

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Court No: 500-11-050409-164
Estate No: 0000293-2016-QC

SUPERIOR COURT
(Commercial Division)
The Companies' Creditors Arrangement Act

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
(1985), c. C-36 WITH RESPECT TO:

**7098961 CANADA INC. (FORMERLY KNOWN AS
BEYOND THE RACK ENTERPRISES INC.),** a
legal person duly incorporated under the laws of
Canada, having its principal place of business at
905 Hodge St., Saint-Laurent QC H4N 2B3

Debtor

-and-

RICHTER ADVISORY GROUP INC., a duly
incorporated legal person having its principal place
of business at 1981 McGill College Avenue, in the
city and district of Montreal, Quebec, H3A 0G6

Monitor

FIRST REPORT OF THE MONITOR
ON THE STATE OF THE DEBTOR'S FINANCIAL AFFAIRS
APRIL 19, 2016

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 "**Debtor**") as appears from the Court record.
2. Pursuant to the Initial Order, Richter Advisory Group Inc. ("**Richter**" or 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 Debtor will present a Motion for the issuance of an Order Extending the Stay of Proceedings up to and including April 25, 2016.
4. We refer the Court to the report issued by Richter as Proposed Monitor dated March 23, 2016 for general information on the Debtor, historical events leading to the CCAA filing, objectives of the CCAA proceedings and historical financial information.
5. This First Report of the Monitor has been prepared in order to inform the Court of the following:
 - A. General information
 - B. Operations and events following the issuance of the Initial Order
 - C. Solicitation process
 - D. Debtor's restructuring measures
 - E. Cash flow projections
 - F. Activities of the Monitor
 - G. Motion for the issuance of an Order Extending the Stay of Proceedings.
6. We inform the Court that the Monitor has not conducted an audit or investigation of the information that was provided by the Debtor and that accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this report. The information contained herein is based on unaudited financial information provided to the Monitor by the Debtor's management as well as discussions with the Debtor's management and employees.
7. The cash flow projections appended to this report were prepared by the Debtor's management and are based on underlying financial assumptions. The Monitor cannot provide an opinion as to the accuracy, completeness or reliability of these projections. As the cash flow projections relate to future events, which are indeterminable by nature, variances will occur, which may be material. Accordingly, the Monitor does not express an opinion regarding the likelihood of materialization of these cash flow projections.
8. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

A) GENERAL INFORMATION

9. The Debtor's business activity is the online sale of designer brand apparel, accessories, beauty and home decor products, through its website, to customers primarily in Canada and the United States.
10. The Debtor leases a building which has approximately 180,000 square feet for administration and its main warehouse. A smaller warehouse is leased in Plattsburgh, New-York (10,000 square feet).
11. Prior to the issuance of the Initial Order, the Company implemented cost cutting measures that included reduction of management positions, pay cuts for certain management positions and the reduction of the number of employees in all departments. The Company presently has 74 employees in Montreal and 76 contractuales overseas, an increase of 12 and 24 respectively from the date of the Initial Order.
12. The objectives of the CCAA proceedings was to seek the issuance of an Initial Order with the necessary reliefs to allow the continuation of the activities while a solicitation process was being conducted under Court supervision, the whole with a view to identify the best transaction for the benefit of all stakeholders (including the employees, the trade creditors, the suppliers, the customers and the shareholders).

B) OPERATIONS AND EVENTS FOLLOWING THE ISSUANCE OF THE INITIAL ORDER

13. The Debtor, with the assistance of the Monitor, implemented a detailed communication plan addressing the information needs of employees, management, suppliers, and customers.
14. The Debtor has been in communication with suppliers affected by the CCAA proceedings and has been successful in maintaining a continued supply of goods and services to its business, either on a cash on delivery basis or on negotiated terms.
15. The Initial Order allowed the Debtor to enter into an Interim Financing totaling \$1,150,000 (the "**DIP Advances**").
16. The following conditions precedent to the DIP Advances were met during the week following the issuance of the Initial Order:
 - i) the conclusion of an agreement between the Company and Paysafe, its principal payment processor; and
 - ii) the conclusion of an agreement between SVB and the DIP Lender.

