

SUPERIOR COURT
(Commercial Division)
Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act, RSC 1985, c C-36

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

No. : 500-11-050409-164

In the matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36:

7098961 CANADA INC.

Petitioner / Applicant

-and-

RICHTER ADVISORY GROUP INC.

Monitor / Applicant

-and-

PAYSAFE MERCHANT SERVICES INC., a legal person under the laws of Canada, having a place of business at 700-3500 De Maisonneuve Blvd. W., Westmount, Québec, H3Z 3C1;

-and-

PAYSAFE MERCHANT SERVICES CORP., a legal person incorporated under the laws of Delaware, having its registered office at 1209 Orange Street, Wilmington, New Castle, Delaware, 19801, United States;

-and-

PAYPAL CA LIMITED, a legal person incorporated under the laws of New Brunswick, having its registered office at Brunswick House, 1000-44 Chipman Hill, Saint John, New Brunswick, E2L 2A9;

-and-

PAYPAL, INC., a legal person incorporated under the laws of Delaware, having its principal place of business at eBay Park North, 2211 North First Street, San Jose, California, 95131, United States;

-and-

AMEX BANK OF CANADA, a legal person under the laws of Canada, having a place of business at 100-2225 Sheppard Avenue East, Toronto, Ontario M2J 5C2;

-and-

AMERICAN EXPRESS TRAVEL RELATED SERVICE COMPANY, INC., a legal person under the laws of the State of New York, having a place of business at 200 Vesey Street, New York, New York, 10285, United States

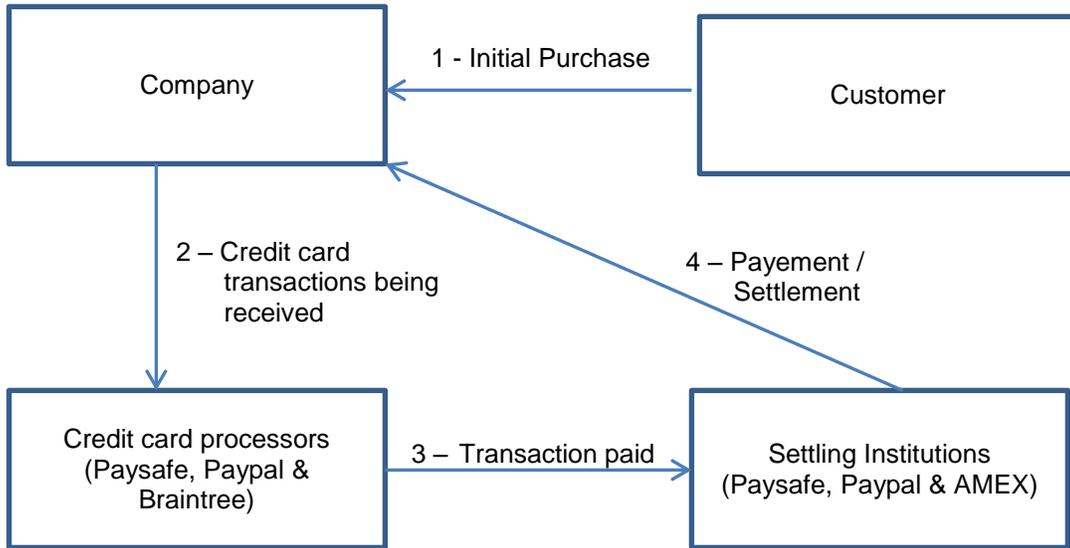
Mis-en-cause

AMENDED APPLICATION FOR DIRECTIONS PERTAINING TO THE UNAUTHORIZED COMPENSATION OF CANCELLED PRE-FILING ORDERS BY THE MIS-EN-CAUSE CREDIT CARDS SETTling INSTITUTIONS (Section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

TO THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C., SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE MONITOR / APPLICANT AND THE PETITIONER / APPLICANT RESPECTFULLY [...] SUBMIT THE FOLLOWING:

1. On March 24, 2016, the Honourable Justice Martin Castonguay, J.S.C., issued an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of 7098961 Canada Inc. (the "**Company**") pursuant to which Richter Advisory Group Inc. (the "**Monitor**") was appointed as Monitor to the Company.
2. The stay period imposed by the Initial Order was extended to April 25, 2016 by an order of the Honourable Michel A. Pinsonnault, J.S.C. rendered on April 20, 2016.
3. The Company's principal business activity is online retailing through its website, such that it is heavily dependent on credit card settling institutions which process payments from the Company's customers.

