



## TRADEMARK ASSIGNMENT

## WHEREAS:

- A. Fantom Technologies Inc. ("Fantom") is the recorded owner of the registered trade-marks listed in Schedule A, and the applicant in respect of the pending trade-mark applications listed in Schedule A (collectively the "Trade-marks");
- B. Pricewaterhousecoopers Inc. ("Receiver") was appointed as the Interim Receiver of Fantom by Order of the Ontario Superior Court of Justice (Commercial List) dated October 25, 2001, with the power to administer and sell any or all of the assets of Fantom. A copy of the Order is attached as Schedule B;
- C. Pursuant to an Agreement of Purchase and Sale dated December 21, 2001 between Receiver and Dyson Limited ("Dyson"), Receiver assigned various assets including the Trademarks to Dyson;
- D. Receiver wishes to confirm the assignment of the Trademarks to Dyson in this document to be filed with the United States Patent and Trademark Office.

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned, **PRICEWATERHOUSECOOPERS INC., as the Interim Receiver of FANTOM TECHNOLOGIES INC.**, confirms that (1) on January 14, 2002, it did sell, assign and transfer to **DYSON LIMITED**, whose principal office or place of business is Tetbury Hill, Malmesbury, Wiltshire, United Kingdom, all of Fantom's right, title and interest in the United States of America in and to the Trademarks, together with the goodwill associated with these Trademarks; and (2) ) it makes no representation or warranty of any kind in respect of the Trade-marks.

**EXECUTED** on January/4, 2002.

**PRICEWATERHOUSECOOPERS INC., as the  
Interim Receiver of FANTOM TECHNOLOGIES INC.**

Per: Catherine Hristow  
Name: CATHERINE HRISTOW  
Title: VICE PRESIDENT

**DYSON LIMITED**

Per: James Dyson  
Name: JAMES DYSON  
Title: CHAIRMAN DYSON LIMITED

**SCHEDULE A**

TRADE-MARK	APPLICATION NO.	REGISTRATION NO.
THE CLEANING FORCE OF TWO CYCLONES		1,782,444
CYCLONE	74/579,989	2,275,074
CYCLONE	75/250,140	2,377,850
CYCONE XT	75/574,705	2,361,531
CYCLONE XT & Design	75/574,368	2,384,738
Design	75/400,365	--
Design	75/400,366	--



Schedule B

Court File No. 01-CL- 4303

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) THURSDAY, THE 25TH  
 )  
MR. JUSTICE FARLEY ) DAY OF OCTOBER, 2001

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

**AND IN THE MATTER OF SECTION 47 OF THE BANKRUPTCY  
AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF A PLAN OR PLANS OF  
COMPROMISE OR ARRANGEMENT OF FANTOM  
TECHNOLOGIES INC., FANTOM TECHNOLOGIES  
INTELLECTUAL PROPERTY, INC., FANTOM TECHNOLOGIES  
DIRECT, INC., FANTOM TECHNOLOGIES U.S.A., INC. AND  
FANTOM TECHNOLOGIES U.S.A. HOLDINGS, INC.**

**INITIAL ORDER**

**THIS APPLICATION** made by Fantom Technologies Inc. ("Fantom"), Fantom Technologies Intellectual Property, Inc., Fantom Technologies U.S.A., Inc., Fantom Technologies Direct, Inc. and Fantom Technologies U.S.A. Holdings, Inc. (collectively the "Applicants" and each an "Applicant") for an Order substantially in the form included in the Application Record was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, the Affidavit of Allan D. Millman sworn October 25, 2001 in support of this Application, and the Consent of PricewaterhouseCoopers Inc. ("PwC") to act as monitor ("Monitor") and as interim

receiver ("Interim Receiver"), filed, on notice to The Bank of Nova Scotia ("BNS") and Trimin Capital Corp. ("Trimin"), on hearing the submissions of counsel for the Applicant, in the presence of counsel for BNS and counsel for Trimin, and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application herein.

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Affidavit in support of this Application is abridged such that the Application is properly returnable today, and that any requirement for service of the Notice of Application and the Application Record upon any interested party is dispensed with.

## **APPLICATION**

2. THIS COURT DECLARES that each of the Applicants is a company to which the *Companies' Creditors Arrangement Act* (the "CCAA") applies.

## **STAY OF PROCEEDINGS**

3. THIS COURT ORDERS that the Applicants shall have the right to file with this Court, on or before November 23, 2001, or such later date as this Court may order, a plan or plans of compromise or arrangement (the "Plan") between the Applicants and one or more classes of their respective creditors, as they deem appropriate.

4. THIS COURT ORDERS that, subject to the other provisions of this Order (including, without limitation, paragraph 25), the Applicants shall remain in possession

and control of their respective property, assets and undertakings, real and personal, wherever situate, both existing and hereafter created or acquired, and whether held by an Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise (collectively the "Property"), shall carry on business in a manner consistent with the preservation of the Property, may continue to use the agents, advisors, contractors, servants, solicitors, consultants and other persons currently engaged by it and may engage such further agents, advisors, contractors, servants, solicitors, consultants and other persons as it deems appropriate, in carrying out the provisions of this Order or for the purposes of the Plan.

