

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

In re:

EBHI HOLDINGS, INC.,¹

Debtors.

Chapter 11

Case No.: 09-12099 (MFW)

Jointly Administered

Hearing: November 20, 2009 at 11:30 a.m.

Objection Deadline: November 13, 2009 at 4:00 p.m.

**MOTION OF GOOGLE AFFILIATE NETWORK INC. FOR AN ORDER
VACATING SALE ORDER SOLELY WITH RESPECT TO
GOOGLE AFFILIATE NETWORK'S CURE AMOUNT**

Google Affiliate Network Inc. ("GAN"), a subsidiary of Google Inc. ("Google"), by and through its undersigned counsel, requests that this Court enter an order, pursuant to Federal Rule of Civil Procedure 60(b), applicable here by Federal Bankruptcy Rule 9024, vacating, solely with respect to GAN's cure amount, this Court's order entered July 23, 2009, which authorized, among other things, the assumption and assignment of certain executory contracts (the "Sale Order"),² and amending Exhibit "D" to the Sale Order to include \$250,868.63 as the cure amount to assume the GAN Affiliate Services portion of the Performance Marketing Agreement.

¹ The Debtors include Eddie Bauer, Inc. a Delaware corporation.

² The full name of the Sale Order, found at Docket No. 508, is: "Order (A) Approving the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Rejection Procedures and Guidelines for Conducting Store Closing Sales; and (D) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. §365(d)(4)".



Jurisdiction and Venue

1. On June 17, 2009, Eddie Bauer, Inc., together with EBHI Holdings, Inc. and multiple related entities (collectively, “Eddie Bauer” or the “Debtors”) filed for protection under Chapter 11 of the Bankruptcy Code.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background³

3. In 2007, Google acquired Performics, Inc. f/k/a Dynamic Trade, Inc. (“Performics, Inc.”) and obtained all of Performics, Inc.’s interest under the Performance Marketing Agreement (“PMA”) between Performics, Inc. and Eddie Bauer dated September 1, 2001. [Declaration of Brian Marcus.]

4. On October 2, 2008, Performics, Inc. was officially renamed Google Affiliate Network Inc. (“GAN”). Articles of Amendment were filed with the Secretary of State on October 17, 2008. [Declaration of Brian Marcus, “Exhibit 1”.]

5. On or about August 5, 2008, Google and three affiliates, including GAN (“Sellers”) entered into an agreement with Publicis Groupe U.S. Investments, LLC, a subsidiary of Publicis Group S. A. (“Publicis”) whereby Sellers sold the search services, natural services, data feed and comparison shopping services (the “Search Services”) portion of the PMA to MarketForward Corporation, an Illinois corporation, that was renamed VivaKi Productions, Inc.

³ The facts set forth herein are taken from the Declarations filed in Support of Motion of Google Affiliate Network Inc. for an Order Vacating Sale Order Solely with Respect to Google Affiliate Network’s Cure Amount and Related Relief.

(“VivaKi”). The Search Services portion of the PMA were to be provided by the Performics division of VivaKi (“Performics”). All other services under the PMA, including affiliate marketing services (the “Affiliate Services”), were retained by GAN. [Declaration of Brian Marcus.]

6. In anticipation of the sale, on or about September 24, 2008, GAN sent Carl Erikson at Eddie Bauer a letter notifying Eddie Bauer of the pending sale of the Search Services and the allocation of the Affiliate Services to GAN (the “Notice Letter”). [Declaration of Brian Marcus, “Exhibit 2”.] The Notice Letter identifies 20 W. Kinzie Street, Chicago, IL, 60054 as GAN’s new address. This Notice Letter was followed up by an email from Dawn Koenigsknecht dated September 30, 2008 which also contains the GAN address at 20 W. Kinzie Street, Chicago, IL, 60054. The Koenigsknecht email was resent to Michael Saracino by Gayle de Die of GAN on July 30, 2009 (collectively the “Notices”). [Declaration of Brian Marcus, “Exhibit 3”.]

