

COURT FILE NUMBER Q.B. 1195 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT BTA REAL ESTATE GROUP INC.

RESPONDENT FAMILY FITNESS INC.

IN THE MATTER OF THE RECEIVERSHIP
OF FAMILY FITNESS INC.


AFFIDAVIT OF JIM BECK

I, Jim Beck, of the City of Saskatoon, Saskatchewan, Businessperson, MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am a business management consultant retained by BTA Real Estate Group Inc. ("**BTA**") in regard to the purchase of the assets of Family Fitness Inc. (the "**Debtor**") and, as such, I have personal knowledge of the facts and matters herein deposed to, except where stated to be on information and belief, and where so stated I believe the same to be true.
2. Attached and marked as Exhibit "A" to my affidavit is a true copy of a letter prepared by Lunova Law, the intellectual property agent of W Law LLP, counsel to BTA, in regard to various intellectual property matters and alleged suspicious and/or improper conduct by or on behalf of SM Fitness Inc., Skye Kaiss, Matt Sawa and/or the Debtor (the "**Lunova Letter**"). I adopt the contents of the Lunova Letter herein in their entirety, and I also adopt and attest to the veracity of the statements made therein which are attributed to me.
3. Attached and marked as Exhibit "B" to my affidavit is a true copy of a letter sent by the Receiver to counsel to SM Fitness Inc., Skye Kaiss and the Debtor in regard to the concerns raised in the Lunova Letter.
4. Attached and marked as Exhibit "C" to my affidavit is a true copy of an email sent by counsel to SM Fitness Inc., Skye Kaiss and the Debtor to counsel to the Receiver in response to one of the concerns outlined in the Lunova Letter.

5. I make this affidavit in support of an application by BTA for various relief as more particularly described in the application herein.

SWORN BEFORE ME at Regina,
Saskatchewan, this 18th day of
February, 2021.


A NOTARY PUBLIC - or -
COMMISSIONER FOR OATHS
in and for the Province of Saskatchewan.
(My commission expires _____
or Being a Solicitor.)

SK # 5613


JIM BECK

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	W Law LLP
Name of lawyer in charge of file:	Mike Russell and Kevin Hoy
Address of legal firms:	Suite 300, 110 – 21 st Street East Saskatoon, Saskatchewan S7K 0B6
Telephone number:	(306) 244-2242
E-mail address:	mrussell@wlaw.com / khoy@wlaw.com

This is Exhibit "A" referred to in
the Affidavit of Jim Beck.

Sworn before me this 18th day of February,
2021.



A commissioner for Oaths for Saskatchewan

My Commission expires

-OR- Being a Solicitor

SK# 5613



Luanne C. Schlosser

Direct Line: 306.713.8008

Fax: 1.888.383.2096

Email: luanne@lunova.ca

Our File: 89-00001

February 15, 2021

BY EMAIL

Alvarez & Marsal Canada Inc.
202-6th Ave SW
Calgary, AB T2P 2R9

Dear Sirs/Mesdames:

Re: In the Matter of the Receivership of Family Fitness Inc. ("FFI") – Intellectual Property Asset Review and Concerns

We act as agents for W Law. We have been retained to assist with certain intellectual property matters in anticipation of the close of an Asset Purchase Agreement (the "**APA**") which was approved by the Court of Queen's Bench on November 19, 2020.

During our review of the intellectual property assets, we have noted that certain actions have been carried out, presumably by or at the direction of Skye Kaiss ("**Mr. Kaiss**"). These actions have the effect of prejudicing the rights of BTA Real Estate Group Inc. ("**BTA Group**") with respect to the assets that are to transfer pursuant to the APA. These matters are set out in further detail below.

A. Copyright Matters

It is our understanding that an entity by the name of AdSpark Communications Inc. ("**AdSpark**") prepared the logo and other social media marketing materials for FFI (the "**Digital Assets**").

Recently, we have become aware that Skye Kaiss ("**Mr. Kaiss**") intends to continue to operate the downtown location under the "Evolution Fitness" brand. Specifically, we note the following:

- During the first week of February 2021, Jim Beck ("**Mr. Beck**") liaised with the principals of AdSpark, Christien Yang ("**Mr. Yang**") and Ryan Haynee ("**Mr. Haynee**") to engage AdSpark to provide services in managing a social media campaign on Facebook and Instagram. AdSpark provided a proposal which was



approved on or about February 6, 2021, where AdSpark agreed to provide the digital media and marketing services (the "**Services**").

- On February 12, 2021, a series of important communications occurred between Mr. Beck, Mr. Anwar, Mr. Haynee and Mr. Yang, summarized as follows:
 - **11:16 am** – Mr. Beck discussed the scope of work required to move forward with the transfer of the Digital Assets and the engagement of AdSpark to provide Services. In doing so, the following exchanges occurred:
 - Mr. Beck broached the subject of exclusivity of services from a local gym point of view;
 - Mr. Haynee advised that he wanted to speak with Mr. Yang, to ensure there was no conflict of interest;
 - After confirming the absence of a conflict of interest, Mr. Haynee phoned Mr. Beck to advise that someone in their office was working on building a new website for Mr. Kaiss;
 - In response, Mr. Beck commented that he understood that Mr. Kaiss was rebranding the downtown location, at which point Mr. Haynee indicated that was not the case and that Mr. Kaiss was expecting to use the "Evolution Fitness" branding;
 - Mr. Beck questioned how that was possible, as FFI controlled the Digital Assets which included the trademarks, the business name and other branded materials; and
 - Mr. Haynee and Mr. Yang indicated that, as developers of the Digital Media, they owned the copyright until it was paid for and transferred to FFI and confirmed that FFI was the owner of the Digital Assets. They indicated that they would not allow Mr. Kaiss' new website to launch with the Digital Assets.
 - **5:07 pm** – Mr. Beck became aware that Mr. Kaiss was taking control of the Facebook page;
 - **5:15 pm** – Mr. Anwar met Mr. Beck;
 - **5:30 pm** – Mr. Anwar and Mr. Beck called Mr. Haynee to query whether Mr. Haynee had access to the Evolution Fitness Facebook account. Mr. Yang was on the master account for Gold's Gym and by having such access, the thought was that access to the Evolution Fitness Facebook page could be prevented. Further discussions about the assignment of the Digital Assets occurred;



- **6:56 pm** – Mr. Haynee confirmed that “you guys” (implying the Receiver) had complete control of the Facebook page;
 - **7:23 pm** – Based on conflicting information, Mr. Beck called Mr. Haynee to advise that the Facebook page may still be compromised; however, Mr. Haynee advised that the Facebook page was under control, and further stated that Mr. Kaiss was trying to call AdSpark right after the security changes were made to the Facebook page;
 - **7:38 pm** – Mr. Beck requested that Mr. Haynee conduct a follow-up check to verify that Mr. Kaiss had no access to the account;
 - **7:48pm** – Mr. Haynee confirmed that Mr. Kaiss had somehow gained access/control;
 - **7:55 pm** – Mr. Beck queried when they could gain control to Facebook once again; and
 - **8:11 pm** – Mr. Haynee then confirmed that, once BTA had all the legal rights to the Digital Assets, that AdSpark would be happy to work on the social media platforms and digital marketing strategy.
- Through these exchanges, it appears as though AdSpark sought legal advice. We note that the registered office for AdSpark is MLT Aikins in Regina. While the registered office of an organization does not necessarily mean that such entity is receiving legal advice from the same lawyers, it is worth noting this relationship.

