

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

In re:)	
)	Chapter 11
DRUG FAIR GROUP, INC., <i>et al.</i> , ¹)	Case No. 09-10897 (BLS)
)	
Debtors.)	Joint Administration Requested
)	
)	
)	

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS
TO MAINTAIN AND ADMINISTER CUSTOMER PROGRAMS
AND HONOR PREPETITION OBLIGATIONS RELATED THERETO**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), seek entry of an order, substantially in the form annexed hereto as Exhibit A, authorizing, but not directing, the Debtors to maintain and administer their customer programs and honor prepetition obligations related thereto and in a manner consistent with past practices. In support of this motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 363, 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(m) of the Local Rules of

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each Debtor, are Drug Fair Group, Inc. f/k/a Community Distributors, Inc. (3660) and CDI Group, Inc. (9976).

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Background

4. On March 18, 2009 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of title 11 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no committees have been appointed or designated.

5. A description of the Debtors’ business and the reasons for filing these chapter 11 cases is set forth in the Declaration of Timothy D. Boates, Chief Restructuring Officer of Drug Fair Group, Inc., in Support of First Day Pleadings (the “Boates Declaration”), which was filed contemporaneously with this motion and is incorporated herein by reference.

Introduction

6. As described in the Boates Declaration, maintaining the loyalty and goodwill of customers is critical to the Debtors’ reorganization efforts. Indeed, many of the Debtors’ customers have been doing business with the Debtors for decades. Moreover, one of the Debtors’ primary corporate objectives as it enters chapter 11 is continuity of operations in support of customer retention. The Debtors must maintain positive customer relationships and a reputation for honoring their commitments to maintain the value of the franchise. Accordingly, the Customer Programs, which encourage store loyalty and, as a result, repeat business, are an important aspect of the Debtors’ business. Maintaining and honoring these customer programs will be even more important as the Debtors embark on their chapter 11 process. Furthermore,

maintaining normal operations is a requirement under the Asset Purchase Agreement with Walgreens. The Debtors believe that the ability to honor their Customer Program Obligations is necessary to retain their customer base and to ensure a smooth transition into chapter 11.

Relief Requested

7. By this motion, the Debtors seek entry of an order, pursuant to sections 363, 1107(a) and 1108 of the Bankruptcy Code, authorizing, but not directing, the Debtors, in their sole discretion, to (a) honor outstanding obligations (including, without limitation, prepayments, deposits, discounts, special pricing arrangements, warranties, trade-in programs and contractual rebates and allowances) earned by and owing to their customers under the Debtors' customer-related programs (collectively, the "Customer Programs") and (b) provide credit adjustments and/or discounts to their customers in satisfaction of accrued prepetition obligations incurred by the Debtors under their Customer Programs (including, without limitation, billing adjustments, refunds and credits, for product returns or account overpayments).

8. The Debtors estimate they may owe approximately \$20,000.00 (the "Estimated Amount") on account of prepetition obligations under the Customer Programs (collectively, the "Customer Program Obligations").

9. The Debtors generally make little to no cash payments on account of the Customer Programs. Indeed, almost all of the Estimated Amount, is comprised of items that do not typically represent cash payments:

- Customer merchandise coupons earned through the "We Care" program described below; and
- Rain checks or store credits which represent obligations to customers.

10. Accordingly, the Debtors seek authority to honor all Customer Programs and obligations owed on account of the Customer Programs, including approximately \$1,000 in cash payments.

The Debtors' Customer Programs

I. Description of the Debtors' Customer Programs

11. The Customer Programs generally can be categorized as follows: (a) a customer loyalty program and (b) refunds and credits.

A. Loyalty Program

12. The "We Care" program creates incentives for return business and promotes customer loyalty. Participants earn points based on purchases less discounts, subject to certain exclusions, such as prescriptions, tobacco purchases, sales tax, etc. Points are earned at the rate of one point for every qualified dollar spent. For every 150 points earned, the customer receives a \$5.00 coupon printed on the back of the receipt for their next purchase. The coupon may be redeemed in the form of a credit on a subsequent purchase subject to the same category exclusions described above. Coupons are non-transferable and expire in two weeks. Points expire if the amount earned within a defined "points collection cycle" is not sufficient for a coupon. Points also expire at December 31st of each year.

13. "Bonus Points" may also be awarded throughout the year to encourage certain purchases. These special promotions are advertised in on-line circulars as well as in the store. The current circular describes sales and discounts that expire March 28, 2009. Participants also are eligible for certain non-cash benefits such as free prescription delivery, priority scheduling for flu shots and free health consultations.