4. The payment interaction model in a typical credit card transaction is as follows:



5. The Company uses various credit cards processing service providers to process the payment of the orders being made on line by its customers, namely the Mis-en-cause Paysafe Merchant Services Inc., Paysafe Merchant Services Corp. (both operating under the trade name “Paysafe”), PayPal CA Limited and PayPal, Inc. (operating under the trade names “PayPal” and “Braintree”).

6. It is the Company and the Monitor’s understanding that some of the organizations that issue credit cards are validating and paying any and all transactions of the credit cards holders while others are instead using the credit cards processing service providers to do the same, as shown in the table below:

| | American Express | Master Card | Visa | Apple Pay | PayPal | Interac |
|--|------------------|-------------|---------|-----------|--------|---------|
| Credit card processing / service providers | Paysafe | Paysafe | Paysafe | Braintree | PayPal | Paysafe |
| Settling institutions | American Express | Paysafe | Paysafe | Braintree | PayPal | Paysafe |

7. In the event that a customer decides to cancel a purchase made with the Company, the settling institution reimburses the customer and claims from the Company any payment made to the customer (since the Company has already received the proceeds of the purchase at the time of the transaction from the settling institution).

8. At the time of the Initial Order, the settling institution contingent claims totalled \$7,314,891, which corresponds to the Company’s customer purchases paid by the

settling institutions to the Company for such purchases yet to be shipped and thus subject to a cancellation by those customers.

9. At the time of the issuance of the Initial Order, the Company projected cash receipts of \$2,872,880 from the settling institutions for the five following weeks, as appears in the Proposed Monitor's Report on Cash-Flow Statement dated March 23, 2016 and filed under seal as **Exhibit A-1**.
10. As evidenced by the Company's projected cash receipts included in the Proposed Monitor's Report on Cash-Flow Statement dated March 23, 2016, Exhibit A-1, at the time of the Initial Order, the Company did not project that the cash receipts from the Mis-en-cause settling institutions would be reduced by the claims of the settling institutions for the cancellation of credit card sales made prior to the Initial Order.
11. Prior to the Initial Order, the Company, with the approval of the then proposed monitor, agreed with the Mis-en-cause, in a spirit of collaboration and although the Mis-en-cause could not have terminated their contractual agreements with the Company, to ask the court to declare and order that each of them is a critical supplier to the Company as contemplated by section 11.4 of the CCAA.
12. The Company, with the agreement of the Mis-en-cause, further asked the court to approve a mechanism by which the Mis-en-cause would continue to supply the Company with their processing and settling services on terms and conditions that are consistent with existing contractual arrangements, but see their contingent claims gradually decreased over time as a result of sales made before the date of the Initial Order being fulfilled by the Company after the date of the Initial Order.
13. The DIP lender and potential plan sponsor, Gestion Optifer inc., has not been a party nor a participant to those discussions.
14. By paragraphs 25 to 33 of the Initial Order, the court declared that the Mis-en-cause were critical suppliers, ordered the Mis-en-cause to continue to supply the Company with their processing and settling services on terms and conditions that are consistent with existing contractual arrangements, and implemented the mechanism proposed by the Company.
15. Regarding this mechanism, the court *inter alia* declared that the Mis-en-cause were entitled to hold back on the remittances owed to the Company for sale to be made after the Initial Order:
 - (a) the applicable payment processing service fees and costs; and
 - (b) an amount equal to 12% of the face value of every credit card sale to be made by the Company after the date of the Initial Order (the "**Court-Approved Hold-back**").
16. It was never intended that the Mis-en-cause be allowed to effect compensation between the claims against the Mis-en-cause accrued to the Company after the Initial Order (as a result of sales made after the Initial Order) and the contingent claims of

the Mis-en-cause against the Company that existed before the Initial Order (and more fully described in paragraph 8 above).

