

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SALUS CAPITAL PARTNERS, LLC

Applicant

- and -

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ
CORP., 2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY
COLLECTION INCORPORATED AND P.M.R. INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**SUPPLEMENT TO THE FIRST REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS RECEIVER OF
J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ CORP.,
2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY COLLECTION
INCORPORATED AND P.M.R. INC.**

September 28, 2016

I. INTRODUCTION

1. This supplementary report is supplementary to the First Report of Richter Advisory Group Inc. in its capacity as Receiver of J.S.N. Jewellery Inc., J.S.N. Jewellery UK Ltd., GMJ Corp., 2373138 Ontario Inc., Always & Forever Family Collection Inc., and P.M.R. Inc. dated September 22, 2016 (the “First Report”). This Report adopts the definitions contained in the First Report.

2. The position asserted by Utopia and Sharon Stone, as set out in the First Report, may require the application of intellectual property law of Thailand. The Receiver has retained Nont Horayangura of the law firm of Baker & McKenzie Ltd. to provide an expert opinion with respect to aspects of such Thai law. Attached hereto as Appendix “A” is the Affidavit of Nont Horayangura appending the Baker & McKenzie Ltd. letter opinion with respect to such questions.

All of which is respectfully submitted on the 28 day of September, 2016.

**Richter Advisory Group Inc., as the Receiver of
J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited,
GMJ Corp., 2373138 Ontario Inc.,
Always & Forever Family Collection Incorporated,
and P.M.R. Inc. and not in its personal capacity**

Clark Lonergan, CPA, CA, CIRP
Senior Vice-President

Katherine Forbes, CPA, CA
Vice-President

APPENDIX "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

- and -

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ
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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF NONT HORAYANGURA
(Sworn September 28, 2016)**

I, Nont Horayangura, of the City of Bangkok, Thailand, lawyer, MAKE OATH AND SAY AS FOLLOWS:

1. I am a member of the law firm of Baker & McKenzie Ltd. I carry on my practice, in the area of intellectual property law from Baker & McKenzie Ltd.'s office in Bangkok, Thailand.
2. Attached hereto as Schedule "A" is a copy of my *curriculum vitae* setting out my experience and expertise in the area of Thai intellectual property law.
3. Attached hereto as Schedule "B" is a copy of a letter I prepared addressed to Fasken Martineau DuMoulin LLP, counsel to Richter Advisory Group Inc., in its capacity as receiver of J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp., 2373138 Ontario Inc., Always & Forever Family Collection Incorporated and P.M.R. Inc., dated September 28, 2016

responding to certain questions with respect to Thai intellectual property law. I believe that the responses to the questions posed to me accurately reflect the intellectual property law of Thailand.

4. Attached hereto as Schedule "C" is a copy of my "Acknowledgment of Expert's Duty" which I have executed.

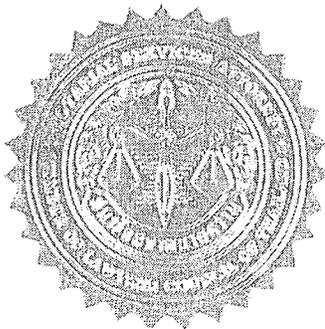
SWORN BEFORE ME at the City of)
Bangkok, Thailand, this 28 day of)
September, 2016.)

Handwritten signature of Miss Praewpan Hinchiranan

Miss Praewpan Hinchiranan)
Notarial Service Attorney)

Handwritten signature of Nont Horayangura

NONT HORAYANGURA



ใบอนุญาต/ทะเบียนเลขที่ 5568/2556
Commission Expires/ทะเบียนหมดอายุ
ในวันที่ 30 June 2017



Reg. No. 5553/2556

หนังสือรับรอง
CERTIFICATE

หนังสือรับรองฉบับนี้ให้ไว้เพื่อแสดงว่า
This is to certify that

นางสาวแพรวพรรณ ทิพย์ชिरะนันท์
Miss Praewpan Hinchiranan

ใบอนุญาตให้เป็นทนายความเลขที่ 970/2552
an Attorney at Law, License No. 970/2552

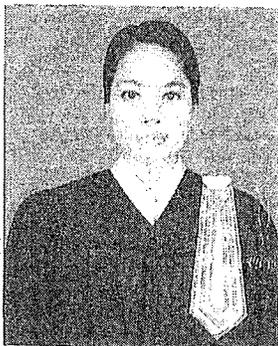
ได้รับการขึ้นทะเบียนเป็นทนายความผู้ทำคำรับรองลายมือชื่อและเอกสาร
has been registered as a Notarial Services Attorney qualified to certify
signatures and documents