7. GAN provided Affiliate Services under the PMA up through the date the petition was filed. Invoices were to be paid to a lockbox at Department CH 10858, Palatine, IL, 60055-0858. [See Invoices attached as “Exhibit 4” and “Exhibit 5” to Declaration of Brian Marcus.] Apparently, as evidenced by the proof of claim filed by Performics [Claim No. 99], Performics continued to provide Search Services pursuant to the PMA and invoices were paid to Performics at 180 N. LaSalle St., Suite 1100, Chicago, IL 60601-2608. [Request for Judicial Notice, Item 1.]

8. Immediately after the June 17, 2009 filing, Michael Saracino, Manager of E-Commerce Marketing, at Eddie Bauer was in contact with Lara Kousaie and Gayle deDie at GAN regarding a public statement that Eddie Bauer had released regarding the bankruptcy. [Declaration of Brian Marcus, “Exhibit 6”.] Clearly, as a result of the Notices sent in September

2008 and the subsequent emails with Kousaie and deDie, Debtor knew where to send notices to GAN and had the names of at least three people at GAN to contact regarding the assumption and assignment of the Affiliate Services portion of the PMA.

9. On June 30, 2009, [Docket No. 222], this Court entered an order to establish various procedures governing the Debtor's proposed sale of assets and assumption and assignment of executory contracts (the "Procedures Order").⁴ The Procedures Order required the Debtors to file a notice of cure amount, called the "Cure Notice", and serve it on all non-debtor parties to any executory contracts that may be assumed by the Debtors and assigned to the successful bidder. Paragraph 16 of the Procedures Order required that: "[t]he Cure Notice shall state the cure amounts that the Debtors believe are necessary to assume such executory contracts . . . and notify the non-debtor party that such party's contract or lease may be assumed or assigned to a purchaser of the Assets to be identified at the conclusion of the Auction." [Request for Judicial Notice, Item 2.]

10. According to the Affidavit of Service of David J. Steinhafel [Docket No. 314], on July 2, 2009, the Debtors sent the Notice of Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances and Interests dated June 30, 2009 [Docket No. 297] (the "Sale Notice") to "Google Affiliate Network Inc." at "Dept. CH10858, Palatine, IL 60055-0858." [Request for Judicial Notice, Item 3.] This is the "lock box" used solely for GAN payments of invoices. [Declaration of Brian Marcus.] According to the Affidavit of Service, the notice was not directed

⁴ The full name of the Procedures Order is: "Order Pursuant to 11 U.S.C. §§105(a), 363, 365, and Bankruptcy Rules 2002, 6004, 6006 (A) Establishing Bidding and Auction Procedures Related to the Sale of All of the Debtor's Assets; (B) Approving Bid Protections for the Sale of the Debtors' Assets; (C) Scheduling an Auction and Sale Hearing for the Sale of the Debtors' Assets; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and leases to Be Assigned; and (E) Granting Certain Related Relief".

to any individual or officer. As a result, neither Performics nor GAN received proper notice of the Sale Notice.

11. According to the Affidavit of Service of Patrick J. Ivie [Docket No. 301], on July 2, 2009, the Debtors also sent the Notice of (I) Cure Amount with Respect to Executory Contracts to Be Assumed and Assigned and (II) Potential Assumption and Assignment of Executory Contracts dated June 30, 2009 [Docket No. 299] (the “Cure Notice”), to the same “lock box,” this time addressing it to “Performics, Inc. f k a Dynamic Track, Inc.” and not “Google Affiliate Network”. [Request for Judicial Notice, Item 4.] The Cure Notice was not directed to the attention of any individual or officer, and neither Performics nor GAN received proper notice of the Cure Notice.

12. Exhibit “1” to the Cure Notice had 12 pages of a spreadsheet listing over 820 names in very small type font. A close review reveals that page 9 lists the cure amount for “Performics Inc. (f/k/a Dynamic Track, Inc.)” at \$124,827.10. This sum represents the March and April 2009 payments due to the division of VivaKi now known as Performics under the Search Services portion of the PMA, as evidenced by Claim No. 99 filed by Performics. It does not include the May 2009 invoiced amount owed to Performics.

13. No cure amount is listed for GAN. The cure amount for the Affiliate Services portion of the PMA, consisting of Invoice No. 0509K2719 dated May 30, 2009 in the sum of \$165,464.46 plus Invoice No. 0609K2719 dated June 30, 2009 in the sum of \$160,132.82, less payment of \$74,728.65 received from Debtor for post-petition services, is \$250,868.63 (the “GAN Cure Amount.”). [Exhibits “4” and “5” to the Declaration of Brian Marcus.]