The above exchange suggests that Mr. Kaiss intends to use and is actively asserting a right to continue using the name “Evolution Fitness” with respect to the downtown location. It is imperative that AdSpark provides a valid form of assignment of the Digital Assets from it to FFI. Absent such assignment, AdSpark retains copyright in the Digital Assets and the further assignment to BTA upon close of the APA would be invalid.

B. Facebook

In conjunction with the issues stated above, we have noted certain suspicious activity occurring on the Evolution Fitness Facebook page and related pages. Specifically, we note the following:

- Late last week, we took note of a fake Facebook page for Evolution Fitness, which was called “Evolution Fitnes” – note that this fake page spells the word “fitness” with one “s” (the “**Fake Page**”). Attached to this letter as Schedule “A” is a screen shot of the Fake Page.



- The posts on the Fake Page mimic the real page (the "**Real Page**"), meaning the Fake Page posts always occur after the posting on the Real Page.
- The Fake Page was created on November 3, 2020; however, on February 10, 2021, there was active reposting of the Real Page's posts. It is likely the case that an individual used a personal account that they had and simply changed the name of the account.
- The background photo of the Fake Page states "One Membership, Four Locations". What is interesting about the choice of photo is that the same photo was used on some of the earlier posts on the Real Page when the gyms were being operated as Gold's Gym. Of note, the words "One Membership, Four Locations" verbiage did not appear on the archived photo which suggests that the person using the Fake Page had access to this particular Digital Asset and then added the verbiage we now see on the Fake Page. Attached as Schedule "B" is a side-by-side comparison of the archival Gold's Gym Photos and the background of the Fake Page.
- The owner of the Fake Page has sent out friend requests to those persons who liked/followed the Real Page. This was noted in an Evolution Fitness Group Exercise Facebook account, where a woman by the name of Shelley Pappas warns members about a friend request from the Fake Page. Attached to this letter as Schedule "C" is a screen shot of Ms. Pappas' warning of the Fake Page. It appears the friend request was done on or around the same time as the flurry of activity on the Fake Page on February 10, 2021.
- On February 13, 2021, the Real Page's name was changed to read "Evolution Fitness Regina Downtown". Attached as Schedule "D" is a screenshot confirming the timing of the change.
- We understand that a court application on certain bad faith and impugned transactions was initially supposed to be heard on Thursday, February 11, 2021. The flurry of posts on the Fake Page, the friend requests from that page occurred the day before the application (February 10, 2021). All of this was occurring in or around the same time with the AdSpark issues noted above.

C. Instagram

We have noted some suspicious activity on the Instagram account. Specifically, we note the following:

- The Instagram account appears to have a new domain name listed in the profile heading of the Instagram page. Attached as Schedule "E" is a screenshot setting out this website.
- When linking to the domain name listed on the Instagram page, the website is inactive.



- In reviewing the information of the domain name listed on Instagram, we see that the domain name was initially reserved on February 5, 2021 and was last updated on February 10, 2021. The registrant details are redacted for privacy, but again, the timing is suspect. Attached as Schedule "F" is a printout of the www.evo-fit.ca domain name details.

D. Domain Names

We have reviewed the domain name details for www.evolutionfitness.ca. We note that there is a notation that client transfer is prohibited at this time. Attached as Schedule "G" is a printout of the domain details. We note that the last action was on January 18, 2021 and would assume that this relates to the lock of the account. Given that this is locked down and not available, it makes sense that Mr. Kaiss or someone acting at his direction created the new www.evo-fit.ca domain name to ensure continued use of the "Evolution Fitness" name.

E. Trademark Matters

We have already identified that SM Fitness Inc. ("**SM**") has applied for a trademark for "Evolution Fitness" which suggests that SM intends to continue to use the brand "Evolution Fitness".

F. Conclusion

In concluding, we hope that the matters set forth herein assist in identifying certain outstanding issues with respect to the transfer of assets contemplated by the APA. Should you have any questions with respect to the contents of this letter, we would be happy to discuss further.

Yours truly,

LUNOVA LAW

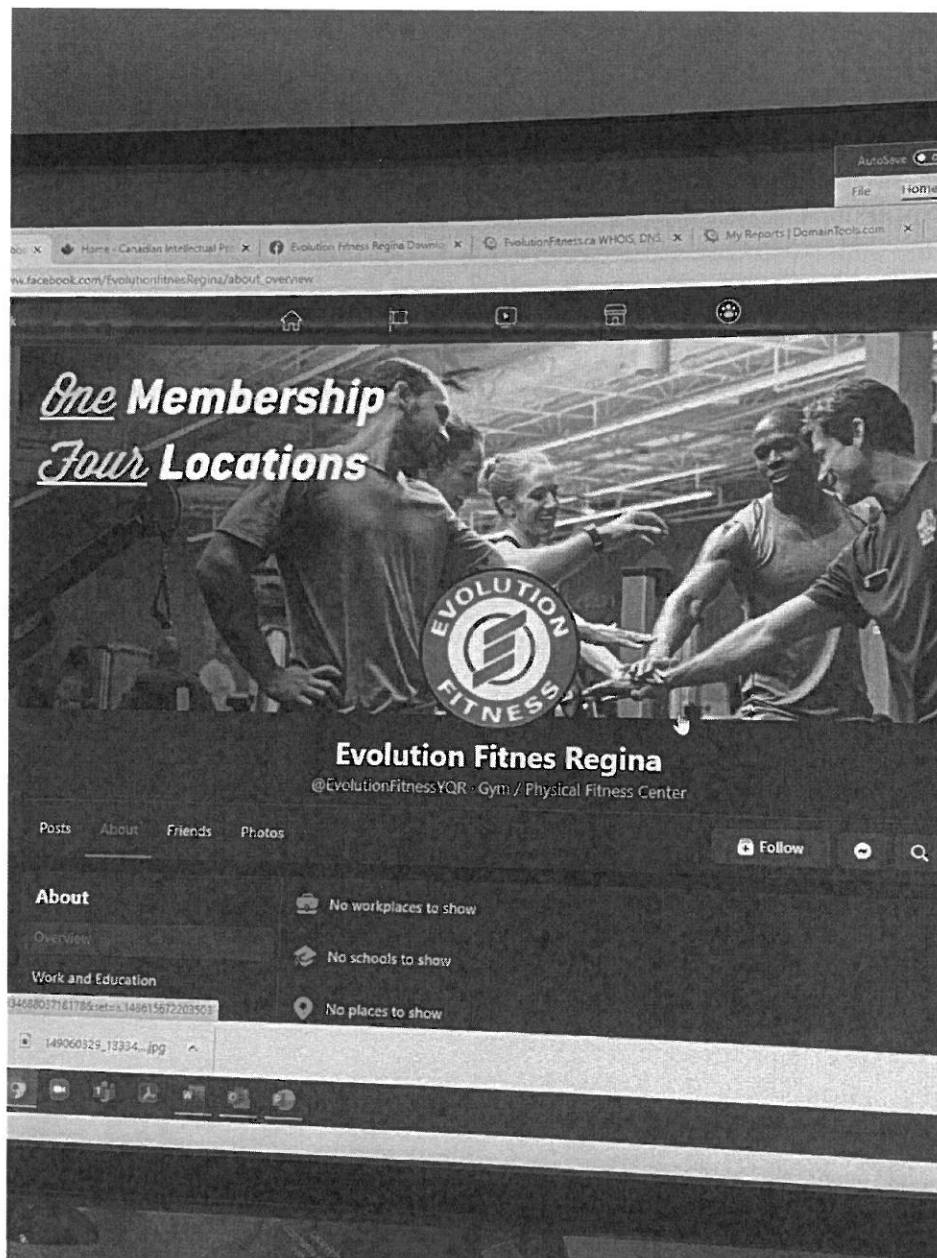
Per:




