

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the “BIA”),
R.S.C. 1985, c. B-3)

No.: 500-11-047847-146

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

MEXX CANADA COMPANY

Debtor/Petitioner

- and -

RICHTER ADVISORY GROUP INC.

Trustee

- and -

LF CENTENNIAL PTE. LTD., a legal person
having a place of business at 10 Raeburn Park,
Block A, 03-08, Singapore, 088702

Respondent

**MOTION TO DECLARE A SEIZURE UNENFORCEABLE AND TO ENFORCE THE
STAY OF PROCEEDINGS OR ALTERNATIVELY TO GRANT A SAFEGUARD
ORDER**

(Section 69 of the *Bankruptcy and Insolvency Act* (the “BIA”))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE
REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL
DISTRICT OF MONTRÉAL, THE DEBTOR RESPECTFULLY SUBMITS THE
FOLLOWING:

I. INTRODUCTION

1. By the present motion, Mexx Canada Company (the “Debtor” or “Mexx”) seeks, *inter alia*, an order (i) declaring unenforceable and inopposable to Mexx an arrest of certain property belonging to it carried out at the request of LF Centennial PTE. LTD. (“LF”) and enforcing the existing stay of proceedings in favor of Mexx against LF (as a result of Section 69 BIA) or alternatively (ii) granting a safeguard order.

II. RELATIONSHIP BETWEEN MEXX AND LF

2. LF is a consumer goods design, development and sourcing company for major retailers and brands around the world. LF specializes in the management of supply chains of high-volume,

time-sensitive goods, as appears from a print-out of LF website communicated herewith as **Exhibit R-1**.

3. At all material times, LF acted as an agent for Mexx. In that capacity LF assisted Mexx and its parent company, in sourcing merchandise with suppliers located in the far east, including China,
4. LF is acting as agent for Mexx for approximately 70% of all the various goods that Mexx is purchasing for its various distribution channels.
5. LF has been acting as Mexx's agent for the purpose of sourcing goods for several years.

III. PROCEDURAL BACKGROUND

6. On December 3, 2014, Mexx filed a *Notice of Intention to File a Proposal* (the "NOI") pursuant to section 50.4 *BIA* with the Official Receiver, and Richter Advisory Group Inc. (the "Trustee") was appointed trustee, as appears from this Court's record.
7. The filing of the NOI granted a stay of the proceedings in favor Mexx and its property (the "Stay").
8. On December 10, 2014, the Trustee sent the *Notice to Creditors of Intention to Make a Proposal* (the "Notice to Creditors") to Mexx's creditors in accordance with subsection 50.4(6) *BIA*, as appears from said Notice to Creditors communicated herewith as **Exhibit R-2**.
9. A copy of the Notice to Creditors was transmitted to LF. The Notice to Creditors indicates that Mexx is indebted to LF for an amount of \$7,841,419.77.
10. On December 17, 2014 LF's counsel contacted the Trustee to advise it that they were representing LF and to gather certain information on Mexx's proposed restructuring and Mexx's intentions with respect to goods in transit. The Trustee then (i) advised LF's counsel of the presentation of the *First Motion for an extension of time to file a Proposal* as well as the *Motion Seeking Authorization to Enter into an Agreement for the Liquidation of the Debtor's Inventory* on December 18, 2014 and (ii) asked if LF would be present at the hearing to make any representations or contestations. LF's counsel responded that they would consult with its client, but in all likelihood would not appear at the hearing as it was not likely the appropriate hearing to debate any of LF's claims and rights, as the case may be.
11. At no time did LF or its counsel file a property claim with the Trustee pursuant to the provisions of the *BIA*, nor did they present any written request in respect of the Seized Inventory nor make any proprietary claims in respect of same.
12. On December 18, 2014, Mexx presented its *First Motion for an extension of time to file a Proposal* and this Court granted an extension of the Stay, up to and inclusive of January 30, 2015. Neither LF nor its counsel were present at the hearing of said motion.
13. On the same day, Mexx also presented its *Motion Seeking Authorization to Enter into an Agreement for the Liquidation of the Debtor's Inventory* which was granted by this Court. Neither LF nor its counsel were present at the hearing of this motion either.