14. On July 23, 2009, this Court entered the Sale Order. Paragraph 18 of the Sale Order, along with Exhibit “D” to the Sale Order, also identified “Performics Inc. f/k/a Dynamic Track, Inc.” rather than Performics or GAN and listed the cure amount at \$124,837.10.

15. According to the Affidavit of Patrick J. Ivie (Docket No. 566), on July 28, 2009, the Debtor sent the notice of the entry of the Sale Order, directed simply to “Performics, Inc. f k a Dynamic Track, Inc.” to the lock box for GAN. [Request for Judicial Notice, Item 5.] Based upon the Affidavit, neither Performics nor GAN received proper notice of the Sale Order.

16. It appears that neither the Sale Notice, the Sale Order nor the Cure Notice were directed to any individual at GAN, or sent to GAN’s actual operating address. Instead, all notices concerning the PMA were erroneously sent to “Performics, Inc. f k a Dynamic Track, Inc.” at the GAN lock box in Palatine, Illinois. GAN discovered the error when its parent company, Google, received a copy of the “Notice of (I) Revised Cure Amount with Respect to Executory Contracts to be Assumed and Assigned and (II) potential Assumption and Assignment of Executory Contracts” (the “Revised Cure Notice”). [Docket No. 517, filed July 24, 2009] On investigation of the orders referenced in the Revised Cure Notice, GAN discovered that the Court had entered the Sale Order on July 23, 2009 and that a cure amount, purportedly for the entire PMA had been set.⁵

17. The Affiliate Services provided by GAN consists of making the customer’s advertisements and links available to GAN’s “affiliates,” otherwise known as “publishers”, for display on the publisher’s Internet site. No publisher has an obligation to display a particular customer’s advertisement or link, and GAN has no obligation to its customers to ensure that their

⁵ GAN filed an objection to the “Revised Cure Notice” as it was not clear if it affected the PMA. Debtor took the position that the PMA cure amount had been set by the Sale Order of July 23, 2009, and that the pending motion did not affect it. GAN withdrew its objection on that basis and filed this motion.

advertisements are placed. The publisher is paid for the advertising space when the GAN customer pays GAN for it. Thus, if a customer fails to pay GAN, and the publisher is therefore not paid, the publishers will be discouraged from promoting that customer's advertising in the future. [Declaration of Brian Marcus.] Therefore, unless there is a cure for the Affiliate Services portion of the PMA, publishers would not get paid and would be discouraged from providing services to the buyer, regardless of the assignment to the buyer or any action by GAN.

18. From August 18th through mid-September, GAN attempted to negotiate a solution through business channels to be paid for Eddie Bauer's pre-petition obligations owed to GAN under the Affiliate Services portion of the PMA, without success. [Declaration of Brian Marcus].

19. As of the date of this motion, neither the Debtor nor the buyer of the Eddie Bauer assets have paid GAN anything for Eddie Bauer's pre-petition obligations under the Affiliate Services portion of the PMA. The buyer, now doing business as Eddie Bauer, has stated repeatedly to representatives of GAN that the buyer wishes to have the full benefits of the Affiliate Services. [Declaration of Brian Marcus.] Counsel for GAN has also spoken with counsel for the Debtor who apparently also appreciates the importance of satisfying the publishers in order to have the PMA be of value to the buyer. [Declaration of Wendy W. Smith.] Notwithstanding this, the Debtor has refused to agree to amend the cure amount, and the buyer has refused to pay the full amount of the Debtor's pre-petition obligation to GAN, each demanding that the other satisfy the obligation. [Declaration of Wendy W. Smith.]

20. Neither the Debtor, nor the buyer dispute that the cure amount was understated, nor do they dispute the amount that GAN asserts is the Correct Cure Amount. Each has effectively directed GAN to seek relief in this Court to determine who has the obligation to

satisfy the GAN obligations. GAN brought this motion as soon as practicable after it became clear that the parties would not negotiate a business solution. [Declaration of Wendy W. Smith.]

