and the like (including product names and corporate names), as set forth on Schedule 1.1(b)(iv) together with the goodwill connected with the use thereof and symbolized thereby;

(v) all non-governmental licenses, sublicenses, covenants or agreements to which Seller is a party, which relate in whole or in part to any items of the categories mentioned above in clauses (i) - (iv), including all trademark licenses as set forth on Schedule 1.1(b)(iv);


(vi) all 800- or 888- prefix phone numbers used by Seller in connection with any aspect of Seller's business;

The assets being sold, conveyed, assigned, transferred and delivered to Buyer by Seller hereunder are sometimes hereinafter referred to as the "Assets."

1.2. Excluded Assets. It is expressly understood and agreed that the Assets shall only include those items set forth in Section 1.1 of this Agreement.

## Schedule 1.1(b)(iv)

Trademarks

APPLECREEK Serial No. 75/219,125 Reg. No. 2,146,072
HEALTH & COMFORT Serial No. 75/140,989 Reg. No. 2,110,003
MISCELLANEOUS DESIGN  Serial No. 73/744,019 Reg. No. 1,542,841

License Agreements

1. See License Agreements referenced in and attached to Schedule 1.1(a).
2. License Agreement dated September 14, 1998 by and between Carol Wright Promotions, Inc. ("CWP") and CW Gifts, LLC f/k/a Genesis Direct Forty-Three, LLC.

Domain Names

The domain name "carolwrightsgifts.com" which is registered with Network Solutions, Inc.



**Schedule 3.1(c)(ii)****Required Consent**

- CIT has a lien on all assets and intellectual property of CW Gifts, LLC ("Target" or "Company"). These will be released as a condition to Closing.
- License Agreement dated September 14, 1998 by and between Carol Wright Promotions, Inc. ("CWP") and CW Gifts, LLC f/k/a Genesis Direct Forty-Three, LLC, pursuant to which CW Gifts licenses the trademark Carol Wright Gifts from CWP.