Luanne Schlosser



Schedule "A"



Schedule "B"




Stick With It!

February 8th to March 11th attend GGX classes and earn Perikville points!

Stick to your New Year's Resolutions!

One sticker per class attended. Contest cards available at the front desk as from your instructor. Fill up as many cards as you can!

Classes Attended	Perikville Points
10 classes	400 points
15 classes	700 points
20 classes	1000 points



**One Membership
Four Locations**

Evolution Fitness Regina
@EvolutionFitnessVGR Gym / Physical Fitness Center

Posts · About · Friends · Photos

About

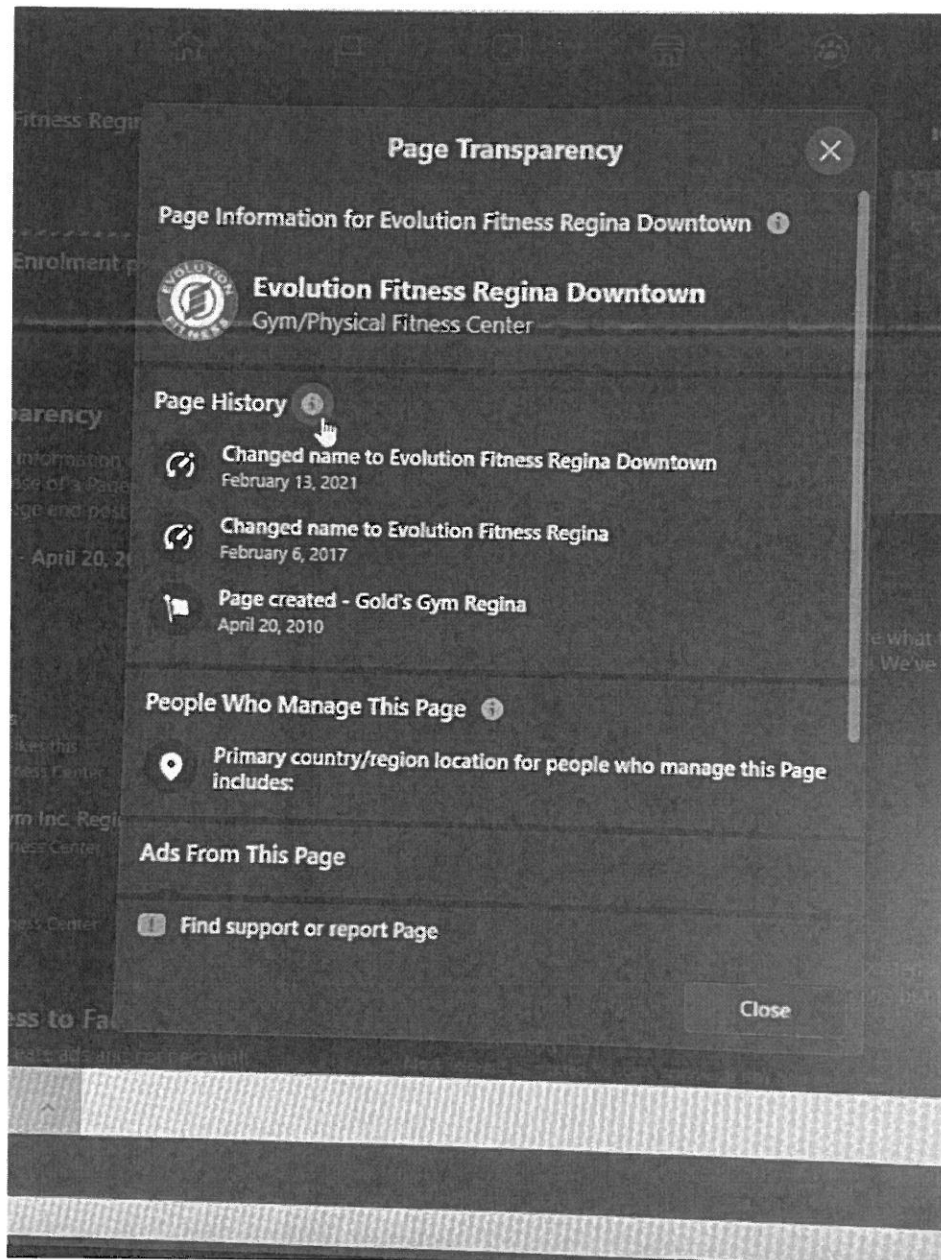
- Website: No websites to show
- Work and education: No schools to show
- Places: No places to show



