

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. : 500-11

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., a legal person incorporated  
under the laws of Canada, having its registered  
office at 905 rue Hodge, in the city and district of  
Montréal, Province of Quebec, H4N 2B3.

Petitioner

-and-

RICHTER ADVISORY GROUP INC., a legal  
person under the laws of Canada, having a place of  
business at 1981 McGill College, in the city and  
district of Montréal, Province of Québec, H3A 0G6;

Proposed Monitor

---

DEMAND FOR THE ISSUANCE OF AN INITIAL ORDER  
(Sections 10 and ff. of the *Companies' Creditors Arrangement Act*)

TO ONE OF THE JUDGES OF THE SUPERIOR COURT SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE  
APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

I. OVERVIEW

1. 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc., the "Company") hereby seeks the protection of this Court pursuant to the *Companies' Creditors Arrangement Act* (as amended, the "CCAA") to facilitate the reorganization of its business and operations, with the ultimate objective of submitting a CCAA restructuring plan to its creditors and/or selling its assets and operations as a going concern, to the extent that it is possible.

2. As explained in greater detail below, these proceedings are being filed in a context where:
  - a) the Company is experiencing a liquidity shortfall and no longer has the ability to meet its obligations as they become due and has become insolvent; and
  - b) the Company has been unable to secure an acceptable binding offer for the purchase of its assets and operations following an almost two-year formal sale process, during which time the Company, with the assistance of its financial advisors, thoroughly canvassed the market in search of a suitable purchaser or investor, which included the negotiation with a potential purchaser that recently fell through.
3. The CCAA proceedings are required to provide the Company with the stability it requires to canvass the market one last time in order to find an investor and/or sell the business, or any part thereof, as a going concern, thereby maximizing recovery for all of its stakeholders, and preserving the enterprise value and the employment of as many employees as possible.

## II. THE COMPANY'S CORPORATE STRUCTURE

4. The Company is a private corporation incorporated on December 24, 2008, under the *Canada Business Corporations Act* (the "CBCA"), with its principal place of business in Montreal, Canada.
5. Beyond the Rack USA Inc. is the wholly owned subsidiary of the Company and is not, at this stage, filing insolvency proceedings in Canada or the United States.
6. The Company's share capital is comprised of an unlimited number of Common Shares, 79,793 Class A Preferred Shares, 40,351 Class B Preferred Shares, 20,464 Class C Preferred Shares, 87,182 Class D Preferred Shares, 88,107 Class E Preferred Shares, 72,705 Class F Preferred Shares, 52,588 Class G Preferred Shares and 53,435 Special Voting Shares, all without par value.
7. On March 23, 2015, the Company (formerly known as Beyond the Rack Enterprises Inc.) filed articles of amendment with the CBCA Director to change its name to 7098961 Canada Inc., the whole as appears from a copy of such articles filed as **Exhibit P-1**. This was done in order to, *inter alia*, preserve the value of the Company's brand and reduce the potential negative impact of these CCAA proceedings on the Company's customers and members. The goal is to avoid further erosion of the Company's business during its short term restructuring efforts. This name change is also a condition to the disbursement of the interim financing described below.

8. The filing of the above mentioned articles of amendments would normally require shareholder approval but given the difficult circumstances that the Company is now facing and a wide shareholder base, it has become impracticable to seek shareholder approval in a timely manner. As such, the Company is seeking an order of this Court dispensing the Company from the requirement to seek shareholder approval.

### **III. THE COMPANY'S BUSINESS AND AFFAIRS**

#### **A. Description of the Business**

9. The Company started its commercial activities in January 2009, with its principal business activity being the online sale of designer brand apparel, accessories, beauty and home décor products, through its website ([www.beyondtherack.com](http://www.beyondtherack.com)), primarily to customers in Canada and the United States.
10. In this regard, the Company operates as an online shopping company for men and women, offering designer brand apparel and accessories at a discounted price to its members through limited-time events, each of which starts at a specific time and typically lasts only 48 hours.
11. In order to view the merchandise available on the Company's website, a browser must subscribe as a member. As of this date, the Company has approximately 14 million consumer members, with over 450,000 of these being active buyers.
12. Since 2009, the Company has expanded the merchandise available to its members, which now includes, *inter alia*, in addition to women and men's apparel and accessories, apparel, toys and books for children, as well as furniture, art and other small home appliances.

