

COURT FILE NUMBER **1801-01297**

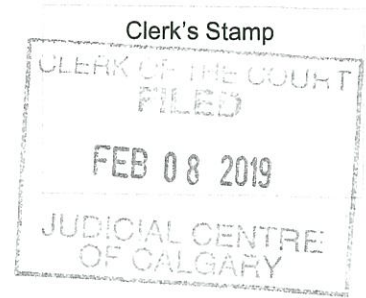
COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFF **HSBC BANK CANADA**

DEFENDANTS **ADVANTAGE PRODUCTS INC. and JAMES
WEBER**

DOCUMENT **APPLICATION FOR A DISCHARGE ORDER**



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
3400 First Canadian Centre
350 – 7 Avenue SW
Calgary, Alberta T2P 3N9

Attention: Travis Lysak / Mihai Tomos
Tel: (403) 261- 5350 / (587) 233 4107
Facsimile: (403) 261- 5351
File No.: 303718.3

NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: February 15, 2019

Time: 11:00 a.m.

Where: Calgary Court Centre, 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7

Before Whom: The Honourable Justice R.A. Neufeld

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. A Discharge Order, substantially in the form attached as **Schedule “A”**, providing for, among other things:
 - a. the Discharge of the Receiver as receiver of Advantage Products Inc. (the “**Debtor**”);
 - b. the approval of the Receiver’s activities, including the fees and expenses of the Receiver and the Receiver’s Counsel, as set forth in the third report of the Receiver dated February 8, 2019 (the “**Third Report**”);
 - c. the approval of the Unsecured Creditor Distribution, as set out in the Third Report;
 - d. such further and other relief as may be sought by the Receiver and this Honourable Court may permit.

Grounds for making this application:

The grounds for making this application are set out more fully in the Third Report, but can be summarized as follows:

(A) Background

2. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the Third Report.
3. Effective February 7, 2018, pursuant to an order of the Honourable Justice A.D. Macleod granted in these proceedings (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. was appointed receiver (the “**Receiver**”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) of API in the within action (the “**Receivership Proceedings**”).
4. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Debtor and to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.

(B) The Third Report

5. The Receiver's actions and activities and the summary of receipts and disbursements, as described in the Third Report, are lawful, proper, and consistent with its powers under the Receivership Order.

(C) Professional Fees

6. All of the actions in respect of the professional fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings are reasonable, have been validly incurred in connection with the discharge of the Receiver's obligations, which have been dutifully performed, and now have been completed or are about to be completed.

(D) Discharge

7. Subject to the Receiver making the distributions contemplated herein, the Receiver will have completed its duties and obligations under the Receivership Order and it should be released from any and all claims and obligations arising as a result of the Receiver acting in its capacity as Receiver of the Debtor, excepting those claims and obligations that arise as a result of gross negligence or willful misconduct.

(E) Distribution

8. The Receiver has paid in full the two secured creditors of the Debtor, as previously authorized by this Honourable Court.
9. Pursuant to the Claims Process Order granted by the Honourable Justice Horner on May 2, 2018, the Receiver accepted 27 unsecured claims in the aggregate amount of \$3,603,781 and proposes a distribution of approximately \$364,000 to the unsecured creditors on a *pro rata* basis, which is subject to the collections of the Forecast Receipts and Disbursements.

Material or evidence to be relied on:

10. The Third Report of the Receiver dated February 8, 2019.
11. Affidavit of Service.

12. The other pleadings and materials filed in this Action and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

13. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Rules of Court*; and
14. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

15. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
16. *Judicature Act*, R.S.A. c. J-2; and
17. Such further and other Acts and Regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

16. Not applicable.

How the application is proposed to be heard or considered:

17. Before the Honourable Justice R.A. Neufeld in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"
Discharge Order

COURT FILE NUMBER

1801-01297

Clerk's Stamp

COURT

Court of Queen's Bench of Alberta

JUDICIAL CENTRE

Calgary

PLAINTIFF

HSBC BANK CANADA

DEFENDANTS

**ADVANTAGE PRODUCTS INC. and JAMES
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Attention: Travis Lysak / Mihai Tomos
Tel: (403) 261- 5350 / (587) 233 4107
Facsimile: (403) 261- 5351
File No.: 303718.3

Date on which Order was pronounced: February 15, 2019

Location where Order was pronounced: Calgary, Alberta

Name of Justice who made this Order: The Honourable Justice R.A. Neufeld

UPON the application of Alvarez & Marsal Canada Inc. in its capacity as the receiver (the “**Receiver**”) of the undertaking, property and assets of Advantage Products Inc. (the “**Debtor**”); **AND UPON HAVING READ** the third report of the Receiver dated February 8, 2019 (the “**Third Report**”) and such other materials in the pleadings and proceedings as deemed necessary; **AND UPON HEARING** the submissions of counsel for the Receiver and any other interested parties appearing at the within application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

IT IS HEREBY ORDERED THAT:

GENERAL

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Third Report.
2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

ACCOUNTS AND ACTIVITIES

3. The Receiver's accounts for fees and disbursements, as set out in the Third Report, including the Forecast Receipts and Disbursements, are hereby approved without the necessity of a formal passing of its accounts.
4. The accounts of the Receiver's legal counsel, Fasken Martineau DuMoulin LLP, for its fees and disbursements, including any Forecast Receipts and Disbursements, as set out in the Third Report, are hereby approved without the necessity of a formal assessment of its accounts.
5. The Receiver's conduct, actions, and activities throughout the within proceedings, including its activities as set out in the Third Report, the Final Statement of Receipts and Disbursements and the Forecast Receipts and Disbursements as attached to the Third Report, are hereby ratified and approved.

DISTRIBUTIONS

6. The Receiver is hereby authorized and directed to make a distribution to the Debtor's unsecured creditors in the amount of approximately \$364,000 on a *pro-rata* basis as set out in the Third Report.

DISCHARGE

7. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part

including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

8. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
9. Upon the Receiver filing with the Clerk of the Court a Receiver's Certificate confirming that: (a) all matters set out in paragraph 6 of this Order have been completed; and (b) the Receiver's remaining administrative tasks have been completed, the Receiver shall be unconditionally and absolutely discharged as Receiver of the Debtor and the Receiver shall have no further duty, liability or obligation with respect to the Property, provided however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.
10. As soon as possible after the granting of this Order, the directors and shareholders of the Debtor shall be provided with an opportunity by the Receiver to collect the books and records of the Debtor ("**Books and Records**"). If the directors do not collect the Books and Records on or before March 8, 2019 the Receiver is hereby authorized to immediately destroy any Books and Records that are no longer required by the Receiver.

SERVICE

11. This Order shall be sufficiently served by serving the same on the service list, in the same manner as the Application was served and by posting a copy of the same on the Receiver's website at: <https://www.alvarezandmarsal.com/advantage>.

Justice of the Court of Queen's Bench of Alberta