

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TOYS "R" US (CANADA) LTD. /
TOYS "R" US (CANADA) LTEE (the "Applicant")**

AIDE-MEMOIRE OF THE APPLICANT

June 21, 2026

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1. This aide-memoire is filed by Toys “R” Us (Canada) Ltd. / Toys “R” Us (Canada) Ltee (the “**Applicant**”) to provide an update on the relief sought by the Applicant and to identify the issues that remain contested and those that do not.

2. Subject to the three discrete issues described below, the Applicant understands that the relief sought on its motion returnable on June 22, 2026 is not otherwise contested. In particular, the Applicant understands that there is no opposition to:

- (a) the approval of the AP Transaction and the issuance of the AP AVO;
- (b) the approval of the Fox Jumbo Transaction and the issuance of the Fox Jumbo AVO;
- (c) the approval of the 262 Transaction and the issuance of the 262 AVO, subject only to the limited issue raised by msi Spergel inc., in its capacity as the Court-appointed receiver and trustee in bankruptcy of 1322297 Ontario Inc. o/a Everest (in such capacities, the “**Everest Trustee**”), an unsecured creditor, as described below;
- (d) the extension of the Stay Period to and including August 31, 2026;
- (e) the approval of the Monitor’s Pre-Filing Report, First Report, Second Report, Third Report, Related Party Transactions Report, and the conduct and activities of the Monitor described therein; and
- (f) the sealing relief sought in respect of the confidential appendices to the Monitor’s Third Report.

3. The three discrete issues are:

- (a) the Everest Trustee opposes the approval of the 262 Transaction on the basis that the 262 Agreement releases, compromises or otherwise prejudices claims or causes of action owned by the Everest Trustee or creditors of Everest against the directors and officers of the Applicant;
- (b) Allied World Specialty Insurance Company (“**AWAC**”) opposes the proposed distributions from the proceeds of the Fox Jumbo Transaction to 2625229 Ontario Inc. (“**262Co**”), as DIP Lender, and the proposed distributions from the AP Transaction to 1001485743 Ontario Inc. (“**1001Co**”), as secured creditor over the IP assets; and
- (c) Dorval Crossing West Holdings Inc. and Malcolm J. Conrad and Lisa Kerkowich (collectively, the “**Third-Party Stakeholders**”), have requested clarifying language, by way of Court endorsement, confirming that their claims against the Applicant and/or its directors and officers are not being released or compromised by the 262 Transaction.

Applicant’s Response to the Everest Trustee

4. The 262 Transaction does not transfer claims or causes of action owned by the Everest Trustee or any creditor. The Applicant can only convey property and claims that it owns. Any rights or remedies that the Everest Trustee may have exist independently of these proceedings, are not assets of the Applicant and are not being sold, transferred, released or compromised by the 262 Transaction.

5. The inclusion of claims in asset purchase agreements is commonplace. The claims are assets, all of which are subject to the DIP Lender's Charge and other secured claims. In this case, as set out in the Monitor's Third Report, the value of the inventory and other working capital assets is many millions less than the DIP Loan. The Monitor carried out the SISP in accordance with the SISP Order and no other party made a meaningful offer to acquire these assets. Any claims would otherwise be subject to the DIP Lender's Charge.

6. The Everest Trustee raises concerns about potential preference claims and/or transfers at undervalue. Such claims would not belong to the Everest Trustee (or any particular creditor). Importantly, such claims are not assets of the Applicant. Any such preference claims and/or transfer at undervalue claims are statutory claims that would belong to the trustee of the Applicant's estate. As this Court held in *Trindent*, following Justice Morawetz's decision in *Tucker v. Aero Inventory (UK) Limited*:

... [a] trustee's ability to pursue assets from third parties as preferences or transfers at undervalue under ss. 95 and 96 are not assets of the debtor or the bankrupt estate. Rather, these are statutory remedies available to a trustee under Canadian law.¹

7. Accordingly, the 262 Transaction will not preclude or foreclose the interest of the Everest Trustee – or any other creditor – in any properly advanced claim for an alleged preference and/or transfer at undervalue by the estate of the Applicant.