14. On December 23, 2014, without any notice to Mexx or the Trustee or their respective counsel and without disclosing the existence of the NOI or the Stay, LF requested and obtained the issuance of a warrant from the Federal Court of Canada (the "FC") allegedly pursuant to sections 22(1) and 22(2)(i) of the *Federal Courts Act* and Rules 481 of the *Federal Court Rules* for the arrest of multiple shipments of apparel and other fashion accessories stowed in shipping containers (the "**Seized Inventory**"). A copy of the proceedings taken by LF before the FC (Docket 7-2602-14) (the "**FC Proceedings**") is communicated *en liasse* herewith as **Exhibit R-3**.
15. As alleged above and as appears from the FC Proceedings, LF made no reference whatsoever to the NOI or Mexx's restructuring proceedings under the *BIA* in either its statement of claim or the affidavit to lead warrant on the basis of which the warrant was issued by the greffier of the Montreal registry of the FC. However, LF was well aware of the existence of the NOI and the restructuring proceedings by virtue of, *inter alia*, the receipt of the Notice to Creditors and the discussions between its counsel and the Trustee of December 17, 2014 more fully described above.
16. The Seized Inventory belongs to Mexx given that they were purchased on an F.O.B. basis.
17. Mexx was first notified of the FC Proceedings by its custom broker, Delmar International ("**Delmar**"), late in the afternoon on December 24, 2014. However, due to the advent of the holidays, Mexx was unable to obtain any details or documents related to the FC Proceedings. Indeed, it was not until the evening of December 28, 2014, five days after the commencement of the FC Proceedings, that LF advised Mexx for the first time of the existence of said proceedings without even providing Mexx with a courtesy copy of same, as appears from an email dated December 28, 2014 communicated herewith as **Exhibit R-4**.
18. On December 29, 2014, Mexx undersigned counsel wrote to request from LF's counsel (i) the immediate termination of the FC Proceedings and (ii) the respect of the Stay, as appears from an email dated December 29, 2014 communicated herewith as **Exhibit R-5**
19. On December 29, 2014, LF's counsel replied stating that they disagreed with the position taken by Mexx and were refusing Mexx's requests, including that the Stay apply to LF, as appears from an email dated December 29, 2014 communicated herewith as **Exhibit R-6**.
20. On December 29, 2014 Mexx undersigned counsel requested that LF provide them with the documents referred to in the affidavit to lead warrant forming part of the record of the FC Proceedings, as appears from an email dated December 29, 2014 communicated herewith as **Exhibit R-7**. Said documents were not provided until December 31, 2014, as appears from a letter dated December 31, 2014 communicated herewith as **Exhibit R-8**.
21. On December 30, 2014, the Trustee served upon LF a *Notice of Stay of Proceedings* (the "**Notice to Suspend**"), as appears from said Notice to Suspend communicated herewith as **Exhibit R-9**.
22. On December 30, 2014, Mexx proposed to LF that it voluntarily terminate the FC Proceedings in exchange for which Mexx would deposit into a segregated account the net proceeds from the sale of the Seized Inventory. This would have allowed Mexx to ship the Seized Inventory to its stores as quickly as possible so as to maximize the value for the benefit of all

stakeholders while protecting LF's rights if any. In due course, a further debate could take place to determine whether LF was entitled to arrest the Seized Inventory, commence the FC Proceedings and to decide who is entitled to the proceeds. Mexx's proposal would avoid any prejudice whatsoever to LF, Mexx and Mexx's stakeholders.

23. On December 31, 2014, LF rejected the above mentioned proposal.
24. On December 31, 2014, the Trustee received from Delmar a list of containers impacted by the FC Proceedings and related bills of lading, commercial invoices and other shipping documentation. Based on the information provided by Delmar and working with Mexx, the Trustee prepared a schedule of the estimated cost value of the seized inventory communicated herewith as **Exhibit R-10**. Based on the schedule prepared, the Seized Inventory has an invoice cost value of US\$995,592 consisting primarily of inventory already in Montreal in various sufferance warehouses as well as goods still in transit. Furthermore, the original retail value of the Seized Inventory is approximately \$5 million and the projected net proceeds of realization is approximately \$1.3 million provided that the Seized Inventory is available for distribution to the retail stores by no later than Wednesday, January 7th, 2015. As indicated below, any delay in distribution of the Seized Inventory will likely materially impact the realization.