5. THIS COURT ORDERS that, from and after the date of this Order, and except as otherwise provided herein, an Applicant or the Interim Receiver may pay the expenses incurred by the Applicant in carrying out the provisions of this Order or for the purposes of the Plan, which expenses include, without limitation, payment of:

- (a) outstanding as well as future wages, salaries, commission or other remuneration, outstanding as well as future vacation pay and (subject to paragraph 42) employee benefits in accordance with any benefit plan of that Applicant in existence on the date of this Order;
- (b) the cost of goods or services supplied, or committed to be supplied, to that Applicant from and after the date of this Order, including payments in respect of documentary credits or deposits;

- (c) all other costs and expenses determined to be necessary or desirable for the preservation of any of the Property, including, without limitation, payments on account of insurance, maintenance and security;
- (d) rent and other payments required pursuant to any tenancies of real property in respect of periods during which that Applicant is in actual occupation of such real property; and
- (e) any other amounts provided for by this Order,

and any Applicant also may, but is not required to, pay any expenses of like or similar type to those referred to in subparagraph (c) incurred prior to the date of this Order so long as such payment is made with the consent of the Interim Receiver or is authorized and empowered or directed by this or any further order of this Court.

6. THIS COURT ORDERS that, except as otherwise provided in this Order, each Applicant is directed:

- (a) to make no payment, whether of principal, interest or otherwise, on account of any amount owing by the Applicants or any of them to any of its or their creditors as of the date of this Order;
- (b) not to borrow or reborrow from, or grant any security over any of the Property to, any person; and
- (c) to make no rental, royalty or other payments on account of personal property leased or licensed to an Applicant as of the date of this Order, except to the extent that the relevant Applicant makes use of such property

after the date hereof and the lessor or licensor is entitled to require immediate payment for such use pursuant to Section 11.3(a) of the CCAA.

7. THIS COURT ORDERS that each Applicant shall remit, in accordance with legal requirements, or pay when due, whether incurred or accruing prior to, on or after the date of this Order:

- (a) statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province or any other taxation authority of any jurisdiction which are required to be deducted from employees' wages, salary, commission or other remuneration, including, without limitation, amounts in respect of employment insurance, Canada Pension Plan and income taxes;
- (b) amounts payable by that Applicant in respect of employment insurance, Canada Pension Plan, workers' compensation, employer health taxes and similar obligations of any applicable jurisdiction with respect to employees; and
- (c) all goods and services or other applicable sales, value-added or consumption taxes payable by that Applicant or its customers in connection with the sale of goods or services by the Applicant.

8. THIS COURT ORDERS that each Applicant has the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its operations, and/or to dispose of redundant or non-material assets, and to deal with the consequences thereof in the Plan;



- (b) terminate the employment of and/or or lay off such employees as it deems appropriate, on such terms as may be agreed upon between that Applicant and such employees or their union, or, failing such agreement, to deal with the consequences thereof in the Plan;
- (c) subject to paragraphs 9 and 10, vacate, abandon or quit any leased premises and terminate or repudiate any lease and any ancillary agreements relating to any leased premises, on not less than 7 days' notice in writing to the relevant landlord, on such terms as may be agreed upon between that Applicant and such landlord, or, failing such agreement, to deal with the consequences thereof in the Plan;
- (d) terminate or repudiate such of its arrangements or executory agreements (of any nature whatsoever, oral or written), as that Applicant deems appropriate (other than any agreement to which the Applicant is or becomes a party in respect of borrowed monies or any guarantee given or security granted therefor), on such terms as may be agreed upon between that Applicant and the other parties to such arrangements or agreements, or, failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue, within the limited time provided by this Order or any further order of this Court, all avenues of financing or refinancing, equity investment and/or offers to acquire, lease or license the use of any part or parts of, or all or substantially all of, the Property.

9. THIS COURT ORDERS that an Applicant shall provide any relevant landlord with notice of that Applicant's intention to remove any fixtures from any location vacated, abandoned or quit by that Applicant at least 7 days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased location to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any item under the provisions of the tenancy, such item shall be left on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or as directed by further order of this Court made upon application by that Applicant on at least 2 days' notice to such landlord and any such secured creditors. If an Applicant has otherwise vacated, abandoned or quit any such location, it shall not be considered to be in occupation thereof pending resolution of any such dispute.

