

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re: Chapter 11
Psystar Corporation, Case No:
Debtor.

_____/

DEBTOR' EMERGENCY MOTION FOR AN ORDER
AUTHORIZING CONTINUED USE OF EXISTING CORPORATE
BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM

(EMERGENCY HEARING REQUESTED)

BASIS FOR EMERGENCY RELIEF

The above-captioned Debtor and debtor in possession (the Debtor") request an emergency hearing in this matter on or before May 21, 2009 2008. By this motion, the Debtor seek the entry of an order authorizing the continued use of existing corporate bank accounts and cash management system. The Debtor require the continued use of existing bank accounts and cash management system in order to preserve the continuity of their business operations. The Debtor request that this Motion be considered on an emergency basis as the relief requested herein is critical to the Debtor's continued operations. The Debtor respectfully request that the Court waive the provisions of Rule 9075-1(B) of the Local Rules, which require an affirmative statement that the Debtor made a bona fide effort to resolve the issues raised in this emergency motion, as the relief requested herein is urgent in nature and does not lend itself to resolution in advance of a hearing.

Psystar Corporation (the "Debtor"), by and through undersigned counsel, file this *Emergency Motion for an Order Authorizing Continued Use of Existing Corporate Bank Accounts and Cash Management System* (the "Motion"), and in support of this Motion, state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding as defined in 28 U.S.C. §§157(b)(2)(A), and (M).

3. The statutory predicates in support of the relief requested herein are § 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Local Rule 9075-1.

BACKGROUND

____4. On May 21, 2008, the Debtor commenced this case by filing voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Petition Date”). The Debtor is operating its business and managing its affairs as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee, examiner, or statutory committee has been appointed in this case.

ORGANIZATIONAL BACKGROUND

____6. Debtor manufactures and distributes computers tailored to customer choosing. As a part of its devotion to supporting customer choice, Debtor supports a wide range of operating systems including Microsoft Windows XP and XP 64-bit, Windows Vista and Vista 64-bit, Linux (32 and 64-bit kernels), and the Mac OS. PSYSTAR generally refers to this custom tailored line of computers as Open Computers. Open Computers are personal computers that, in the case of the Mac OS, work like a Macintosh including the latest Macintosh operation system—OS X.5 (a.k.a. Leopard). PSYSTAR Open Computers, again in the case of the Mac OS, run the OS X like that of a Macintosh from APPLE albeit on a computer hardware system offered at a considerably lower price and with considerably higher performance.

BUSINESS OPERATIONS

____7. Psystar is a retail store conducting its business solely on the internet. It does not have a store front location but its main center of operation is located in Doral, Florida.

RELIEF REQUESTED AND BASIS FOR RELIEF

____8. By this Motion, the Debtor respectfully requests the entry of an order authorizing it to maintain its existing corporate bank accounts and cash management system.

9. The Office of the United States Trustee has established certain operating guidelines for debtors in possession in order to supervise the administration of chapter 11 cases. These guidelines require chapter 11 Debtors to, among other things, close all existing bank accounts and open new debtor in possession (“DIP”) bank accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee, establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), maintain a separate DIP account for cash collateral, and obtain checks for all DIP accounts that bear the designation “debtor in possession,” the bankruptcy case number, and the type of account. The guidelines also require Debtor to close their books and records as of the petition date and to open new books and records. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent the inadvertent postpetition payment of prepetition claims. Through this Motion, the Debtor seeks relief from these requirements. See Local Rule 1001-1(E). The Debtor further request that the Court authorize all financial institutions with which the Debtor maintain bank accounts to continue to maintain, service, and administer such accounts.

10. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Extensive authority supports the relief that Debtor request. In other chapter 11 cases, courts have recognized that strict enforcement of the United States Trustee requirements does not always serve the purposes of chapter 11. Accordingly, courts, including courts in this District, often grant relief from these requirements and replace them with alternative procedures. See, e.g., *In re Gemini Air Cargo Logistics, Inc.*, Case No. 06-10780-BKC-AJC (Bankr. S.D. Fla. Mar. 20, 2006) (Order granting motion for inter alia maintenance of existing corporate bank accounts and cash management system); *In re Fine Air Serv. Corp.*, Case No. 00-18671-75 (Bankr. S.D. Fla. Feb.

7, 2001) (same); In re Atlas Air Worldwide Holdings, Inc., Case No. 04-10792-BKC-RAM (Bankr. S.D. Fla. March 26, 2004) (same).

