

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N°: 500-11-043787-122

SUPERIOR COURT  
COMMERCIAL DIVISION

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

SIXTY CANADA RETAIL INC.

Debtor/Petitioner

and

RICHTER ADVISORY GROUP INC. (FORMERLY RSM  
RICHTER INC.) (Mr. Benoit Gingues),

Trustee

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MOTION FOR AN ORDER AUTHORIZING THE SALE OF ASSETS OF THE DEBTOR AND  
THE ASSIGNMENT OF LEASES UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*  
(R.S.C. 1985, c. B-3)

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TO ONE OF THE JUDGES OF THE SUPERIOR COURT, DISTRICT OF MONTREAL,  
SITTING IN THE COMMERCIAL DIVISION, THE PETITIONER RESPECTFULLY SUBMITS:

I. NATURE OF MOTION

1. The Petitioner hereby seeks an order (the "Order") which would :
  - (a) Approve the sale of assets and the assignment of rights and obligations of Sixty Retail under certain contracts (the "Transaction") described in the Asset Purchase Agreement (the "APA") between Sixty Canada Retail Inc. ("Sixty Retail" or the "Debtor") and Sixty Canada Trading Inc. made as of December 21, 2012 and attached herewith under seal of confidentiality as Exhibit R-1; and
  - (b) Issue the Vesting Order sought herein.

II. BACKGROUND TO THE NOI PROCEEDINGS

2. The Debtor is a fashion company that distributes apparel, footwear, and accessories under the brands Miss Sixty and Energie across Canada. The Debtors distributes their products through boutiques and company-owned stores.

3. The Debtor is a wholly-owned subsidiary of Sixty Canada Inc. ("**Sixty Canada**"), which is wholly owned by Sixty SPA, a legal person constituted under the laws of Italy.
4. Sixty SPA and Sixty Far East Ltd. have been supplying the Debtor since its inception with more than 95% of its inventory.
5. Sixty SPA initiated on September 20, 2012 in Italy a reorganization procedure and is seeking to conclude a deed of arrangement (*concordato preventivo*) with its creditors.
6. Two months before the above-mentioned reorganization procedure, Sixty SPA's parent company, Sixty International S.A., a corporation constituted under the laws of Luxembourg, which owns the trademarks of the brands currently distributed in Canada by the Debtor, was acquired by Crescent HydePark European Opportunities Fund I ("**Crescent HydePark**"), an Asian investment fund.
7. The contract between Sixty SPA and Sixty International S.A. regarding the distribution of the brands (the "**Licensing Agreement**") expires on December 31, 2012 and will not be renewed or extended with respect to Canada.
8. Sixty International S.A. owns Sixty Far East Ltd. which has sourced most of the products being distributed by the Debtor in 2012.

### III. ORDERS REQUESTED

9. On December 10, 2012, the Petitioner and Sixty Canada each filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* ("**BIA**") and Richter Advisory Group Inc. (formerly RSM Richter Inc.) (the "**Trustee**") was named trustee in the Debtor's proposal proceedings (the "**NOI Proceedings**"), the whole as more fully appears from the Court record.
10. Since the filing of the NOI, the Debtor has filed a *Motion for an order granting an administrative charge and a D&O charge* which was granted by Justice Corriveau on December 11, 2012, the whole as more fully appears from the Court record.
11. Before the filing of the NOI, discussions had taken place with Crescent HydePark and Sixty International S.A., which were potential natural buyers of Sixty Canada and Sixty Retail considering the ownership of Sixty International S.A. of the trademarks used by the Debtor. These discussions continued following the filing of the NOI and the beginning of the NOI Proceedings.

12. The APA was concluded and accepted by Sixty Retail and Sixty Canada on December 20, 2012, and pertains to the sale of the inventory and assets located at Sixty Retail's rented premises as well as to the assignment of certain contracts, including the leases for the business premises operated by Sixty Retail, the whole as appears from a copy of the APA (Exhibit R-1).
13. The Debtor requests that the APA (Exhibit R-1) be filed under seal of confidentiality and that a redacted copy only, removing the financial information, be filed in the Court record.
14. The assets and contracts described in the APA and defined therein as the Purchased Assets and the Assumed Contracts shall be collectively referred to herein as the "**Purchased Assets**" and the "**Assumed Contracts**".
15. Sixty Canada Trading Inc. is indirectly wholly owned by Crescent HydePark and was incorporated for the purpose of acquiring all the assets of Sixty Retail and Sixty Canada.
16. As appear from the APA, the Transaction between Sixty Retail and Sixty Canada Trading Inc. remains subject to Court approval and contemplates an order of this Court for the transfer and conveyance of the Purchased Assets, free and clear of all hypothecs, liens, charges and encumbrances (the "**Vesting Order**").
17. The Assumed Contracts include the leases of the business premises operated by Sixty Retail and located at :
  - (a) 1 Bass Pro Mills Dr., unit 611, Vaughan, Ontario, L4K 5W4 (Ivanhoe); and
  - (b) 4700 Kingsway, Burnaby, British Columbia, H2N 2C9 (Ivanhoe) (collectively, the "**Leases**").