10. THIS COURT ORDERS that, if a location is vacated, abandoned or quit by an Applicant, the relevant landlord shall be entitled to take possession of such location without waiver of or prejudice to any claims or rights such landlord may have against the Applicants or any of them in respect of the vacating, abandonment or quitting of such location and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and lease such location on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

11. THIS COURT ORDERS that, until and including November 23, 2001 or such later date as this Court may establish by further order from time to time (the "Stay

Period”), no suit, action, application or regulatory or administrative proceeding, no arbitration or other extra-judicial proceeding and no enforcement process (a “Proceeding”) against or in respect of the Applicants or any of them and/or the Property may be commenced or taken, and no Proceeding against or in respect of the Applicants or any of them and/or the Property already commenced or taken may be continued, except with the prior written consent of the Applicant or the Interim Receiver or with leave of this Court obtained upon at least 7 days’ notice to the Applicants, the Interim Receiver, BNS and Trimin or upon such other notice, if any, as this Court may order.

12. THIS COURT ORDERS that, during the Stay Period, no individual, firm, corporation, partnership, government, governmental authority, trade union, employee or other association or other entity or organization (a “person”) may assert, enforce or exercise any right, including, without limitation,

- (a) any right under Subsection 224(1.2) of the *Income Tax Act* (Canada) or its provincial equivalents;
- (b) any right of registration, dilution, buy-out, divestiture, forced sale, conversion, repossession, distress or distraint;
- (c) any right of set off, compensation or consolidation of accounts, other than legally valid set-offs of pre-filing amounts against other pre-filing amounts (for which purpose “filing” shall be deemed to have occurred at 12:01 AM, Toronto time, on the date of this Order);
- (d) any right to accelerate the time for payment or repayment;

- (e) any right to modify, suspend, terminate, cancel, revoke or rescind any agreement, lease, licence, permit, qualification or registration (of any nature and whether written or oral or arising from any course of conduct);
- (f) any right to interfere with an Applicant's quiet possession of any of the Property;
- (g) any right to assert, file, register or perfect any right or interest (including, without limitation, any right of revendication or any right of possession or stoppage in transit of any goods supplied or shipped to an Applicant, whether in the Province of Québec or elsewhere and whether pursuant to the *Bankruptcy and Insolvency Act* or otherwise); and
- (h) any other option, privilege or remedy,

arising or existing by operation of law, by virtue of any arrangement or agreement or by any other means against the Applicants or any of them and/or any of the Property, as a result of any default, breach or non-performance by any Applicant, the commencement of these proceedings or any step taken in furtherance of commencing these proceedings, or any allegation, admission or declaration in respect of insolvency in these proceedings, except with the prior written consent of the Applicant or the Interim Receiver or with leave of this Court obtained upon at least 7 days' notice to the Applicant, Interim Receiver, BNS and Trimin or upon such other notice, if any, as this Court may order.

13. THIS COURT ORDERS that, during the Stay Period, no person may discontinue, dishonour, fail to renew or extend in accordance with existing terms of renewal or extension, modify, interfere with, terminate, suspend, cancel, revoke, rescind, delay,

interrupt or in any way fail to comply with any right, agreement, licence, lease or permit (including, without limitation, any agreement for the licensing of any intellectual property to the Applicants or any of them and any purchase agreements or supply contracts with suppliers or customers) in favour of or held by the Applicants or any of them or forming part of the Property, as a result of any default, breach or non-performance by any Applicant, the commencement of these proceedings or any step taken in furtherance of commencing these proceedings, or any allegation, admission or declaration in respect of insolvency in these proceedings, except with the prior written consent of the Applicant or the Interim Receiver or with leave of this Court upon at least 7 days' notice to the Applicant, the Interim Receiver, BNS and Trimin or upon such other notice, if any, as this Court may order.

14. THIS COURT ORDERS that, during the Stay Period, no person having any arrangement or agreement with any Applicant or statutory or regulatory mandate for the supply of goods or services (including, without limitation, computer software, communication or other data services, insurance, packaging materials, pallets, transportation or utilities) to any Applicant or any of the Property may discontinue, dishonour, interfere with, terminate, suspend, cancel, revoke, delay, interrupt or in any way fail to supply such goods or services so long as the normal prices for such goods or services received after the date of this Order are paid in accordance with present payment practices, or as may be agreed to by the Applicant or the Interim Receiver from time to time, except with the prior written consent of the Applicant or the Interim Receiver or with leave of this Court obtained upon at least 7 days' notice to the Applicant, the Interim Receiver, BNS and Trimin or upon such other notice, if any, as this Court may order.

15. THIS COURT ORDERS that, provided an Applicant pays any premiums due and owing or becoming due and owing at the current rates required under such policy of insurance, all existing directors' and officers' insurance, and all existing export, trade finance, credit or accounts receivable insurance, shall be deemed extended by a period of time equal to the duration of the Stay Period, unless the applicable insurer obtains leave of this Court not to so extend such insurance upon at least 7 days' notice to the Applicant, the Interim Receiver, BNS and Trimin or upon such other notice, if any, as this Court may order.

16. THIS COURT ORDERS that no creditor of an Applicant shall be under any obligation after the making of this Order to advance any new monies or otherwise extend any new credit to that Applicant, provided that cash placed and deposits made by any Applicant with any creditor from and after the date of this Order, whether in an operating account or otherwise and whether for its own account or the account of any other person, shall not be applied by any such creditor in reduction or repayment of pre-filing amounts owing to such creditor.