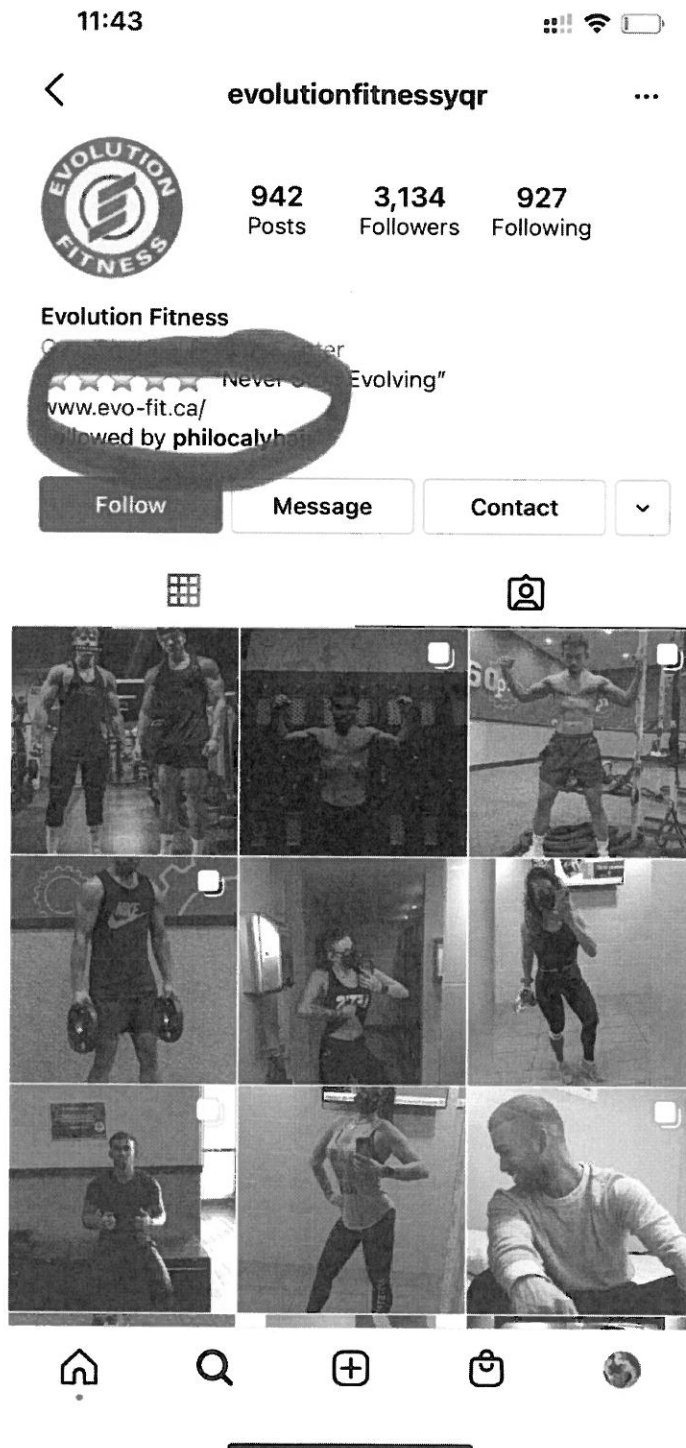
Schedule "C"



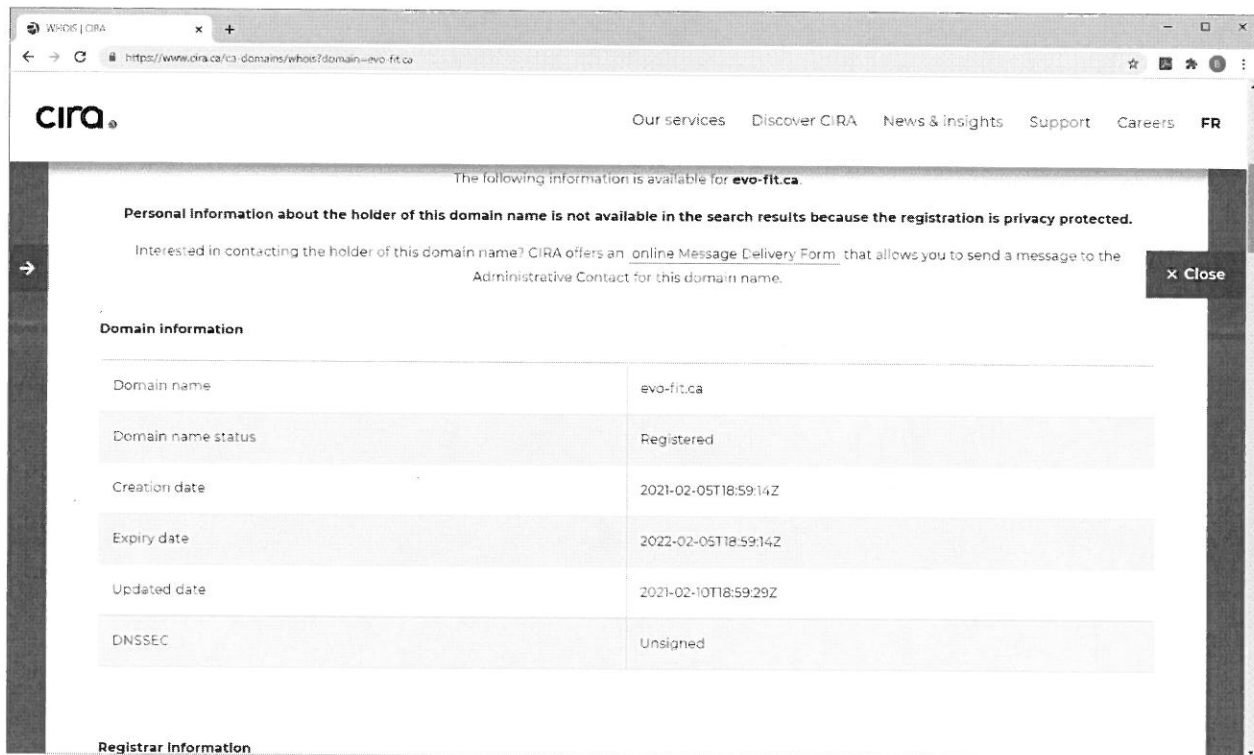
Schedule "D"



Schedule "E"



SCHEDULE "F"



The screenshot shows a web browser window with the CIRA website. The address bar shows the URL: <https://www.cira.ca/c3-domains/whois?domain=evo-fit.ca>. The CIRA logo is in the top left, and navigation links (Our services, Discover CIRA, News & Insights, Support, Careers, FR) are in the top right. The main content area has a heading "The following information is available for **evo-fit.ca**." Below this, a message states: "Personal information about the holder of this domain name is not available in the search results because the registration is privacy protected." It then says: "Interested in contacting the holder of this domain name? CIRA offers an [online Message Delivery Form](#) that allows you to send a message to the Administrative Contact for this domain name." A "Close" button is on the right. Below this is a section titled "Domain information" containing a table with the following data:

Domain name	evo-fit.ca
Domain name status	Registered
Creation date	2021-02-05T18:59:14Z
Expiry date	2022-02-05T18:59:14Z
Updated date	2021-02-10T18:59:29Z
DNSSEC	Unsigned

Below the table is a section titled "Registrar Information".