The landlord of these premises have been duly informed of the proposed assignment of the rights and obligations of Sixty Retail under the Leases, the whole as more fully appears from a copy of emails sent to the landlords on December 13, December 19 and December 20, 2012 attached herewith as Exhibit R-2.
18. All monetary defaults in relation to the Leases will be remedied before or as of December 31, 2012.

19. If the orders requested are granted by this Court, the closing of the Transaction will take place on December 31, 2012. This will enable the creditors to benefit from the proceeds of the sales during the holiday season.
20. The Debtor submits that that it is urgent that the Court approve and authorize the APA and that the Transaction contemplated therein be completed without delay considering, *inter alia*, that :
  - (a) Time is of the essence in that the expediency with which the Transaction would take place is a significant consideration;
  - (b) The terms and conditions of the APA are favorable for the Debtor and it is unlikely that the Debtor would obtain more favorable purchase price, terms, and conditions in the future, especially considering the ownership of Sixty International S.A. of the trademarks used by the Debtor.
  - (c) If the Debtor is precluded from effecting the Transaction, this would be prejudicial to the Debtor and its stakeholders;
  - (d) The ongoing costs, including rents and salaries being paid or payable by the Debtor, may become disproportionate to the value of the Purchased Assets if the Debtor is unable to conclude the Transaction in a timely fashion.
21. The Trustee has reviewed the APA and is satisfied that the Transaction contemplated in the APA is fair and reasonable and in the best interest of the Debtor's creditors.
22. Given the foregoing, it is appropriate that the Debtor be authorized to :
  - (a) Perform all acts, sign all documents, and take necessary actions to execute any disposition, transaction or engagement stipulated in the APA or any related document, and further execute any agreement, contract, deed or any other document ancillary or related to the APA, which could be required or useful to give full and complete effect thereto; and
  - (b) Complete the Transaction;
  - (c) Deliver the Purchased Assets free and clear of any security, charge or other restriction; and

- (d) Transfer its rights and obligations under the Assumed Contracts, including the Leases, provided that all monetary defaults in relation to the Leases are remediated before or as of December 31, 2012.

23. This Motion is well founded in fact and in law.

**WHEREFORE, MAY IT PLEASE THE COURT TO :**

1. **GRANT** the present *Motion for an Order Authorizing the Sale of Assets of the Debtor and the Assignment of Leases* (the "**Motion**");
2. **DECLARE** valid and sufficient the notices given for the presentation of the Motion;
3. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Motion;
4. **AUTHORIZE** and **ORDER** the Transaction pursuant to and in accordance with the terms and conditions of the APA;
5. **AUTHORIZE** Sixty Retail to perform all acts, sign all documents, and take necessary actions to execute any disposition, transaction or engagement stipulated in the APA or any related document, and further execute any agreement, contract, deed or any other document ancillary or related to the APA, which could be required or useful to give full and complete effect thereto;
6. **ORDER** and **DECLARE** that, upon closing of the Transaction, the Purchased Assets shall vest absolutely and exclusively in and with Sixty Trading Canada Inc., free and clear of and from any and all rights, interests, prior claims, hypothecs, security interests, trusts, deemed trusts (whether statutory, contractual or otherwise), pledges, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgage, liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, obligations, liabilities (direct, indirect, absolute or contingent), or other claims or encumbrances, whether or not they have been attached or been perfected, registered or filed and whether secured, unsecured or otherwise (all of which are collectively referred to as the "Encumbrances") including without limiting the generality of the foregoing, all rights, charges, security interests or claims evidenced by registrations of any province in Canada and the *Civil Code of Québec*;