IV. INVALIDITY OF THE SEIZURE & CONCLUSIONS

25. The FC Proceedings are in blatant violation of (i) the Stay in favor of Mexx resulting from Section 69 BIA, which was duly extended on December 18 until January 30, 2015, (ii) the equal treatment of Mexx's stakeholders, (iii) the preservation of the *status quo* during the proceedings under the NOI, (iv) the duty to make a full and frank disclosure when a party applies for an *ex parte* order and (v) the necessity for a creditor to obtain a lift of the stay from this Court pursuant to section 69.4 BIA if it wants to institute proceedings against Mexx or its property.
26. If the motion is not granted on an urgent basis, all of Mexx's stakeholders will suffer significant, serious and irreparable prejudice as the FC Proceedings affect the sales and thus the return to all Mexx's stakeholders. Furthermore, if Mexx is unable to ship the Seized Inventory to its stores their ultimate retail sales value will diminish. This loss of value will continue and grow more acute with each passing day.
27. Any delay in obtaining the Seized Inventory will also increase the restructuring costs (such as the labour and the related distribution center costs) the whole to the detriment of Mexx's stakeholders.
28. In addition to the foregoing, the arrest of the Seized Inventory seriously compromises Mexx' efforts to restructure itself under the protection of the BIA. This was the point of the NOI and is the purpose fostered by the BIA and the reason for the Stay.
29. It is also worth noting that all of the Seized Inventory bear labels, logos and other identifying marks that are copyrighted by or that display trademarks belonging exclusively to Mexx Europe B.V., a related entity of Mexx. Thus, LF could not lawfully sell the Seized Inventory even if the FC Proceedings were maintained.

30. Lastly, the FC Proceedings were commenced for an improper purpose, namely to provide LF with leverage and a preference over other unsecured creditors to which LF is not entitled at law.
31. Given the circumstances and the urgency, Mexx hereby requests that the order to be rendered be executory notwithstanding appeal. Such conclusion is in the undisputed best interest of Mexx and its stakeholders.
32. Furthermore, Mexx intends to claim damages against LF.
33. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present motion;

ORDER LF Centennial PTE. LTD. (“**LF**”) to respect the stay of proceedings in favour of Mexx Canada Company (“**Mexx**”);

DECLARE that the warrant issued by the Federal Court of Canada (the “**FC**”) on December 23, 2014 in the FC’s file 7-2602-14 (the “**FC Proceedings**”) is unenforceable against Mexx and inopposable to it;

DECLARE that the FC Proceedings have been irregularly instituted and are in contravention to section 69 of the *Bankruptcy and Insolvency Act* (the “**BIA**”);

ORDER LF to release immediately the goods seized mentioned in Exhibit R-3 by no later than January 7, 2015 at noon (the “**Seized Inventory**”);

ORDER the provisional execution of the judgment to be rendered on the motion notwithstanding appeal;

THE WHOLE, with costs against LF.

OR ALTERNATIVELY TO GRANT THE FOLLOWING SAFEGUARD ORDER:

DECLARE that the FC Proceedings have been irregularly instituted and are in contravention to section 69 *BIA*;

ORDER LF to cause the Seized Inventory to be released from arrest by no later than January 7, 2015 at noon;

ORDER Richter Advisory Group Inc., in its capacity as Trustee to the Notice of Intention, to keep in a segregated account the proceeds of the sale of the Seized Inventory less (i) applicable taxes, (ii) any amounts on account of custom duties and freight and brokerage charges in respect thereof, (iii) any amount owed to Merchant Retail Solutions ULC and Gordon Brothers Canada ULC (as per the Consulting Agreement approved by this Court on December 18, 2014) and (iv) any costs to distribute the Seized Inventory to the stores, including distribution center labour and transport from the distribution center to the stores (the “**Net Proceeds**”) up to a maximum amount of US\$995,592;