17. The Debtor is maintaining its operations and focusing on the fulfilment of customers' orders through delivery of items held in inventory and purchases made depending on cash flow availability.
18. Pursuant to the Initial Order, Paysafe and its representatives have been given unrestricted access to the books and records of the Debtor, its premises, employees and management and have been provided by the Debtor with the information allowing for the calculation of its Pre-Filing Exposure and Current Exposure, the whole in accordance with the Initial Order. Furthermore, Paysafe has been provided with additional information as requested.
19. The Debtor has implemented or is in the process of implementing restructuring measures detailed further in this report.
20. The Debtor's indebtedness was recently updated and is as follows:

7098961 Canada Inc. List of Creditors As of March 23, 2016 (000's)	
Secured creditors	\$19,545
Unsecured creditors	<u>26,252</u>
Total	<u>\$45,797</u>

C) SOLICITATION PROCESS

21. On March 29, 2016, Richter implemented a formal process to solicit offers for the sale of the Debtor's assets and business.
22. In this regard, Richter identified strategic buyers worldwide likely to be interested in purchasing Debtor's assets and business in a going concern scenario. We also identified auctioneers, liquidators, investment funds and other investors who could be interested in Debtor's assets and business.
23. We have prepared and sent out a solicitation letter and a summary information document (**Appendix A**) by email to 428 identified potential buyers, including the one who had made an offer in March 2016, in order to enquire as to their interest regarding this business opportunity.

24. We have made available to potential buyers who have signed a confidentiality agreement, the relevant information to assess this business opportunity through a virtual data room.
25. 41 potential buyers have expressed an interest of which 33 have signed a confidentiality agreement (“**Interested Potential Buyers**”) and were given access to the virtual data room. They can be allocated among the following categories:
 - 19 strategic buyers;
 - 11 auctioneers or liquidators; and
 - 3 investment funds or other investors.
26. Interested Potential Buyers have had the opportunity to visit the premises of the Debtor, inspect the assets and meet with management. Information requested by Interested Potential Buyers were posted in the virtual data room so that every Interested Potential Buyer had access to the same information.
27. On April 14, 2016, we posted in the virtual data room a Request for Offer (refer to **Appendix B**) containing basic information on the process and inviting Interested Potential Buyers to use the suggested Asset Purchase Agreement also posted in the virtual data room the same day.
28. In the context of this solicitation of interest, we have requested that offers be submitted to our office no later than noon, Eastern Daylight Time, on April 18, 2016. This deadline was considered necessary in order to provide for the possibility to conclude a transaction on a going concern basis with minimal impact on the business and to mitigate further losses.
29. On April 18, 2016, offers received were opened in private with representatives of the Monitor and its legal counsel, and representatives of the Debtor and its legal counsel.
30. The offers are summarized in **Appendix C** to be filed under seal with the Court.
31. The best offer envisages an investment in the Debtor to fund a Plan of Arrangement with the creditors, the whole to be implemented by June 4, 2016 or, failing same, an acquisition of the assets. This offer is from a company related to the DIP Lender and it provides for a conditional \$2 million of additional Interim Financing to the Debtor.

D) DEBTOR'S RESTRUCTURING MEASURES

32. The following is a summary of the Debtor's restructuring initiatives that are presently being implemented or are being contemplated by management.

Cancellation of certain leases and contracts

33. The Debtor terminated a lease in Toronto that was no longer necessary and a lease in Montreal that had never been occupied by the Debtor and leased to a sub-tenant.
34. The Debtor also terminated contracts relating to certain leased equipment that were no longer used.