17. However, it seems that the Mis-en-cause did effect compensation (the “**Unauthorized Compensation**”) between:
- (a) remittances owed to the Company of credit card payments relating to credit card sales made after the date of the Initial Order, which are claims accrued to the Company after the Initial Order, and
 - (b) amounts owed to the Mis-en-cause relating to cancelled credit card sales made before the date of the Initial Order, which are claims of the Mis-en-cause against the Company that existed before the Initial Order.
18. The Unauthorized Compensation is evidenced in the Monitor’s comparison of projected receipts and disbursements and actual receipts and disbursements for the four-week period ended April 17, 2016, filed under seal as **Exhibit A-2** and in the following table:

| Description | Amount (\$) |
|--|-------------|
| Customer orders made after the date of the Initial Order | 2,546,556 |
| Cancellation of customer orders made after the date of the Initial Order | (54,099) |
| Cancellation of customer orders made before the date of the Initial Order | (1,222,327) |
| Estimated payment processing service fees and costs | (76,396) |
| Court-Approved Hold-back | (209,866) |
| Estimated other net dilutive factors (i.e. sales taxes, shipping revenues, store credits, etc.) and timing | (177,455) |
| Remittances received by the Company | 806,413 |

19. The Unauthorized Compensation, estimated at \$1,222,327, has drastically reduced the cash receipts of the Company for the four-week period ended April 17, 2016. Instead of the projected cash receipts of \$2,047,268 from the Mis-en-cause, the Company has received only \$806,413 in remittances from the Mis-en-cause, as appears from the Monitor’s comparison of projected receipts and disbursements and actual receipts and disbursements for the four-week period ended April 17, 2016, Exhibit A-2.
20. The reduced cash receipts for the four-week period ended April 17, 2016 caused by the Unauthorized Compensation has impeded the Company’s efforts to restructure by limiting the purchase of products and their shipment, and therefore the fulfillment of orders for sales made both before and after the date of the Initial Order.
21. The Unauthorized Compensation will jeopardize the restructuring of the Company if continued and not remedied, as appears from the Company’s projected receipts and disbursements for the nine-week period ending June 19, 2016, filed under seal as **Exhibit A-3**, and would cause irreparable harm to the Company.

22. Furthermore, the Company has been informed today that the DIP lender and potential plan sponsor considers this Unauthorized Compensation to be a material change that may allow it to recall immediately the advances made pursuant to the initial DIP Agreement and to terminate any other agreement entered into with the Company.
23. In light of the serious prejudice and irreparable harm to the Company and its shareholders, it is justified that the provisional execution of the judgment be ordered notwithstanding any appeal.

WHEREFORE, MAY THIS COURT:

As interim relief, if the present Application is not heard on April 25, 2016 and/or judgment is not rendered on said date:

ORDER the Mis-en-cause Paysafe Merchant Services Inc., Paysafe Merchant Services Corp., PayPal CA Limited, PayPal, Inc., Amex Bank of Canada and American Express Travel Related Service Company, Inc. (the “**Institutions**”) to stop effecting compensation between any claim of the Institutions against 7098961 Canada Inc. (the “**Company**”) that existed before the initial order rendered on March 24, 2016 by the Honourable Justice Martin Castonguay, J.S.C., under the *Companies' Creditors Arrangement Act* in respect of the Company (the “**Initial Order**”), including any claim relating to cancelled credit card sales made by the Company before the date of the Initial Order, and any claims accrued to the Company after the Initial Order, including remittances to the Company of credit card payments relating to credit card sales made by the Company after the date of the Initial Order until further order of the court;

ORDER that the Proposed Monitor’s Report on Cash-Flow Statement dated March 23, 2016, Exhibit A-1, Monitor’s comparison of projected receipts and disbursements and actual receipts and disbursements for the four-week period ended April 17, 2016, Exhibit A-2, and the Company’s projected receipts and disbursements for the nine-week period ending June 19, 2016, Exhibit A-3, be kept confidential and under seal with the Court until, as the case may be, further order of this Court or written agreement from the Company and the Monitor. All creditors of the Company shall be entitled to obtain disclosure of title said exhibits upon written request and provided they have signed a confidential agreement in standard form, provided that this requirement shall not apply to secured creditors;

