

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	:	Jointly Administered Under
	:	Case No. 17-30673
	:	
Gander Mountain Company	:	Case No. 17-30673
Overton's, Inc.	:	Case No. 17-30675
	:	
Debtors.	:	Chapter 11 Cases

CONSUMER PRIVACY OMBUDSMAN

REPORT TO THE COURT

May 3, 2017

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Consumer Privacy Ombudsman

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I. Consumer Privacy Ombudsman Report to the Court

Pursuant to Bankruptcy Code section 332(b), Lucy L. Thomson, the Consumer Privacy Ombudsman (“CPO” or “Ombudsman”) appointed in this case,¹ submits this Report to advise the Court on the issues related to the protection of the privacy of personally identifiable information (PII) of the customers of Gander Mountain Company and Overton’s Inc. (“Debtors,” “Gander Mtn,” or “Overton’s”).

The Debtors collected PII from approximately 8 million individuals who shopped at www.gandermountain.com or www.overtons.com, in their stores and/or obtained a branded Mastercard or enrolled in a rewards program. Gander Mtn and Overton’s each published the same privacy policy on their websites to ensure the protection of personal consumer records.

The Bankruptcy Code provides a framework in sections 332 and 363 for evaluating the sale of personally identifiable consumer records in the context of a bankruptcy case. 11 U.S.C. §§ 101 *et. seq.* This Report outlines the considerations the Court would need to evaluate in making a decision to approve the Debtors’ asset sales of PII.

The CPO recommends that the Court approve the sale of the Gander Mtn and Overton’s customer data to the proposed Buyer Camping World Holdings, Inc. (“Camping World”), subject to the Court making a determination that Camping World is a “Qualified Buyer” and meets the conditions that bankruptcy courts have adopted over the years in asset sales of personally identifiable consumer information. These conditions are set forth in section III of this CPO Report. Camping World has advised the Ombudsman that the company will agree to these conditions and the parties will incorporate them into the Sale Order.

¹ Pursuant to the Court’s Order of March 30, 2017 Directing the Appointment of a Consumer Privacy Ombudsman (Dkt. No. 277), the United States Trustee appointed Lucy L. Thomson as the Consumer Privacy Ombudsman in this case (Dkt. No. 417).

Camping World is in materially the same line of business as Gander Mtn and Overton's, and agrees to use the PII for the same purposes as they were previously, namely to sell outdoor products and services, and provide special offers and rewards for the Debtor's former customers. Camping World has indicated that it is willing to stipulate that it will notify customers of the change in ownership, and advise them that they will abide by the Debtor's privacy policy (as may be amended after the closing in accordance with applicable law.)² The notice to customers or an amended privacy policy has not yet been shared with the Ombudsman.³ The content and method of providing notice of the sale and any amendment to the Debtor's privacy policy are essential to protecting the privacy rights of the Debtors' customers. It is customary in bankruptcy cases such as this for the Ombudsman to review sale notices and privacy policy changes to ensure that the privacy rights of consumers are protected.⁴

The CPO recommends that the Court identify and implement a process to ensure that an appropriate notice of the sale is developed and sent to Debtors' customers and is placed conspicuously on available websites of the business entities involved in this sale and that any amendments to the Debtors' privacy policy comply with applicable laws and fair information practice principles (discussed in section V of this Report). The Ombudsman stands ready to assist, as the Court may deem appropriate.

² See, e.g., Federal Trade Commission (FTC) "Mergers and Privacy Promises," (Mar. 25, 2015) (summarizing FTC interpretation of post-merger or sale policy changes) *available at* <https://www.ftc.gov/news-events/blogs/business-blog/2015/03/mergers-privacy-promises>.

³ The Ombudsman received notice of the results of the auction on Friday afternoon April 29, 2017 and was provided four days over the weekend to analyze all privacy issues pertaining to the sale and prepare this CPO Report for filing on May 2, 2017.

⁴ See, e.g., *In re Circuit City*, No. 3:08-bk-35653 (Bankr. E.D.Va.); *In re Coach Am Holdings Corp.*, No. 12-10010 (KG); *In re Hancock Fabrics*, No. 16-10296 (BLS) (D. Del.); *In re QSL of Medina*, No. 15-52722 (N.D. Ohio); *In re Tomsten, d/b/a Archiver's*, No. 13-42153 (D. Minn.), and other cases.

II. Request to Sell Personally Identifiable Consumer Information⁵

Gander Mountain Company, Inc. maintains its headquarters in St. Paul, Minnesota. It is a retail network of outdoor specialty stores for shooting sports, hunting, fishing, camping, marine, apparel, footwear and outdoor lifestyle. The company began as a catalog-based retailer in Wilmot, Wisconsin, located near Gander Mountain, the highest point in Lake County, Illinois. Operating out of a small store, the founder marketed shooting supplies to gun dealers via mail-order catalogs. As of March 2017 the company has 162 stores in 27 states, making it the largest chain of outdoors specialty stores in the U.S., and it operates an e-commerce platform at <http://www.gandermountain.com>.

In 1976 Overton's began selling water skis out of a local grocery store in Greenville, North Carolina. Now its catalog and website provide consumers with a wide selection of boating accessories and watersports equipment. Overton's operates two retail stores – in Greenville and Raleigh, N.C. – and an e-commerce site at <http://www.overtons.com>.

On March 10, 2017, the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' cases. The Debtors have announced that the company will close a number of its Gander Mtn stores.

⁵ Section 101 (41A) of the Bankruptcy Code defines the term "personally identifiable information" to mean – (A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes –

- (i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;
- (ii) the geographical address of a physical place of residence of such individual;
- (iii) an electronic address (including an e-mail address) of such individual;
- (iv) a telephone number dedicated to contacting such individual at such physical place of residence;
- (v) a social security account number issued to such individual; or
- (vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A) –

- (i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or
- (ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

On April 27-28, 2017, an auction was conducted for the sale of the Debtors' property, including approximately 8 million customer records. Camping World Holdings was determined to have made the highest and best offer for certain assets of Gander Mtn. and Overton's boating business, including intellectual property rights, and the Debtors' e-commerce business. A group of liquidators will conduct liquidation sales at certain Gander Mtn stores.