ตามข้อบังคับสภาทนายความว่าด้วยการขึ้นทะเบียนทนายความผู้ทำคำรับรอง
ลายมือชื่อและเอกสาร พ.ศ.2551

pursuant to the Regulation of the Lawyers Council on Registration of Notarial
Services Attorneys B.E.2551

หนังสือรับรองฉบับนี้มีผลถึงวันที่ 30 มิถุนายน 2560
This Certificate is valid until June 30, 2017

ให้ไว้ ณ วันที่ 9 เมษายน 2558
Given on April 9, 2015



รับรองแล้วถูกต้อง

นาย. กษ

นายสุมิตร มาศรีงสรณ์

ผู้อำนวยการ

Mr. Sumit Masrungson

Director

สำนักงานทะเบียนแบบการรับรองลายมือชื่อและเอกสาร สภาทนายความ
The Registry of Signature and Document Attestation, Lawyers Council of Thailand

SCHEDULE "A"



Nont Horayangura

Partner
 Bangkok, THAILAND
 +66 2636 2000 ext. 4568
 bnnon@bakermckenzie.com

Practice description

With 20 years of experience, Nont represents a wide range of business and institutional clients in various Intellectual Property (IP) matters. He regularly assists multinational and local clients in exploiting their valuable IP in various forms of agreements around the world. He also assists clients in protecting their IP rights in Thailand and overseas by assessing risk to their IP portfolios, planning cross-border anti-infringement campaigns and court trials. Particularly, he acts as a lead counsel for Thai clients in representing their interests in overseas markets, including taking action in cross border litigation in cooperation with overseas counselors in respective jurisdictions for IP infringement cases in Thailand, China, Hong Kong SAR, South Korea, Malaysia, the United Kingdom and the United States.

Nont is also active in the information technology and communications practice group through which he advises multinational banking, software, and telecommunications industry leaders on issues related to information and telecommunications regulatory issues, cloud computing, construction and acquisition of telecommunication towers and equipment, international roaming, outsourcing, support and maintenance services, content supply through mobile phone communication systems, e-commerce, advertising laws, data protection and privacy.

Sample Experience

- Team leader, working with Baker & McKenzie San Diego Office, to represent a major ‘free to air’ TV channel in Thailand in filing a copyright and trademark case in Los Angeles, USA, against an illegal local cable TV operator resulting in a favorable multi-million dollar jury verdict;
- Representing a number of leading Thai businesses in coordinating sophisticated cross-border anti-infringement strategies and court trials in People Republic of China, Hong Kong SAR, South Korea, Malaysia, the United Kingdom, and Thailand;
- Representing a group of companies that owns and operates well-known fast food franchises around the world in relation to its battle against copycat marketing in Thailand; and
- Representing a leading Thai telecommunications service provider in establishing a joint venture company with a leading Japanese technology company, including preparing IP and technology transfer/license agreements;

Areas of expertise

Intellectual Property |
 IT/Communications | Antitrust &
 Competition

Languages

Thai
 English

Baker & McKenzie Ltd.
 5th Floor and 21st-25th Floors
 990 Abdulrahim Place
 Rama IV Road, Silom, Bangrak
 Bangkok 10500
 Thailand

- Representing a leading Thai convergence service provider in preparation of agreements for commercial launch of state-of-the-art digital products and services in the cloud computing format;
- Representing leading aesthetic service providers in preparation of agreements for commercialization of their IP outside Thailand;
- Representing leading Thai restaurant operators in preparation of agreements for commercialization of their IP outside Thailand;
- Representing a leading Thai bank in cooperation with a leading Israeli technology company for the commercialization of technologies and products in all gas stations of the leading petrochemical company in Thailand;
- Representing international fashion designers/brands for the commercialization of their IP in Thailand;
- Representing one of Thailand's largest breweries for expansion of its business into the music industry, advising on various entertainment and media issues and preparing an array of contracts related to the music industry;
- Representing a TV production company in preparing agreements for co-production of TV programs and exploitation of advertising time in its cable TV services;
- Representing a Japanese digital marketing company in preparing agreements for distribution of its famous characters in Thailand; and
- Representing The Stock Exchange of Thailand in project agreements with Cinnober Financial Technology AB for their new cutting-edge trading, market data, and market surveillance systems for both equities and derivatives markets.

