

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
	:	Chapter 11
TRUVO USA LLC, <u>et al.</u> ,	:	
	:	Case No. 10-13513 (AJG)
Debtors.	:	Jointly Administered
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TRUVO USA LLC, <u>et al.</u> ,	:	
	:	Adv. Proc. No. 10-03341 (AJG)
Plaintiffs,	:	
	:	
v.	:	
	:	
THE BANK OF NEW YORK MELLON	:	
CORPORATION, INDENTURE TRUSTEE WITH	:	
RESPECT TO THE HY NOTES, <u>et al.</u> ,	:	
	:	
Defendants.	:	
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**PRELIMINARY INJUNCTION FOLLOWING A HEARING PURSUANT TO 11 U.S.C.  
§ 105, RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURE, AND RULES  
7001(7) AND 7065 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Upon the motion dated July 1, 2010 (the “Motion”),<sup>1</sup> filed by Truvo USA LLC (“Truvo USA”) and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession in the above-captioned Chapter 11 cases and plaintiffs in this adversary proceeding (collectively, the “Debtors”), for entry of a temporary restraining order and a preliminary injunction following a hearing (i) pursuant to 11 U.S.C. § 105, Rule 65 of the Federal Rules of Civil Procedure, and Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure and/or (ii) extending the automatic stay pursuant to Section 362 of the Bankruptcy Code; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334;

<sup>1</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to those terms as used in the Motion.



and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the relief requested being in the best interests of the Debtors and their estates and creditors; and the Court having entered the Temporary Restraining Order sought by the Motion on July 1, 2010 (D.I. 2 in Case No. 10-03341, the “TRO”); and the Court having considered and reviewed (i) the complaint for injunctive relief and the exhibits thereto (the “Complaint”), (ii) the Motion, (iii) the Memorandum of Law in Support of the Motion (the “Memorandum”), (iv) the Declaration of Marc C. F. Goegebuer in support of the Motion (the “Goegebuer TRO Declaration”), (v) the Declaration of Jacques Reding in support of the Motion (the “Reding Declaration”), (vi) the Declaration of Peter Werdmuller in support of the Motion (the “Werdmuller Declaration”), (vii) the Declaration of Laura MacDermott in support of the Motion (the “MacDermott Declaration”), (viii) the Declaration of Saul E. Burian in support of the Motion (the “Burian Declaration”), (ix) the Declaration of Luke A. Barefoot in support of the Motion (the “Barefoot Declaration”), (x) the Declaration of Thomas J. Moloney pursuant to Local Bankruptcy Rule 9077-1(b) (the “Moloney Declaration”, and together with the Motion, Memorandum, Goegebuer TRO Declaration, Reding Declaration, Werdmuller Declaration, MacDermott Declaration, Burian Declaration, and Barefoot Declaration, the “Moving Papers”), (xii) the affidavits of service and declarations of publication reflecting the notice provided of the Moving Papers and notice of entry of the Court’s TRO, (xiii) the Response of the Bank of New York Mellon to Debtors’ Motion for a Preliminary Injunction (the “BNYM Response”), (xiv) the Memorandum of the Coordinating Committee of Senior Lenders in Support of the Debtors’ Motion for Preliminary Injunction, (xv) the reply filed by the Debtors, and (xvi) the testimony, evidence, and arguments presented on the record of the hearing held before the Court on July 14,

2010 (the “Hearing”); and service of the Moving Papers as provided herein providing due, proper, and sufficient notice; and the Court having determined that the legal and factual bases set forth in the Moving Papers establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, this Court hereby makes the following findings of fact and conclusions of law:

1. Failure to enter this preliminary injunction would cause immediate and irreparable injury to the Debtors’ estates, threatening the Debtors’ ability to consummate a plan of reorganization, destroying value in the Debtors’ estates, and disrupting the Debtors’ administration of these Chapter 11 cases.