Proposed Purchaser – Camping World

Camping World Holdings, Inc. (NYSE: CWH) of Lincolnshire, Illinois provides products and resources for recreational vehicle ("RV") enthusiasts. Through its two brands, Camping World and Good Sam, founded in 1966, the company offers new and used RVs for sale, vehicle service and maintenance, along with products and services through its retail locations and membership clubs. Good Sam provides RV services, protection plans, and products and resources, while Camping World operates 125 retail locations in 36 states and an e-commerce platform.

Intellectual Property for Sale — Individual Consumer Records

Gander Mtn collected PII from more than 4.3 million individuals who shopped in the Gander Mtn stores or online at <http://www.gandermountain.com> or enrolled in its Mastercard and rewards program. More than 817,000 customers are included in the Firearm Registry. Overton's collected PII from more than 2.5 million individuals who shopped in the two Overton's stores or online at <http://overtons.com> or enrolled in its Mastercard and rewards program.

These data include customer name, address, e-mail address, telephone number, and the information provided when a shopper requested a catalog, subscribed to a newsletter, or made a purchase at one of the retail or online stores.

Gander Mtn and Overton's maintain social media sites on Facebook, Twitter, Instagram, and Youtube.

Records Not Included in the Sale

Private Label and co-branded Mastercards – Gander Mtn offered Gander Mtn and Overton's rewards credit cards issued by Comenity Bank based in Columbus, Ohio. Customer financial information and credit card numbers related to the credit cards is in the possession of Comenity Bank and is not the subject of this bankruptcy sale. The Debtors have advised the Ombudsman that any customer financial records, including payment (credit and debit) card and bank account numbers and other financial information will not be sold.

Rewards Programs – The Gander Mtn and Overton's Rewards program allows customers to earn points on the dollars they spend using their Gander Mountain and Overton's accounts. Customers can then redeem those Points for rewards certificates valid at Gander Mtn stores and www.gandermountain.com and www.overtons.com. Customers who obtained a Mastercard were automatically enrolled in the rewards program when the bank opened their account.

Firearm Registry – Gander Mtn maintained a Firearm Registry with approximately 817,000 active customers. The registry also contains the names of more than 1 million inactive customers. Gander Mtn has advised the Ombudsman that they will not sell the e-4473 data (Bureau of Alcohol, Tobacco, and Firearms (ATF) Firearm Transaction Record form e-4473). Instead, Gander Mtn plans to send all of its e-4473 data and records to ATF and close out the licenses registry. In the future buyers will obtain their own licenses from ATF. Counsel for Gander Mtn has advised that company officials have had discussions with ATF about this plan and the process for buyers to obtain temporary operating authority.

III. Debtors' Privacy Policy and "Qualified Buyer" Criteria

Gander Mtn and Overton's maintained a privacy policy on their websites. It was in effect on the bankruptcy petition date. (The Gander Mtn and Overton's privacy policy is attached to this CPO Report as Appendix A).

The privacy policy contains a statement of the Debtors' commitment to protect the privacy interests of its customers ("this is how we will protect your personal information"). The introduction to the privacy policy states:

This Privacy Policy [] explains how Gander Mountain, Overton's, and other members of the Gander Mountain family of businesses (collectively, "the Gander Mountain family of businesses," [] protect your privacy when you use the following Web sites []:

The privacy policy specifies conditions under which the Debtors may share personal information with "service providers," "carefully selected third parties," in "business transactions," "as described in a privacy notice," and in a "country-specific notice."

The parties in this bankruptcy case do not fully agree on the extent of the protections afforded to the Debtors' customers by the privacy policy. It is the Ombudsman's view that the intent of the Debtors' privacy policy is to protect the privacy of the customers' personal information, as evidenced by provisions requiring the Debtors' companies to provide notice to customers of the sharing of their personal information with other entities, the Debtors' commitment to affording "choice" to customers with respect to the use and sharing of their personal information, and the Debtors' intent to afford privacy protections in the event of a sale of their businesses. With respect to "Business Transactions" involving the sale, merger, or reorganization of the companies, the privacy policy states that "we will take reasonable measures

to protect the personal information we disclose...”.⁶

Camping World has agreed to abide by the criteria that are customarily required by bankruptcy courts to establish that the company is a “Qualified Buyer” in a bankruptcy sale of this kind where the “assets” are personal consumer records. The Debtors and Camping World have agreed to incorporate the following criteria into the Sale Order.

- The Buyer is in materially the same line of business as Gander Mtn and Overton’s.
- The Buyer agrees to use the personally identifiable consumer records for the same purpose(s) as they were previously, namely, to sell outdoor products and services and provide special offers and rewards for Gander Mtn and Overton’s customers.
- The Buyer agrees to comply with the Debtors’ privacy policy (as may be amended in accordance with applicable law after the Closing).
- The Buyer agrees that prior to making any “material change” to the privacy policy, or using or disclosing personal information in a different manner from that specified in the privacy policy, it will notify consumers and afford them an opportunity to opt-out of the changes to those policies or the new uses of their personal information.
- The Buyer agrees to notify Gander Mtn and Overton’s customers whose personal information the Buyer is acquiring of the change in ownership, and advise them that they will abide by the Gander Mtn and Overton’s privacy policy (as may be amended after the Closing in accordance with applicable law).

⁶ The one example of a “reasonable measure” provided is “requiring the prospective purchaser to sign a non-disclosure agreement limiting the use and protecting the confidentiality of the personal information.” This requirement is not on point for the Gander Mtn. and Overton’s bankruptcy sales in which the issues set forth in the “Qualified Buyer” criteria must be addressed.