RELIEF REQUESTED

For the reasons set forth below, GAN respectfully requests that this Court enter an order finding that:

- (a) Service of the sale motion and cure notice were ineffective as to GAN;
- (b) GAN's cure amount is \$250,868.63; and that
- (c) Exhibit "D" to the Sale Order be amended to reflect the correct cure amount.

BASIS FOR RELIEF

- A. The sale order, to the extent it purports to set a cure amount to assume and assign the Debtor's contract with GAN is void as to GAN.**

Pursuant to Federal Rule of Civil Procedure 60(b)(4), made applicable by Federal Rule of Bankruptcy Procedure 9024, a Court may relieve a party from a final order if it is void. Bankruptcy Rule 6006(a) provides that a proceeding to assume or assign an executory contract, other than as part of a plan, is a contested matter governed by Federal Rule of Bankruptcy Procedure 9014. Rule 9014 provides that motions and contested matters must be served in the same manner provided for service of a summons and complaint in Federal Rule of Bankruptcy Procedure 7004. This rule requires that service by mail on a domestic corporation can be made by "mailing a copy of the summons and complaint *to the attention of an officer, a managing or general agent, or to any other authorized by appointment by law to receive service of process.*" Federal Rule of Bankruptcy Procedure 7004(b)(3)(emphasis added). According to the affidavits of service generated by employees of the claims agent for the case, Kurtzman Carson Consultants, both the Sale Order and Cure Notice were sent to the lock-box maintained by GAN

for the receipt for payments on invoices. [Request for Judicial Notice, Items 3 and 4.] Neither of these notices was directed to any individual at all and was certainly not directed to an “officer, managing or general agent.” This alone is sufficient to void the Cure Notice and the resulting Sale Order as to GAN.

In the case of *In re Goldenbooks Family Entertainment*, 269 BR 300, 305 (Bankr. D. Del. 2001), the Court held that notice documents regarding the assumption, rejection or assignment of an executory contract that fail to address the notice to a person of authority or a person authorized to accept service are deficient. In that case, the notices were actually addressed to the location at which the company in question did business. Here, however, the notices were merely sent to a lock-box with no effort at all to direct them to anyone, certainly not to anyone of authority. Nor can the Debtor argue that GAN’s knowledge that Eddie Bauer had filed bankruptcy placed some duty on GAN to expect a Cure Notice. The Third Circuit Court of Appeals addressed the issue in detail in its opinion in *Grand Entertainment Group v. Star Media Sales*, 988 F.2d, 476, 493 (3d Cir. 1993). There, the decision underpins the rule that “notice cannot by itself validate an otherwise defective service.”

There is nothing strange about our conclusion that notice, though necessary, is not sufficient to effect service. Similar principles exist in Anglo-American law. Although notice underpins Federal Rule of Civil Procedure 4 concerning service, notice cannot by itself validate an otherwise defective service. Proper service is still a prerequisite to personal jurisdiction. Inquiry into the propriety of service is separate from, and in addition to, the due process concerns present in an inquiry into the notice itself. See *Mid-Continent Wood Prods., Inc. v. Harris*, 936 F.2d 297, 301 (7th Cir.1991); *Echevarria-Gonzalez v. Gonzalez-Chapel*, 849 F.2d 24, 28 (1st Cir.1988); *Montgomery, Zukerman, Davis, Inc. v. Diepenbrock*, 698 F.Supp. 1453, 1458 (S.D.Ind.1988). A district court’s power to assert in personam authority over parties defendant is dependent not only on compliance with due process but also on compliance with the technicalities of Rule 4. *Echevarria-Gonzalez*, 849 F.2d at 28.

Eddie Bauer's failure to properly address the notice is something of a mystery. Employees of Eddie Bauer had been engaged in extensive communications with employees of GAN since the date the petition was filed, and at least two of those emails contained "contact information" that clearly identified a person to contact as well as the physical address of GAN as 20 West Kinzie Street, Chicago, Illinois, 60654. "A default judgment entered when there has been no proper service of the complaint is, a fortiori, void and should be set aside." *Gold Kist, Inc. v. Laurinburger Oil Co.*, 756 F.2d 14, 19 (3d Cir. 1985). Here, Eddie Bauer failed to serve GAN pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3) of its notice to set the cure amount for the assumption of the Performics Agreement. The Sale Order that Eddie Bauer obtained purporting to set the cure amount for the PMA was obtained by default as to GAN. As there was no adequate service, that order is void.