17. THIS COURT ORDERS that, during the Stay Period, all of the customers of an Applicant shall make payments to the Applicant on a timely basis when due, and no customer of any Applicant shall purport to exercise any right of set off, compensation or consolidation against monies which are now or which may become due and owing to the Applicants or any of them (including, without limitation, any set off rights contained in any purchase agreements, production contracts or supply contracts), except as permitted by paragraph 12, with the prior written consent of the Applicant or the Interim Receiver

or with leave of this Court obtained upon at least 7 days' notice to the Applicant, the Interim Receiver, BNS and Trimin or upon such other notice, if any, as this Court may order.

18. THIS COURT ORDERS that any actual or prospective supplier to any Applicant, or any other person, that is in possession of mould, die, machinery, equipment or tooling the title to which has been retained by, or has passed to, an Applicant ("Tooling") shall, forthwith on demand therefor, deliver up to the Applicant or up to the Interim Receiver (as the case may be) or to such other person as the Applicant or the Interim Receiver (as the case may be) specifies, possession of such Tooling, except only to the extent that any such supplier requires the use of, and is actually using, such Tooling in order to complete an order by the Applicant issued from or after the date of this Order, and no actual or prospective supplier that declines or refuses to accept or complete an order by the Applicant shall be entitled to retain any Tooling as against the Applicant or the Interim Receiver.

19. THIS COURT ORDERS that, during the Stay Period, no Proceeding (whether involving an Applicant as a party or not) may be commenced or taken, or if already commenced or taken may be continued, against any of the former, present or future directors or officers of any Applicant with respect to any claim against any of such persons that arose before or after the commencement of these proceedings and that relates to any obligation or liability of any Applicant whereby any of such persons are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation or liability.

20. THIS COURT ORDERS that, to the extent that any right or obligation, or any time or limitation period, relating to the Applicants or any of them and/or to any of the Property may expire or terminate with the passage of time (other than the term of any real or personal property tenancy or licence or of any foreign exchange forward contract or other agreement between the Applicant and BNS), the term of such right, obligation or period shall be deemed extended by a period of time equal to the duration of the Stay Period. For greater certainty, if an Applicant becomes bankrupt or a receiver is appointed in respect of it within the meaning of Section 243(2) of the *Bankruptcy and Insolvency Act*, the Stay Period shall not be counted in determining the 30-day period referred to in Section 81.1 or the 15-day period referred in Section 81.2 of that statute.

21. THIS COURT ORDERS that, subject to paragraphs 12 to 20, all persons shall continue to perform and observe the terms, conditions and provisions contained in any arrangements, agreements, leases, licences or permits with or in favour of the Applicants or any of them on their part to be performed or observed.

22. THIS COURT ORDERS that the provisions of paragraphs 11 to 21 apply, *mutatis mutandis*, to stay all Proceedings with respect to any liability of an Applicant that may be commenced or taken against any person other than the Applicant who is or may be directly or indirectly obligated for any liability of that Applicant otherwise than under any letter of credit or any guarantee in respect of any such liability.

#### **DIP FINANCING**

23. THIS COURT ORDERS that, notwithstanding any other provision of this Order:



- (a) Fantom, with the approval of the Interim Receiver may borrow, repay and reborrow from BNS, on the security of the DIP Charge (as hereinafter defined), at an interest rate per annum equal to the rate chargeable from time to time on advances under its existing credit arrangements with BNS (the "BNS Facility"), by way of overdraft to the Applicant's banking accounts or evidenced by one or more demand promissory notes of the Applicant, up to an aggregate principal amount outstanding at any one time of not more than \$1,400,000 (the "DIP Facility");
- (b) Fantom shall, under the supervision of the Interim Receiver, continue its existing bank account arrangements and/or open new bank accounts with BNS and perform all of its obligations to BNS under agreements relating to its bank accounts; and
- (c) each of the Applicants shall deposit all receipts to bank accounts with BNS for application, firstly, to Fantom's obligations in connection with the DIP Facility and, secondly, to the Applicants' respective obligations in connection with the BNS Facility or any foreign exchange forward contracts between Fantom or any other Applicant and BNS, subject to the retention of such reserves as may be deemed necessary with the approval of the Interim Receiver.

24. THIS COURT ORDERS that BNS shall be entitled to the benefit of and is granted a charge and security interest (the "DIP Charge") on the Property of the

Applicants and each of them as security for all advances, and all interest thereon, under the DIP Facility.