- The Buyer agrees to employ appropriate information security controls (technical, operational and managerial) to protect the personally identifiable customer information, including strong encryption.
- The Buyer agrees to abide by all applicable federal, state, and international laws, including laws prohibiting unfair or deceptive practices “UDAP,” data breach notification, data disposal, privacy and confidentiality of personal information, “do-not-track,” “do-not-call,” and “no spam” laws.

The content of the notice of change in company ownership is important to ensure that customers are afforded appropriate “choices” in the use of their personal information, as specified in the Debtors’ privacy policy, are given an appropriate time frame in which to act, and other pertinent information. Bankruptcy courts have customarily required notices of a change of company ownership to be placed “conspicuously” on available websites and be designed to reach the greatest number of customers reasonably possible. The Buyer has stipulated that it will provide a notice of the change of ownership, and that the notice will promise to abide by the Debtor’s privacy policy, subject to an additional stipulation to offer notice and a choice to opt-out should “material changes” be proposed in the future.

The CPO recommends that the Court identify and implement a process to ensure that an appropriate notice of the sale is developed and sent to Debtors’ customers and is placed conspicuously on available websites of the business entities involved in this sale and that any amendments to the Debtors’ privacy policy comply with applicable laws and fair information practice principles (discussed in section V of this Report).

IV. The CPO Process and Applicable Non-Bankruptcy Laws

Section 332 of the Bankruptcy Code makes the protection of consumer privacy an important focus of all bankruptcy proceedings in which personally identifiable consumer records are to be sold. The statute provides a broad mandate for the Ombudsman – to investigate and provide the Court with information relating to:

- The Debtors' Privacy Policy;
- Potential losses or gains of privacy to consumers if the sale is approved;
- Potential costs or benefits to consumers if the sale is approved; and
- Possible alternatives that would mitigate potential privacy losses or costs to consumers.

11 U.S.C. § 332.

A. Analytical Framework

Section 363(b)(1) of the Bankruptcy Code provides that the Court must make a number of determinations before the Debtors are authorized to sell the personally identifiable Gander Mtn and Overton's consumer records.

More specifically:

- If the Debtors' Privacy Policy prohibits the transfer of personally identifiable information about individuals to persons that are not affiliated with the Debtors; and
- If the policy is in effect on the date of the commencement of the case;
- Then the Trustee may not sell personally identifiable information to any person unless—
(A) such sale is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease –

(i) giving due consideration to the facts, circumstances, and conditions of such sale; and

(ii) finding that no showing was made that such sale would violate applicable non bankruptcy law.

B. Potential Privacy Risks

The representations made to consumers who shopped online or visited the Gander Mtn or Overton's websites in the posted privacy policy about how their personal information is collected, used, shared, sold, and secured must be honored, even in the context of a bankruptcy sale, in order to comply with laws prohibiting unfair or deceptive trade practices. This sale involves the transfer of millions of customer names and address, e-mail address, telephone number, customer loyalty program data, and other elements of personal data. While sensitive financial information such as credit card or other payment-related data are not at issue, large customer databases have been the target of cyber attacks, warranting assurances that laws mandating reasonable security measures are also followed. The Debtor has promised to maintain customer data securely.

Companies, particularly those in the retail sector, are being targeted by hackers because of the huge volume of valuable information about individuals they collect, store, and transfer between and among their own entities and business partners. With the development of databases containing vast amounts of sensitive personal information, and the use of ever more sophisticated technical capabilities for data aggregation and data mining, coupled with powerful business

intelligence and analysis tools, much is at stake in the potential sacrifice of personal privacy by individual consumers.

Failed security has resulted in thousands of data breaches that led to the loss or compromise of millions of personally identifiable records. The notification requirements of the state data breach laws have helped to highlight the significant increase in the number of data breaches during the past decade. In total, 809,158,748 records have been compromised in 4,786 breaches reported since 2007.⁷

In today's digital world, threats to information systems are evidenced almost everywhere a computer, server, laptop, smart phone, thumb drive, or other electronic device is operating. The proliferation of mobile devices and wireless technology that enable mobile commerce (m-commerce) and a continually expanding array of Apps – more than 6.5 million – present many vulnerable points in the flow of sensitive data in computer networks. Website vulnerabilities provide an attack vector for hackers seeking to plant malware on computer networks. The lack of security resulting from unencrypted data on computers, laptops, and other mobile devices that are lost or unaccounted for creates another type of threat.

The consequences to consumers of a data breach can be devastating, potentially subjecting them to identity theft, fraud, negative publicity, and even financial ruin.⁸

V. Fair Information Practice Principles

Identity theft, phishing attacks and other fraudulent activity by hackers and cyber criminals is growing and threatens to seriously undermine trust in conducting business online and

⁷ Privacy Rights Clearinghouse, Chronology of Data Breaches, *available at* <https://www.privacyrights.org/data-breach>. A website that goes by the name “information is beautiful” provides a visualization of hundreds of the major data breaches over the past decade and serves as a useful resource to identify and learn about the massive data breaches that have affected the private sector and government.

<http://www.informationisbeautiful.net/visualizations/worlds-biggest-data-breaches-hacks/>.
⁸ See <https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud>.

ultimately the future of electronic commerce. Protection of the privacy of personal records is crucial.

The FTC has studied the manner in which entities collect and use personal information – their "information practices" – and the safeguards required to assure those practices are fair and provide adequate privacy protection. The FTC has identified widely-accepted principles concerning fair information practices.⁹ Common to these are five core principles of privacy protection. These principles provide a useful framework for analyzing the privacy issues presented in this case.

(1) *Notice/Awareness*

The most fundamental privacy principle is notice. Consumers should be given notice of an entity's information practices before any personal information is collected from them, and when the circumstances surrounding the ownership or use of a person's information changes, such as in a bankruptcy sale. Without notice, a consumer cannot make an informed decision as to whether and to what extent to disclose personal information. Moreover, three of the other principles discussed below – choice/consent, access/participation, and enforcement/redress – are only meaningful when a consumer has notice of an entity's policies, and his or her rights with respect thereto.