SCHEDULE "G"

The screenshot shows a web browser window with the URL <https://who.is/whois/evolutionfitness.ca>. The page displays the Whois information for the domain evolutionfitness.ca. The interface includes a search bar, navigation tabs (Whois, DNS Records, Diagnostics), and a sidebar with promotional banners for Name.com. The main content area is divided into sections: Registrar Info, Important Dates, Name Servers, Similar Domains, Registrar Data, Site Status, and Suggested Domains.

cache expires in 23 hours, 57 minutes and 44 seconds

Registrar Info

Name	Tucows.com Co.
Whois Server	whois.ca.fury.ca
Referral URL	http://domainhelp.tucows.com
Status	clientTransferProhibited https://icann.org/epp#clientTransferProhibited clientUpdateProhibited https://icann.org/epp#clientUpdateProhibited

Important Dates

Expires On	2022-02-02
Registered On	2017-02-02
Updated On	2021-01-18

Name Servers

ns1.c37001.sgvp.net	35.206.117.64
ns2.c37001.sgvp.net	35.206.117.64

Similar Domains

evolu-bat.com | evolu-bca.fr | evolu-clions.com | evolu-coach.com | evolu-com.com | evolu-del.com | evolu-dys.com | evolu-earphone.com | evolu-formes.com | evolu-gold.biz | evolu-gold.com | evolu-gold.info | evolu-gold.net | evolu-group.com | evolu-group.in | evolu-habitat.fr | evolu-it.cl | evolu-mall.info | evolu-mod.com | evolu-mode.com |

Registrar Data

We will display stored WHOIS data for up to 30 days.

[Make Private Now](#)

Get a \$7.99 .COM domain with promo code NAME799

Find the perfect domain at **Name.com**

Online greatness is just a click away

REGISTER YOUR .COM DOMAIN FOR ONLY \$7.99

[GET YOUR DOMAIN](#)

USE PROMO CODE NAME799

Name.com

Let's not discount .COM registration on .tldserver

Site Status

Status	Active
Server Type	nginx

Suggested Domains for evolutionfitness.ca





This is Exhibit "B" referred to in
the Affidavit of Jim Beck.

Sworn before me this 18th day of February,
2021.


A commissioner for Oaths for Saskatchewan

My Commission expires

-OR- Being a Solicitor

SK # 5613

525 – 8th Avenue S.W., 46th Floor
Eighth Avenue Place East
Calgary, Alberta T2P 1G1 Canada
P. 403.776.3700 | F. 403.776.3800

www.torys.com

Kyle Kashuba
kkashuba@torys.com
P. 403.776.3744

February 16, 2021

VIA EMAIL (JROSE@MLTAINKINS.COM)

MLT Aikins LLP
1500 - 1874 Scarth Street
Regina, SK S4P 4E9

Attention: Mr. James Rose

Dear Sir:

Re: In the Matter of the Receivership of Family Fitness Inc.;
Intellectual Property Asset Review and Concerns

As you are aware, we act as counsel to Alvarez & Marsal Canada Inc. (the "**Receiver**") in relation to the above-captioned matter concerning the receivership of Family Fitness Inc. ("**FFI**", and such proceedings, the "**Receivership Proceedings**"). As you may recall, on February 10, 2020, Mr. Justice B.J. Scherman issued the Sale Approval and Vesting Order (the "**SAVO**"), pursuant to which the Court approved the agreement of purchase and sale dated January 15, 2021 (the "**APA**") between BTA Real Estate Group Inc. ("**BTA Group**") and the Receiver for certain assets of FFI. As you are aware, your client took no position regarding the APA and sale transaction.

The Receiver received a letter last evening from Lunova Law, trademark agent, that BTA Group has engaged in connection with the intellectual property matters that are the subject matter of the APA. In their review of the intellectual property assets, they have noted that certain actions have been carried out, apparently by or at the direction of Skye Kaiss ("**Mr. Kaiss**"). They take the position that these actions have the effect of prejudicing the rights of BTA Group with respect to the assets that are to be transferred pursuant to the APA. These matters are set out in further detail below; however, in brief, we wanted to draw certain actions/matters to your and hereby require that Mr. Kaiss cease and desist from continuing with such actions:

- The name of the current Facebook page was amended on February 13, 2021, to read "Evolution Fitness Regina Downtown";
 - This is unacceptable and the Receiver hereby requires that Mr. Kaiss request for the addition of "Downtown" to be removed;
- There is a fake Facebook page operating as "Evolution Fitnes" (one "s") Regina which is reposting posts from the real Facebook page. The operator of this page is actively trying to add friends based on the listed membership of those persons who follow and/or like the real Facebook page;
- The Instagram account has been amended to include a new domain name in the account profile (www.evo-fitness.ca). This domain name points to an inactive website; however, we understand that this domain name has been reserved, presumably with the intention to create a new website and continue using the "Evolution Fitness" business name and trademark;

- The Receiver has since updated the link back to the correct website (www.evolutionfitness.ca) on the Instagram account;
- Mr. Kaiss has engaged AdSpark Communications Inc. (“**AdSpark**”) to develop a new website using the same or similar name as “Evolution Fitness”.
 - To avoid any further issues, we require that Mr. Kaiss cease from proceeding with such action.

BTA Group’s legal counsel has confirmed that the business name Evolution Fitness is registered to FFI on the Saskatchewan Corporate Registry, and the Receiver and BTA Group take serious issue with attempts to hijack the social media accounts held under that business name, particularly while the Receiver has control of the assets.

The Receiver has also been asked by the BTA Group to request that AdSpark provide an assignment in favour of FFI of the logo and other related materials. BTA Group’s legal counsel will be preparing a form of Assignment for this purpose. Upon receipt of same, the Receiver will be dealing with AdSpark directly, seeking the execution of the Assignment on behalf of the Receiver.

A. Copyright Matters

It is the Receiver’s understanding that an entity by the name of AdSpark prepared the logo and other social media marketing materials for FFI (the “**Digital Assets**”).

Recently, the BTA Group has become aware that Mr. Kaiss intends to continue to operate the downtown location under the “Evolution Fitness” brand. Specifically, they have noted the following:

- During the first week of February 2021, Jim Beck (“**Mr. Beck**”) liaised with the principals of AdSpark, Christien Yang (“**Mr. Yang**”) and Ryan Haynee (“**Mr. Haynee**”) to engage AdSpark to provide services in managing a social media campaign on Facebook and Instagram. AdSpark provided a proposal which was approved on or about February 6, 2021, where AdSpark agreed to provide the digital media and marketing services (the “**Services**”).
- On February 12, 2021, a series of important communications occurred between Mr. Beck, Mr. Anwar, Mr. Haynee and Mr. Yang, which have been summarized to the Receiver as follows:
 - **11:16 am** – Mr. Beck discussed the scope of work required to move forward with the transfer of the Digital Assets and the engagement of AdSpark to provide Services. In doing so, the following exchanges occurred:
 - Mr. Beck broached the subject of exclusivity of services from a local gym point of view;
 - Mr. Haynee advised that he wanted to speak with Mr. Yang, to ensure there was no conflict of interest;
 - After confirming the absence of a conflict of interest, Mr. Haynee phoned Mr. Beck to advise that someone in their office was working on building a new website for Mr. Kaiss;
 - In response, Mr. Beck commented that he understood that Mr. Kaiss was rebranding the downtown location, at which point Mr. Haynee indicated that was not the case and that Mr. Kaiss was expecting to use the “Evolution Fitness” branding;