25. THIS COURT ORDERS that BNS shall not be obliged by this Order to lend or continue to lend any monies to or for the account of Fantom and that BNS may, in its sole discretion, at any time, decline to make any advance or further advance pursuant to the DIP Facility, except that, where BNS has agreed with the Applicant and/or the Interim Receiver on a budget for anticipated costs, expenditures or obligations to be funded by one or more advances under the DIP Facility, BNS must give the Interim Receiver (with a copy to Trimin) 2 business days prior written notice to that effect (a "Termination Notice") before declining to make any further advance, and BNS shall be bound to advance the amount of any cost, expenditure or obligation irrevocably incurred, in accordance with the agreed budget, prior to the delivery of such Termination Notice. Immediately upon the delivery of a Termination Notice BNS shall have the right to apply to this Court for such other order as it may see fit, including, without limitation, an order to expand or modify the authorities and powers of the Interim Receiver.

26. THIS COURT ORDERS that BNS shall be treated as an unaffected creditor in the Plan with regard to the DIP Facility.

#### **DIRECTORS AND OFFICERS**

27. THIS COURT ORDERS that, in addition to any existing indemnity, each Applicant shall indemnify its present directors and officers from all costs (including, without limitation, defence costs), charges, expenses, claims, liabilities and obligations of any nature whatsoever ("Claims") which may arise out of their acting as or being

directors or officers of the Applicant (including, without limitation, an amount paid to settle an action or satisfy a judgment) resulting from or relating to the failure of the Applicant or the Interim Receiver at any time to make or have made payments for or on account of any amounts of a kind referred to in subparagraph 5(a) or paragraph 7 that accrue from and after, or have accrued on or before but are unpaid as at, the date of this Order. For the purposes of this Order, an individual shall be considered to be a "present" director or officer of an Applicant if he or she was a director or officer of that Applicant as at 12:01 AM, Toronto time, on October 25, 2001.

28. THIS COURT ORDERS that the present directors and officers of an Applicant, *pari passu*, shall be entitled to the benefit of and are granted a charge and security interest (the "Directors' Charge") on the Property of the Applicants and each of them as security for the indemnity provided in paragraph 27, but the Directors' Charge shall only apply to the extent that the directors and officers do not have coverage under the provisions of any applicable directors' and officers' insurance. In respect of any Claim that is asserted against the directors or officers, if the directors or officers against whom the Claim is asserted (collectively, "Respondents") do not receive satisfactory confirmation from the applicable insurer that it will provide coverage for and indemnify the Respondents against the Claim, then, without prejudice to the subrogation rights hereinafter referred to, the Applicant, or the Interim Receiver out of funds in its hands, shall pay the amount of the Claim as it becomes payable by the Respondents and, failing such payment, the Respondents shall be entitled to enforce the Directors' Charge; provided that the Respondents shall reimburse the Applicant or the Interim Receiver (as the case may be) to the extent that they subsequently receive insurance proceeds in respect of a Claim paid

by an Applicant or the Interim Receiver (as the case may be) and provided further that the Applicant or the Interim Receiver (as the case may be) shall, in the event of such payment being made, be subrogated to the rights of the Respondents to pursue recovery thereof from the applicable insurer as if no such payment had been made.

29. THIS COURT ORDERS that, in the event that any part of parts of, or all or substantially all of, the Property is sold, leased or otherwise disposed of, or made subject to licence, the sale, lease or other disposition, or the interest of the licensee, shall be free and clear of the Directors Charge, which shall continue as against the proceeds with the same priority as specified in paragraph 48.

#### **MONITOR AND INTERIM RECEIVER**

30. THIS COURT ORDERS that PwC is appointed as (i) the Monitor of each of the Applicants, with the authorities and powers and the duties stipulated by the CCAA and set forth in this Order, and (ii) the Interim Receiver of each of the Applicants, with the authorities and powers and duties as such set forth in this Order, and that the Applicants and their respective shareholders, officers, directors, servants, agents and representatives shall co-operate fully with the Monitor and the Interim Receiver in the exercise of its authorities and powers and the fulfillment of its duties.

31. THIS COURT ORDERS that the Monitor and the Interim Receiver, in addition to its prescribed rights and obligations under the CCAA (as regards the Monitor), is authorized and empowered:

- (a) as Monitor and/or as Interim Receiver, to report to this Court as it deems appropriate, or as this Court from time to time directs, in respect of the Plan, any proposed sale, lease or other disposition of, or licensing of the use of, any part or parts of, or of all or substantially all of, the Property, and such other matters as may be relevant to the proceedings herein;
- (b) as Interim Receiver, to identify and deal with prospective purchasers, lessees, licensees, investors or others, and to that end to devise, in consultation with any stakeholders that it may consider appropriate, and carry out, a marketing plan for the sale, lease or licensing of the use of any part or parts of, or of all or substantially all of, the Property;
- (c) as Interim Receiver, to act to preserve, collect and protect the Property of the Applicants or any of them (but without being obliged to enter into or take occupation or possession of any of the Property);
- (d) as Monitor, to advise the Applicants in the development of the Plan and any amendments to the Plan and advise or assist the Applicants in dealing with their creditors;
- (e) as Monitor, to assist the Applicants with respect to the holding and administering of creditors' meetings for voting on the Plan;
- (f) as Monitor and/or as Interim Receiver, to have full and complete access to the books and records, information, management, employees and advisors of or to the Applicants and each of them and to the Property;

- (g) as Monitor and/or as Interim Receiver, to engage independent legal counsel in respect of the exercise of its authorities and powers or the discharge of its duties or in order to seek relief as contemplated by paragraph 58;
- (h) retain and use the services of related PwC entities as may be necessary to perform its duties; and
- (i) perform such other duties as are required of it by this Order or by further order of this Court from time to time.