(2) *Choice/Consent*

At its simplest, choice means giving consumers options as to how any personal information collected from them may be used. Choice relates to secondary uses of information – *i.e.*, uses beyond those necessary to complete a contemplated transaction. Such secondary uses can be internal, such as placing the consumer on the company's e-mail or postal list in order to

⁹ FTC, Fair Information Practice Principles, *available at* <https://www.ftc.gov/reports/privacy-online-fair-information-practices-electronic-marketplace-federal-trade-commission>

market additional products or promotions, or external, such as the transfer of information to third parties.

In order to be effective, any choice regime should provide a simple and easily-accessible way for consumers to exercise their choices.

(3) Access/Participation

This refers to an individual's ability both to access data about him or herself – *i.e.*, to view the data in an entity's files – and to contest that data's accuracy and completeness.

(4) Integrity/Security

To assure data integrity, companies must take reasonable steps, such as using only reputable sources of data and cross-referencing data against multiple sources, providing consumer access to data, and destroying untimely data or converting it to anonymous form. Security involves both managerial and technical measures to protect against loss and the unauthorized access, destruction, use, or disclosure of the data.

(5) Enforcement/Redress

The core principles of privacy protection can only be effective if there is a mechanism in place to enforce them.

VI. Non-Bankruptcy Laws

The bankruptcy sale may proceed only if no applicable non-bankruptcy law has been violated. The Ombudsman believes no such law would be violated in this sale.

1. Unfair or Deceptive Practices

Section 5 of the Federal Trade Commission Act (FTCA), which prohibits “unfair or deceptive practices in or affecting commerce [.]”, the Children’s Online Privacy Protection Act (COPPA), and the Gramm-Leach-Bliley (GLB) Act, provide privacy protections for the PII of

consumers in the U.S. In this sale, the question may be posed as to whether the transfer of the Debtors' consumer records to the Buyer constitutes an unfair or deceptive business practice.

Section 5 of the FTCA prohibits "unfair or deceptive practices in or affecting commerce [.]” 15 U.S.C. § 45(a). "Unfair" practices are defined by the FTC as those that "cause[] or [are] likely to cause *substantial injury* to consumers which *is not reasonably avoidable* by consumers themselves and *not outweighed by countervailing benefits* to consumers or to competition" (15 U.S.C. Sec. 45(n)).¹⁰

"Unfair business practices" is an evolving concept reflecting the ingenuity of unscrupulous business persons in concocting new schemes to gain advantage at someone else's expense. The FTC has identified several factors to be considered in determining whether a practice is unfair. The injury must be substantial, outweigh any countervailing benefit to the consumer, and be one the consumer cannot reasonably avoid.

In this case, it appears there is no injury to consumers. Even if the Gander Mtn and Overton's privacy policy is read as "precluding" the transfer, the injury cannot meet the test for unfairness established by the FTC because any such perceived injury cannot be viewed as "substantial." While it is unclear what notice and consent regime the proposed Buyer intends to adopt in connection with this sale, if the Debtors' customers are provided appropriate notice of the sale, they can opt-out if they so choose. The Debtor has stipulated to providing such a notice.

The second prong of the test focuses on countervailing benefits to the consumer or competition. Because the sale would enable the Camping World to provide special offers to Gander Mtn and Overton's customers for their recreational interests, the sale could expand the opportunities available to them. Consumers may avoid contact with Camping World by initially

¹⁰ A Brief Overview of the Federal Trade Commission's Investigative and Law Enforcement Authority, Enforcement Authority, Consumer Protection, available at <http://www.ftc.gov/ogc/brfoprvw.shtml>.

or later opting out of any contact with the company. “ ‘Consumers may act to avoid injury before it occurs if they have reason to anticipate the impending harm and the means to avoid it, or they may seek to mitigate the damage afterward if they are aware of potential avenues toward that end.’ ” *Orkin* at 1365 (quoting *FTC v. Orkin Exterminating Co.*, 108 F.T.C. 341, 366 (1986)). Customers may unsubscribe from receiving future Camping World e-mails or mailings at any time by following the unsubscribe link at the bottom of an e-mail or following the opt-out process.

2. Financial Information and Payment Card Numbers

Federal law protects financial information, including payment (credit and debit) card numbers, and provides certain requirements for providing notice of an organization’s privacy policy and an opportunity for consumers to opt-out of changes to that policy.

Gander Mtn and Overton’s did not collect or process customer financial data. Third party service providers handled payment card transactions. Since this case does not involve the sale of customer payment card or financial information, any changes to the Gander Mtn and Overton’s privacy policy, if they were to occur, should not be an issue under GLB.

3. Children’s Online Privacy Protection Act (COPPA)

COPPA prohibits unfair or deceptive acts or practices in connection with the collection, use, or disclosure of PII from or about children under age 13 obtained on the Internet. The Gander Mtn and Overton’s Privacy Policy and Terms of Use affirm that the company did not knowingly collect information from children on the Internet:

Privacy Policy – Children

Our Sites are not directed nor targeted to children under the age of thirteen. We do not use the Site to knowingly solicit data from or market to children under the age of thirteen. If you are under the age of thirteen, do not provide us with any personal information. If we

learn that someone under thirteen has provided personally identifiable information to our Sites, we will use reasonable efforts to remove such information from our databases.

Terms of Use – Minors

Our Sites are not intended for children or minors under the age of thirteen years without the permission of a parent or guardian. In addition, you must be at least eighteen years of age to make a purchase on any of our Sites.

There is no evidence that Gander Mtn and Overton's was not in compliance with the requirements of COPPA.