14. Approximately 800,000 customers are registered in the "We Care" program. The Debtors estimate that they spent a total of approximately \$500,000 on account of the marketing

and administration of the program in 2008. In December 2008, the Debtors discontinued the services of the outside provider that had been marketing and administering the program. Accordingly, the Debtors expect that the marketing and administration costs will significantly decline in the future. The Debtors authority to, in their sole discretion, continue the “We Care” Program.

B. Refunds and Credits

15. In the ordinary course of business, the Debtors routinely issue refunds or store credits for purchases returned to the store because the customer no longer desires the product or it is unsatisfactory to the customer in another respect. Typically, there may be a lag of up to two weeks between the time of purchase and the point at which the item is returned and a refund is issued. In the case of a straight refund, corporate approval may be required and an additional lag time may apply. At any given time, it is difficult to determine the amount of outstanding purchases that are subject to return or refund in the ordinary course of business. Store credits issued before the Petition Date may not have been redeemed as of the Petition Date. Moreover, some refund checks issued to customers before the Petition Date may not have been presented for payment or may not have cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date.

16. As of the Petition Date, the Debtors estimate that de minimis amounts for refunds and store credits may be due and owing to customers on account of returned merchandise. The Debtors seek authority to continue to issue and pay refund checks and store credits for returns and refunds of merchandise purchased prepetition as has been done in the ordinary course of business.

Basis for Relief

II. The Court Should Authorize the Debtors to Continue to Honor the Customer Programs In the Ordinary Course of Business.

A. Ample Authority Exists to Support Continuing To Honor the Customer Programs.

17. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363 provides, in relevant part, that “[t]he [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). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wage claims pursuant to section 363(b)). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *Id.* at 175.

18. The importance of the Debtors’ customers to their business cannot be overstated. The Debtors’ Customer Programs have generated valuable goodwill and repeat business and have contributed to the Debtors’ overall revenue. Honoring prepetition commitments under the Customer Programs will benefit the Debtors and their creditors by allowing the Debtors’ operations to continue without interruption. To maintain continuity in their relationships and operations, the Debtors hope to continue during the postpetition period those Customer Programs that they believe were effective prepetition. The Debtors also believe that the relief requested herein is necessary to preserve their customer relationships and goodwill for the benefit of their estates. If the Debtors do not honor their obligations under the Customer Programs, the Debtors risk alienating their customers and encouraging customers to procure products from the Debtors’ competitors. Furthermore, the Asset Purchase Agreement with Walgreens requires normal operations by the Debtors, the lack of which could detrimentally impact the value of the

transaction to the Debtors' estates. Thus, the substantial benefit conferred on the Debtors by the Customer Programs justifies the granting of the relief requested in this motion.

19. The Court may also rely on its general equitable powers to grant the relief requested in this motion as codified in section 105(a) of the Bankruptcy Code. Section 105 empowers the Court to "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). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." Ionosphere Clubs, 98 B.R. at 175-176 (citing Miltenberger v. Logansport, C. & S.W. R.Co., 106 U.S. 286 (1882)). Section 105(a) authorizes a court to "permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *see also* In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

20. Application of section 105(a) in the context of this motion is appropriate because the relief requested herein is consistent with the rehabilitative policy of chapter 11 of the Bankruptcy Code. A debtor in possession is a fiduciary with a duty to protect and preserve its estate, including the value of the business as a going concern. In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim"). Granting the relief requested in this motion will enhance the likelihood of the Debtors' successful rehabilitation, maximize the value of the estates' assets and thus benefit the estates' creditors.

21. Most, if not all, of the Customer Programs are standard practice in the Debtors' industry. Thus, if the Debtors do not honor their Customer Programs, the Debtors would be at a significant disadvantage with respect to their competitors, which undoubtedly would lead to a

decrease in business. For example, if the Debtors were to be unable to honor the Service Warranties, customers may lose trust in the Debtors' ability to ensure quality services. Moreover, the Debtors would risk isolating certain customers or, possibly encourage such customers to initiate business relationships with the Debtors' competitors. As a result, the failure to honor the Customer Programs could erode the Debtors' hard-earned reputation for quality customer service and customer loyalty, which, in turn, could adversely affect the Debtors' prospects for a successful reorganization.