- Mr. Beck questioned how that was possible, as FFI controlled the Digital Assets which included the trademarks, the business name and other branded materials; and
 - Mr. Haynee and Mr. Yang indicated that, as developers of the Digital Media, they owned the copyright until it was paid for and transferred to FFI and confirmed that FFI was the owner of the Digital Assets. They indicated that they would not allow Mr. Kaiss' new website to launch with the Digital Assets.
-
- **5:07 pm** – Mr. Beck became aware that Mr. Kaiss was taking control of the Facebook page;
 - **5:15 pm** – Mr. Anwar met Mr. Beck;
 - **5:30 pm** – Mr. Anwar and Mr. Beck called Mr. Haynee to query whether Mr. Haynee had access to the Evolution Fitness Facebook account. Mr. Yang was on the master account for Gold's Gym and by having such access, the thought was that access to the Evolution Fitness Facebook page could be prevented. Further discussions about the assignment of the Digital Assets occurred;
 - **6:56 pm** – Mr. Haynee confirmed that the Receiver had complete control of the Facebook page;
 - **7:23 pm** – Based on conflicting information, Mr. Beck called Mr. Haynee to advise that the Facebook page may still be compromised; however, Mr. Haynee advised that the Facebook page was under control, and further stated that Mr. Kaiss was trying to call AdSpark right after the security changes were made to the Facebook page;
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 - **8:11 pm** – Mr. Haynee then confirmed that, once BTA had all the legal rights to the Digital Assets, that AdSpark would be happy to work on the social media platforms and digital marketing strategy.

Through these exchanges, it appears as though AdSpark sought legal advice. Ms. Schlosser of Lunova Law has noted that the registered office for AdSpark is MLT Aikins in Regina. While the registered office of an organization does not necessarily mean that such entity is receiving legal advice from the same lawyers, it is worth noting this relationship.

The above exchange suggests that Mr. Kaiss intends to use and is actively asserting a right to continue using the name "Evolution Fitness" with respect to the downtown location. It is imperative that AdSpark provides a valid form of assignment of the Digital Assets from it to FFI. Absent such assignment, AdSpark retains copyright in the Digital Assets and the further assignment to BTA upon close of the APA would be invalid. Thus, the Receiver will be requesting the subject assignment as noted above.

B. Facebook

In conjunction with the issues stated above, Ms. Schlosser has noted certain suspicious activity occurring on the Evolution Fitness Facebook page and related pages. Specifically, Ms. Schlosser has noted the following:

- Late last week, Ms. Schlosser took note of a fake Facebook page for Evolution Fitness, which was called "Evolution Fitnes" – note that this fake page spells the word "fitness" with one "s" (the "**Fake Page**"). Attached to this letter as Schedule "A" is a screen shot of the Fake Page.
- The posts on the Fake Page mimic the real page (the "**Real Page**"), meaning the Fake Page posts always occur after the posting on the Real Page.
- The Fake Page was created on November 3, 2020; however, on February 10, 2021, there was active reposting of the Real Page's posts. Ms. Schlosser is of the view that it is likely the case that an individual used a personal account that they had and simply changed the name of the account.
- The background photo of the Fake Page states "One Membership, Four Locations". What Ms. Schlosser has noted as interesting about the choice of photo is that the same photo was used on some of the earlier posts on the Real Page when the gyms were being operated as Gold's Gym. She has noted that the words "One Membership, Four Locations" verbiage did not appear on the archived photo which, in her view, suggests that the person using the Fake Page had access to this particular Digital Asset and then added the verbiage we now see on the Fake Page. Attached as Schedule "B" is a side-by-side comparison of the archival Gold's Gym Photos and the background of the Fake Page.
- The owner of the Fake Page has sent out friend requests to those persons who liked/followed the Real Page. This was noted in an Evolution Fitness Group Exercise Facebook account, where a woman by the name of Shelley Pappas warns members about a friend request from the Fake Page. Attached to this letter as Schedule "C" is a screen shot of Ms. Pappas' warning of the Fake Page. It appears the friend request was done on or around the same time as the flurry of activity on the Fake Page on February 10, 2021.
- On February 13, 2021, the Real Page's name was changed to read "Evolution Fitness Regina Downtown". Attached as Schedule "D" is a screenshot confirming the timing of the change.
- We understand that a court application on certain bad faith and impugned transactions was initially supposed to be heard on Thursday, February 11, 2021. The flurry of posts on the Fake Page, the friend requests from that page occurred the day before the application (February 10, 2021). All of this was occurring in or around the same time with the AdSpark issues noted above.

C. Instagram

Ms. Schlosser has also noted some suspicious activity on the Instagram account. Specifically, she has noted the following:

- The Instagram account appears to have a new domain name listed in the profile heading of the Instagram page. Attached as Schedule "E" is a screenshot setting out this website.
- When linking to the domain name listed on the Instagram page, the website is inactive.

- In reviewing the information of the domain name listed on Instagram, Ms. Schlosser has noted that the domain name was initially reserved on February 5, 2021 and was last updated on February 10, 2021. The registrant details are redacted for privacy, but again, the timing is suspect. Attached as Schedule "F" is a printout of the www.evo-fit.ca domain name details.
- As noted above, the Receiver has amended same.

D. Domain Names

Ms. Schlosser has reviewed the domain name details for www.evolutionfitness.ca and has noted that there is a notation that client transfer is prohibited at this time. Attached as Schedule "G" is a printout of the domain details. Ms. Schlosser has noted that the last action was on January 18, 2021 and would assume that this relates to the lock of the account. Ms. Schlosser is of the view that given that this is locked down and not available, it makes sense that Mr. Kaiss or someone acting at his direction created the new www.evo-fit.ca domain name to ensure continued use of the "Evolution Fitness" name.

E. Trademark Matters

Ms. Schlosser has already identified that SM Fitness Inc. ("SM") has applied for a trademark for "Evolution Fitness" which suggests that SM intends to continue to use the brand "Evolution Fitness".

As noted above, the Receiver hereby requires that Mr. Kaiss immediately cease and desist from issue with any further attempts to hijack the social media accounts held under the subject business name, while the Receiver has control of the assets.

Should you have any questions with respect to the contents of this letter, we would be happy to discuss further. In fact, given all of the issues that have arisen over the last couple of weeks, and further to Ms. Schlosser's letter, the Receiver sees some value in requesting a meeting hosted by the Receiver with W Law and MLT regarding the significant concerns/actions of Mr. Kaiss. The Receiver shares BTA Group's concerns related to Mr. Kaiss' recent actions and it would be prudent for the parties to arrange a call to discuss and consider next steps.

We trust that the foregoing is in order, but should you have any questions or concerns relating to the above, please do not hesitate to contact the undersigned to discuss the same.