Liquidation of Excess Inventory

35. The Debtor's management is in the process of implementing a liquidation strategy for the inventories. This strategy involves the following:
- On April 15, 2016 the Company launched an inventory liquidation campaign to raise funds for the on-going operations.
 - Promotional discounts of up to 50% are offered to customers.
 - Items are advertised as "in-stock".
 - Items are advertised as being shipped within 1-3 weeks.
 - The campaign ends on Tuesday, April 19, 2016, at 9:59 am (EST) or until inventory is available.
 - This campaign is expected to generate approximately \$250K in sales as a result of liquidating the equivalent cost of inventory.

Sales and Gross Margin Improvements

36. Different sales and gross margin improvement initiatives have been developed by Management. The implementation of these measures will depend on the strategy that a successful buyer will envisage for the future of the business.

Operating and overhead expenses reduction

37. Management is in the process of completing its analysis and identification of potential cost reduction initiatives at the head office through the implementation of internal processes to control costs.

E) CASH FLOW PROJECTIONS

DIP Financing

38. The Initial Order authorized an Interim Financing Facility providing the Debtor with \$1,150,000 to maintain its operations with a Maturity Date of May 27, 2016. To date, the full amount of the DIP Facility has been received by the Debtor.

Period from March 23 to April 17, 2016

39. When the Motion for the Issuance of an Initial Order was filed on March 23, 2016, the Debtor submitted a projected cash flow statement for the initial 30-day period.
40. We refer this Court to **Appendix D** (under seal) for the comparative cash flow statement for the above period including details of the major variances.
41. Since the filing of the CCAA, the Debtor is paying its suppliers based on negotiated terms or on cash on delivery basis. The Debtor advises that it has not incurred significant unpaid liabilities since the filing.
42. The cash receipts from the payment processors have been significantly impaired as a result of payment processors offsetting, from their remittance, customers' order cancellations totaling \$1,276,000 pertaining to pre-filing orders. For the 4-week period ended April 17, 2016, new orders totaled \$2.5 million, which are \$200,000 higher than initially projected.

Period from April 18 to April 24, 2016

43. The Debtor presents to this Court its cash flow projections ("**Projections**") for the period from April 18 to April 24, 2016 (the "**Period**") (refer to **Appendix E**) which are filed under seal with the Court.
44. The Projections reflect the following general assumptions:
- Extension of the Stay Period;
 - Continued service by the payment providers;
 - Continued service by the different outsourcing companies and individuals.

45. More particularly, the Projections reflect the following assumptions:

Cash Receipts

- The forecasted sales were based on the recent trending since the filing of the CCAA.
- Receipts assume that the payment processors will continue to offset, from their remittance, the customers' cancellations of pre-filing orders.
- Receipts from payment processors assume a holdback of 12% for Paysafe.

Cash Disbursements

- Funds will be used in priority to pay employees and expenses to maintain the operations of the business. Purchases, shipping and marketing expenses will depend on the level of funds collected from the payment processors. Therefore, such disbursements were projected as a function of payment processors receipts. Management expects to purchase more products and fulfill more open customers' orders in the eventuality that the funds received from payment processors are higher than projected.
- Operating expenses were projected based on historical information and the expected level of activity.
- More particularly, salaries reflect the actual number of employees and payments to contractors reflect the amounts necessary in order to maintain operations and the IT infrastructure.

F) ACTIVITIES OF THE MONITOR

46. On April 1st, 2016, in accordance with the Initial Order, the Monitor mailed to all known creditors of the Debtor a notice informing them of the issuance of the Initial Order and of the Stay of Proceedings. A copy of this notice has been posted on our website so that creditors may have access to it and a dedicated telephone number and email address have been established.
47. Since the Initial Order was issued, the Monitor has participated in several meetings and work sessions with the Debtor's management with the view of maintaining and restructuring their operations efficiently. The Monitor is not, however, taking any managerial decisions, same being entirely left to the Debtor's management.
48. The Monitor has devoted time and energy in implementing the solicitation process including the set-up of the virtual data room and communication with Interested Potential Buyers.