Publications, presentations and articles

Nont has been a guest speaker and visiting lecturer in both public and private forums, including the Department of Intellectual Property of Thailand, the Department of International Trade Promotion of Thailand, the Intellectual Property Association of Thailand, CENSUS (a cooperation platform of the Economic and Social Commission for Asia and the Pacific, United Nations), the Franchise Association of Thailand, Chulalongkorn University, the University of the Thai Chamber of Commerce, Assumption University of Thailand, the Stock Exchange of Thailand, Leo Burnett Thailand, and PTT Exploitation and Production Public Company Limited.

Topics on which he has spoken include intellectual property protection and exploitation in Thailand and overseas, contracts relating to IP and technologies commercialization, IP legal due diligence, laws on motion pictures and videos, and others.

He also published various articles in respect of IP law, IT/Communication law as well as developments in the industries in numerous forums. These include, for example, The World Copyright

Law Report, Bloomberg BNA Data Protection Report, Bangkok Post, The Nation, Post Today and Baker & McKenzie Newsletters

Professional affiliations

- Member, Intellectual Property Association of Thailand

Awards and rankings

- 'IP Star for Thailand', Managing Intellectual Property, 2015-2016
- 'Recommended Lawyer' in Technology, Media, Telecoms (TMT), *The Legal 500 Asia Pacific*, 2014-2016
- Received a 'silver' rating in the area of prosecution and strategy, *World Trademark Review WTR1000*, 2016

Education and admission

- University of Bristol, LL.M., 2001
- Sasin Graduate Institute of Business Administration, Business Management Program, 1998
- Thammasat University, LL.B., 1996
- Admitted to the Thai Bar Association
- Admitted to the Law Society of Thailand

SCHEDULE "B"

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Asia Pacific
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Manila*
Melbourne
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Shanghai
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Sydney
Taipei
Tokyo
Yangon

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& Africa**
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Almaty
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Baku
Barcelona
Berlin
Brussels
Budapest
Cairo
Casablanca
Doha
Dubai
Dusseldorf
Frankfurt/Main
Geneva
Istanbul
Jeddah*
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St. Petersburg
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Santiago
Sao Paulo**
Tijuana
Valencia

North America
Chicago
Dallas
Houston
Miami
New York
Palo Alto
San Francisco
Toronto
Washington, DC

* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

28 September 2016

Aubrey E. Kauffman
Partner
Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto,
Ontario M5H 2T6, Canada

by email: akauffman@fasken.com

**RE: RECEIVERSHIP OF JSN JEWELLERY INC. (JSN) ET AL- CLAIM OF
UTOPIA JEWELLERY LTD. AND SHARON STONE CO., LTD.**

Dear Aubrey,

Per our communications earlier, please find our responses to each of the Receiver's inquiries as follow.

1) *Under Thai law, what principles apply to the concept of "work for hire", i.e., in what circumstances, if any, will the party that requests and pays for the creation of work be considered the owner of copyright in the work even absent a written agreement assigning copyright?*

First of all, it would be worthwhile to note that the legal system of Thailand is a civil law system. Most of its fundamental legal principles (such as contracts, property, wrongful acts, (i.e. tort law), hire of property, hire-purchase, intellectual property, suretyship, mortgage, pledge, warehousing, agency, bills of exchange and partnerships) are prescribed in the codified systems and statutes.

Judicial precedents could not constitute legal principles. Nevertheless, they could provide persuasive guidelines for legal interpretations where a code or a statute is silent on any specific issue.

Copyright is protected in Thailand under the statute so called "the Copyright Act B.E. 2537" (A.D. 1994) (the "Act"). The Copyright Act provides copyright protection to a range of creative work, which is defined as "creative work in the form of literary, dramatic, artistic, musical, audio-visual, cinematographic, sound records, sound and picture broadcasting work, or any other work in the literary, scientific or artistic domain of the author, irrespective of the mode or manner in which the works are expressed".

Thailand is a signatory to the Berne Convention for the Protection of Literary and Artistic Works ("**Berne Convention**") and is therefore under an obligation to provide copyright protection to works of other contracting states of the Berne Convention.

Section 10¹ of the Act prescribes that copyright in the work created in the course of commission shall vest in the employer [hirer], unless the author and the employer have agreed otherwise.

Hence, in absence of a written agreement on the ownership of copyright, the party that orders and pays for the work (i.e. hirer) could be considered the owner of the copyright under the Act. This is in accordance with the provisions under the law.

For instance, if Company A commissions Company B without a proper written agreement for the creation of a copyright work, Company A should be considered the owner of the copyright.