2. The issuance of a preliminary injunction appears necessary to preserve and maximize the value of the Debtors’ estates and is in the best interests of the Debtors, their estates and their creditors.

3. Actions to enforce the Guaranteed Debt against the European Guarantors threaten to destroy the Debtors’ ability to reorganize pursuant to the Plan. Such actions could include forcing the European Guarantors into involuntary insolvency proceedings, attaching the property of the European Guarantors, and/or taking actions to enforce any security interests against the European Guarantors.

4. Any such involuntary insolvency proceeding would generally divest management of control of the operations of the European Guarantors in favor of an appointed trustee charged with liquidating the assets of the companies. Scattering control of the European Guarantors among various bankruptcy trustees would irreparably destroy creditor value and the ability of the Debtors to reorganize.

5. Any attachments of the European Guarantors’ property (whether *ex parte*

or otherwise) would threaten their ability to continue operations, obstruct the shift towards an online- and mobile-focused business model, and, preclude the European Guarantors from making intercompany loans or other transfers to the Debtors to fund the administration of their ongoing Chapter 11 expenses.

6. Because the property pledged by the European Guarantors in support of the Truvo Group's obligations under the Senior Facility includes the key operational assets of Truvo Belgium and Truvo Ireland, enforcement of security interests against such property would force these entities to cease operations.

7. Absent a preliminary injunction, the threat of involuntary insolvency proceedings or other enforcement actions in the jurisdictions where the European Guarantors operate would also cause severe commercial and reputational harm by dissuading the Truvo Group's short-term customers from renewing their contracts and continuing to do business with any member of the Truvo Group. Such uncertainty would also threaten the European Guarantors' ability to recruit and retain critical employees.

8. The injunction is in the best interests of all parties in interest in these Chapter 11 cases. As a whole, the Defendants will benefit from entry of the injunction, which will ensure that the going-concern value of the Truvo Group is preserved and maximized, eliminating the destruction of such value through piecemeal individual efforts to enforce the Guaranteed Debt against the European Guarantors. The coordinated process embodied in the Debtors' Plan also permits the sharing of value with junior creditors whose classes vote in favor of the Plan, which would be impossible in a liquidation scenario. The temporary delay imposed by this injunction will not prejudice the Defendants to any degree comparable to the prejudice that all creditors as a group and other parties in interest in these Chapter 11 cases would suffer if

the enforcement actions were not enjoined. The balance of the equities therefore weighs in the favor of the Debtors.

9. For these reasons, the granting of the requested injunctive relief is necessary to avoid immediate and irreparable injury to the Debtors' estates.

10. Due and adequate notice to the extent practicable has been given to the Defendants.

11. The legal and factual bases set forth in the Complaint, the Moving Papers, and at the Hearing establish just cause for the relief granted herein.

**NOW, THEREFORE**, based on the foregoing and for other good and sufficient cause, it is hereby

**ORDERED** that the Motion is granted in its entirety; and it is further

**ORDERED** that any objections to the relief sought in the Motion (including without limitation, the BNYM Response) are overruled on their merits; and it is further

**ORDERED** that, pursuant to Sections 105(a) and 362(a) of the Bankruptcy Code, effective immediately and subject to the terms hereof, and for an initial period which (subject to the rights of the Debtors and their creditors to request an extension or reduction) shall expire on the earlier of (i) 120 days, or (ii) termination of the Plan Support Agreement in accordance with its terms, the Defendants (whether known or unknown) and all other creditors of the Debtors receiving notice of this Order, including without limitation, their agents, attorneys and all persons acting in concert or participation with them, directly or indirectly, are hereby stayed, restrained and enjoined from (a) taking any act or action to enforce any rights in respect of the