On the Application:

GRANT the Application;

ORDER the Mis-en-cause Institutions to stop effecting compensation between any claim of the Institutions against the “**Company**” that existed before the Initial Order, including any claim relating to cancelled credit card sales made by the Company before the date of the Initial Order, and any claims accrued to the Company after the Initial Order, including remittances to the Company of credit card payments relating to credit card sales made by the Company after the date of the Initial Order;

ORDER the Institutions to remit to the Company, within 24 hours of the date of the order to be rendered herein, all credit card payments relating to credit card sales made by the Company after the date of the Initial Order which, as of the date of the order to be rendered herein, have been withheld in contravention of the Initial Order;

ORDER the Institutions to collaborate with the Monitor in order to ensure the proper execution of the order to be rendered herein, including by providing to the Monitor any document or information requested by the latter;

ORDER the provisional execution of the judgement notwithstanding any appeal and without the necessity of furnishing any security;

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

MONTREAL, April 26, 2016

McCarthy Tétrault LLP

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NOTICE OF PRESENTATION

To: **Service List**

**American Express Travel Related
Service Company, Inc.**

c/o Jeff Morency
(jeff.morency@aexp.com), Andrea L.
Martin (andrea.l.martin@aexp.com)
200 Vesey Street, New York, New York,
10285, United States

Amex Bank of Canada

Merchant Services
c/o Vice President, Client Management
(MerchantServicesOnline@aexp.com),
Jeff Morency (jeff.morency@aexp.com),
Andrea L. Martin
(andrea.l.martin@aexp.com)
100-2225 Sheppard Avenue East,
Toronto, Ontario M2J 5C2

Take notice that the *Amended Application for directions pertaining to the unauthorized compensation of cancelled pre-filing orders by the mis-en-cause credit cards settling institutions* is scheduled for adjudication before the Honourable Michel A. Pinsonnault, J.C.S., sitting in the Commercial Division in and for the District of Montreal, at the Montreal Court House, 1 Notre-Dame Street East, Montreal, Quebec at 9:15 AM on April 27, 2016 in at room to be determined.

Do govern yourselves accordingly.

MONTREAL, April 26, 2016

McCarthy Tétrault LLP

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SUPERIOR COURT
(Commercial Division)
Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act, RSC 1985, c C-36

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-050409-164

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Mis-en-cause

AMENDED LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR DIRECTIONS PERTAINING TO THE UNAUTHORIZED COMPENSATION OF CANCELLED PRE-FILING ORDERS BY THE MIS-EN-CAUSE CREDIT CARDS SETTling INSTITUTIONS

| | |
|-------------|---|
| Exhibit A-1 | [Under seal] Proposed Monitor's Report on Cash-Flow Statement dated March 23, 2016 |
| Exhibit A-2 | [Under seal] Monitor's comparison of projected receipts and disbursements and actual receipts and disbursements for the four-week period ended April 17, 2016 |
| Exhibit A-3 | [Under seal] Company's projected receipts and disbursements for the nine-week period ending June 19, 2016 |

MONTREAL, April 26, 2016

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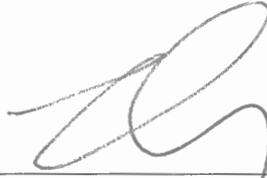
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N^o 500-11-050409-164
SUPERIOR COURT (COMMERCIAL DIVISION)
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

IN THE MATTER OF COMPANIES' CREDITORS
ARRANGEMENT ACT:

7098961 CANADA INC. PETITIONER

-AND-
RICHTER ADVISORY GROUP INC. MONITOR

-AND-
PAYSAFE MERCHANT SERVICES INC. ET AL
MIS-EN-CAUSE

**AMENDED APPLICATION FOR DIRECTIONS PERTAINING
TO THE UNAUTHORIZED COMPENSATION OF CANCELLED
PRE-FILING ORDERS BY THE MIS-EN-CAUSE CREDIT
CARDS SETTLING INSTITUTIONS**

ORIGINAL

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