2) *Under Thai law, what are the basic requirements for the creation and existence of copyright?*

In brief, works eligible for protection under the Act must:

(1) be "creative" works;

The Act does not provide a definition for the term "creative." Analysis of the Thai Supreme Court decisions such as, Decision Numbers 14580/2557 and 19305/2555, have provided certain guidelines that to be a creative work, the work must be intentionally created by the author using a certain level of skill, labor, and effort;

(2) be in the categories of literature, drama, art, music, audio visual, cinematography, sound recordings, and sound and video broadcasting works or any other works in the literary, scientific, or artistic domains, regardless of the mode or manner of expression;

(3) not be any idea or procedure, process or system or method of use or operation or concept, principle, discovery or scientific or mathematical theory; and

(4) not be non-copyrightable works such as news of the day and facts having the character of mere information; constitution and legislation; regulations, rules, announcements, orders, explanations and official correspondence of the Ministries, Sub-Ministries, Departments or any other government or local units; judicial decisions, orders, rulings and official reports; translation and compilation of those aforementioned made by the Ministries, Sub-Ministries, Departments or any other government or local units.

3) *Under Thai law, what principles apply to determine whether there is joint authorship in a work, including whether authors must intend to create a joint work?*

The Act is silent on the principles of joint ownership.

Nevertheless, the Thai Supreme Court Decision Number 7457/2550 has ever laid down certain requirements of joint ownership in copyrighted works in its previous decision. That is, a person must participate in expressing his/her ideas in creation of such work in order to be considered as a joint owner of a artistic and cinematographic work. Verbally suggesting ideas in conversation about the

¹ Copyright Act B.E. 2537 (1994) Section 10 "Copyright in the work created in the course of commission vests in the employer, unless the author and the employer have agreed otherwise."

creative work does not constitute joint ownership. Participation in making or creating the work is an essential element to determine if a person is a joint owner.

Thus, intention to create a joint work would likely be considered as a part of establishment of a joint authorship under the law.

4) *Under Thai law, are there any restrictions or exceptions to the creation, existence or enforcement of copyright, such as exceptions based on the concept of "useful articles" or the number of copies of a work produced?*

Yes. There are certain restrictions and exceptions to creation and enforcement of copyright which are prescribed under the Act. They may be summarized as follows:

A. Restrictions or exceptions to the creation

The Act does not protect any idea or procedure, process or system or method of use or operation or concept, principle, discovery or scientific or mathematical theory. In addition, the Act does not provide copyright protection for the following works:

- (1) Daily news and facts having the character of being information only, which are not in the literary, scientific, or artistic fields;
- (2) Constitutions and legislation;
- (3) Rules, regulations, notifications, orders, explanations and correspondences of Ministries, Sub-Ministries, Departments, or any other governmental or local agencies;
- (4) Judgments, orders, rulings, and reports of governmental agencies;
- (5) Translations and compilations of works made by Ministries, Sub-Ministries, Departments, or any other governmental or local agencies.

As for the useful article doctrine, the Act does not expressly recognize this concept. "Applied art"² is one of the work categories that may afford copyright protection under the Act. "Applied art" means a work applying each or a composition of literature, drama, art, music, audio visual, cinematography, sound recordings, and sound and video broadcasting works for other uses apart from the appreciation in the merit of the work, such as for practical use, decoration of materials or appliances, or for commercial benefit. Reading from the language, any artistic work that falls within the ambit of "applied art" and if satisfies other requirements under the Act, may afford copyright protection.

B. Uses Not Constituting Infringement

Generally, reproduction, adaptation, publication, dissemination to the public, or rental of the original or a copy, without permission, of a copyrighted work constitutes an infringement. However, any act which would constitute

² Copyright Act B.E. 2537 (1994) Section 4(7) "work of applied art which means a work applying each or composition of the works mentioned in (1) to (6) for other uses apart from the appreciation in the merit of the work, such as for practical use, decoration of materials or appliances, or for commercial benefit."

copyright infringement shall be exempted if it is done for any of the reasons specified in the Act and it does not conflict with the normal exploitation of the work or unreasonably prejudices the lawful rights of the owner, e.g. producing for research or study not for profit, producing for one's own benefit or his or her family members or close relatives, reproduction, adaptation, or display for teaching purposes when not done for profit and reasonable copying in part from a copyrighted work with acknowledgment of ownership of copyright. As such, producing small numbers of copies may not be an infringement if it is made for the purpose specified in the Act as mentioned above.