32. THIS COURT ORDERS that, the Interim Receiver is authorized and empowered, but not required:

- (a) to engage or retain and to discharge or terminate such agents, assistants and other persons as the Interim Receiver may consider necessary or desirable, provided that any such action, or any other action undertaken by the Interim Receiver as otherwise permitted by this Order, shall not constitute the Interim Receiver an employer, successor employer, sponsor, or payor with respect to any Applicant or any employee of any Applicant
  - (i) under any collective agreement or other contract between any Applicant and any of its present or former employees, or (ii) within the meaning of any legislation governing employment or labour standards or in respect of pensions or benefits or any other statute, regulation or rule of law or equity for any purpose whatsoever;

- (b) to institute and prosecute and to continue the prosecution of all suits, proceedings and actions in and before both courts and administrative bodies as may in the Interim Receiver's judgment be necessary for the proper protection and preservation and for the realization and disposition of the Property;
- (c) to receive and collect all rents or other monies now or hereafter owing or payable to an Applicant in relation to any of the Property;
- (d) to maintain bank accounts and to deposit therein all funds collected in the exercise of its authorities and powers pursuant to this Order, and to deal with such funds as provided in paragraph 23; and
- (e) to exercise the rights of that Applicant as the holder of any shares or other securities.

33. THIS COURT ORDERS that the Interim Receiver is authorized and empowered to sell, lease or otherwise dispose of, and/or to license the use of, the Property, or any part or parts thereof, by private tender, public auction or otherwise, without compliance with Part V of the *Personal Property Security Act* (Ontario), Part III of the *Mortgages Act* (Ontario) or the *Bulk Sales Act* (Ontario),

- (a) without need for the approval of this Court in respect of any transaction or series of transactions with the same purchaser or related purchasers involving an aggregate gross consideration of \$500,000 or less; and

(b) subject to the approval of this Court in respect of any other such transaction.

34. THIS COURT ORDERS that, for the purpose of exercising any authority or power or fulfilling any duty of the Interim Receiver, the Interim Receiver is authorized and empowered, but not required, to use funds borrowed or reborrowed by Fantom under the DIP Facility, and any such borrowing or reborrowing shall be secured by the DIP Charge.

35. THIS COURT ORDERS that the Monitor may, but is not required to, prepare a report and assessment on the Plan.

#### **INFORMATION**

36. THIS COURT ORDERS that, subject to compliance with any applicable securities legislation, the Monitor shall provide any creditor of an Applicant with information provided by that Applicant in response to reasonable requests for information made in writing and addressed to the Monitor and/or the Interim Receiver. In addition, the Monitor and/or the Interim Receiver shall communicate freely regarding the Applicants or any of them and/or the Property or any other matter contemplated by this Order with BNS and Trimin or either of them, as it or they request. PwC shall not, either as Monitor or as Interim Receiver, have any responsibility or liability with respect to the information disseminated to any creditor pursuant to this paragraph. In the case of information that the Monitor and/or the Interim Receiver has been advised by an Applicant is confidential, the Monitor shall not be obliged to provide such information to creditors unless otherwise directed by further order of this Court.



37. THIS COURT ORDERS that, except as expressly authorized and required under the provisions of this Order, the Monitor and the Interim Receiver are directed not to take possession or ownership of any of the Property, and PwC shall not, by exercising its authorities or powers or fulfilling its duties as Monitor and/or as Interim Receiver, be deemed to have taken or maintained possession, control or management of the Property and/or of the business of the Applicant or any part or parts thereof.

38. THIS COURT ORDERS that, in addition to the rights and protections afforded to the Monitor and to the Interim Receiver by statute or as an officer of this Court, PwC shall incur no liability as a result of its appointment, the fulfillment of its duties or any act or omission in the exercise of its authorities or powers (including the preparation of reports) under the CCAA or this or any other order of this Court, save and except for liability arising from gross negligence or wilful misconduct, and no action, suit, application or regulatory or administrative proceeding shall be commenced against PwC as a result of or relating in any way to its appointment as Monitor and/or as Interim Receiver, the exercise of its authorities and powers or the fulfillment of its duties, except with leave of this Court obtained on 7 days' notice to PwC, BNS and Trimin and upon further order securing the legal costs of PwC in connection with such action, suit, application or proceeding on a full indemnity basis. The related PwC entities referred to in subparagraph 31(h) shall also be entitled to the protections, benefits and privileges of this paragraph, *mutatis mutandis*.