8. The 262 Transaction should, therefore, be approved by this Court without a “carve-out” for undefined claims “in relation to” the matters raised by the Everest Trustee. Such language is

¹ *Trindent Consulting International Inc. et al.*, [2025 ONSC 3353](#) at [para 41](#), citing *Tucker v. Aero Inventory (UK) Limited*, [2011 ONSC 4223](#) at [paras 137-138](#).

unnecessary and would create ambiguity over claims and causes of action that are properly assets of the Applicant and form part of the Purchased Assets under the 262 Agreement.

Applicant's Response to AWAC

9. The Stay and Distribution Order provides for the following distributions (the “**Proposed Distributions**”):

- (a) from the Fox Jumbo Transaction proceeds: first, to satisfy amounts payable under the Administration Charge; and second, to 262Co in partial satisfaction of amounts owing under the DIP Loan Agreement and secured by the DIP Lender's Charge; and
- (b) from the AP Transaction proceeds: first, to satisfy amounts payable under the Administration Charge; and second, to 1001Co in partial satisfaction of amounts owing under the Secured IP Claim.

10. AWAC's position is that the Proposed Distributions should not be made before any alleged transfer at undervalue or preference is determined on a final basis.

11. AWAC has not identified any right or claim to the specific proceeds proposed to be distributed, nor any issue with respect to the DIP Facility or the Secured IP Claim (each as defined in the Third Report), that would justify the deferral of the Proposed Distributions that are otherwise supported by the evidence and the lien priority structure. The DIP Facility is secured by the DIP Lender's Charge, which has a first-ranking interest in respect of all of the Property, including all proceeds from the proposed transactions, pursuant to the ARIO issued by this Court. The Monitor

obtained a written opinion from its independent counsel that, subject to the usual assumptions and qualifications, the Secured IP Claim constitutes valid and enforceable security.

12. AWAC also suggests that each of 262Co and 1001Co may be a “person who is privy” (as defined in the BIA) to potential claims for preferences and/or transfers at undervalue and, for this reason, the Proposed Distributions should not be approved. This position cannot be sustained. First, AWAC highlights that the parties are related – which relationship has been fully disclosed – without specifying what benefits 262Co or 1001Co may have received from transactions subject to any such claims. Second, the distributions that AWAC seeks to “lock up” are proceeds that are completely unrelated such transactions. Rather, the Proposed Distributions are in respect of the partial repayment of amounts that 262Co advanced as DIP Lender to fund these proceedings, including the advancement of the Related Party Transactions Report, and the partial repayment of amounts outstanding to 1001Co under its Secured IP Claim – funds that would not be available to unsecured creditors in any event. AWAC is effectively seeking to elevate its status to that of a secured creditor, with the Proposed Distributions being segregated and becoming cash collateral available for enforcement and collection before judgement on unspecified and unsecured claims, contrary to the clear priorities established by Court order and statute.

13. AWAC suggests there is no prejudice to delaying the Proposed Distributions, without considering the additional time and significant cost that any transfer at undervalue or preference litigation would entail.

14. The Proposed Distributions will not preclude or foreclose the rights of AWAC or any other stakeholders with respect to any potential claims for alleged preferences and/or transfers at undervalue. As noted above, it is settled law that potential statutory remedies for preferences or

transfers at undervalue are not property of the Applicant but, rather, statutory remedies available to a trustee in bankruptcy if the statutory requirements are met.

Applicant's Response to the Third-Party Stakeholders

15. The Third-Party Stakeholders have enquired about the scope of claims being sold by the 262 Agreement and have requested clarifying language, by way of endorsement, confirming that their claims against the Applicant and/or its directors and officers are not being released or compromised by the 262 Transaction.

16. The Purchased Assets under the 262 Transaction include, among other things, “any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever of the Vendor, whether known or unknown.”

17. The claims and causes of action of these Third Party Stakeholders are not assets of the Applicant, and the 262 Transaction does not affect free-standing claims and causes of action of creditors or third parties against the Applicant's directors and officers. The approval of the 262 Agreement does not operate as a release of claims against the Applicant or its directors or officers. No clarifying language is necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of June, 2026.



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Court File No. CL-26-00000042-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

**AIDE-MEMOIRE OF THE APPLICANT
(Returnable June 22, 2026)**

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