ORDER that for the purposes of determining the rights of Mexx and LF over the Seized Inventory, the Net Proceeds shall stand in the place and stead of the Seized Inventory, and that any rights that Mexx or LF had on or over the Seized Goods shall attach to the Net Proceeds with the same priority (if any) as they had with respect to the Seized Inventory immediately prior to the release of said Seized Inventory, as if the Seized Inventory had not been released and sold and remained in the possession or control of the person having that possession or control immediately prior to the release of the Seized Inventory.

ORDER the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal;

THE WHOLE, with costs against LF

MONTREAL, January 5, 2015

Davies Ward Phillips & Vineberg LLP

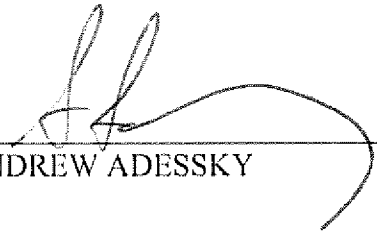
DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtor
Mexx Canada Company

AFFIDAVIT

I, the undersigned, Andrew Adessky, Partner at Richter Advisory Group Inc., having a place of business at 1981 McGill College, in the City of Montréal, Quebec, solemnly declare the following:

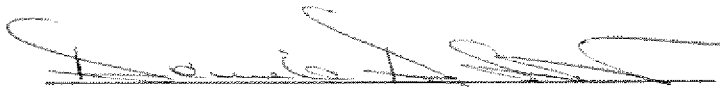
1. I am a partner at Richter Advisory Group Inc., the trustee to the notice of intention of Mexx Canada Company;
2. I have taken cognizance of the attached *Motion to Declare a Seizure Unenforceable and to Enforce the Stay of Proceedings or Alternatively to Grant a Safeguard Order*;
3. All the facts alleged in the said motion are true to the best of my knowledge.

AND I HAVE SIGNED



ANDREW ADESSKY

Solemnly affirmed before me in Montreal
on the 5th day of January, 2015





NOTICE OF PRESENTATION

TO: THE SERVICE LIST

TAKE NOTICE that the *Motion to Declare a Seizure Unenforceable and to Enforce the Stay of Proceedings or Alternatively to Grant a Safeguard Order* will be presented for hearing and allowance in room 15.11 at 9:15 a.m. on January 6, 2015 at the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as Counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, January 5, 2015

Douglas Ward Phillips & Vineberg

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Debtor

Mexx Canada Company.

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T
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Trustee

- and -

LF CENTENNIAL PTE. LTD.

Respondent

LIST OF EXHIBITS

- EXHIBIT R-1** Print-out of LF Centennial PTE. Ltd.'s website;
- EXHIBIT R-2** Notice to Creditors dated December 10, 2014;
- EXHIBIT R-3** Proceedings taken by LF Centennial PTE. Ltd before the Federal Court of Canada;
- EXHIBIT R-4** Email dated December 28, 2014;
- EXHIBIT R-5** Email dated December 29, 2014;
- EXHIBIT R-6** Email dated December 29, 2014;
- EXHIBIT R-7** Email dated December 29, 2014;
- EXHIBIT R-8** Letter dated December 31, 2014;
- EXHIBIT R-9** Notice to Suspend dated December 30, 2014; and

EXHIBIT R-10 Schedule of the estimated cost value of the seized inventory prepared by the Trustee.

MONTREAL, January 5th, 2015

Davies Ward Phillips & Vineberg

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Debtor

Mexx Canada Company

No. 500-11-047847-146

S U P E R I O R C O U R T
District of Montréal

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF**

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**MOTION TO DECLARE A SEIZURE
UNENFORCEABLE AND TO ENFORCE THE
STAY OF PROCEEDINGS OR ALTERNATIVELY
GRANT A SAFEGUARD ORDER, AFFIDAVIT OF
ANDREW ADESSKY AND NOTICE OF
PRESENTATION**

ORIGINAL

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