#### **B. Revenues**

13. The Company generates sales through its website, namely through the sale of designer brand apparel, accessories, beauty, and home décor, and from any shipping and handling charges to the Company's customers. It also generates net sales from advertising on its website and from distributing marketing materials on behalf of third parties to its customers.

#### **C. Employees**

14. As at February 23, 2016, the Company had approximately 211 active employees, 190 of which are located in Montreal, with the remainder in Toronto, New York and Las Vegas. Recently, the Company implemented cost cutting measures, so that as of March 21, 2016, there remains 62 active employees in Montreal, as well as 52 contractual employees overseas.
15. None of the Company's employees are unionized.

16. The Company's gross payroll obligations (salaried and hourly) for the fiscal years ended January 31, 2015 and 2016 amounted to approximately \$19.9 million and \$14.5 million, respectively.
17. The Company's employees are paid on a periodic basis as is customary in the jurisdiction in which they work. The Company is current in the payment of benefits and vacation pay to its employees for the last pay period ending before the filing of this demand. Deductions from employee salaries are made, as required in the various jurisdictions, and these deductions are remitted to the appropriate governmental authorities, where applicable, and are also current.

**D. Trademarks and Licensing**

18. The Company's trademarks are key assets with substantial value.
19. As of the date hereof, the Company is the owner of 15 Canadian trademark registrations and applications, as well as 7 in the United States.

**E. Cash Management System**

20. The Company's business and financial affairs require the collection, disbursement and movements of funds through several bank accounts throughout Canada and the United States. In the ordinary course of business, the Company uses a centralized cash management system (the "Cash Management System") controlled by the Company in order to, *inter alia*, collect funds and pay expenses associated with operations.
21. The Cash Management System is funded primarily through online sales, for which the Company is heavily dependent on its credit card processing service providers, the majority of which, use Optimal Payments ("Optimal") as their base structure for the processing of all online purchases.
22. The services provided by Optimal are essential to the Company's ongoing operations, and any refusal to provide services going-forward would prevent the Company from processing any credit card transactions, the result of which, would be a complete halt of all future sales.

**IV. INDEBTEDNESS**

23. The Company is subject to the following obligations:

Secured Loan by Silicon Valley Bank (including revolving line of credit)	Term loan: \$9,060,124.40 (USD\$6,977,914.67) (as of March 17, 2016). Revolving line of credit: \$2,606,826.43 (USD\$2,007,722.15) (as of
---	--

	March 17, 2016) Letters of Credit (Undrawn): \$626,481.53 (USD\$482,502.72) (as of March 17, 2016)
Secured Loan by Long Zone Holdings Inc.	\$6,102,480 (USD\$4.7 million) (as of March 15, 2016)
Accounts payable - trade	\$14.7 million (as of March 15, 2016)
Deferred revenue (open customer orders)	\$6.8 million (as of February 29, 2016)
Credit Notes	\$4.4 million (as of February 29, 2016)
<b>Total</b>	<b>\$44,295,912.36</b>

**A. Silicon Valley Bank ("SVB")**

24. On September 5, 2014, the Company entered into an agreement with Silicon Valley Bank (the "**SVB Facility**") granting the Company access to a credit facility totaling \$12,984,000 (USD\$10 million), by way of a revolving line of credit to a maximum amount of \$3,246,000 (US\$2.5 million) and a term loan in the amount of \$9,738,000 (US\$7.5 million), which agreement was subsequently amended on October 21, 2014, December 31, 2014, February 12, 2015, March 14, 2015, April 17, 2015 and January 5, 2016.
25. The SVB Facility is stated to be secured by a first priority security interest and hypothec in any and all properties, rights and assets of the Company (the "**SVB Security**").
26. As of March 17, 2016, an aggregate amount of \$12,293,432.37 (USD\$9,468,139.54), excluding interest, was owed by the Company to SVB.