7. **ORDER** that the Encumbrances be transferred to and conveyed upon, and thus charge, the proceeds from the sale of the Purchased Assets subject to all defects, attributes and considerations affecting and/or relating to the Encumbrances in existence prior to the said transfer;
8. **DECLARE** that the sale and assignment of the Purchased Assets shall have the same effects as a sale by judicial authority as per the provisions of the *Civil Code of Québec*;
9. **ORDER** that notwithstanding:
  - (a) any proceedings under the BIA;
  - (b) any petitions for a receiving order now or hereafter issued pursuant to the BIA and any received order issued pursuant to any such petitioner; or
  - (c) the provisions of any federal or provincial statute;the vesting of the Purchased Assets in Sixty Trading Canada Inc, as well as the execution of all agreements pursuant to the order to be granted pursuant to the Motion, shall be binding on any successor in interest, including any trustee, monitor or receiver that may be appointed under any applicable federal or provincial legislation, and shall not be void or voidable nor deemed to be a settlement, transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;
10. **ORDER** that Sixty Retail shall be authorized to take all such steps as may be necessary to effect the discharge of the Encumbrances as may be necessary;
11. **AUTHORIZE** and **DECLARE** that, upon closing of the Transaction, the rights and obligations of Sixty Retail under the Assumed Contracts, including without limitation the Leases, shall be assigned to Sixty Canada Trading Inc. provided that all monetary defaults under the Leases are remedied prior to or as of December 31, 2012;
12. **ORDER** that the Report of the Trustee filed in connection with the present application and the APA filed as Exhibit R-1 be sealed and that a redacted copy removing financial information therefrom be filed in the Court record;

13. **ORDER** the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal;
14. **THE WHOLE** without costs, save and except in case of contestation and then, **WITH COSTS** against any contesting party, solidarily.

Montréal, December 20, 2012

*McCarthy Tétrault LLP*

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**MCCARTHY TÉTRAULT LLP**  
Attorneys for the Debtor/Petitioner

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and

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RICHTER INC.) (Mr. Benoit Gingues)

Trustee

AFFIDAVIT

I, the undersigned, Arpi Balouzian, Director of Finance and Administration of Sixty Canada Retail Inc., having a place of business at 225 Chabanel Street West, Suite 600, Montreal, Quebec, H2N 2C9, solemnly declare the following:

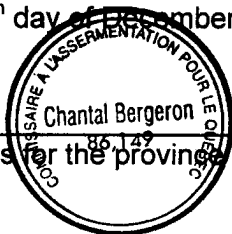
1. I am a duly authorized representative of Sixty Canada Retail Inc. for the purposes hereof;
2. All the facts alleged in this *Motion for an Order Authorizing the Sale of Assets of the Debtor and the Assignment of Leases* are true.

AND I HAVE SIGNED

  
\_\_\_\_\_  
ARPI BALOUZIAN

Solemnly declared before me in  
Montreal, on this 21<sup>th</sup> day of September, 2012

  
\_\_\_\_\_  
Commissioner of oaths for the province of Quebec





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RICHTER INC.) (Mr. Benoit Gingues)

Trustee

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NOTICE OF PRESENTATION

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To: Mr. Benoit Gingues  
RSM RICHTER INC.  
1981 McGill College avenue, 11<sup>th</sup> Floor  
Montreal, Quebec, H3Z 0G6  
Fax: (514) 934-3504  
[BGingues@rsmrichter.com](mailto:BGingues@rsmrichter.com)

**TAKE NOTICE** that the Motion for an Order Authorizing the Sale of Assets of the Debtor and the Assignment of Leases under the *Bankruptcy and Insolvency Act* will be presented before the Honourable Jean-Yves Lalonde, j.c.s., sitting at the Superior Court for the District of Montreal sitting in bankruptcy and insolvency matters, at the Montreal courthouse, located at 1 Notre Dame St. East, Montreal (Québec), in room 16.10, on December 21, 2012, at 9:15 am, or soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, December 20, 2012

  
MCCARTHY TÉTRAULT LLP  
Attorneys for the Debtor/Petitioner

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Trustee

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**LIST OF EXHIBITS**

*(Motion for an Order Authorizing the Sale of Assets of the Debtor and the Assignment of Leases  
under the Bankruptcy and Insolvency Act)*

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- Exhibit R-1:** Asset Purchase Agreement between Sixty Canada Retail Inc. and Sixty Canada Inc. and Sixty Canada Trading Inc. *[Filed under seal of confidentiality]*
- Exhibit R-2:** Copy of emails sent to the landlords on December 13, December 19 and December 20, 2012

Montréal, December 20, 2012

  
\_\_\_\_\_  
**MCCARTHY TÉTRAULT LLP**  
Attorneys for the Debtor/Petitioner

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SUPERIOR COURT (COMMERCIAL DIVISION)  
PROVINCE OF QUEBEC  
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Trustee

**MOTION FOR AN ORDER AUTHORIZING THE SALE  
OF ASSETS OF THE DEBTOR AND THE ASSIGNMENT  
OF LEASES UNDER THE BIA**

**ORIGINAL**

**Me Alain N. Tardif  
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