

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)

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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

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APPLICATION FOR THE ISSUANCE OF (I) A CLAIMS AND MEETING  
PROCEDURE ORDER, (II) AN ORDER APPROVING AN ASSET PURCHASE  
AGREEMENT AND (III) AN EXTENSION OF THE STAY OF PROCEEDINGS  
(Sections 4, 5, 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,  
c. C-36)

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 May 24, 2016, as appears from the Court record.
4. For the reasons set forth herein, the Company hereby seeks the issuance by this Court of the following orders:
  - a) 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 "**C&M Procedure Order**");
  - b) an approval and vesting order in connection with the immediate sale of all or substantially all of the assets of the Company to 9721444 Canada Inc. (the "**Approval and Vesting Order**"), the whole upon the terms and conditions set forth in the APA (as defined hereinafter); and
  - c) an order extending the Stay Period until July 18, 2016.

## II. RECENT DEVELOPMENTS

5. Following an expedited sale and solicitation process, which culminated in the acceptance by the Company of an offer for the restructuring of the Company's business and assets, on or around April 21, 2016, the Company filed a motion entitled *Application for the Issuance of (i) a Claims and Meeting Procedure Order (ii) an Order Approving an Asset Purchase Agreement and (iii) an Order Approving an Increase of the DIP Facility* (the "**Application for the Approval of the Sale and Other Relief**").
6. On or around April 22, 2016, the Monitor filed an *Application for Directions Pertaining to the Unauthorized Compensation of Cancelled Pre-Filing Orders by the Mis-en-Cause Credit Cards Settling Institutions* (as amended, the "**Application for Directions**"), relating to the compensation by the Payment Processors (as defined in the Initial Order) between (a) remittances owed to the Company of credit card payments relating to credit card sales made after the date of the Initial Order, and (b) amounts owed to the Payment Processors relating to cancelled credit card sales made before the date of the Initial Order, the whole as appears from the Court record.
7. On May 6, 2016, the Honourable Justice Pinsonnault issued a judgment on both the Application for the Approval of the Sale and Other Relief and on the Application for Directions (the "**Judgment**"), in which it dismissed the Application for the Approval of the Sale and Other Relief, as well as the Application for Directions, while extending the Stay Period to May 13, 2016, so as to allow the Company to properly react to the implications of the Judgment.
8. On May 13 and again on May 20, 2016, the Court extended the Stay Period so as to allow (i) the Company, 9523669 Canada Inc. (the "**DIP Lender**") and the Company's primary payment processor, Paysafe Merchant Services Inc. and

Paysafe Merchant Service Corp. (collectively, "Paysafe") to reach an agreement in connection with the operations of the Company going-forward, and (ii) the Company to finalize the sale of its assets.

9. As of this date, the Company, Paysafe, the DIP Lender and 9721444 Canada Inc. (the "Purchaser") have reached an agreement in connection with the issues related to customer orders. Pursuant to this agreement, all pre-filing orders will not be fulfilled. Additionally, such agreement will allow the Purchaser to, on a best efforts basis, fulfill a significant portion of the post-filing orders.
10. On May 23, 2016, the Company finalized and executed an *Asset Purchase Agreement* with the Purchaser for the sale of all or substantially all of the assets of the Company (the "APA"), as appears from a copy of the APA communicated under confidential seal as **Exhibit R-1**.

### III. THE SALE AND SOLICITATION PROCESS

11. As mentioned in the Application for the Approval of the Sale and Other Relief, immediately following the issuance of the Initial Order, the Company, with the Monitor's assistance, launched a sale and solicitation process for all or substantially all of the Company's business and/or assets (the "Sale Process"), which Sale Process is described in detail in the Application for the Approval of the Sale and Other Relief, as well as the First Report of the Monitor dated April 19, 2016.
12. The Monitor and the Petitioner, in consultation with their respective advisors, reviewed the offers that were submitted, and determined that the offer submitted by Gestion Optifer Inc. (as amended on April 21, 2016, the "Offer") was by far the best offer submitted to the Company and that its acceptance was in the best interest of both the Company and its stakeholders. Since this time, and in light of the Judgment and the agreement reached between the Company and its stakeholders, the terms of the Offer have been revised, as appears from a copy of the signed APA (Exhibit R-1).
13. More specifically, the Company and the Purchaser have agreed to implement the following restructuring transactions:
  - a) **Sale of Assets.** Shortly following the issuance of the Approval and Vesting order (if granted by the Court), the Purchaser shall acquire all or substantially all of the assets of the Company in consideration of the assumption of: i) the full amount owing under the Amended DIP Facility (as defined hereinafter) at closing, ii) a significant portion of the pre-filing senior secured facility held by the DIP Lender, and iii) the Company's obligations under certain contracts to be assumed by the Purchaser; and
  - b) **CCAA Plan.** The Company shall submit and the Purchaser shall sponsor the CCAA Plan (as defined hereinafter) pursuant to which any and all claims against the Company will be compromised in return for a distribution equal to a pro-rata share of a basket amount of \$310,000.