**B. Long Zone Holdings Inc. ("Long Zone")**

27. On October 22, 2014, the Company entered into an agreement with Long Zone Holdings Inc. (the "**Long Zone Facility**") granting it access to a term loan in the amount of \$6,492,000 (USD\$5 million), which agreement was subsequently amended on April 14, 2015 and January 5, 2016.
28. The Long Zone Facility is stated to be secured by a security interest and hypothec in any and all properties, rights and assets of the Company, which hypothec is subordinated to the SVB Security.
29. As of March 15, 2016, an aggregate amount of \$6,102,480 (USD\$4.7 million), excluding interest, was owed by the Company to Long Zone.

**C. Suppliers and Other Trade Creditors**

30. As of March 15, 2016, an amount of approximately \$14.7 million was owing by the Company to trade creditors.

**D. Deferred Revenue (Open Customer Orders)**

31. As of March 17, 2016, an amount of approximately \$6.8 million was outstanding in respect of open customer orders.

**E. Credit Notes**

32. As of February 29, 2016, the Company has extended credit notes for an aggregate face amount of approximately \$4.4 million. The credit amount has accumulated since inception, and it is intended that the Company will continue to honour outstanding credit notes for existing customers following the issuance of the order sought herein.

**F. Employment Obligations**

33. As of the date hereof, the Company maintains no employee pension or retirement plans.

**G. Other Obligations**

34. The Company is party to certain finance lease agreement in respect of leased vehicles, computer equipment, furniture and other equipment used in connection with its operations. The obligations under these leases are not material in light of the Company's overall indebtedness.

**V. FINANCIAL DIFFICULTIES**

**A. Financial Losses**

35. For the fiscal year ended January 31, 2016, the Company recorded a total loss from operations of \$17.1 million, as appears from the financial statements of the Company for the year ended January 31, 2016, communicated herewith, under confidential seal, as **Exhibit P-2**.

**B. Forbearance Agreement**

36. As at January 31, 2015, the Company was in a forbearance arrangement with SVB as it had breached certain financial covenants, which the Company was required to comply with pursuant to the SVB Facility.

37. As a result, the Company entered into a waiver and amendment agreement with SVB, dated April 17, 2015, whereby the SVB Facility was amended to waive the existing financial covenant defaults and to amend, *inter alia*, the financial

covenants going forward as follows: (i) resetting the quarterly revenue and EBITDA threshold, and (ii) adding a minimum liquidity covenant such that the Company must maintain a minimum amount of \$2 million of unrestricted cash-in-bank.

38. On January 5, 2016, the Company entered into a *Sixth Amendment to Loan and Security Agreement* with SVB, in order to, *inter alia*, (i) revise the repayment schedule, (ii) increase the interest rate, and (iii) revise the financial covenants.
39. As at January 31, 2015, the Company was in a forbearance arrangement with Long Zone, due to the cross-default provisions of the Long Zone Facility with the SVB Facility.
40. On April 14, 2015, the Company entered into a waiver and amendment agreement with Long Zone, whereby the Long Zone Facility was amended to waive the existing cross-default caused by the SVB Facility default, and to amend and add certain terms.
41. On January 5, 2016, the Company entered into a *Second Waiver and Amendment to Loan and Security Agreement* with Long Zone, whereby the Long Zone Facility was once again amended to waive existing defaults thereunder.
42. As of this date, the Company is again in breach of certain financial covenants pursuant to both the SVB Facility and the Long Zone Facility. In fact, on March 17, 2016, SVB sent a formal letter to the Company advising them of certain defaults pursuant to the SVB Facility and requested immediate payment of all outstanding amounts, as appears from a copy of the letter dated March 17, 2016, communicated herewith as **Exhibit P-3**.
43. On March 17, 2016, SVB also sent to the Company a *Notice of Intention to Enforce Security* pursuant to section 244 of the *Bankruptcy and Insolvency Act*, as appears from a copy of the Notice of Intention, communicated herewith as **Exhibit P-4**.