22. Where, as here, retaining loyalty and patronage of customers is critical to successful chapter 11 cases, courts in this district and others have routinely granted relief similar to that requested here. *See, e.g., In re Portola Packaging, Inc.*, No. 08-12001 (CSS) (Bankr. D. Del. Aug. 29, 2008); *In re ACG Holdings, Inc.*, No. 08-11467 (CSS) (Bankr. D. Del. July 16, 2008); *In re Pierre Foods, Inc.*, No. 08-11480 (KG) (Bankr. D. Del. July 16, 2008); *In re Vertis Holdings, Inc.*, No. 08-11460 (CSS) (Bankr. D. Del. July 16, 2008); *In re Tropicana Entm't, LLC*, No. 08-10856 (KJC) (Bankr. D. Del. May 6, 2008); *Leiner Health Prods. Inc.*, No. 08-10446 (KJC) (Bankr. D. Del. Mar. 12, 2008); *In re Wickes Holdings, LLC*, No. 08-10212 (KJC) (Bankr. D. Del. Feb. 28, 2008); *In re Buffets Holdings, Inc.*, No. 08-10141 (MFW) (Bankr. D. Del. Jan. 23, 2008); *In re Domain, Inc.*, No. 08-10132 (PJW) (Bankr. D. Del. Jan. 22, 2008).²

III. The Court Should Authorize the Debtors' Financial Institutions to Honor Checks.

23. As noted, the Debtors generally make cash payments for returns, but on occasion refunds may be made by check. As set forth in the Boates Declaration, the Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue

² Because of the voluminous nature of the orders cited herein, such orders are not annexed to the Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing. Also, under the Debtors' existing cash management system, the Debtors represent that they can readily identify checks as relating to an authorized payment in respect of a customer refund. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently. The Debtors therefore request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks in respect of the Customer Programs, if any.

IV. The Requirements of Bankruptcy Rule 6003(b) Have Been Satisfied.

24. Bankruptcy Rule 6003(b) empowers a court to grant relief within the first 20 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." The Customer Programs are integral to the Debtors' success because they help maintain the confidence and goodwill of the Debtors' customer base. Restricting or canceling the Customer Programs could jeopardize customer relations and irreparably harm the Debtors' reputation. Indeed, the Debtors' customer relationships are their estates' most valuable assets and the Debtors must do everything possible to preserve and stabilize those relationships. Any disruption to the Customer Programs would seriously harm the Debtors and their estates. Accordingly, the Debtors meet the "immediate and irreparable harm" standard of Bankruptcy Rule 6003(b).

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

25. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 10-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

The Debtors' Reservation of Rights

26. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any customer claim or billing dispute. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

27. The Debtors have provided notice of this motion by either hand delivery, electronic mail, facsimile, or overnight mail to: (a) the U.S. Trustee; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (c) counsel to the Debtors' Prepetition First Lien Lenders and Postpetition Lenders; (d) counsel to the Debtors Prepetition Second Lien Lenders; and (e) the Internal Revenue Service. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

28. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, authorizing, but not directing, the Debtors to maintain and administer customer programs and honor prepetition obligations to customers related thereto in the ordinary course of business and in a manner

consistent with past practice, and granting such other and further relief as the Court deems appropriate.

Dated: March 18, 2009
Wilmington, Delaware

KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS, LLP

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and Debtors-in-Possession

15283-0001/CHYH1-60917

EXHIBIT A

PROPOSED ORDER

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

In re:)	
)	Chapter 11
DRUG FAIR GROUP, INC., <i>et al.</i> , ¹)	Case No. Case No. 09-10897 (BLS)
)	
Debtors.)	Joint Administration Pending
)	
)	
)	

**ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS
TO MAINTAIN AND ADMINISTER CUSTOMER PROGRAMS
AND HONOR PREPETITION OBLIGATIONS RELATED THERETO**

Upon the Motion of The Debtors For Entry of an Order Authorizing, but not directing, the Debtors to Maintain and Administer Customer Programs and Honor Prepetition Obligations Related Thereto (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order authorizing, but not directing, the Debtors to maintain and administer its Customer Programs in the ordinary course of business and in a manner consistent with past practice, as more fully set forth in the Motion;² and upon the Boates Declaration; the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each Debtor, are Drug Fair Group, Inc. f/k/a Community Distributors, Inc. (3660) and CDI Group, Inc. (9976).

² All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

1. The Motion is granted.
2. The Debtors are authorized, but not directed, in their sole discretion, to maintain and administer, in the ordinary course of business and in a manner consistent with past practices, the Customer Programs and to pay any prepetition amounts outstanding thereunder.
3. The financial institution at which the Debtors maintain their accounts relating to the payment of the Customer Program Obligations is authorized and directed to honor checks presented for payment and all fund transfer requests made by the Debtors related to the Customer Programs to the extent sufficient funds are on deposit in such accounts.
4. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of any Customer Program Obligations that are dishonored or rejected.
5. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of any claim with respect to the Customer Programs pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.
8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Wilmington, Delaware

Date: _____, 2009

The Honorable Brendan L. Shannon
United States Bankruptcy Judge

15283-0001/CHYH1-60917