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11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **LOS ANGELES DIVISION**

14 In re
15 ESTYLE, INC., a Delaware Corporation,
dba babystyle, Cadeau, and Cadeau
16 Designs,
17 Debtor.

Case No. 2:08-13518-SB
Chapter 11

**ORACLE'S OPPOSITION TO DEBTOR'S
MOTION FOR ORDER AUTHORIZING AND
APPROVING: (1) THE SALE OF eSTYLE,
INC., FREE AND CLEAR OF LIENS, AND (2)
THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND
UNEXPIRED NONRESIDENTIAL REAL
PROPERTY LEASES IN CONNECTION
THEREWITH**

Date: July 8, 2008
Time: 2:00 p.m.
Place: 255 East Temple Street
Courtroom 1575
Los Angeles, CA 90012

1 Oracle USA, Inc., successor-in-interest to Oracle Corporation (“Oracle”), a creditor and
2 interested party in the above-captioned Chapter 11 case, submits this opposition (“Opposition”) to
3 eStyle, Inc.’s (“Debtor”) Motion for Order Authorizing and Approving: (1) the Sale of Assets of
4 eStyle, Inc., Free and Clear of Liens, and (2) the Assumption and Assignment of Executory
5 Contracts and Unexpired Nonresidential Real Property Leases in Connection Therewith (“Sale
6 Motion”).

7 In support of the Opposition, Oracle submits as follows:

8 **I. INTRODUCTION**

9 On or about February 24, 2005, the Debtor and Oracle entered into an Oracle License and
10 Services Agreement (“OLSA”). A true and correct copy of the OLSA is attached as Exhibit “A.”
11 In connection with the Sale Motion, the Debtor filed and served a Schedule of Proposed Cure
12 Amounts Regarding: (1) Unexpired Real Property Leases and (2) Executory Contracts Which
13 May Be Assumed and Assigned Pursuant to the Sale Motion (“Cure Schedule”), which identifies
14 those contracts which may be assumed and assigned, as well as the Debtor’s proposed cure
15 amounts. Exhibit “2” attached to the Cure Schedule identifies Oracle Corporation with a
16 \$49,586.68 cure amount. It includes the following entry:

17 “Software updates and product support”

18 Without more information than that supplied in the Cure Schedule, Oracle cannot
19 determine whether it is Debtor’s intention to assume the OLSA. The underlying license
20 agreement must be assumed along with the software updates, support and service agreements
21 identified by the Debtor. Oracle’s and Debtor’s counsel have discussed this concern, and
22 anticipate it can and will be resolved. However, as noticed, the vague description leaves Oracle
23 unable to assess the impact of the proposed assumption with precision. In addition, if the Debtor
24 contemplates assuming and assigning the OLSA, which is Oracle’s understanding, the Cure
25 Schedule must be amended to reflect this intention.

26 Furthermore, pursuant to the Sale Motion, the Stalking Horse Bidder is identified as TRS
27 Acquisition Subsidiary, Inc., a portfolio company of Hancock Park Capital II, LP (“TRS”). The
28 sale is subject to auction, however, and the Debtor may receive additional qualified bids. If so,

1 the ultimate purchaser may be an entity other than TRS. Therefore, at this time, Oracle cannot
2 evaluate whether the prerequisites of 11 U.S.C. § 365(b) have been met, or how its pecuniary and
3 proprietary interests may be affected under the proposed sale, since the purchaser's identity is in
4 question.

5 Finally, as described below, Debtor may not assume and assign any Oracle agreements
6 without Oracle's consent, as such contracts involve the licensing of patented and/or copyrighted
7 materials, and Oracle does not consent to their assumption and assignment at this time due to the
8 limited concerns expressed here. In order to ensure adequate assurance of future performance by
9 the ultimate purchaser, Oracle requests that the Debtor, at a minimum, provide to Oracle the
10 following information about the eventual purchaser: (1) financial bona fides; (2) confirmation of
11 status as a non-competitor of Oracle's; and (3) assurances of its willingness to execute an Oracle
12 Assignment Agreement. Without this information, Oracle is unable to determine the buyer's
13 creditworthiness or suitability/ability to adequately perform. For these reasons, Oracle requests
14 that the Court deny, at this time, the Debtor's request for assumption and assignment of any
15 Oracle executory agreements in the absence of Oracle's consent.

16 **II. ARGUMENT**

17 **A. The Debtor May Not Yet Assume and Assign the OLSA, as It Pertains to a** 18 **License of Intellectual Property and Oracle Does Not Consent to the Proposed** 19 **Assignment.**

20 Section 365(c)(1) of the Bankruptcy Code provides, in relevant part:

21 The trustee may not assume or assign an executory contract ... of
22 the debtor ... if (1)(A) applicable law excuses a party, other than the
23 debtor, to such contract or lease from accepting performance from
24 or rendering performance to an entity other than the debtor ...,
25 whether or not such contract or lease prohibits or restricts
26 assignment of rights or delegation of duties; and (B) such party
27 does not consent to such assumption or assignment.