### C. Insolvency

44. Cash flow forecasts for the period of March 27, 2016 to April 24, 2016 for the Company are included as Appendix A, under confidential seal, to the Richter Report (as defined hereinafter).
45. As of the date hereof, the Company's financial position continues to deteriorate, such that its projected cash requirements indicate that the Company is facing a liquidity crisis.
46. Moreover, the Company has very limited liquidities in addition to having a negative cash-flow and negative working capital. Unless the post-filing interim financing described below is granted, it is expected that the Company will completely run out of liquidities within days and will be unable to pursue any meaningful restructuring alternatives.

**D. Causes of Financial Difficulties**

47. Several factors have materially contributed to the decline in the Company's business. The Company operates in the nascent e-commerce retail industry where many of its peer companies are in a similar position, in that they have incurred financial losses and have yet to demonstrate a positive cash flow and financial sustainability. Many of these companies have recently been acquired and have merged with traditional brick and mortar retail strategic partners.
48. Since its incorporation, the Company has incurred significant financial losses, as it worked towards establishing its foothold in the industry, developing its technology, and growing its business operations and customer base.
49. The Company's financial losses were accelerated in early 2014 as a marketing-driven customer growth expansion strategy in the United States failed to deliver the desired economic return. In the summer/fall of 2014, the Company formulated a revised strategic plan that had as its primary objective the goal of achieving profitability, positive cash flow and a long-term sustainable business. Consequently, the Company embarked on a complete restructuring of its business operations including cutting unprofitable business lines, a retraction of its business footprint, a reduction in marketing activities, and numerous employee terminations, including the departure of senior executives and senior managers. Despite the ongoing restructuring efforts, the Company has yet to achieve profitability and a positive cash flow and consequently its ability to attract new capital has been negatively impacted.
50. Obtaining sufficient capital is critical to the Company, who has used significant cash in its operating activities since incorporation, relying upon financing to fund its operations and to establish its infrastructure, primarily through debt and private equity placements (approximately \$100 million has been consumed since inception). However, within the past few years, the general economic and capital market conditions in Canada and the United States has deteriorated and as a result has adversely affected access to and the cost of capital. Despite significant efforts, the Company has failed to secure new sources of capital and has relied upon its existing investor base and secured lenders to continue to fund the operations under increasingly onerous terms.

**VI. RESTRUCTURING EFFORTS**

51. Starting in the summer of 2014, the Company began to undertake various actions to restructure its business, which included the implementation of cost cutting measures, including downsizing its operation costs as well as certain layoffs.
52. More specifically, between the summer of 2014 and the end of 2015, the Company had reduced its workforce by approximately 30%.
53. During this period, the Company also discontinued non-performing product

lines and revenues accordingly declined from \$137 million in 2015 to \$102.8 million in 2016. As a result, the value of inventory decreased dramatically, from a peak of \$18 million in 2015, to \$8.9 million as at January 31, 2016.

54. In addition, marketing expenditures were cut from \$23 million in 2016 to \$8.9 million in 2016.
55. The Company also consolidated its warehouse facilities and down sized its New York buying office, thereby reducing its overall fixed assets, from \$2.9 million in 2015 to \$2.1 million in 2016.
56. Finally, the Company refinanced its existing debt facility, increasing it from \$9,738,000 (USD\$7.5 million) to \$12,984,000 (USD\$10 million). In addition, the Company obtained a new subordinated debt facility of \$6,492,000 (USD\$5 million), as well as new equity financing of \$18,116,000 (USD\$14 million), which was funded over the course of 2015 and 2016.