11. An integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr.D. Del. 1992), *aff’d* in relevant part and *rev’d* in part, 997 F.2d 1039, 1061 (3d Cir. 1993). The requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” Columbia Gas, 997 F.2d at 1061; see also In re Southmark Corp., 49 F.3d 1111, 1114 (5th Cir. 1995) (stating that cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”).

12. The Debtor uses an integrated, centralized cash management system in the ordinary course of business (the “Cash Management System”). Under the Cash Management System, funds are collected by the merchant processors and transferred to the bank account to solely handle these type of transactions (New Merchant Account) at TD Bank. The Cash Management System enables the Debtor to (a) better forecast and report its cash position, (b) monitor collection and disbursement of funds, and (c) maintain control over the administration of their various bank accounts, all of which facilitates effective collection, disbursement, and movement of cash.

13. As of the Petition Date, the Debtor maintains the following three (3) active bank accounts (the “Bank Accounts”) in a “Authorized Depository” per the United States Trustee for Region 21:

a. TD Bank Merchant Account. All funds collected via the website by the merchant processors are remitted or deposited into this account. (Account No. xxxxxxxxx2022).

b. TD Bank Main Operating Account: Funds from the TD Merchant account are deposited into this account in order to purchase parts and supplies necessary to fill internet orders.

All operating expenses are also paid from this account, such as payroll, supplies, office expenses, etc. (Account No.xxxxxxxxx2030).

c. TD Bank Wire Account: This account is used to receive wires from customers that are overseas and can not fulfill the necessary security checks imposed by our Merchant processors.

15. The Debtor respectfully request authority to maintain their existing Bank Accounts and Cash Management System in accordance with their usual and customary practices to ensure a smooth transition into chapter 11 with minimal disruption to operations and their ability to conduct an orderly reorganization. The Debtor also request authority to close any of the Bank Accounts if, in the exercise of their business judgment, the Debtor determine that such action is in the best interests of its estate.

16. Only if the Bank Accounts are maintained with the same account numbers can the transition into chapter 11 be smooth and orderly and free from interference with continuing operations. To conduct their post petition business and to facilitate a smooth reorganization, the Debtor need to be able to issue checks to vendors, service providers, and employees. Requiring the Debtor to open new accounts and obtain checks for those accounts will cause delay and disruption to the Debtor's business. By preserving business continuity and avoiding operational and administrative paralysis that Closing the existing bank accounts and opening new ones would necessarily create, all parties-in-interest, including employees, vendors, customers, and service providers, will be best served, and the benefit to the estates will be considerable. The confusion and delay that would otherwise result would work to the detriment of the Debtor's estates.

17. Without the relief requested in this Motion, the Debtor will be required to open separate accounts as debtor in possession and rearrange their Cash Management System. The Debtor's accounting and bookkeeping employees would be forced to focus nearly exclusively on opening new accounts immediately and revising cash management procedures as opposed to

focusing on their daily management of the Debtor's books and transactions. Such distractions would be disruptive during this critical period in which the Debtor is transitioning into Chapter 11. Moreover, the opening of new accounts would certainly increase operating costs, thereby negatively impacting the Debtor' cash flow. Accordingly, the Court should authorize the Debtor' continued use of their existing Bank Accounts and Cash Management System.

18. The Debtor will continue to maintain records respecting all transfers between and among the Bank Accounts so that all transactions can be ascertained after they have occurred. In addition, the Debtor will instruct their banks to add the designation. "Debtor in possession" or "DIP" to their current and any future Accounts with each such bank, will treat the Bank Accounts for all purposes as accounts of the Debtor as debtor in possession, and will maintain records that recognize the distinction between prepetition and postpetition transfers.

19. Notice: The Debtor have provided notice of this Motion to (a) all banks wherein Debtor has Bank Accounts; (b) the Office of the United States Trustee for the Southern District of Florida; (c) the Debtor' 20 largest unsecured creditors. In light of the relief requested, the Debtor respectfully submits that no further notice is necessary.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion and authorize the Debtor to maintain and continue to use their existing Bank Accounts and Cash Management System.

WHEREFORE, the Debtor request the entry of an order granting this Motion, authorizing maintenance and use of existing corporate bank accounts and cash management system, and granting such other and further relief that the Court may deem just and proper.

Dated: May 21, 2009.

CERTIFICATE OF ADMISSION

I hereby certify that I am admitted to the Bar of the United States District Court for the