Yours truly,



Kyle Kashuba

KDKenclosures

Copies to: The Receiver, Alvarez & Marsal Canada Inc., Attention: Orest Konowalchuk and Jill Strueby (via email)

Schedule "A"



Schedule "B"

The image is a composite of two black and white photographs. The left photograph shows a flyer titled "Stick With It!" with a background image of people at a gym. The flyer includes the text "February 6th to March 11th attend GGX classes and earn Perkville points! Stick to your New Year's Resolutions!" and a list of point rewards: "10 classes 400 points", "15 classes 700 points", and "20 classes 1000 points". It also mentions "One sticker per class attended" and shows a small image of a sticker. The right photograph shows a Facebook page for "Evolution Fitness Regina". The page header features the text "One Membership Four Locations" and the Evolution Fitness logo. The page name is "Evolution Fitness Regina" with the location "Regina, Saskatchewan". The "About" section shows "No websites to show", "No schools to show", and "No places to show". The page has a "Follow" button and a search icon.

Stick With It!

February 6th to March 11th attend GGX classes and earn Perkville points!
Stick to your New Year's Resolutions!

One sticker per class attended. Collect cards available at the front desk when you register. Fill up as many cards as you can!

10 classes **400 points**
15 classes **700 points**
20 classes **1000 points**

Evolution Fitness Regina
@EvolutionFitnessRegina Gym / Physical Fitness Center

Home About Friends Photos

Follow

About

Website: No websites to show

Work and Education: No schools to show

Places: No places to show

Schedule "C"




Schedule "D"




The image shows a screenshot of a mobile device screen with a Facebook 'Page Transparency' overlay. The overlay is a dark grey box with white text and icons. At the top, it says 'Page Transparency' with a close button (X). Below that, it says 'Page Information for Evolution Fitness Regina Downtown' with an information icon (i). The page name 'Evolution Fitness Regina Downtown' is displayed in a larger font, followed by 'Gym/Physical Fitness Center' and the Evolution Fitness logo. The 'Page History' section lists three events: 'Changed name to Evolution Fitness Regina Downtown' on February 13, 2021; 'Changed name to Evolution Fitness Regina' on February 6, 2017; and 'Page created - Gold's Gym Regina' on April 20, 2010. The 'People Who Manage This Page' section shows a location pin icon and the text 'Primary country/region location for people who manage this Page includes:'. The 'Ads From This Page' section has a button that says 'Find support or report Page'. At the bottom right of the overlay is a 'Close' button. The background of the screen shows parts of the Facebook app interface, including a navigation bar with icons for home, search, posts, and profile, and some blurred text from the page being viewed.

Page Transparency


Page Information for Evolution Fitness Regina Downtown ⓘ

 **Evolution Fitness Regina Downtown**
Gym/Physical Fitness Center


Page History ⓘ

-  Changed name to Evolution Fitness Regina Downtown
February 13, 2021
-  Changed name to Evolution Fitness Regina
February 6, 2017
-  Page created - Gold's Gym Regina
April 20, 2010

People Who Manage This Page ⓘ

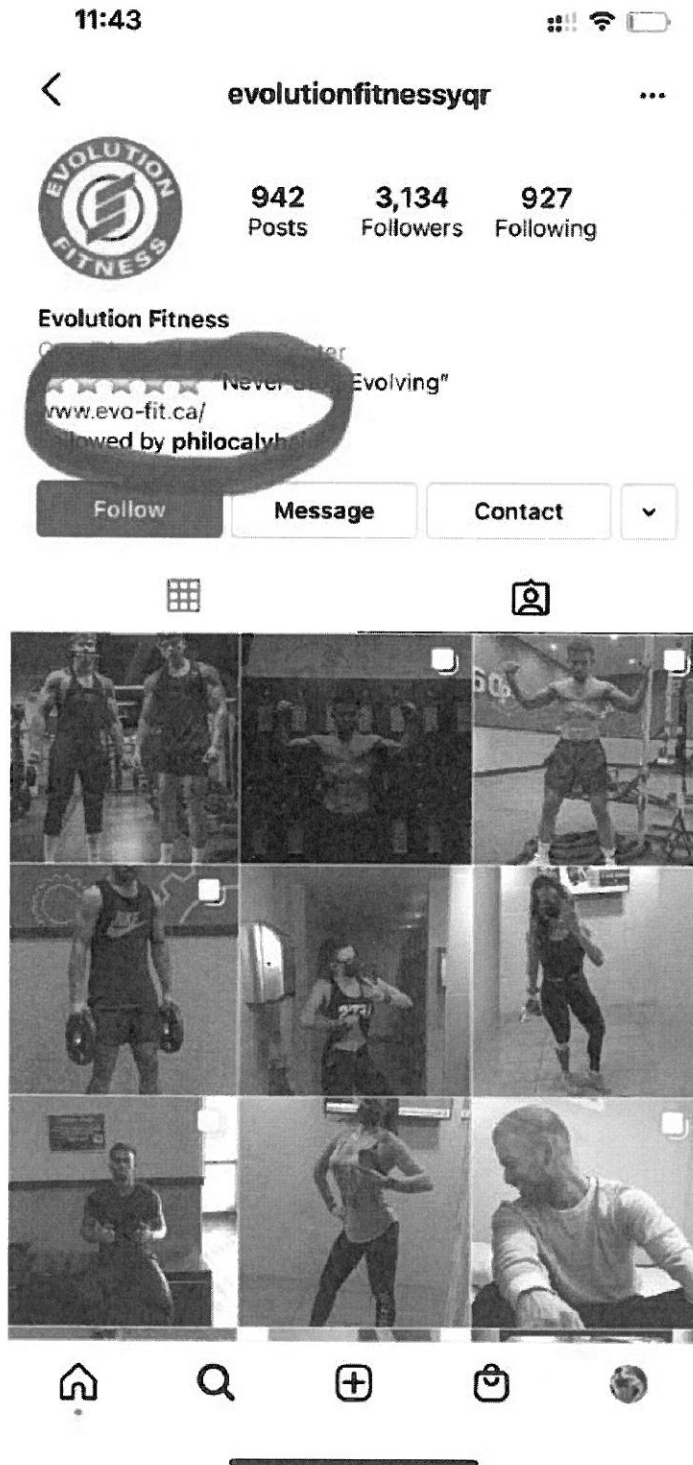
 Primary country/region location for people who manage this Page includes:

Ads From This Page

 Find support or report Page

Close

Schedule "E"



Schedule "F"

WHIS | CIRA

← → ↻

https://www.cira.ca/co-domains/whois?domain=evo-fit.ca

☆

🔍

🔗

⋮

cira.

Our servicesDiscover CIRANews & insightsSupportCareersFR

The following information is available for **evo-fit.ca**.

Personal information about the holder of this domain name is not available in the search results because the registration is privacy protected.
Interested in contacting the holder of this domain name? CIRA offers an [online Message Delivery Form](#) that allows you to send a message to the Administrative Contact for this domain name.