49. In addition, the Monitor has been in communication with representatives of Paysafe in order to keep them apprised of the evolution of the file as well as of the actual financial results in comparison to cash flow projections.
50. The Monitor assisted the Debtor in its dealings with a number of suppliers in order to ensure an uninterrupted flow of goods and services.
51. The Debtor has provided the Monitor with its full cooperation and the Monitor has had unrestricted access to its premises, as well as to the various books and records.
52. The Monitor has implemented procedures to insure a monitoring of the receipts and disbursements, as provided by the CCAA, with a view of performing comparison and variance analysis of actual results against the Debtor's cash flow projections filed with the application made pursuant to the CCAA.
53. The Monitor, to its knowledge, has been kept informed of the Debtor's major activities and has reviewed the disbursements to ensure that they were related to current commitments.

G) MOTION FOR THE ISSUANCE OF AN ORDER EXTENDING THE STAY OF PROCEEDINGS

Extension of Stay of Proceedings

54. The Debtor's application to extend the Stay of Proceedings to April 25, 2016 is reasonable and the Monitor recommends that this Court agrees to it, given inter alia the following factors:
 - The requested delay is essential in order to allow time for the Debtor to complete its discussion with the party having submitted the highest proposal in the context of the solicitation process with the view to prepare a Plan of Arrangement under the CCAA.
 - The requested delay will provide the interested parties with useful time to resolve any issue relating to the offset done by the payment processors.
 - If the extension is granted, we are not aware of any other issue that may materially prejudice creditors.
 - Several suppliers and employees have indicated their support to the Debtor during the current restructuring process.
 - The extension of the Stay of Proceedings is supported by the DIP Lender, the Debtor's principal secured lender.

- Several direct and indirect jobs are at stake.
- Since the issuance of the Initial Order, the Debtor has continued to act diligently, in good faith and in the interest of its creditors.
- Since March 24, 2016, the Debtor has continued to pay its employees and suppliers of goods and services on time and/or according to existing agreements.
- If the Initial Order issued by this Court is not extended as requested by the Debtor, there is a strong possibility it will go bankrupt and a liquidation will ensue.

CONCLUSION AND RECOMMENDATION

55. The Monitor has managed an accelerated solicitation process with a view to sell the assets or the business of the Debtor in a going concern basis, avoid business interruption and maximize value for all stakeholders.
56. The Monitor believes that the issuance of an Order Extending the Stay of Proceedings is necessary and reasonable in the circumstances and will allow the Debtor to implement the transaction being proposed by the party having submitted the highest proposal in the context of the solicitation process, the whole for the benefit of all of the Debtor's stakeholders since it is contemplating the submission of a Plan of Arrangement under the CCAA.

Respectfully submitted at Montreal, this 19th day of April 2016.

Richter Advisory Group Inc.
Monitor



Benoit Gingues, CPA, CA, CIRP

Appendix A

Solicitation Letter and Summary Information Document

RICHTER

March 29, 2016

Via Email

Subject: 7098961 Canada Inc. (formerly Beyond the Rack Enterprises Inc.) – Request for Offers

Dear Madam, Sir,

Richter Advisory Group Inc. (“Richter”) is conducting a sale process for the assets and business of 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc.) (“BTR”) an on-line shopping company.

Attached you will find a short document providing additional information regarding BTR and its assets. Should you wish to pursue this investment opportunity, additional information will be made available to you following the execution of an Undertaking Agreement attached hereto.

Should you require additional information, please do not hesitate to contact the undersigned.

Yours very truly,

**Richter Advisory Group Inc.
Monitor**

Benoit Gingues, CPA, CA, CIRP

Encl.