4. State Laws

Nearly all states have enacted "little FTC" statutes that appear to predicate standing to maintain a private action on actual injury resulting from the alleged offending business practice. In general, harm is a core requirement of these statutes. While it is unclear what notice and consent regime the proposed Buyer intends to adopt in connection with this sale, because the sale of consumer records to the Buyer are not likely to result in harm to consumers, (including because the prospective Buyer is engaged in substantially the same line of business, and plans to operate out of the same retail outlets and online shopping sites), these laws cannot act as a bar to this sale.

5. Data Breach Notification Laws and Data Protection Provisions

Forty eight (48) states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have enacted data breach notification laws that require any business in possession of certain sensitive personal information about a covered individual to disclose any breach of that information to the person(s) affected

A number of states require that companies and government entities that maintain certain personal information of state residents take steps to protect against data breaches through data

security measures, as well as secure disposal of personal information. Examples of states with specific security requirements include:

- **California** – Data custodians must implement reasonable security procedures and practices.
- **Florida** – Requires “reasonable measures to protect and secure data in electronic form containing personal information.”
- **Massachusetts** – Businesses must develop a comprehensive information security program.
- **Maryland** – Requires reasonable security procedures.
- **Nevada** – Covers any personal customer information and requires businesses to encrypt all transmissions. Mandates PCI DSS compliance for card processors.
- **Texas** – Businesses shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business.

The proposed Buyer has agreed to follow applicable state laws in this case.

6. Data Disposal Laws

Following the sale and closing in this case, the Debtors may need to destroy, dispose of, or otherwise make personal information unreadable or undecipherable, in order to protect the privacy of the individuals who were Gander Mtn and Overton’s customers. At least 29 states have laws that govern the disposal of personal data held by businesses.¹¹ The Debtors must use professionally acceptable means to delete the sensitive personal data of any customer who opts-out of the sale.

¹¹ See NCLS Data Disposal Laws, available at <http://www.ncsl.org/research/telecommunications-and-information-technology/data-disposal-laws.aspx>.

VII. Conclusion

The Ombudsman understands that the proposed Buyer is in the process of determining how its new business will be structured. As decisions are made in the coming weeks about how notice of the bankruptcy sale will be given to the Debtors' customers and what amendments will be made to the Debtors' privacy policy, the Court should be advised so that transparency is maintained and appropriate protection of the privacy interests of Debtors' customers is ensured.

As stated earlier, the Court should identify and implement a process to ensure that an appropriate notice of the sale is developed and sent to Debtors' customers and is placed conspicuously on available websites of the business entities involved in this sale and that any amendments to the Debtors' privacy policy comply with applicable laws and fair information practice principles (discussed in section V of this Report).

In conclusion, the issues related to the sale of the personally identifiable Gander Mtn and Overton's consumer records required under sections 332 and 363 of the Bankruptcy Code have been addressed and are presented in this CPO Report for consideration by the Court. The CPO was appointed on March 16, 2017, and a hearing is scheduled for May 3, 2017.

The Ombudsman stands ready to provide whatever further analysis or recommendations as the Court deems appropriate.

Respectfully submitted,

/s/ Lucy L. Thomson

Lucy L. Thomson
Consumer Privacy Ombudsman

APPENDIX A

Privacy Policy

GanderMountain.com; Overtons.com; OvertonsOutdoors.com

<http://www.gandermountain.com/help-center/privacy.shtml>

This Privacy Policy (this "Policy") explains how **Gander Mountain**, Overton's, and other members of the **Gander Mountain** family of businesses (collectively, "the Gander Mountain family of businesses," "we," "us," and "our") protect your privacy when you use the following Web sites (our "Sites"):

GanderMountain.com
Overtons.com
OvertonsOutdoors.com

Gander Mountain Company ("Gander Mountain") owns the Site located at GanderMountain.com. Overton's, Inc. ("Overton's") owns the Sites located at Overtons.com and OvertonsOutdoors.com. Consumers Marine Electronics, Inc. ("Consumers Marine") owns the Site located at ConsumerMarine.com. When we wish to describe how one particular Site uses or shares information you submit to it, we will do so by describing how the "Owner" of the Site uses or shares your information.

This Policy covers the "personal information" we collect through our Sites. "Personal information" is information that identifies you personally, either alone or in combination with other information available to us. Examples of personal information include your name, address, e-mail address, telephone number, and the information you provide when you request a catalog, subscribe to a newsletter, or make a purchase at one of our online stores.

The terms "you" and "your," when used in this Policy, mean any user of our Sites.

This Policy is part of the Terms and Conditions that govern your use of our Sites. To review our Terms and Conditions, [click here](#)

Your Consent to This Policy

Please take a few minutes to review this Policy. By accessing or using our Sites, you are agreeing to the terms of this Policy. IF YOU DO NOT AGREE TO THE COLLECTION, USE AND DISCLOSURE OF YOUR PERSONAL INFORMATION AS SET FORTH IN THIS POLICY, PLEASE EXIT AND DO NOT USE OUR SITES.

Changes to This Policy

As we add new features and functionality to our Sites, we may need to update or revise this Policy. We reserve the right to do so, at any time and without prior notice, by posting the revised version on our Sites. These changes will be effective as of the date we post the revised version on our Sites. They will apply only to the personal information we collect after we have posted the revised version. Your use of one of our Sites following any such change constitutes your consent to the terms of the revised Policy. For this reason, it is important to review this Policy regularly. If we modify this Policy, we will provide a notice at the top of this Policy for at least thirty days after the new effective date.

You may access the current version of this Policy at any time by clicking on the link marked "Privacy Policy" at the bottom of each page of our Sites.

Privacy Notices

This Policy may be supplemented or amended from time to time by privacy notices ("Privacy Notices") provided at the time we collect your personal information. For example, certain pages of our Sites may contain Privacy Notices providing details about the personal information we collect on those pages, why we need that information, and choices you may have about the ways we use that information. Our Privacy

Notices are part of this Policy.