B. Exhibit "D" to the Sale Order lists a mistaken cure amount for the Performance Marketing Agreement.

Pursuant to Federal Rule of Civil Procedure 60(b), made applicable by Federal Rule of Bankruptcy Procedure 9024, a Court may also relieve a party from a final order for "mistake, inadvertence, surprise, or excusable neglect." Federal Rule of Civil Procedure 60(b)(1). Where an order contains exhibits that mistakenly represent a Debtor's intent with respect to the treatment of an executory contract, the order may be vacated to correct the mistake. See *Sleepmaster Finance Corp.* 284 B.R. 411, 413 (Bankr. D. Del. 2002).

In this case, all of GAN's communication with the Debtor, and with its buyer indicate it was the Debtor's intent to assume – and therefore cure – the PMA. Debtor was sent copies of invoices in the normal course of business. As of the date of the bankruptcy filing, two invoices, totaling \$250,868.63 remain totally or partially unpaid. The cure amount listed in the Sale

Notice, Sale Order and Cure Notice, is actually the amount owed to Performics for the Search Services portion of the PMA for March and April 2009. GAN has communicated extensively with Eddie Bauer post petition. Debtor has the GAN invoices and the Performics invoices. Debtor has been paying these two companies separately and treated them independently as to both services and payments. Yet, when the bankruptcy is filed, Debtor reverts to the pre-October 2008 arrangement as if Performics and GAN were one company, and then serves them at a lock box set up by GAN after the sale to Performics. As a result neither provider was properly served.

C. The Court may relieve GAN from the result of the error.

Pursuant to Bankruptcy Rule 9024 and Fed. R. Civ. P. 60(b), the Court may relieve GAN from the Sale Order for “mistake, inadvertence, surprise, or excusable neglect.” Likewise, the Court, in its discretion, may extend the time for GAN to object to the Cure Notice, if its failure was a result of “excusable neglect.” Bankruptcy Rules 3003(c) and 9006(b)(1). In determining whether neglect is “excusable,” courts should take into account “all relevant circumstances surrounding the party’s omission.” *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 395 (1993). These factors include “the danger of prejudice to the debtor, the length of delay amid its potential impact on the judicial proceedings, the reason for the delay including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Id.*

Here, GAN did not receive proper or effective notice of either the Sale Order or the Cure Notice, and the Debtor made virtually no effort to provide it, sending the notice to a lock box and on at least one occasion, addressed to the wrong party. GAN discovered the error when its parent company, Google, received a copy of the Revised Cure Notice. GAN acted as swiftly as possible to preserve its rights, and filed an objection to the Revised Cure Notice before the deadline on

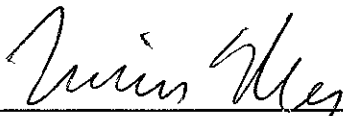
August 18th, 2009. The objection was based in part on the broad language of the Notice.

Notwithstanding these errors and GAN's efforts to correct the error, both the Debtor and buyer stand by their positions that the other party has the obligation to pay the GAN Cure Amount. Each has effectively directed GAN to seek relief in this Court to determine who has the obligation to satisfy the GAN obligations. (Neither has denied that GAN is actually owed the money.) GAN brought this motion as soon as practicable after it became clear that the parties would not negotiate a business solution.

The Debtor is likely to argue that it will suffer prejudice from GAN's requested relief, claiming that the amount paid into escrow to satisfy the cure amounts was not adequate to cover the actual obligation to GAN. Any such prejudice is the result of the Debtor's failure to make a reasonable effort to provide adequate notice to GAN, not any fault of GAN's. In particular, the Debtor had had ongoing communications with GAN personnel at the start of the case and could have easily identified the proper address for notice. Instead, the Debtor sent a notice to a lock box with no direction to any person or officer.

WHEREFORE, GAN requests that the Court enter an order finding that (i) service of the sale motion and cure notice were ineffective as to GAN; (ii) GAN's cure amount is \$250,868.63; (iii) Exhibit "D" to the Sale Order be amended to reflect the correct cure amount; and (iv) award such other relief as is just and proper.

SAUL EWING LLP

By: 
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Counsel for Google Affiliate Network Inc.