#### **A. The Capital Raising Process**

57. On or about April 3, 2014, the Company retained the services of BMO Nesbitt Burns Inc. ("**BMO Capital Markets**") and Canaccord Genuity Corp. ("**Canaccord**", collectively with BMO Capital Markets, the "**Financial Advisors**") to act as its financial advisors in order to run a dual track Private placement and Initial Public Offering ("**IPO**") process for the Company. After a throughout canvassing of the market by the Financial Advisors, the Company's board of directors decided to not pursue the IPO process.
58. Instead, till about November 2014, the Financial Advisors conducted an extensive private placement process, which included contacting a total of 79 specifically targeted Canadian and American potential investors, which was later broadened to include family run-offices and over 23 selected strategic potential buyers and/or investors. These investors were provided data room access, and any interested parties were invited to meet with the Company's management.
59. Notwithstanding the significant efforts deployed by the Financial Advisors and Management, the process was unsuccessful.
60. Accordingly, on or around December 14, 2014, the Company terminated the Financial Advisors' mandate.
61. In light of the unsuccessful attempts at raising capital, the Company's shareholders agreed to fund an additional \$15 million through the issuance of Series G Preferred Shares. The shareholders subscribed to \$13.6 million of shares in three tranches in the fiscal year 2015.

#### **B. The Sale Process**

62. On or about August 6, 2015, the Company signed a new engagement letter with

Canaccord to act as financial advisor so as to, *inter alia*, review the Company's financial situation and assist in identifying strategic alternatives, including exploring a transaction that would maximize value and benefit for all stakeholders and ensure the continuation of the Company's business as a going concern.

63. Canaccord and the Company's management worked diligently in this regard and reported regularly to the Company's board of directors on the progress and status of the interest of the potential purchasers contacted.
64. On March 7, 2016, the Company received a conditional offer to purchase the assets of the Company, and after having duly reviewed and considered this offer, the Company's board of directors came to the conclusion that it represented the best offer received to date, and agreed to engage in negotiations to execute a final asset purchase agreement. Unfortunately, on or around March 16, 2016, these negotiations fell through.
65. As such, although numerous potential purchasers were contacted, as of this date, the Company has been unable to obtain a binding satisfactory offer, however it respectfully submits that it is in the best interest of its stakeholders, and particularly its employees, that, in the context of these CCAA proceedings, it be permitted to make one last attempt at selling the Company's business as a going concern, and in so doing, take the time to canvass and assess every possible angle to generate revenue.

## VII. RELIEF SOUGHT

### A. General

66. The Company believes that it is wholly appropriate for the order requested herein to be made forthwith seeing as it finds itself in dire financial circumstances, is insolvent, is not able to meet its obligations and requires a stay of proceedings for the benefit of its creditors, customers and other stakeholders.
67. The Company is deeply concerned that unless the requested order is made, certain suppliers, creditors and other stakeholders may take steps that will deplete its estate to the detriment of all stakeholders and jeopardize the completion of any future sale process.
68. The filing of these proceedings is necessary to preserve the value of the Company's business with minimal disruption while it tries to sell its assets and operations.
69. Accordingly, the Company hereby requests a stay of proceedings until April 22, 2016, the whole as set forth in the draft Initial Order, communicated herewith as **Exhibit P-5**.

70. Indeed, such stay of proceedings will preserve the *status quo* and prevent creditors and others from taking any steps to try and better their positions in comparison to other creditors. All stakeholders generally, including creditors, will benefit from the requested order.

71. In the event of a liquidation and complete termination of operations, the value of the assets of the Company will be substantially reduced. It is expected that the completion of a going-concern sale in the context of the CCAA will yield better results than any conceivable liquidation scenario.