Country-Specific Notices

Privacy requirements vary from country to country. To meet these requirements we may include certain "country-specific notices" as part of this Policy. If any of the terms of a country-specific notice are different than the general terms of this Policy, the terms of the country-specific notice will supplement or amend this Policy, but only to the extent that the laws of that country apply to the collection of personal information through our Sites.

What Personal Information Do We Collect When You Use Our Sites?

Information You Provide. We collect the personal information you knowingly provide (using your mouse and keyboard) when you use our Sites. The information we collect depends on how you use our Sites. For example:

If you sign up to receive e-mail communications from us, we collect your name and e-mail address and any related information you provide.

If you make a purchase at one of our online stores, we collect the information you submit when you place your order, including your credit card and shipping information. If you ship an item to another person, we collect the information you provide about that person, such as his/her name, address and other contact information.

If you participate in one of our sweepstakes, we collect the information you submit to enter the sweepstakes.

If you upload photographs, comments or other user generated content ("User Generated Content") to our Sites, including to any "Bragging Board," we collect that information also. All User Generated Content you upload to our Site must comply with our Terms and Conditions.

Information Sent to Us by Your Web Browser. We collect information that is sent to us automatically by your Web browser. This information typically includes your IP address, the name and version of your operating system, the name and version of your browser, the date and time of your visit, and the pages you visit. Please check your browser if you want to learn what information your browser sends or how to change your settings.

This information does not identify you personally. Generally, we use this information to improve our Site and make it more compatible with the technology used by our visitors. In most cases, we do not link the information sent by your browser to information that identifies you personally. However, if you have created a user identity, for example, by signing up to use a password-protected area of our Sites, we may link your IP address to information that identifies you personally. We may also link your IP address to personally identifiable information you submit in placing an order. In addition, when you access our Sites by clicking on a link in an e-mail or other electronic communication you receive from us, your browser tells us that someone has clicked on a particular link in a communication addressed to you. We collect that information to improve the effectiveness of our marketing efforts. We may also review our server logs—which contain visitors' IP addresses—for security purposes, such as detecting intrusions into our network. If we suspect criminal activity, we may share our server logs with the appropriate investigative authorities who could use that information to trace and identify individuals.

Cookies and Similar Technologies. We use "cookies" and other Web technologies to collect information and support certain features of our Sites. For example, we may use these technologies to collect information about the ways visitors use our Sites—which pages they visit, which links they use, and how long they stay on each page; to support the features and functionality of our Sites—for example, to track the items in your shopping cart; to save you the trouble of reentering information already in our database; and to prompt the settings you established on previous visits to our Sites; and to personalize your experience when you use our Sites.

Generally, the information we collect using these Web technologies does not identify you personally. If, however, you have created a user identity, for example, by signing up to use a password-protected area of our Sites, we may link this information we collect using Web technologies to other information that identifies you personally.

If you do not wish to receive cookies, you may set your browser to reject cookies or to alert you when a cookie is placed on your computer. You may also delete our cookies as soon as you leave our Sites. Although you are not required to accept our cookies when you visit our Sites, if you set your browser to reject cookies, you will not be able to use all of the features and functionality of our Sites.

Supplemental Information. From time to time, we may supplement the information you give us with information from other sources, such as information validating your address or demographic information based on your zip code. We may also supplement the information you give us with information we collect from you through other channels. For example, if you shop at one of our stores, we may supplement the information you provide online with information we collect at the store.

How Do We Use Your Personal Information?

- Generally, we use the personal information we collect through our Sites
- to provide the information, products and services you request;
- for security, credit or fraud prevention purposes;
- to provide you with effective customer service;
- to provide you with a personalized experience when you use our Sites;
- to contact you with special offers and other information we believe will be of interest to you;
- to contact you with information and notices related to your use of our Sites;
- to invite you to participate in surveys and provide feedback to us;
- to better understand your needs and interests;
- to improve the content, functionality and usability of our Sites;
- to improve our products and services;
- to improve our marketing and promotional efforts; and
- for any other purpose identified in an applicable Privacy Notice, Country-Specific Notice, or other agreement between you and us

Direct Marketing. Before we use or share your personal information for direct marketing purposes, we may offer you the opportunity to “opt out” or “opt in,” as required by applicable law. To learn more about the choices you have about the ways we use your personal information, please [click here](#).

Shipping Information If you ship an item to another person, we collect the personal information you provide about him or her and will use that information just as we use your personal information, subject to international restrictions on the use of personal information. For example, we may add that person to our catalog mailing list. If that person does not wish to receive catalogs or other promotional communications from us, he or she may contact us using the contact information provided in the catalog, on each electronic communication or on our Sites.

Employment Information. Some of our Sites include “careers” areas. When you use our Sites to search for job openings or submit an online employment application, we may ask you to provide certain personal information, such as your name, address, telephone number, e-mail address, educational background and employment history. You may also send us your resume and other information relating to your job search or application. We use the information you submit on the careers areas of our Sites for recruiting,

hiring, and employment purposes, we do not use it for direct marketing purposes. More specifically, we use the information we collect through the “careers” areas of our Sites:

- to respond to your searches and inquiries;
- to process your job application and evaluate your qualifications;
- to contact you regarding your application, for example, to arrange an interview;
- to contact you with information about other employment opportunities we believe will be of interest to you;
- to maintain our recruitment, applicant, and employee records;
- to comply with applicable laws, such as equal opportunity laws; and
- to improve our recruiting, hiring, and employment practices

Please note that by submitting personal information to us through the careers area of one of our Sites, you authorize us to transmit and store your information in our recruitment database and to circulate that information within the **Gander Mountain** family of businesses for the purpose of evaluating your qualifications for job vacancies. We may also use this information in contacting references you provide or to obtain a consumer report regarding your criminal record and other records. If you are hired by one of us, the information you provide during the recruiting process will become part of our employee records and may be used to “populate” or “pre-fill” data fields on password-protected sites used for human resource purposes, such as employee benefit administration sites. The careers areas of our Sites may be “powered” by a third-party service provider.

