

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-056311-190

DATE: *OCTOBER 4, 2019*

PRESIDING : **Me Julie Bégin**
Registraire

IN THE MATTER OF THE NOTICE OF INTENTION OF:

BIOMOD CONCEPTS INC.

Debtor

and

RICHTER ADVISORY GROUP INC.

Trustee

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Debtor's *Motion for the Issuance of an Approval and Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee dated October 2, 2019 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Debtor's attorneys and the testimony of the Trustee;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the Offer to Purchase (the "**Offer**") by and between the Debtor (the "**Vendor**"), as vendor, and an entity to be formed by 9200908 Canada Inc. (the "**Purchaser**"), as purchaser, a copy of which was filed as Exhibit R-4 to the Motion, and vesting in the Purchaser the assets described in the Offer (the "**Purchased Assets**"), namely any and all of the Vendor's intellectual property rights, including but not limited to all patents, trademarks and copyrights owned or otherwise used by the Vendor, as well as certain fixed assets;

CHS

WHEREFORE THE COURT:

[5] **GRANTS** the Motion;

SERVICE

[6] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

[7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

[8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of an asset purchase agreement by the Vendor in keeping with the Offer is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee.

EXECUTION OF DOCUMENTATION

[9] **AUTHORIZES** the Vendor and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Offer (Exhibit R-4) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

[10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

[11] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, taxes, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Purchased Assets, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted

Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

- [12] **ORDERS and DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [13] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the following registrations in connection with the Purchased Assets in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

- (i) Modify the "Biens" section of registration 18-0798097-0001 in favour of Centre d'Aide aux Entreprises de la Rive-Sud Inc. as follows :

~~"L'hypothèque grève l'universalité des biens meubles corporels et incorporels présents et à venir de l'emprunteur, où qu'ils se trouvent.~~

~~Sans limité la généralité de ce qui précède, l'hypothèque grève également l'universalité des comptes à recevoir, les stocks et inventaires qui y sont reliés, ainsi que tout dépôt ou tout paiement partiel effectué relativement auxdits comptes à recevoir et ce, quelque soit le lieu où se trouvent les débiteurs de cette créance, dépôt ou tout paiement partiel.~~

~~L'hypothèque créée par le présent acte grève aussi les biens présents et à venir suivants, dans la mesure ou ils ne sont pas déjà inclus dans la description apparaissant aux paragraphes ci-dessus, mais sans restreindre les affectations découlant du seul effet de la loi:~~

~~Le produit de toute vente, location ou autre disposition des biens indiqués aux paragraphes ci-dessus, de même que toute créance résultant de ces opérations;~~

~~Tout droit rattaché aux biens indiqués aux paragraphes ci-dessus ainsi que les fruits et revenus qu'ils produisent, y compris toute indemnité d'assurance ou d'exportation payable en rapport avec ceux-ci;~~

~~Tous les titres, documents, registres, factures et comptes constatant les biens indiqués aux paragraphes ci-dessus ou s'y rapportant, quelle que soit la nature de leur support et quelle que soit la forme sous laquelle ils sont accessibles, soit écrite, graphique, sonore, visuelle, informatisée ou autre;~~

~~Le bien qui remplace un bien déjà grevé de la présente hypothèque, dans la mesure ou le bien de remplacement (y compris les sommes d'argent en tenant lieu) n'est pas autrement hypothéqué du fait de présent acte ou de la loi."~~

- (ii) Modify the "Biens" section of registration 71-1172315-0001 in favour of Centre d'Aide aux Entreprises de la Rive-Sud Inc. as follows :

~~"L'hypothèque grève l'universalité des biens meubles corporels et incorporels présents et à venir de l'emprunteur, où qu'ils se trouvent.~~

~~Sans limite la généralité de ce qui précède, l'hypothèque grève également spécifiquement:~~

~~Les sommes découlant des comptes à recevoir des bons de commande au nom de Cosswiss AG, Charlotte Tilbury Beauty Ltd, Trish Mcevoy Ltd, Ulta inc./Ulta Beauty et Astral Brands incluant les stocks et inventaires qui y sont reliés, ainsi que tout dépôt ou tout paiement partiel effectué relativement à ces commandes et ce, quelque soit le lieu où se trouvent les débiteurs de cette créance, dépôt ou tout paiement partiel.~~

~~L'hypothèque créée par le présent acte grève aussi les biens présents et à venir suivants, dans la mesure ou ils ne sont pas déjà inclus dans la description apparaissant aux paragraphes ci-dessus, mais sans restreindre les affectations découlant du seul effet de la loi:~~