Dated: October 20, 2009

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

In re:

EBHI HOLDINGS, INC.,¹

Debtors.

Chapter 11

Case No.: 09-12099 (MFW)

Jointly Administered

Hearing: November 20, 2009 at 11:30 a.m.

Objection Deadline: November 13, 2009 at 4:00 p.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on October 20, 2009, Google Affiliate Network Inc., a subsidiary of Google Inc. filed the **Motion of Google Affiliate Network Inc. for an Order Vacating Sale Order Solely With Respect to Google Affiliate Network's Cure Amount** (the "Motion") with the United States Bankruptcy Court.

You are required to file a response to the Motion on or before **November 13, 2009 at 4:00 p.m.**

At the same time, you must also serve a copy of the response on the following:

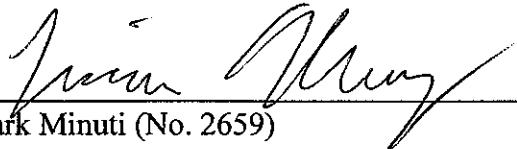
Mark Minuti, Esq.
Saul Ewing LLP
222 Delaware Avenue, Suite 1200
P.O. Box 1266
Wilmington, DE 19899

A HEARING ON THE MOTION WILL BE HELD before the Honorable Mary F. Walrath, United States Bankruptcy Court, 824 N. Market Street, 5th Floor, Wilmington, Delaware 19801 on **November 20, 2009 at 11:30 a.m.**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors include Eddie Bauer, Inc. a Delaware corporation.

SAUL EWING LLP

By: 

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Counsel for Google Affiliate Network Inc.

Dated: October 20, 2009

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

In re:

EBHI HOLDINGS, INC.,¹

Debtors.

Chapter 11

Case No.: 09-12099 (MFW)

Jointly Administered

Related to Docket No. _____

**ORDER VACATING SALE ORDER SOLELY WITH RESPECT TO
GOOGLE AFFILIATE NETWORK'S CURE AMOUNT**

The motion of Google Affiliate Network Inc. ("GAN"), a subsidiary of Google Inc. ("Google") for an order, pursuant to Federal Rule of Civil Procedure 60(b), applicable here by Federal Bankruptcy Rule 9024, vacating, solely with respect to GAN's cure amount, this Court's order entered July 23, 2009, which authorized, among other things, the assumption and assignment of certain executory contracts (the "Sale Order"),² and amending Exhibit "D" to the Sale Order to include \$250,868.63 as the cure amount to assume the GAN Affiliate Services portion of the Performance Marketing Agreement (the "Motion"), came on regularly for hearing on November 20, 2009. The appearances being noted in the record, and the Court having considered the Motion and finding good cause therefor,

IT IS HEREBY ORDERED, that the Motion is GRANTED.

¹ The Debtors include Eddie Bauer, Inc. a Delaware corporation.

² The full name of the Sale Order, found at Docket number 508, is: "Order (A) Approving the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Rejection Procedures and Guidelines for Conducting Store Closing Sales; and (D) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. §365(d)(4)".

IT IS FURTHER ORDERED, that the Sale Order is hereby vacated as to the cure amount attributable to Google Affiliate Networks Inc and the Sale Order and Exhibit "D" to the Sale Order are hereby amended to change the cure amount to assume the GAN Affiliate Services portion of the Performance Marketing Agreement to \$250,868.63.

United States Bankruptcy Judge

Dated: _____, 2009

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

In re:

EBHI HOLDINGS, INC.,

Debtors.

Chapter 11

Case No.: 09-12099 (MFW)

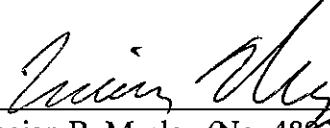
Jointly Administered

CERTIFICATE OF SERVICE

I, Lucian B. Murley, hereby certify that on October 20, 2009, I caused a copy of the **Motion of Google Affiliate Network Inc. for an Order Vacating Sale Order Solely With Respect to Google Affiliate Network's Cure Amount** to be served on the parties set forth on the attached service list in the manner indicated therein.

SAUL EWING LLP

By: _____


Lucian B. Murley (No. 4892)
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(302) 421-6898

EBHI HOLDINGS, INC.
Service List

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