Investment Opportunity

BEYOND THE RACK

UNIQUE BRAND AND CUSTOMER BASE



-Not all superheros wear capes

Shop for mom
up to 80% off

Request for offers

Inquiries concerning this request for offers
should be directed to:

RICHTER

1981 McGill College
12th Floor
Montréal, Québec H3A 0G6

Benoît Gingues, CPA, CA, CIRP
(514) 934-3514
bgingues@richter.ca

Mirella Pisciueneri, CPA, CA
(514) 934-3465
mpisciueneri@richter.ca

Pierre-Olivier Strini, MBA
(514) 934-3440-4084
pstrini@richter.ca

BUSINESS OVERVIEW

- ▶ 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc.) (“BTR” or the “Company”) is a leading Canadian online shopping company for men and women, offering designer brand apparel and accessories at a discounted price to its members through limited-time events.
- ▶ BTR started its commercial activities in January 2009, and progressively expanded its product offering to its members, to include apparel for children (toys and books), as well as housewares products such as furniture, art and other small home appliances.
- ▶ The Company presently has 14 million consumer members in Canada and the US, with over 450,000 of these being active buyers and offers merchandise from over 3,000 brands.
- ▶ BTR generated gross sales in excess of \$130 million through its website in 2014 and 2015.
- ▶ Rented headquarters and warehouse of the Company are located in Montreal, Quebec (180,000 sq.ft.).

BUSINESS MODEL AND MARKET OUTLOOK

- ▶ BTR provides a solution to the excess inventory for select consumer brands through a subscriber business model. The Company generates revenues through:
 - ▶ Online merchandise sales;
 - ▶ Shipping and handling charges to its customers;
 - ▶ Advertising on its website; and
 - ▶ Distribution of marketing materials on behalf of third parties to its customers.
- ▶ BTR is part of a fast growing industry, a 17.2% annual growth rate is expected between 2015 and 2020 for online designer clothing sales in the United States (IBIS World).

BUSINESS OPPORTUNITY

- ▶ Extensive members’ list including a large number of active buyers;
 - ▶ E-commerce website and platform;
 - ▶ Experienced management and operational team in the e-tailing industry;
 - ▶ Highly valuable brand name;
 - ▶ 15 Canadian and 7 United States trademarks registrations and applications;
 - ▶ Possibility to purchase the business without the obligations related to the leased premises;
 - ▶ Possibility to structure the transaction in order to benefit from a portion of the accumulated tax losses;
 - ▶ Inventory and equipment; and
 - ▶ Debt free transaction(s).
-

TRANSACTION PROCESS

- ▶ On March 24, 2016, the Company filed for protection under the *Companies' Creditors Arrangement Act* and Richter Advisory Group Inc. ("Richter") was appointed Monitor.
- ▶ Richter is conducting a sale process to solicit offers on behalf of the Company from parties interested in acquiring BTR's assets and business. Considering the insolvency proceedings undertaken, the contemplated transaction(s) will be concluded on a "debt-free" and "as is where is" basis.
- ▶ Detailed information relating to the Company's operations and assets for sale will be made available, in a virtual data room, upon signature and receipt by Richter of the Confidentiality Agreement (attached hereto). All inquiries and any requests for additional information should be made directly to Richter.
- ▶ In view of the information contained in the data room, it is expected that offers would contain minimal conditions. Each offer will be subject to the terms and conditions included in the data room. All offers should clearly substantiate financial ability to conclude a transaction.
- ▶ **Offers must be submitted no later than noon EDT on April 18, 2016, at the office of:**

Richter Advisory Group Inc.
Attention: Benoit Gingues, CPA, CA, CIRP
1981 McGill College, 12th Floor
Montréal, Québec H3A 0G6
bgingues@richter.ca

- ▶ Any ultimate transaction would be subject to approval by the Court and secured lenders.
- ▶ The Company reserves the right, in its sole discretion, to:
 - Suspend or modify the process for any reason, at any time;
 - Exclude any potential buyer from any further participation in the solicitation process;
 - Select the chosen potential buyer without any obligation to accept any offer; and
 - Reject any or all offers and shall have no obligation to disclose any reason therefor.

ABOUT RICHTER

- ▶ Richter Advisory Group Inc. is a leader in the field of financial reorganization, distressed transaction services and insolvency, with a track record for finding practical solutions to complex problems. Our team has been involved in some of Canada's most significant restructurings.
- ▶ Richter is a financial consulting services firm offering strategic support and has been a recognized member of the business community since 1926. Our team is composed of more than 450 partners, specialists, high level professionals and administrative staff. In an increasingly complex global environment, our firm offers a range of financial advisory services and our delivery model supports a comprehensive and integrated approach in which our participation becomes a natural extension of each client.