With Whom Do We Share Your Personal Information?

Service Providers. We may share personal information collected through our Sites with companies and organizations that perform services on our behalf, for example, companies that provide support services to us (such as credit card verification services, online recruiting services, and Web hosting services) or that help us market our products and services (such as third-party web analytics firms and marketing consultants).

With Other Members of the Gander Mountain Family of Businesses. When you provide personal information through one of our Sites, the Owner of that Site may share your personal information with other members of the Gander Mountain family of businesses. Before doing so, however, the Owner of the Site may offer you the opportunity to “opt out” or “opt in,” as required by applicable law. Every member of the Gander Mountain family of businesses is required to handle information collected through our Sites in accordance with this Policy and the privacy preferences you have expressed to us. Accordingly, if we share your personal information with other members of the Gander Mountain family of businesses, they will use your information only as permitted under this Policy and will honor the privacy preferences you have expressed to us.

With Carefully Selected Third Parties. From time to time, we may share our mailing lists with carefully selected third parties (outside the Gander Mountain family of businesses) for their own marketing purposes. For example, we exchange our catalog mailing lists with other catalog companies. Before doing so, however, we may offer you the opportunity to “opt out” or “opt in,” as required by applicable law.

User Generated Content. Some of our Sites feature “Bragging Boards” or “Get Recognized” boards (collectively “Photo Boards”), which are designed to showcase your outdoor pursuits by allowing you to upload User Generated Content such as photographs (and text describing the photographs). The User Generated Content on these Photo Boards is accessible to visitors of our Sites and to the general public. In addition, we may repurpose User Generated Content you post to Photo Boards for use in advertising campaigns and other promotions. You should have no expectation of privacy with respect to the User Generated Content you or others submit to the Photo Boards. You should not post any User Generated Content on the Photo Boards you do not wish to make available to the general public, and you must take

special care to make sure your posts comply with our Terms and Conditions. In particular, your posts must not violate the privacy or other rights of others. If, at any time, you wish us to take down User Generated Content that contains your personal information, please contact us and we will work with you to remove the User Generated Content from our Photo Boards. Please be aware, however, that if the User Generated Content has already been distributed to other Web sites or published in other media, we will not be able to recapture and delete it.

Business Transactions. We may decide, for strategic or other reasons, to sell, buy, merge or otherwise reorganize one or more of our businesses. A transaction of this type may involve the disclosure of personal information to prospective purchasers. In such cases, we will take reasonable measures to protect the personal information we disclose, for example, by requiring the prospective purchaser to sign a non-disclosure agreement limiting the use and protecting the confidentiality of the personal information.

Compliance With Laws and Protection of Our Rights and the Rights of Others. We may disclose personal information when we, in good faith, believe disclosure is appropriate to comply with the law, a court order or a subpoena. We may also disclose personal information to prevent or investigate a possible crime, such as fraud or identity theft; to enforce or apply our online Terms and Conditions or other agreements; or to protect our own rights or property or the rights, property or safety of our users or others.

As Described in a Privacy Notice. We reserve the right to disclose your personal information as described in any Privacy Notice posted on the Web page where you provide that information. By providing your personal information on that Web page you will be consenting to the disclosure of your personal information as described in that Privacy Notice.

As Described in a Country-Specific Notice. We reserve the right to disclose your personal information as described in any Country-Specific Notice posted on the Web page where you provide that information. By providing your personal information on that Web page you will be consenting to the disclosure of your personal information as described in that Country-Specific Notice.

As Described in a Click-Through Agreement. We reserve the right to disclose your personal information as described in any click-through agreement to which you have agreed.

Your Choices

In General. We respect your right to make choices about the ways we collect, use and disclose your personal information. In most cases, we will ask you to indicate your choices at the time we collect your personal information.

Direct Marketing. Before we share your information with affiliates or third parties for their direct marketing purposes, we may offer you the opportunity to choose (by "opting out" or "opting in," depending on applicable law) whether to have your information shared in this way. In addition, the Owner of a Site to which you submit information may, depending on applicable law, offer you an opportunity to choose (by "opting out") whether to have your information used for that Site's own direct marketing purposes. We will also include an "opt out" link in each electronic newsletter or promotional e-mail we send you, so that you can inform us that you do not wish to receive such communications from us in the future.

Previously Expressed Preferences. You may change previously expressed preferences regarding how we use and share your personal information. If at any time you wish to be taken off our mailing lists, please contact us. Please provide your full name, postal address and e-mail address so that we can find you on our mailing lists. You may ask to be removed from our catalog mailing lists and/or to be removed from our general direct marketing mailing lists. Once we have the information we need, we will remove you from our catalog and/or general direct marketing mailing lists as you have requested. Please give us a reasonable amount of time to honor your request.

Likewise, if at any time you decide you do not want us to share your personal information with third parties for their direct marketing purposes, please contact us. Please provide your full name, postal address and e-mail address so that we can find you on our mailing lists. Please give us a reasonable

amount of time to honor your request. Even if we add you to our “do not share” lists, you may still receive information, catalogs and offers from third parties with whom we shared your information before we processed your request. If this happens to you, please contact the third party directly and ask to be removed from its mailing lists.

How Can You Access, Update or Correct Your Personal Information?

Some of our Sites have links that permit you to manage your subscriptions or access and update some of your personal information. In most cases, however, you will need our help. If you wish to access, update or correct your personal information, please contact us. We will respond to you within a reasonable time and, in any case, within the time limits established by applicable law. We may ask you for additional information to verify your identity. In most cases, we will provide access and correct or delete any inaccurate information you discover. In some cases, however, we may limit or deny your request if the law permits or requires us to do so or if we are unable to verify your identity.