**B. Appointment of Monitor**

72. Richter Advisory Group Inc. ("**Richter**") has been assisting the Company with the pending CCAA application and is aware of its financial situation.

73. Richter, in its capacity as proposed monitor, intends to file a report confirming its consent to act as the Company's monitor (the "**Richter Report**").

74. The Company believes that it is in the best interests of all stakeholders that Richter act as the monitor of the Company pursuant to the CCAA. Richter has valuable insights into the Company's business and will be in a position to perform the monitoring duties without any delay.

75. In addition to any powers or obligations provided for by the CCAA, the Company hereby requests that this Court grant Richter the powers, rights, obligations and protections detailed in the draft Initial Order.

**C. Directors' and Officers' Charge**

76. In order to continue to carry on business during the CCAA proceedings the Company requires the active and committed involvement of certain members of its board of directors and senior officers.

77. Although the Company intends to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the directors and officers of the Company are nevertheless concerned about the potential for their personal liability in the context of the present CCAA proceedings.

78. Since the Company's ongoing operations requires the continued assistance of some of these directors and officers, these directors and officers require the Company to indemnify them for all liabilities which they may incur in the context of their employment after the filing of these proceedings.

79. The Company maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the officers and directors of the Company. The D&O Insurance expires in April 2016. The current amount of coverage provided by the D&O Insurance may not be sufficient to protect the directors of the Company from all

of the potential directors' liability.

80. The Company is not currently in a position to secure additional directors' and officers' liability insurance, notably in light of its financial situation.
81. The Company therefore requests a Court-ordered charge (the "D&O Charge") in the amount of \$225,000 over its assets, property and undertaking to indemnify its directors and officers in respect of any liability which they may incur from and after the commencement of these proceedings.
82. As appears from the draft Initial Order (Exhibit P-5), the Company proposes that the D&O Charge only apply to the extent that the D&O Insurance is inadequate.
83. The Company submits that the requested D&O Charge is reasonable and adequate given, notably, the complexity of its business, its workforce located around the world and the corresponding potential exposure of the Company's directors and officers to personal liability, especially under a scenario where these proceedings were to be extended beyond the expiry date of the D&O Insurance.
84. Absent the protections sought in the conclusions of the present Demand, the Company is concerned that one or more of its directors or officers will be forced to resign their posts, which would, in all likelihood, jeopardize the continuation of the Company's business, the whole to the detriment of the Company's stakeholders.
85. In addition, the Company further submits that the D&O Charge will provide assurances to the Company's employees that its obligations towards them for accrued wages, termination and severance pay shall be satisfied.
86. Indeed, while the insolvency of the Company and its non-payment of various employee obligations may trigger the personal liability of the Company's directors and officers, any recourse initiated by the Company's employees does not guarantee them any recovery. Therefore, the creation of a security in favour of the Company's directors and officers for sums for which they may be held liable to employee (but for which the Company is ultimately liable) enhances such employees' chances of recovery by, in effect, creating a security for their claims.

**D. Administration Charges**

87. The Company also seeks a \$250,000 administration charge, which shall affect its assets and secure the payments to be made to Richter and its legal counsel, if applicable and the Company's legal counsel, the whole as set forth in the draft Initial Order.

**E. Post-Filing Financing**

*i. The DIP Facility*

88. In order to address financing needs both generally and during these proceedings, the Company has contacted certain potential private investors so as to secure both interim and long-term financing for its operations.
89. In this regard, and in anticipation of these CCAA proceedings, a Commitment Letter amongst the Company and 9523669 Canada Inc. (the "DIP Lender") was negotiated in order to, amongst other things, finance the post-filing working capital requirements of the Company (the "DIP Facility"). A copy of the DIP Facility is communicated herewith as Exhibit P-6.
90. The DIP Facility consists of a credit facility, which will be guaranteed and secured by a first priority charge (the "DIP Charge") granted on a post-petition super priority basis on all present and after-acquired property of the Company.
91. Subject to the issuance by this Court of the Initial Order and its approval of the proposed DIP Charge, the DIP Facility may be used, *inter alia*, to:
- a) fund working capital and for other general corporate purposes;
  - b) pay costs and expenses in connection with these CCAA proceedings; and
  - c) pay fees and expenses associated with the DIP Facility.
92. After consultation with its advisors, the Company determined that it would be in its best interest, as well as that of its stakeholders, to accept the above-mentioned DIP financing.