CONFIDENTIALITY AND DISCLAIMER

This document has been prepared based on information provided by the Company and is intended to provide preliminary information to potentially interested third parties to formulate offers with regard to the purchase of the Company's assets and operations. The information contained herein, along with any accompanying materials, is confidential and proprietary to the Company. Accordingly, the reader agrees to treat all information as strictly confidential and shall not disclose, either in part or in whole, to any party not directly involved in this process.

This document is not intended for general circulation or publication and cannot be reproduced in any form without the written permission of the Company and of Richter Advisory Group Inc. This document does not constitute a prospectus, offering memorandum or public offering. No guarantees are made or implied with regard to any transaction that may ultimately result.

Appendix B
Request for Offer

Request for Offers

BEYOND THE RACK

- ▶ On March 24, 2016, 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc.) ("Beyond the Rack" or the "Company") filed for protection under the *Companies' Creditors Arrangement Act* and Richter Advisory Group Inc. ("Richter") was appointed Monitor.
- ▶ Richter has solicited numerous parties who could have an interest in purchasing the assets and business of Beyond the Rack in whole or in part.
- ▶ You have expressed an interest in participating in this sale process and after entering into a Confidentiality Agreement with the Company, you have been provided with access to a virtual data room containing information on the business and its assets.
- ▶ Richter is now requesting that potential purchasers formalize their interest in this business opportunity by submitting a definitive and binding offer (the "Offer"). We invite potential purchasers to use the suggested Asset Purchase Agreement which is now available in the virtual data room. **This draft Asset Purchase Agreement contemplates an asset transaction and is not intended to limit the type of transactions that may be considered by the Company. Potential purchasers are not precluded from proposing alternative acquisition structures and updating said draft Asset Purchase Agreement accordingly.**
- ▶ **Offers must be submitted in a sealed envelope clearly marked "Offer – Beyond the Rack" no later than noon (EDT) on April 18, 2016, at the office of:**

Richter Advisory Group Inc.
Attention: Benoit Gingues, CPA, CA, CIRP
1981 McGill College, 12th Floor
Montréal, Québec H3A 0G6
bgingues@richter.ca

- ▶ Offers will be opened in private.
 - ▶ All offers must stipulate that they are open for acceptance until noon (EDT) on April 28, 2016.
 - ▶ All offers **must be accompanied** by a deposit in an amount of no less than 5% of the purchase price in the form of a certified check, irrevocable wire transfer or bank draft payable to Richter Advisory Group Inc. - in trust.
 - ▶ Any ultimate transaction would be subject to approval by the Company, the Monitor, secured lenders and the Court.
 - ▶ The Company reserves the right, in its sole discretion, to:
 - Suspend or modify the process for any reason, at any time;
 - Exclude any potential purchaser from any further participation in the solicitation process;
-

- Select the chosen potential purchaser without any obligation to accept the highest offer; and
 - Reject any or all offers and shall have no obligation to disclose any reason therefor.
- ▶ Potential purchasers acknowledge by submitting an offer that if any of those event were to occur they would have no recourse whatsoever against the Company, the Monitor and their respective representatives.

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This document has been prepared based on information provided by the Company and is intended to provide preliminary information to potentially interested third parties to formulate offers with regard to the purchase of the Company's assets and operations. The information contained herein, along with any accompanying materials, is confidential and proprietary to the Company. Accordingly, the reader agrees to treat all information as strictly confidential and shall not disclose, either in part or in whole, to any party not directly involved in this process.

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FILED UNDER SEAL

Appendix C

Summary of Offers

FILED UNDER SEAL

Appendix D

Comparative Cash Flow Statement for the Initial 30-day Period Ending on April 17, 2016

FILED UNDER SEAL

Appendix E

Cash flow Projections for the Period from April 18 to April 24, 2016