14. The amounts of secured debt to be assumed pursuant to the APA in consideration for the sale of all or substantially all of the Company's assets far exceeds the amount offered by any other bidder in the context of the Sale Process. Since the conclusion of the Sale Process, the Company has not received any further expressions of interest from prospective investors or purchasers.
15. It should also be noted that the APA is the only proposal received that provides some recovery beyond the amounts owed under the DIP Facility (as defined in the Initial Order), in addition, to some recovery for the Company's creditors generally. All other offers would have only benefited the DIP Lender.
16. The Company and the Purchaser have also finalized a Plan of Compromise under the CCAA (the "CCAA Plan"). A copy of the CCAA Plan is communicated as **Exhibit R-2**.
17. It is anticipated that the transactions contemplated in the APA will close within hours of the issuance of the C&M Procedure Order and the Approval and Vesting Order, and in this regard, the closing of the APA is conditional upon, *inter alia*, the issuance of an approval and vesting order made by this Court approving the sales and transactions contemplated therein free and clear of all liens.
18. The Petitioner submits that the sale of all or substantially all of its assets pursuant to the APA and the implementation of the CCAA Plan are fair and reasonable in the circumstances.
19. It is the opinion of both the Petitioner and the Monitor, that the transactions described herein are the best offers that the Petitioner can expect to receive in the current circumstances and following extensive sale efforts, in that the alternative is a liquidation, which would result in a significantly reduced recovery for the Company's stakeholders.
20. As a result of the foregoing, the Company hereby requests the issuance of:
  - a) the C&M Procedure Order in order to submit the CCAA Plan to its creditor and to the Court for approval;
  - b) the Approval and Vesting Order in order to proceed with the transactions contemplated in the APA; and
  - c) an extension of the Stay Period so that it can proceed with the claims process and creditors' meeting to vote on the CCAA Plan.

#### **IV. THE C&M PROCEDURE ORDER**

##### **A. Filing of the CCAA Plan**

21. The Company hereby requests authorization from this Court to file the CCAA Plan (Exhibit R-2) and related schedules and appendices provided that revised or

amended versions thereof may be filed with this Court and posted on the Monitor's website at <https://www.richter.ca/en/folder/insolvency-cases/0-9/7098961-canada-inc> (the "Monitor's Website").

22. The purpose of the CCAA Plan is to provide for a coordinated restructuring and compromise of the Petitioner's debt obligations and to reorganize and simplify the Petitioner's corporate and capital structure.
23. For the purpose of voting on and receiving distributions pursuant to the CCAA Plan, the Affected Creditors Class shall be the only class of Affected Claims, as set out in the Plan.
24. The treatment offered to the Affected Creditors and the terms and conditions of the Petitioner's liquidation and compromise pursuant to the CCAA, and its implementation, are detailed in the CCAA Plan.

**B. Claims Packages**

25. The C&M Procedure Order provides that the Monitor shall send a claims document package (the "Claims Package") to each Known Creditor as soon as possible and no later than May 27, 2016.
26. The Claims Package will include French and English versions of the following Schedules to the C&M Procedure Order (Exhibit R-3):
  - a) a copy of the Notice of the Claims Process (Schedule "B");
  - b) a copy of the Proof of Claim Form (Schedule "C"); and
  - c) a copy of the Creditors' Instructions (Schedule "D").
27. Moreover, pursuant to the C&M Procedure Order, the mailing of the Claims Package to known creditors will be supplemented by the placement, in widely distributed French and English-language newspapers, of the Notice of the Claims Process and Creditors Meetings, as well as the posting of the French and English versions of the Claims Package on the Monitor's website.