Guaranteed Debt<sup>2</sup> against any of the European Guarantors<sup>3</sup> (including without limitation, any efforts to accelerate the maturity of the Guaranteed Debt, including service by the Trustee of any notice of default pursuant to the Intercreditor Agreement), *provided however* that Bank of New York Mellon, as indenture trustee under the Indenture (the “Trustee”), may continue to send invoices to the European Guarantors and/or the Debtors in respect of reasonable fees and expenses incurred by the Trustee pursuant to the Indenture and the Intercreditor Agreement and may request that this Court resolve any disputes concerning such invoices, (b) taking any act or action in respect of the Guaranteed Debt to take or obtain possession of or to exercise control over property, or the proceeds of property, of the European Guarantors (including, without limitation, any efforts to attach such property, or to enforce security interests in such property), (c) taking any act or action in respect of the Guaranteed Debt (including, without limitation, commencing or continuing any act or action or other legal proceeding including any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) to create, perfect or enforce any lien against the European Guarantors or their property, or the proceeds of such property; (d) commencing or continuing any act or action or other legal proceeding (including, without limitation, any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), in respect of the Guaranteed Debt against the European Guarantors, or any of their property, or the proceeds of such property, including, without limitation, the commencement of insolvency or similar proceedings against the European Guarantors in any jurisdiction whatsoever; and (e) taking any act or action to enforce or collect

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<sup>2</sup> The Guaranteed Debt is comprised of obligations under (a) the Senior Facility Agreement dated May 23, 2007, and (b) the €95 million of 8 1/2% senior notes and \$200 million of 8 3/8% senior notes due in 2014 issued by debtor Truvo Subsidiary Corp. pursuant to the Indenture dated December 7, 2004.

<sup>3</sup> Truvo Belgium Comm. V., Truvo Services & Technology B.V., Truvo Belgium Comm. V., Truvo Nederland B.V., Truvo Dutch Holdings B.V., Truvo Ireland Ltd., Truvo Corporate CVBA, Truvo Ireland Holdings B.V., and Truvo Nederland Holdings B.V. are each European Guarantors

upon any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order against the European Guarantors in respect of the Guaranteed Debt, in any jurisdiction whatsoever *provided however*, that nothing in this Order shall be interpreted to stay, restrain or enjoin any actions taken in furtherance of or to effectuate the Debtors' Plan or the Plan Support Agreement; and it is further

**ORDERED** that pursuant to Bankruptcy Rule 7065, the Debtors are relieved from posting any security pursuant to rule 65(c) of the Federal Rules of Civil Procedure; and it is further

**ORDERED** that nothing contained in this Order shall prohibit any party in interest from seeking relief from the terms of this Order by filing an appropriate motion with the Court, on notice to counsel for the Debtors; and it is further

**ORDERED** that so long as the preliminary injunction as provided for herein remains in effect, all other matters in this adversary proceeding shall be stayed and the parties shall not serve discovery requests or engage in motion practice in this adversary proceeding (aside from motions for relief from the terms of this Order) without first obtaining leave of this Court, *provided however*, for the avoidance of doubt, that the foregoing provision shall apply only to this adversary proceeding and shall not apply to motion practice or discovery concerning other matters in the Debtors' cases, including without limitation confirmation of any plan of reorganization; and it is further

**ORDERED** that a copy of this Order shall be served by overnight mail, postage prepaid, within three (3) business days of entry of this Order, upon all known Defendants and the General Service List (as defined in the Administrative Order, Pursuant to Rule 1015(c) of the Federal

Rules of Bankruptcy Procedure Establishing Case Management and Scheduling Procedures (D.I. 31 in Case No. 10-13513); and it is further

**ORDERED** that service of the Motion and Complaint as provided therein, including service upon Defendants, shall be deemed good and sufficient notice of such Motion and Complaint, and service of this Order in accordance herewith shall be deemed good and sufficient service and adequate notice for all purposes, and no other or further notice of the Motion or this Order need be provided; and it is further

**ORDERED** that this Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

Dated: New York, New York  
July 14, 2010

**s/Arthur J. Gonzalez**  
Chief United States Bankruptcy Judge