

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-050409-164

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C., c. C-36, as amended)

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

7098961 CANADA INC.,

Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Monitor

<p>APPLICATION FOR THE ISSUANCE OF AN AMENDED CLAIMS AND MEETING PROCEDURE ORDER (Sections 4, 5, 9, 10 and 11 of the <i>Companies' Creditors Arrangement Act</i>, R.S.C. 1985, c. C-36)</p>

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. On March 24, 2016, the Honourable Justice Martin Castonguay, J.S.C., issued an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc., the "**Company**" or the "**Petitioner**") as appears from the Court record.
2. Pursuant to the Initial Order, Richter Advisory Group Inc. (the "**Monitor**") was appointed as Monitor to the Company and a stay of proceedings (the "**Stay of Proceedings**") was issued from the date of the Initial Order until April 22, 2016 (the "**Stay Period**").

3. On April 20, 2016, the Stay of Proceedings was extended temporarily to April 25, 2016, and was extended again on several occasions, most recently, until July 18, 2016, as appears from the Court record.
4. On May 24, 2016, the Court issued (i) an Approval and Vesting Order (the "**Vesting Order**") authorizing the *Asset Purchase Agreement* executed by the Company with 9721444 Canada Inc. (the "**Purchaser**") for the sale of all or substantially all of the assets of the Company (the "**Sale**"), (ii) an order establishing a process for the treatment of claims against the Company and setting out the procedure for the calling and holding of a meeting of creditors to consider, and if deemed acceptable, approve a CCAA plan (the "**Plan**") (the "**Original C&M Procedure Order**"), and (iii) an order extending the Stay Period until July 18, 2016.
5. For the reasons set forth herein, the Company hereby seeks the issuance by this Court of the following orders:
 - a) an amended order establishing a process for the treatment of claims against the Company and setting out the procedure for the calling and holding of a meeting of creditors to consider, and if deemed acceptable, approve an amended CCAA plan (the "**Amended C&M Procedure Order**"); and
 - b) an order extending the Stay Period until August 5, 2016.

II. COMPLETION OF THE SALE AND AMENDMENT OF THE PLAN

6. Following the issuance of the Vesting Order, on May 25, 2016, the Company and the Purchaser completed the Sale, as evidenced by the Monitor's Certificate filed into the court record.
7. Thereafter, the Company, the Purchaser, the Monitor and the Company's primary payment processor, Paysafe Merchant Services Inc. and Paysafe Merchant Service Corp. (collectively, "**Paysafe**") developed a communication strategy to deal with the Company's customers that had placed orders prior to March 24, 2016 that had not been fulfilled and remain unfulfilled as well as customers that had received store credits prior to March 24, 2016 that had not been fulfilled and remain unfulfilled (the "**Pre-Filing Customers**").
8. In the course of these discussions, it became apparent that the CCAA plan that was filed on May 24, 2016 (the "**Original Plan**") and the C&M Procedure Order would need to be amended in order to:
 - (a) create a separate class for the Pre-Filing Customers; and
 - (b) provide a stream-lined and user-friendly process for the Pre-Filing Customers to file claims and vote on the plan.

9. Accordingly, the Company and the Purchaser, as plan sponsor, have amended the Original Plan (the "**Amended Plan**"), as appears from a copy of the Amended Plan communicated as **Exhibit R-1**.
10. A copy of the Amended Plan compared with the Original Plan is communicated as **Exhibit R-2**.
11. Given the Amended Plan, it is necessary that the C&M Procedure Order be amended. A copy of the Amended C&M Procedure Order is communicated as **Exhibit R-3**.
12. A copy of the Amended C&M Procedure Order compared with the Original C&M Procedure Order is communicated as **Exhibit R-4**.
13. In particular, in order to reduce the immense amount of time and cost associated with analyzing potentially thousands of claims from Pre-Filing Customers, and considering that the ultimate distribution to the Pre-Filing Customers will likely be marginal, the Amended Plan and the Amended C&M Procedure Order provide for:
 - (a) simplified communications to the Pre-Filing Customers with a link to a specific page on the Monitor's website;
 - (b) a simplified voting procedure via an on-line form controlled by the Monitor; and
 - (c) a choice of distribution to Pre-Filing Customers under the Amended Plan between \$5.00 paid by cheque or a \$15.00 credit to be issued by the Purchaser.
14. In addition, given the number of Pre-Filing Customers, as well as the large number of suppliers, the Amended C&M Procedure Order provides for publicity of the Amended Plan by way of press release rather than publication in local newspapers. The Amended C&M Procedure Order also facilitates the delivery of notices via email to the Company's known creditors.
15. Finally, the Amended C&M Procedure Order envisages a slightly modified timeline whereby the creditors' meetings will now take place on August 3, 2016 and the sanction hearing on August 5, 2016.
16. As a result of the foregoing, the Company hereby requests the issuance of:
 - a) the Amended C&M Procedure Order in order to submit the Amended Plan to its creditors and to the Court for approval; and
 - b) an extension of the Stay Period so that it can proceed with the claims process and creditors' meetings to vote on the Amended Plan in accordance with the revised timeline.

17. The Monitor supports this Application, as will appear from the Monitor's Report which shall be filed with this Court prior to the hearing on this Application.
18. It is in the best interest of the Petitioner and all of its stakeholders that the present Application be granted in accordance with its conclusions.
19. The Petitioner submits that the notices given of the presentation of the present Application are proper and sufficient.
20. The present Application is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

GRANT this *Application for the Issuance of an Amended Claims and Meeting Procedure Order* (the "**Application**");

ISSUE an order substantially in the form of the draft Amended Claims and Meeting Procedure Order communicated as Exhibit R-2;

EXTEND the Stay Period (as defined in the Application) until August 5, 2016;

THE WHOLE, without costs save in case of contestation.

MONTRÉAL, June 10, 2016

Stikeman Elliott LLP

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Our File: 137950-1006

NOTICE OF PRESENTATION

To: Service List

TAKE NOTICE that the *Application for the Issuance of an Amended Claims and Meeting Procedure Order* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting Commercial Division in and for the District of Montréal, at the Montréal Court House, 1 Notre-Dame Street East, Montréal, Quebec on June 13, 2016 at 2:00p.m., in room 15.09.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, June 10, 2016

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-and-

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<p>LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF AN AMENDED CLAIMS AND MEETING PROCEDURE ORDER</p>

- Exhibit R-1: Amended CCAA Plan
- Exhibit R-2: Blackline of Amended CCAA Plan
- Exhibit R-3: Draft Amended Claims and Meeting Procedure Order
- Exhibit R-4: Blackline of draft Amended Claims and Meeting Procedure Order

MONTRÉAL, June 10, 2016

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Proposed Monitor

BS0350

File: 137950-1006

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of the *Companies' Creditors Arrangement Act*, R.S.C.
1985, c. C-36) and LIST OF EXHIBITS and
EXHIBITS R-1 TO R-4

ORIGINAL

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