5) *Under Thai law, is ownership of copyright determined based on the law of Thailand, or the law of the location where the work is created/authored?*

We understand from the question that you would like to know what applicable law will apply to determine the ownership of copyright work if a work made for hire is made at a distance between a Thai party and a foreign party (outside Thailand) and there is no specific contract governing ownership issue.

In absence of a specific contract between the parties whose nationalities are different, the Conflict of Laws Act B.E. 2481 (1938) normally comes into play. It provides that the question as to what law is applicable in regard to the effect of a contract is determined by the intention of the parties thereto. If such intention, express or implied, cannot be ascertained, the place where the contract is deemed to have been made is the place where a notice of acceptance reaches the offeror. If such place cannot be ascertained, the law of the place where the contract is to be performed shall govern.

Hence, if the intention of the parties and the place where the contract was deemed concluded could not be ascertained, but the work for hire was created in Thailand, the ownership of copyright will be determined based on the Copyright Act, B.E. 2537. For your additional information, Thailand is a member country of an international convention on the protection of copyright (the Berne Convention). As such, the Act extends its protection to a copyright work created by a national from³ or created in a member country of the Berne Convention per the conditions as follows.

- a. For unpublished work, during the entire time or most of the time of the creation of the work, the creator must be a Thai national or reside in Thailand, or a national of or reside in a member country of an international convention on the protection of copyright.
- b. For published work, the initial publication must have been made in Thailand or in a member country of an international convention, or where the initial publication was made outside Thailand and in a country that is not a member of an international convention, the publication of the copyrighted work in

³ Copyright Act B.E. 2537 (1994) Section 61 "A copyright work of an author as well as the rights of a performer of a country which is a member of the Convention for the protection of copyright or the Convention for the protection of performer's rights of which Thailand is also a member or a copyright work of an international organization of which Thailand is a member shall be protected by this Act..."

Thailand or in a member country of an international convention must have occurred within 30 days of the initial publication.⁴

We hope the above is responsive to the Receiver's initial concern. Please feel free to let us know if you have any question.

Best regards,


Nont Horayangura / Thitirat Pullsuk

Partner / Lawyer

Tel: +66 (0) 2636 2000 ext. 4568 / 4952

Fax +66 (0) 2636 2111 ext. 4568 / 4952

E-mail : nont.horayangura@bakermckenzie.com / thitirat.pullsuk@bakermckenzie.com

⁴ Copyright Act B.E. 2537 (1994) Section 8 "The author is the owner of copyright in the work of authorship subject to the following conditions:

- (1) In the case of unpublished work, the author must be a Thai national or reside in Thailand or be a national of or reside in a country which is a member of the Convention for the protection of copyright of which Thailand is a member, provided that the residence must be at all time or most of the time spent on the creation of the work ;
- (2) In the case of published work, the first publication must be made in Thailand or in a country which is a member of the Convention for the copyright protection of which Thailand is a member, or in the case the first publication is made outside Thailand or in a country which is not member of the Convention for the copyright protection of which Thailand is a member, if the publication of the said work is subsequently made in Thailand or in a country which is member of the Convention for the copyright protection of which Thailand is a member within thirty days as from the first publication, or the author has the qualifications as prescribed in (1) at the time of the first publication.

In case the author must be a Thai national, if the author is a juristic person, it must be established under the Thai law."

SCHEDULE "C"

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

SALUS CAPITAL PARTNERS, LLC

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INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Nont Horayangura. I live in the City of Bangkok, Thailand.
2. I have been engaged by or on behalf of Richter Advisory Group Inc., in its capacity as receiver of J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp., 2373138 Ontario Inc., Always & Forever Family Collection Incorporated and P.M.R. Inc., to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

(c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Dated: September 28, 2016



NONT HORAYANGURA

SALUS CAPITAL PARTNERS, LLC

Applicant

- and -

J.S.N. JEWELLERY INC., *et al.*

Respondents

Court File No. CV-16-011478-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced in Toronto

**SUPPLEMENT TO THE FIRST REPORT OF
RICHTER ADVISORY GROUP INC., IN ITS
CAPACITY AS RECEIVER OF J.S.N.
JEWELLERY INC., J.S.N. JEWELLERY UK
LIMITED, GMJ CORP., 2373138 ONTARIO INC.,
ALWAYS & FOREVER FAMILY COLLECTION
INCORPORATED AND P.M.R. INC.**

FASKEN MARTINEAU DUMOULIN LLP

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Aubrey E. Kauffman (LSUC# 18829N)

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Lawyers for the Receiver, Richter Advisory Group Inc.