**C. Claims Bar Date**

28. As discussed above, the proposed C&M Procedure Order establishes the Claims Bar Date and outlines a procedure for the filing of Claims (including Restructuring Claims) against the Petitioner, its directors or officers. The Claims Bar Date does not apply to certain Claims designated as Excluded Claims which i) cannot be compromised under the CCAA, ii) relate to the sale of goods or the rendering of services after the filing of these CCAA proceedings or iii) are secured by CCAA Charges (as such term is defined in the Initial Order).

**D. Review and Determination of Claims**

29. The C&M Procedure Order provides for the review of all claims by the Monitor and the Petitioner and a determination on such claims by the Monitor.
30. It also provides that the Monitor shall send, where applicable, a Notice of Revision or Disallowance to the creditors whose claims are disallowed in whole or in part.
31. Upon receiving a Notice of Revision or Disallowance, a creditor whose claim has been disallowed in whole or in part will have the opportunity to file, within ten (10) calendar days from the receipt of the Notice of Revision or Disallowance, a motion before this Court to appeal said Notice of Revision or Disallowance, failing which, the creditor will be deemed to have accepted the Monitor's determination of its claim.

**E. The Creditors' Meeting**

32. The Petitioner also requests from this Court that it be authorized to convene, hold and conduct a meeting of the Affected Creditors on July 12, 2016, in Montreal, Québec (the "**Creditors' Meeting**"), to consider, and, if thought advisable, adopt a resolution approving the CCAA Plan, with or without variation (the "**Resolution**").
33. The Petitioner requests that the Petitioner and the Monitor be authorized to proceed, in accordance with the terms and proposed forms of documents set out in, and attached as Schedules to, the C&M Procedure Order, including, *inter alia*, in connection with (i) the publication and transmission of the applicable Meeting Materials, (ii) the filing of a Monitor's report on the CCAA Plan, (iii) the procedure to be followed at the Creditors' Meeting, (iv) the voting procedure, including the procedure for determining the Voting Claims, and (v) the notice of the Sanction Hearing (as defined below).
34. The Meeting Materials will include French and English versions of the following Schedules to the C&M Procedure Order (Exhibit R-3):
  - a) a copy of the Notice of the Creditors' Meeting (Schedule "E");
  - b) a copy of the CCAA Plan (Schedule "F");
  - c) a copy of the form of proxy for Creditors (Schedule "G"); and
  - d) a copy of the C&M Procedure Order (in English only) to be rendered by this Court, if deemed appropriate.

**F. The Sanction Hearing**

35. The Petitioner requests that this Court hold a hearing (the "**Sanction Hearing**") on or about July 18, 2016 to consider and if determined to be appropriate to grant the Sanction Order.

36. The Petitioner requests that this Court order that the publication and mailing by the Monitor of the notice of the Creditors' Meeting and the C&M Procedure constitutes good and sufficient service of notice of the Sanction Hearing upon all Persons who are entitled to receive such service and no other form of service need be made and no other materials need be served on such Persons in respect of the Sanction Hearing.
37. The Petitioner requests this Court to order that any Person intending to object to the motion seeking the Sanction Order shall (i) file with the Court, before 4:30 p.m. (Montréal Time) on July 15, 2016, a written notice containing a description of its proposed grounds of contestation and (ii) effect service of same, within the same delay, upon counsel to the Petitioner and the Monitor, and upon those Persons listed on the Service List.

**G. Proposed CCAA Timeline**

38. In view of the foregoing, the Petitioner proposes the following timeline:

Proposed Date (2016)	Event
May 27	Deadline for: <ul style="list-style-type: none"> <li>▪ Mailing the Claims Package and Meetings Materials to the Creditors;</li> <li>▪ Posting the Claims Package and Meetings Materials on Monitor's Website;</li> </ul>
May 27	Deadline for: <ul style="list-style-type: none"> <li>▪ Publicizing the Notice to Creditors (short form) regarding the Claims Process in the Designated Newspapers.</li> </ul>
July 8	Claims Bar Date for all Claims, excluding Restructuring Claims
July 8	Voting Record Date for Affected Creditors
July 8	Deadline for receiving Proxies at Monitor's office (Proxies may also be deposited with the Chair before the beginning of the Creditors' Meeting)
July 12	Creditors' Meeting
July 13	Filing in Court of the Motion for the issuance of a Sanction Order
July 13	Filing in Court the Monitor's Report on the results of the

	vote at the Creditors' Meetings
July 15	Deadline for Affected Creditors to file objection to Motion for Sanction Order
July 18	Hearing on the motion for the Sanction Order
By July 21	Implementation of the CCAA Plan

39. The Petitioner submits that it is appropriate for this Court to issue the C&M Procedure Order in accordance with the terms and conditions set out in the proposed draft thereof communicated as **Exhibit R-3**.