~~Le produit de toute vente, location ou autre disposition des biens indiqués aux paragraphes ci-dessus, de même que toute créance résultant de ces opérations;~~

~~Tout droit rattaché aux biens indiqués aux paragraphes ci-dessus ainsi que les fruits et revenus qu'ils produisent, y compris toute indemnité d'assurance ou d'exportation payable en rapport avec ceux-ci;~~

~~Tous les titres, documents, registres, factures et comptes constatant les biens indiqués aux paragraphes ci-dessus ou s'y rapportant, quelle que soit la nature de leur support et quelle que soit la forme sous laquelle ils sont accessibles, soit écrite, graphique, sonore, visuelle, informatisée ou autre;~~

~~Le bien qui remplace un bien déjà grevé de la présente hypothèque, dans la mesure ou le bien de remplacement (y compris les sommes d'argent en tenant lieu) n'est pas autrement hypothéqué du fait de présent acte ou de la loi."~~

NET PROCEEDS

- [14] **ORDERS** that the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the Trustee and shall be distributed in accordance with applicable legislation.
- [15] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Offer) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

VALIDITY OF THE TRANSACTION

[16] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the purchase documents pursuant to the Offer and this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

LIMITATION OF LIABILITY

[17] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[18] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Trustee shall benefit from the protection arising under the present paragraph;

GENERAL

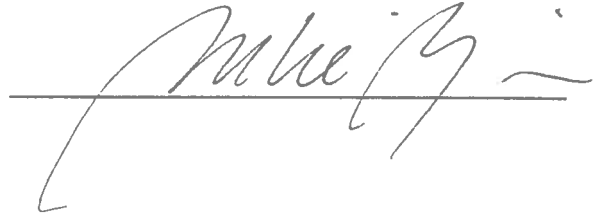
[19] **ORDERS** that the Purchaser or the Vendor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

[20] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;

[21] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[22] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

A handwritten signature in black ink, appearing to read "Me Alexander Bayus", is written over a horizontal line.

Gowling WLG (Canada) LLP
Me Alexander Bayus
Attorneys for the Debtor

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR


Personne désignée par le greffier

SCHEDULE "A"
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No. 500-11-056311-190

SUPERIOR COURT
(COMMERCIAL DIVISION)

IN THE MATTER OF THE NOTICE OF INTENTION
OF:

BIOMOD CONCEPTS INC.

Petitioner/Debtor

and

RICHTER ADVISORY GROUP INC.

Trustee

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on April 8, 2019, the Debtor filed a Notice of Intention to make a proposal under the *Bankruptcy and Insolvency Act*.

WHEREAS Richter Advisory Group Inc. (the "**Trustee**") was appointed notice of intention Trustee of the Debtor;

WHEREAS on ●, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Debtor of a purchase agreement (the "**Purchase Agreement**") by and between the Debtor, as vendor (the "**Vendor**") and ● as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustees.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Trustees once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE TRUSTEES CERTIFIES [THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustees at ____ on _____.

Richter Advisory Group Inc. in its capacity as Trustee, and not in its personal capacity.

Name: _____

Title: Partner

SCHEDULE "B"
PERMITTED ENCUMBRANCES

- All hypothecs in favour of Investissement Québec and Quantius Inc., which shall be addressed on or prior to closing pursuant to agreements reached with the Purchaser.

Quantius Inc.

- Deed of hypothec over the universality of the Debtor's movable and immovable property in the amount of \$4,000,000 with interest thereon at the rate of 25% per annum, dated November 20, 2018 and registered at the Register of Personal and Movable Real Rights ("RPMRR") on November 20, 2019 under number 18-1284765-0001; and
- Movable hypothec over the universality of the Debtor's movable assets, in the amount of \$1,000,000 with interest thereon from the date of the hypothec at the rate of 25% per annum dated August 31, 2018 and registered at the RPMRR on September 4, 2019 under number 18-0968389-0002.

Investissement Québec

- Movable hypothec over the universality of the Debtor's movable assets in the amount of \$234,000 registered at the RPMRR on October 29, 2013 under number 13-0963490-0001;
- Movable hypothec over the universality of the Debtor's movable assets in the amount of \$912,000 registered at the RPMRR on September 27, 2016 under number 16-0947341-0001;
- Movable hypothec over the universality of the Debtor's movable assets in the amount of \$3,840,000 registered at the RPMRR on December 9, 2016 under number 16-1206120-0001; and
- Movable hypothec over the universality of the Debtor's movable assets in the amount of \$300,000 registered at the RPMRR on September 7, 2017 under number 17-0943533-001.