Security

How Do We Protect Personal Information? We take reasonable precautions to provide a level of security appropriate to the sensitivity of the personal information we collect. For example, we use SSL encryption to protect your credit card information as it travels over the Internet. Although we use reasonable measures to help protect your personal information against unauthorized use or disclosure, we cannot guarantee the security of information provided over the Internet or stored in our databases.

Password Protected Areas of Our Sites. For your protection, certain areas of our Sites may be password protected. You are responsible for maintaining the confidentiality of your passwords. We have the right to assume that anyone accessing our Sites using a password assigned to you has the right to do so. You will be solely responsible for the activities of anyone accessing our Sites using a password assigned to you, even if the individual is not, in fact, authorized by you. If you have reason to believe that your password has been compromised or used without authorization, you must promptly change it using the functionality provided on our Sites.

Information Collected by Web Analytics Firms and Marketing Consultants

From time to time, we may use third-party Web analytics firms and marketing consultants to collect information that will help us understand the needs and interests of our visitors; improve the content, functionality and usability of our Sites; and improve the effectiveness of our advertising and marketing efforts. We may permit these companies to use Web beacons, cookies and other Web technologies to count and track visitors to our Sites. Using standard Web technologies, these companies can track what links our visitors use, what pages they view, and other information about the ways our visitors use our Sites. This information does not identify you personally and is not combined with information that identifies you personally. If you do not wish to receive cookies, you may set your browser to reject cookies or to alert you when a cookie is placed on your computer. You may also delete our cookies as soon as you leave our Sites. Although you are not required to accept our cookies when you visit our Sites, if you set your browser to reject cookies, you will not be able to use all of the features and functionality of our Sites.

Links to and from Other Web Sites

Links to Other Sites Operated by Members of the Gander Mountain Family of Businesses. Our Sites contain links to Web sites operated by other members of the Gander Mountain family of businesses. If you visit another of our Web sites take a minute to review the privacy policy. GanderMountain.com, Overtons.com, ConsumersMarine.com, and OvertonsOutdoors.com are all governed by this Policy; our other Web sites have their own privacy policies.

Ratings and Reviews. Some of our Sites permit visitors to rate and post reviews of the products offered for sale on those Sites. The rating and review functionality may be “powered by” a third party. This means that if you click on “write a review,” you will be transferred directly to a custom Web site operated by that third party. The third party’s site is governed by its terms of use and privacy policy. The third party’s privacy policy describes what information is collected by it when you rate or review a product, how the third party uses that information, and with whom the third party shares that information. We receive some

of the information collected through the rating and review functionality on our Sites.

Site Feedback Surveys. Some of our Sites permit visitors to provide feedback regarding our stores, products, and services by taking surveys. The surveys may be “powered by” a third party. This means that if you click on “Store Feedback Survey,” you will be transferred directly to a custom Web site operated by that third party. The Web site is governed by the third party’s terms of use and privacy policy. The third party’s privacy policy describes what information it collects when you take a survey, how the third party uses that information, and with whom the third party shares that information. We receive some of the information collected through the surveys.

Personalized Gift Cards. Some of our Sites permit visitors to personalize gift cards by uploading photographs or other content. This functionality may be “powered by” a third party. This means that if you personalize a gift card, you will be transferred directly to a custom Web site operated by that third party. The third party’s site is governed by its terms of use and privacy policy. The third party’s privacy policy describes what information is collected by it when you personalize a gift card, how the third party uses that information, and with whom the third party shares that information. We receive some of the information collected by this third party.

Social Media Sites. Some of our Sites contain links to social media sites such as Facebook and Twitter. For example, some of our Sites contain links to Facebook fan pages for members of the Gander Mountain family of businesses. Facebook and Twitter and other social media sites are governed by their own terms of use and privacy policies, which you should review. You should have no expectation of privacy with respect to material you or others submit to social media sites such as Facebook and Twitter. You should not post to those sites any material you do not wish to make permanently available to the general public, and you must take special care to make sure your postings do not violate the privacy or other rights of others.

Links to Other Third-Party Sites. Our Sites also contain links to Web sites operated by third parties other than those identified above. For example, some of our Sites link to third-party sites where you can apply for a credit card or insurance coverage. Some of our Sites also link to third-party sites where you can enter sweepstakes contests. Like Facebook and Twitter and the sites that power our ratings and reviews functionality and our feedback surveys, these third-party Web sites are governed by the third party’s terms of use and privacy policies. Before you use any third-party Web site, you should take a few minutes to review the applicable terms of use and privacy policy.

Children

Our Sites are not directed nor targeted to children under the age of thirteen. We do not use the Site to knowingly solicit data from or market to children under the age of thirteen. If you are under the age of thirteen, do not provide us with any personal information. If we learn that someone under thirteen has provided personally identifiable information to our Sites, we will use reasonable efforts to remove such information from our databases.

Information for Visitors Accessing Our Sites from Outside the United States

Gander Mountain, Overton’s and Consumers Marine are U.S. corporations headquartered in the United States. Our Sites are currently hosted on servers located in the United States, although we reserve the right to relocate our Sites to other servers elsewhere in the world. Your personal information may be stored on servers located within the United States or in another country. In addition, we may transfer your personal information to our service providers and others located in the United States or another country for the purposes described in this Policy. Different countries have different privacy laws and requirements, and some provide less legal protection for your personal information than others. Please know, however, that no matter where your personal information is collected, used, transferred or stored, if it was collected through this Policy, it will be protected by the terms of this Policy and any Privacy Notices, Country-Specific Notices or other agreements that apply to you.

BY USING THIS WEB SITE, YOU ARE CONSENTING TO THE COLLECTION, USE, AND TRANSFER OF YOUR PERSONAL INFORMATION IN OR TO THE UNITED STATES OR TO ANY OTHER

COUNTRY IN THE WORLD SUBJECT TO THE TERMS OF THIS POLICY

Governing Law

This Policy is part of our Terms and Conditions and, as such, shall be governed under the laws of the State of Minnesota, United States of America, without regard to its conflicts of law provisions.