39. THIS COURT DECLARES that neither the appointment of the Monitor nor the appointment of the Interim Receiver shall constitute a sale or disposition of the business

of the Applicant or of any of the Property to PwC and that such business will continue to be the business of the Applicant unless and until it is sold, in whole or in part, to a purchaser other than PwC.

40. THIS COURT ORDERS that nothing herein contained shall vest in the Monitor or in the Interim Receiver the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "Possession"), or require or obligate the Monitor or the Interim Receiver to occupy, or to take Possession of, any Property which may be environmentally contaminated or be a pollutant or a contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act*, the *Environmental Protection Act (Ontario)*, the *Emergency Plans Act, 1983 (Ontario)*, the *Ontario Water Resources Act*, the *Occupational Health and Safety Act (Ontario)*, or the regulations thereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction, affecting the environment or the transportation of goods (collectively, "Environmental Laws").

41. THIS COURT DECLARES that neither the Monitor nor the Interim Receiver shall be deemed, by virtue of this Order, to be a person responsible, the owner, the occupant or a person in charge of any premises owned or occupied by the Applicant for the purposes of any statute, regulation or rule of law or equity applicable in Canada which imposes liability on the basis of such status, provided that nothing herein shall

relieve the Monitor or the Interim Receiver from liability arising from gross negligence or wilful misconduct.

42. THIS COURT ORDERS that the Interim Receiver shall not authorize or cause the Applicant to make any contribution to any employee pension plan without specific direction and authority of this Court.

#### **ADMINISTRATION CHARGE**

43. THIS COURT ORDERS that the Monitor and the Interim Receiver, counsel for the Monitor and/or the Interim Receiver and counsel to the Applicants shall be paid by the Applicants, or from funds in the hands of the Interim Receiver, their fees and disbursements (in the case of fees of the Monitor and Interim Receiver, on the basis of a chartered accountant and its own client and, in the case of fees of counsel, on the basis of a solicitor and his own client) incurred both before and after the making of this Order in relation to these proceedings or the Plan, and, subject to any final assessment or taxation as may be ordered by this Court, the Applicants, and the Interim Receiver as regards funds in its hands, are authorized, empowered and directed to pay the periodic accounts of the Monitor and the Interim Receiver, counsel for the Monitor and/or the Interim Receiver and counsel to the Applicants when due.

44. THIS COURT ORDERS that the Monitor and the Interim Receiver, counsel for the Monitor and/or the Interim Receiver and counsel to the Applicants, *pari passu*, shall be entitled to the benefit of and are granted a charge and security interest (the "Administration Charge") on the Property of the Applicants, and each of them, as security for any unpaid portions of their fees and disbursements in respect of these

proceedings or the Plan in accordance with paragraph 43 and, in the case of the Monitor and/or the Interim Receiver, as security for any obligations or liabilities incurred in exercising its authorities and powers or fulfilling its duties in accordance with this or any further order of this Court.

45. THIS COURT ORDERS that, in the event that any part or parts of, or all or substantially all of, the Property is sold, leased or otherwise disposed of, or made subject to licence, the sale, lease or other disposition, or the interest of the licensee, shall be free and clear of the Administration Charge, which shall continue as against the proceeds with the same priority as specified in paragraph 48.

#### **PRIORITIES OF CHARGES**

46. THIS COURT ORDERS that the DIP Charge, the Directors' Charge and the Administration Charge shall not be required to be filed, registered or perfected, shall be valid and enforceable as against all of the Property for all purposes (including as against any right, title or interest filed, registered or perfected subsequent to the DIP Charge, the Directors' Charge and/or the Administration Charge coming into existence) and notwithstanding the absence of filing, registration or perfection of the DIP Charge, the Directors' Charge and/or the Administration Charge, shall survive any bankruptcy of the Applicant and shall have priority over the interest of any trustee in bankruptcy of the Applicant.

47. THIS COURT ORDERS that the obligations pursuant to the DIP Facility shall not be illegal, invalid or non-binding, or otherwise be rendered unenforceable, by reason of the pendency of these proceedings or any allegation, admission or declaration of

insolvency made in these proceedings, by the pendency of any petition for a receiving order issued pursuant to the BIA in respect of the Applicant or by the provisions of any federal or provincial statute relating to oppression, fraudulent conveyances, fraudulent preferences, assignments and preferences or settlements or any similar legislation.

48. THIS COURT ORDERS that the priorities of the Prior Statutory Claims (as hereinafter defined), the security held by each of BNS and Trimin as at the date of this Order, the DIP Charge, the Directors' Charge and the Administration Charge, as between them, shall be as follows:

- (a) first, any liens or trusts that arise by operation of statute without any grant of security or creation of trust by the Applicant to the extent such liens or trusts, by virtue of statute, would have priority in a bankruptcy of the Applicant over contractual security granted by the Applicant even if such contractual security was granted prior to the date such liens or trusts arose (the "Prior Statutory Claims");
- (b) second, the Administration Charge;
- (c) third, the Directors' Charge;
- (d) fourth, the DIP Charge;
- (e) fifth, the security held by BNS as at the date of this Order; and
- (f) sixth, the security held by Trimin as at the date of this Order.