→

✕ Close

Domain Information

Domain name	evo-fit.ca
Domain name status	Registered
Creation date	2021-02-05T18:59:14Z
Expiry date	2022-02-05T18:59:14Z
Updated date	2021-02-10T18:59:29Z
DNSSEC	Unsigned

Registrar Information

Schedule "G"

The screenshot shows a web browser window with the URL <https://who.is/whois/evolutionfitness.ca>. The page is titled "who.is" and has a search bar for domains or IP addresses. The main content area is divided into several sections:

- Registrar Info**:
 - Name: Tucows.com Co.
 - Whois Server: whois.ca.fury.ca
 - Referral URL: http://domainhelp.tucows.com
 - Status: clientTransferProhibited, https://icann.org/epp#clientTransferProhibited, clientUpdateProhibited, https://icann.org/epp#clientUpdateProhibited
- Important Dates**:
 - Expires On: 2022-02-02
 - Registered On: 2017-02-02
 - Updated On: 2021-01-18
- Name Servers**:
 - ns1.c37001.sgvp.net 35.206.117.64
 - ns2.c37001.sgvp.net 35.206.117.64
- Similar Domains**:
 - evolu-bat.com | evolu-bca.fr | evolu-clions.com | evolu-coach.com | evolu-com.com | evolu-del.com | evolu-dys.com | evolu-earphone.com | evolu-formes.com | evolu-gold.biz | evolu-gold.com | evolu-gold.info | evolu-gold.net | evolu-group.com | evolu-group.in | evolu-habitat.fr | evolu-it.cl | evolu-mail.info | evolu-mod.com | evolu-mode.com |
- Registrar Data**: We will display stored WHOIS data for up to 30 days. [Make Private Now](#)
- Site Status**:
 - Status: Active
 - Server Type: nginx
- Suggested Domains for evolutionfitness.ca**: (List of suggested domains)

On the right side of the page, there is a promotional banner for Name.com with the text "Online greatness is just a click away" and "REGISTER YOUR .COM DOMAIN FOR ONLY \$7.99".

31752660.3

This is Exhibit "C" referred to in
the Affidavit of Jim Beck.

Sworn before me this 18th day of February,
2021.



A commissioner for Oaths for Saskatchewan

My Commission expires

-OR- Being a Solicitor

SK #5613

From: James Rose <jrose@mltaikins.com>
Date: February 17, 2021 at 5:49:26 PM CST
To: "Mann, Jessie" <jmann@torys.com>, luanne@lunova.ca, Mike Russell
<mrussell@wlaw.com>, Michelle Tobin <mtobin@wlaw.com>, "Tristan N. Culham"
<tculham@mltaikins.com>
Cc: "Kashuba, Kyle" <kkashuba@torys.com>, "Strueby, Jill"
<jstrueby@alvarezandmarsal.com>, "Konowalchuk, Orest"
<okonowalchuk@alvarezandmarsal.com>
Subject: Re:A&M - Family Fitness - Call for a Potential Resolution

All,

Further to our phone call, SM Fitness Inc. has advised that it is attempting to change the name of the Evolution Fitness Facebook page from "Evolution Fitness Downtown" back to "Evolution Fitness".

I understand that SM Fitness Inc. has actually been trying to do this since Saturday (realizing that it is inconsistent on the one hand to assert that the page is shared whilst silently making it appear that the page is exclusive to downtown) but Facebook has prevented them from doing so. SM will continue trying to rename the page, but apparently group pages, as I understand, can only be changed every 7 days or so. With hope, the page will be renamed soon.

I hope to provide a positive update shortly.

James Rose
Partner

P: +1 (306) 347-8420 | E: jrose@mltaikins.com

Visit our [COVID-19 Resource Centre](#) for help navigating the changing business and legal environment.

MLT Aikins LLP

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----- Original message -----

From: "Mann, Jessie" <jmann@torys.com>
Date: Wed., Feb. 17, 2021, 12:13 p.m.
To: luanne@lunova.ca, James Rose <jrose@mltaikins.com>, 'Mike Russell' <mrussell@wlaw.com>, 'Michelle Tobin' <mtobin@wlaw.com>, "Tristan N. Culham" <tculham@mltaikins.com>
Cc: "Kashuba, Kyle" <kkashuba@torys.com>, "Strueby, Jill" <jstrueby@alvarezandmarsal.com>, "Konowalchuk, Orest" <okonowalchuk@alvarezandmarsal.com>
Subject: A&M - Family Fitness - Call for a Potential Resolution
External Sender

Terrific – thanks, Luanne. I will circulate a calendar invite momentarily.

Jessie Mann

P. 403.776.3770 | F. 403.776.3800 | 1.800.505.8679

From: luanne@lunova.ca <luanne@lunova.ca>
Sent: Wednesday, February 17, 2021 11:11 AM
To: Mann, Jessie <jmann@torys.com>; 'James Rose' <jrose@mltaikins.com>; 'Mike Russell' <mrussell@wlaw.com>; 'Michelle Tobin' <mtobin@wlaw.com>; 'Tristan N. Culham' <tculham@mltaikins.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; 'Strueby, Jill' <jstrueby@alvarezandmarsal.com>; 'Konowalchuk, Orest' <okonowalchuk@alvarezandmarsal.com>
Subject: RE: A&M - Family Fitness - Call for a Potential Resolution

Jessie:

I've discussed with my colleagues, and W Law is available for a call at 2:00 pm MST.

-Luanne

LUANNE C. SCHLOSSER

Founder. Lawyer. Trademark Agent.



Suite 200, 306 Ontario Avenue
Saskatoon, Saskatchewan S7K 2H5
Direct Line: +1 306.713.8008

Fax: +1 888.383.2096
Email: luanne@lunova.ca

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From: Mann, Jessie <jmann@torys.com>
Sent: February 17, 2021 11:26 AM
To: James Rose <jrose@mltaikins.com>; 'Mike Russell' <mrussell@wlaw.com>; 'Michelle Tobin' <mtobin@wlaw.com>; luanne@lunova.ca; Tristan N. Culham <tculham@mltaikins.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; Strueby, Jill <jstrueby@alvarezandmarsal.com>; Konowalchuk, Orest <okonowalchuk@alvarezandmarsal.com>
Subject: A&M - Family Fitness - Call for a Potential Resolution

James, Mike and Michelle,

Given all of the issues that have arisen over the last couple of weeks, the Receiver sees some value in requesting a meeting hosted by the Receiver with W Law and MLT regarding the recent events and to consider a potential resolution between the parties to deal with matters between the 4 facilities during the Receivership Proceedings – whether that is a standstill agreement / sharing agreement, etc.

The Receiver and its counsel can be available today at 12:00 noon or 2:00 p.m. **MST** and James Rose has confirmed that he is also generally available this afternoon. **W Law** – please let us know what time works for you to discuss.

Thanks,

Jessie
Jessie Mann

P. 403.776.3770 | F. 403.776.3800 | 1.800.505.8679
525 - 8th Avenue S.W., 46th Floor, Eighth Avenue Place East
Calgary, Alberta T2P 1G1 Canada | www.torys.com



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