*ii. Necessity of Obtaining DIP Financing*

93. The DIP Facility sought by the Company is critical to the ongoing operations and restructuring of the Company, the whole as set out in the Richter Report.
94. The DIP Facility is beneficial to the Company, to the group of creditors as a whole and to the larger community of stakeholders. The DIP Facility will allow the Company to continue its operations as a going concern and preserve value to the benefit of the Company's creditors, employees and other stakeholders.
95. Despite the current liquidity crisis it is facing, the Company has an ongoing business, which should allow for a successful eventual sale.
96. As appears from the foregoing, the benefits of authorizing the DIP Facility outweigh the inconveniences, if any, suffered by the creditors of the Company.

**F. Cash Management**

97. The Company respectfully submits that the continued operation of the Cash

Management System is the most efficient way to maintain the Company's operations.

98. In order to ensure that the Company can continue to access its existing bank accounts and Cash Management System, the Company seeks the relief set forth in the Initial Order.

**G. Confidentiality**

99. As mentioned, the Company is privately owned, and therefore has no statutory securities disclosure obligations.
100. The Company is therefore under no obligation to disclose its cash flow statements and/or its financial statements to the public, nor does wish to share this information.
101. The Company submits that all cash flow and financial statements produced and/or communicated in the context of the present proceedings should be kept strictly confidential and shall be filed under seal. Such information will be made available to creditors of the Company who execute a confidentiality agreement.
102. It is submitted that public disclosure of such sensitive financial information and documentation would be very prejudicial to the Company, notably due to the potential use of this information by potential creditors, and the Company's ongoing efforts to finalize a sale of its assets and operations.
103. At the same time, this would cause no prejudice to their creditors, as the information would nevertheless be filed with this Court and could be made available to certain creditors upon signature of a confidentiality agreement.

**VIII. CONCLUSIONS**

104. The Initial Order is based on the standard CCAA Initial Order issued by the Superior Court of Québec, Commercial Division (the "Model Initial Order"). A version comparing the Model Initial Order and the Initial Order is communicated herewith as Exhibit P-7.
105. For the reasons set forth above, the Company believes it is both appropriate and necessary that the relief being sought be granted.
106. Considering the urgency of the situation, the Company respectfully submits that the notices given of the present Demand are proper and sufficient and that this Demand should be granted in accordance with its conclusions.
107. The present Demand is well founded in fact and in law.

**WHEREFORE, MAY THIS COURT:**

**GRANT** this *Demand for the Issuance of an Initial Order* (the "**Demand**");

**ISSUE** an order substantially in the form of the draft Initial Order communicated in support of the Demand as Exhibit P-5.

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

MONTRÉAL, March 23, 2016



STIKEMAN ELLIOTT LLP

Me Guy P. Martel

[gmartel@stikeman.com](mailto:gmartel@stikeman.com)

Me Nathalie Nouvet

[nnouvet@stikeman.com](mailto:nnouvet@stikeman.com)