**V. THE APPROVAL AND VESTING ORDER**

40. The Company hereby request this Court's authorization to complete the transactions contemplated in the APA. As appears from the APA the transactions contemplated therein are subject to certain conditions including the issuance of the Approval and Vesting Order.

41. The Company respectfully submits that the issuance of the Approval and Vesting Order communicated as **Exhibit R-4**, will allow the Company to meet the conditions set forth in the APA, which is in the best interest of all of the Company's stakeholders. A copy of the draft Approval and Vesting Order compared with the model vesting order is communicated as **Exhibit R-4**.

**VI. THE EXTENSION ORDER**

42. The extension of the Stay Period is necessary in order to provide the Company and the Purchaser with the necessary delays to execute the APA, as well as allow the Monitor to run a claims process and hold the Creditors' Meeting.

43. In sum, the extension of the Stay Period will allow the Company to restructure its business and operations, the whole in the best interest of the Company and its stakeholders.

44. The Company is only requesting an extension of the Stay Period until the proposed Sanction Hearing, and in this regard, no creditor will suffer any undue prejudice by the extension of the Stay Period.

45. As such, the Company respectfully submits that it is appropriate, in the circumstances, to grant the present Application and order the extension of the Stay Period to July 18, 2016.

**VII. CONCLUSION**

46. The Petitioner submits that it is appropriate for this Court to issue the (i) C&M Procedure Order, (ii) Approval and Vesting Order and (iii) Extension of the Stay



Period Order, the whole so as to implement the transactions contemplated in by the Purchaser and the Company pursuant to the APA.

47. 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.
48. The Petitioner submits that the notices given of the presentation of the present Application are proper and sufficient.
49. The present Application is well founded in fact and in law.

**WHEREFORE, MAY THIS COURT:**

**GRANT** this *Application for the Issuance of (i) a Claims and Meeting Procedure Order, (ii) an Order Approving an Asset Purchase Agreement and (iii) an Order Extending the Stay of Proceedings* (the "**Application**");

**ISSUE** an order substantially in the form of the draft Claims and Meeting Procedure Order communicated as Exhibit R-3;

**ISSUE** an order substantially in the form of the draft Approval and Vesting Order communicated as Exhibit R-4;

**EXTEND** the Stay Period (as defined in the Application) until July 18, 2016;

**THE WHOLE**, without costs save in case of contestation.

MONTRÉAL, May 23, 2016

*Stikeman Elliott LLP*

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Attorneys for the Petitioner

**NOTICE OF PRESENTATION**

To: Service List

**TAKE NOTICE** that the *Application for the Issuance of (i) a Claims and Meeting Procedure Order, (ii) an Order Approving an Asset Purchase Agreement and (iii) an Order Extending the Stay of Proceedings* 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 May 24, 2016 at 2:00p.m., in a room to be communicated to the Service List.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, May 23, 2016

*Stikeman Elliott LLP*

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LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF  
(I) A CLAIMS AND MEETING PROCEDURE ORDER, (II) AN ORDER  
APPROVING AN ASSET PURCHASE AGREEMENT AND (III) AN EXTENSION OF  
THE STAY OF PROCEEDINGS

Exhibit R-1: Asset Purchase Agreement

UNDER SEAL

Exhibit R-2: CCAA Plan

Exhibit R-3: Draft Claims and Meeting Procedure Order

Exhibit R-4: Draft Approval and Vesting Order

**Exhibit R-5:** Compare of the Draft Approval and Vesting Order and the Model Vesting Order

MONTREAL, May 23, 2016

Stikeman Elliott LLP

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APPLICATION FOR THE ISSUANCE OF (I) A  
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AN ORDER APPROVING AN ASSET PURCHASE  
AGREEMENT AND (III) AN EXTENSION OF THE  
STAY OF PROCEEDINGS  
NOTICE OF PRESENTATION

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ORIGINAL

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