28 Federal law makes non-exclusive patent licenses non-assignable absent consent of the
licensor. In re Catapult Entertainment, Inc., 165 F.3d 747 (9th Cir. 1999), cert. dismissed, 528
U.S. 924 (1999). See also In re ANC Rental Corporation, Inc., 277 B.R. 226, 235 (Bankr. D. Del.
2002); In re Golden Books Family Entertainment, Inc., 269 B.R. 311, 316 (Bankr. D. Del. 2001).
As the OLSA involves the licensing of non-exclusive, patented software, and Oracle does not yet

1 consent to the assignment for the reasons set forth here, it is non-assignable. Accordingly, the
2 assumption and assignment should be denied with respect to the OLSA.

3 **B. The Motion Should Be Denied With Respect to the OLSA Because it Fails to**
4 **Identify the Ultimate Buyer/Assignee.**

5 Section 365(b) of the Bankruptcy Code sets forth specific prerequisites that must be met
6 before a trustee/debtor can assume and assign an executory contract, including: (1) curing (or
7 providing adequate assurance of a prompt cure of) any defaults under the subject contracts; and
8 (2) providing adequate assurance of future performance under the contract. Absent the foregoing,
9 the Oracle agreements may not be assumed, or assumed and assigned.

10 Since the proposed sale is subject to the Debtor potentially receiving additional qualified
11 bids, the identity of the ultimate purchaser/assignee remains unknown. Therefore, at this time,
12 Oracle cannot determine whether: 1) the ultimate purchaser/assignee is capable of providing
13 adequate assurance of future performance; 2) the proposed assignee is a competitor of Oracle; and
14 3) the purchaser is willing to enter into a standard Oracle Assignment Agreement, reflecting the
15 terms of the post-assignment parties' relationship. Until at least the information identified above
16 is provided, Oracle is unable to determine whether Debtor has complied, or will comply, with the
17 protections of section 365(b)(1)(C).

18 **III. CONCLUSION**

19 Debtor is prohibited from assuming and assigning any Oracle contracts in the absence of
20 obtaining Oracle's consent pursuant to section 365(c) and applicable case law. The Debtor has
21 failed to comply with the statutory prerequisites for assumption and assignment of the Oracle
22 contracts by: (1) being unable to identify the buyer with certainty at this time, so as to allow a
23 knowledgeable evaluation of its ability to perform; (2) failing to correctly and thoroughly identify
24 the contracts; and (3) failing to provide adequate assurance of future performance.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is at BUCHALTER NEMER, A Professional Corporation, 1000 Wilshire Boulevard, Suite 1500, Los Angeles, California 90017-2457.

On the date set forth below, I served the foregoing document described as:

ORACLE’S OPPOSITION TO DEBTOR’S MOTION FOR ORDER AUTHORIZING AND APPROVING: (1) THE SALE OF eSTYLE, INC., FREE AND CLEAR OF LIENS, AND (2) THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES IN CONNECTION THEREWITH

on all other parties and/or their attorney(s) of record to this action by _____ faxing and/or _____ placing a true copy thereof in a sealed envelope as follows:

See attached Service List

BY FACSIMILE AND MAIL I caused the above-named document(s) to be sent via facsimile transmission to the law office(s) and facsimile number(s) stated above. The transmission was reported as complete and without error. A copy of the transmission report(s) properly issued by one or more of Buchalter, Nemer’s three Xerox 745 WorkCenter facsimile machine(s) [telephone number(s): (213) 896-0400, (213) 896-0411, (213) 896-0408], and (213) 896-0409 is(are) made a part of this proof of service pursuant to CRC §2.306. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The correspondence will be deposited in an envelope with the United States Postal Service this day in the ordinary course of business for mailing to the address(es) shown above. The envelope was sealed and placed for collection and mailing with the United States Postal Service at Buchalter Nemer in Los Angeles, California on July 2, 2008 following ordinary business practices.

BY EMAIL. On July 2, 2008, I caused the above-referenced document(s) to be sent in electronic PDF format as an attachment to an email addressed to the person(s) on whom such document(s) is/are to be served at the email address(es) shown above, as last given by that person(s) or as obtained from an internet website(s) relating to such person(s), and I did not receive an email response upon sending such email indicating that such email was not delivered.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on July 2, 2008, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on July 2, 2008, at Los Angeles, California.

Shirlene Martin /s/ Shirlene Martin
(Signature)

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