1155 René-Lévesque Blvd. West, Suite 4000

Montréal, Québec H3B 3V2

Tel : 514-397-3163

Fax : 514-397-3493

Our file : 137950-1006

Attorneys for the Petitioner

**AFFIDAVIT**

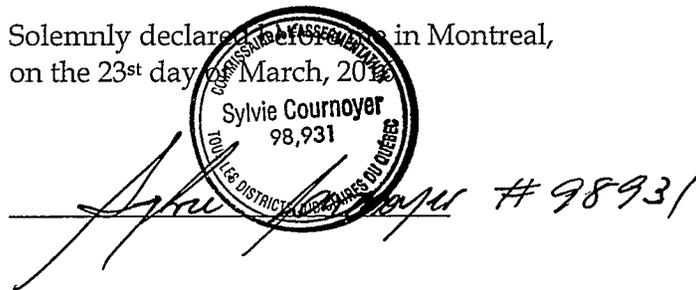
I, the undersigned, Yona Shtern, business person, having my principal place of business at 905 Hodge, in the city and district of Montréal, Province of Quebec, solemnly declare the following:

1. I am a the Chief Executive Officer of 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc.); and
2. All the factual allegations contained in the *Demand for the Issuance of an Initial Order* are true.

**AND I HAVE SIGNED:**

  
\_\_\_\_\_  
Yona Shtern

Solemnly declared before me in Montreal,  
on the 23<sup>rd</sup> day of March, 2014

  
#98931

NOTICE OF PRESENTATION

To: Service List

TAKE NOTICE that the *Demand for the Issuance of an Initial 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 **March 24, 2016**, and at a time and a room to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, March 23, 2016



STIKEMAN ELLIOTT LLP

Me Guy P. Martel

[gmartel@stikeman.com](mailto:gmartel@stikeman.com)

Me Nathalie Nouvet

[nnouvet@stikeman.com](mailto:nnouvet@stikeman.com)

1155 René-Lévesque Blvd. West, Suite 4000

Montréal, Québec H3B 3V2

Tel : 514-397-3163

Fax : 514-397-3493

Our file : 137950-1006

Attorneys for the Petitioner

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. : 500-11

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.

Proposed Monitor

---

<p>LIST OF EXHIBITS IN SUPPORT OF THE DEMAND FOR THE ISSUANCE OF AN INITIAL ORDER</p>
---

Exhibit P-1: Articles of Amendment

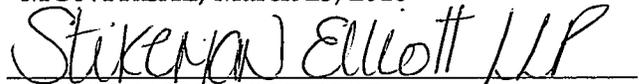
Exhibit P-2: Financial statements of 7098961 Canada Inc. for the year ended  
January 31, 2016  
UNDER  
CONFIDENTIAL  
SEAL

Exhibit P-3: Letter dated March 17, 2016

Exhibit P-4: Notice of Intention to Enforce Security

- Exhibit P-5: Draft Initial Order
- Exhibit P-6: DIP Facility
- Exhibit P-7: Version comparing the Model Initial Order and the Initial Order

MONTRÉAL, March 23, 2016



STIKEMAN ELLIOTT LLP

Me Guy P. Martel

[gmartel@stikeman.com](mailto:gmartel@stikeman.com)

Me Nathalie Nouvet

[nnouvet@stikeman.com](mailto:nnouvet@stikeman.com)

1155 René-Lévesque Blvd. West, Suite 4000

Montréal, Québec H3B 3V2

Tel : 514-397-3163

Fax : 514-397-3493

Our file : 137950-1006

Attorneys for the Petitioner

SUPERIOR COURT  
(Commercial Division)

---

N°. 500-11-

---

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

---

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.

Proposed Monitor

BS0350

File: 137950-1006

---

DEMAND FOR THE ISSUANCE OF AN  
INITIAL ORDER, AFFIDAVIT, LIST OF  
EXHIBITS AND EXHIBITS P-1 to P-7  
(Sections 10 and ff. of the *Companies' Creditors  
Arrangement Act*)

---

ORIGINAL

---

Mtre Guy P. Martel  
Mtre Nathalie Nouvet

514-397-3163  
514-397-3128

STIKEMAN ELLIOTT  
Stikeman Elliott LLP BARRISTERS & SOLICITORS  
40<sup>th</sup> Floor  
1155 René-Lévesque Blvd. West  
Montréal, Canada H3B 3V2