49. THIS COURT ORDERS that, subject to any other applicable provision of this Order, all liens in favour of the Crown, federal or provincial, except as provided for in

Section 11.4 and Section 11.7(8) of the CCAA, and all interests or other encumbrances in favour of any persons granted before the date of this Order for advances made or obligations incurred prior to the date of this Order, shall retain the same priorities as if this Order had not been made.

50. THIS COURT ORDERS that, except as provided by any statute, the liability of the Monitor and/or the Interim Receiver which it may incur as a result of its appointment or as a result of the exercise of its authorities and powers or the fulfillment of its duties, save and except liability arising as a result of gross negligence or wilful misconduct, shall be limited in the aggregate to the "Net Realizable Value of the Property". The Net Realizable Value of the Property shall be the proceeds realized in cash from the disposition of the Property or part thereof after deducting the remuneration and the disbursements of the Monitor and/or Interim Receiver, the DIP Charge and those charges ranking in priority to the DIP Charge and any costs or obligations incurred by the Interim Receiver or by any person in connection with the completion of any sale of all or part of the Property, have been paid. In the event that the Monitor and/or the Interim Receiver incurs any liability under any Environmental Law, then, for the purposes thereof, "Net Realizable Value of the Property" shall be deemed to be the Net Realizable Value of the real property in respect of which that liability arose and any other real property of the Applicant that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage.

51. THIS COURT ORDERS that any liability incurred by PwC as Monitor or as Interim Receiver, except for liability arising from gross negligence or wilful misconduct,

shall be deemed to be incurred by PwC solely in its capacity as Monitor or as Interim Receiver (as the case may be) and not in its personal capacity.

## GENERAL TERMS

52. THIS COURT ORDERS that the Applicants shall, within 5 business days of the date of entry of this Order, send a notice of these proceedings (including a copy of this Order) to their known creditors, other than employees and other creditors owed less than \$500, at the respective addresses last shown on the records of the Applicants, and that PwC as is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

53. THIS COURT ORDERS that the Applicants are at liberty to serve this Order, any other orders in these proceedings, the Plan, any notices of meetings and all other notices relating to these proceedings or to the Plan, and to deliver any letters to creditors, information circulars, proofs of claim, proxies and disallowances of claims, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to creditors at their respective addresses as last shown on the records of the Applicants, and that any such service or delivery by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or, if sent by ordinary mail, on the third business day after mailing.

54. THIS COURT ORDERS that the Applicants or any of them, the Monitor or the Interim Receiver may, from time to time, apply to this Court for directions in respect of the execution of this Order.

55. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the Applicants or any of them may apply at any time to this Court to seek further relief, and that any interested person (including, without limitation, BNS or Trimin) may apply to this Court to vary or rescind this Order or seek other relief upon 7 days' notice to the Applicants and the Interim Receiver and to any other party likely to be affected by the relief sought, or upon such other notice, if any, as this Court may order.

56. THIS COURT ORDERS that the protection afforded by Section 142 of the *Courts of Justice Act* (Ontario) shall apply to the directors and officers of each of the Applicants, to the Monitor and the Interim Receiver, to their respective servants, solicitors or agents, and to other persons, who, in good faith, do or omit to do any act in accordance with this Order or any further order of this Court.

57. THIS COURT REQUESTS the aid, assistance and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States of America or any of the states or other subdivisions of the United States of America and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order and any other order made in these proceedings, and in particular this Court requests that the Monitor and the Interim



Receiver be recognized as the foreign representative of the estate of the Applicants or any of them for the purpose of any proceeding in the United States of America

58. THIS COURT ORDERS that the Monitor and the Interim Receiver are authorized and empowered to apply for relief from and seek the aid, assistance and recognition of any court or judicial, regulatory and administrative body outside Canada, including in particular relief in respect of the estate of the Applicants or any of them pursuant to Section 304 of the *United States Bankruptcy Code*, and that the Monitor and the Interim Receiver are authorized and empowered to act as the foreign representative of the estate of the Applicants or any of them for the purpose of any proceeding in the United States of America.

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OFFICE OF THE CLERK OF THE COURT  
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OCT 26 2001

PER/PAR: JA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF SECTION 47 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
AND IN THE MATTER OF A PLAN OR PLANS OF COMPROMISE OR ARRANGEMENT OF FANTOM TECHNOLOGIES  
INC., FANTOM TECHNOLOGIES INTELLECTUAL PROPERTY, INC., FANTOM TECHNOLOGIES DIRECT, INC., FANTOM  
TECHNOLOGIES U.S.A., INC. AND FANTOM TECHNOLOGIES U.S.A. HOLDINGS, INC.

Applicants

Court file No. 01-CL- 4303

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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