

**Dionymed Brands Inc.**

---

**THIRD REPORT OF THE RECEIVER  
FTI CONSULTING CANADA INC.**

---

April 29, 2020



## Table of Contents

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>4</b>
<b>2.0</b>	<b>PURPOSE OF THE THIRD REPORT .....</b>	<b>6</b>
<b>3.0</b>	<b>TERMS OF REFERENCE .....</b>	<b>6</b>
<b>4.0</b>	<b>UPDATE ON RECEIVERSHIP.....</b>	<b>7</b>
<b>5.0</b>	<b>ASSET REALIZATIONS .....</b>	<b>11</b>
<b>6.0</b>	<b>UNREALIZED ASSETS HELD BY THE RECEIVER.....</b>	<b>11</b>
<b>7.0</b>	<b>RECEIPTS AND DISBURSMENTS .....</b>	<b>12</b>
<b>8.0</b>	<b>COMPLETION OF THE RECEIVERSHIP PROCEEDINGS .....</b>	<b>13</b>

## 1.0 INTRODUCTION

1.1 By the order (the "**Receivership Order**") of the Honourable Mr. Justice Marchand of the Supreme Court of British Columbia pronounced October 29, 2019, FTI Consulting Canada Inc. ("**FTI**") was appointed receiver, without security, of all of the assets, undertakings and property of DionyMed Brands Inc. ("**Dionymed**" or, the "**Company**"), including all proceeds thereof (in such capacity, the "**Receiver**").

1.2 On November 20, 2019, the Receiver filed its first report to the Court (the "**First Report**") in support of an application for an order, among other things, approving bidding procedures (the "**Bidding Procedures**") for the sale of the Company's Property (as defined in the Receivership Order); and authorizing, but not requiring, the Receiver to provide financing to Herban Industries Inc. ("**Herban Delaware**"), a U.S. subsidiary of the Company, to acquire the Gotham Green Debt and Security (as defined in the First Report), (the "**Bidding Procedures and Funding Order**").

1.3 On November 26, 2019, the Court granted the Bidding Procedures and Funding Order, as requested.

1.4 On January 7th, 2020, the Receiver filed its second report to the Court (the "**Second Report**") which amongst other things:

- a) Provided the background and update on the receivership proceedings;
- b) Information and the Receiver's comments on a motion by the Receiver for, amongst other things:

1.4.b.1 Approving the Transaction between Eaze Technologies, Inc. and DYME US Acquisition Sub, LLC (the “**Transaction**”);

1.4.b.2 contemporaneously with the completion of the Transaction, authorizing and directing the Receiver to make one or more distributions to the first secured creditor of the Company, SP1 Credit Fund “**SP1**”);

1.4.b.3 Approving the activities of the Receiver as described in the Second Report;

1.4.b.4 Approving the fees and disbursements of the Receiver and its legal counsel; and

1.4.b.5 Sealing the Affidavit of Victor Fong and the Confidential Supplement to the Receiver’s Second Report.

1.5 On January 16th, 2020 the Court issued three orders:

a) Approving the Transaction between the Receiver and Eaze Technologies Inc., vesting of the purchased assets and providing for a distribution of the proceeds. (the “**Approval, Vesting and Distribution Order**”);

b) Approving the conduct and fees of the Receiver and its counsel as set out in the Receiver’s Second Report to the Court (the “**First Fee Approval Order**”); and

c) Sealing the Affidavit of Victor Fong and the Confidential Supplement to the Receiver’s Second Report to the Court as requested.

## **2.0 PURPOSE OF THE THIRD REPORT**

2.1 The purpose of this third report of the Receiver (the “**Third Report**”) is to provide an update on the following items:

- a) the interim statement of receipts and disbursements;
- b) asset realizations to date;
- c) property of which the Receiver has taken possession or control that has not yet been sold or realized; and
- d) information about the anticipated completion of the receivership.

## **3.0 TERMS OF REFERENCE**

3.1 Unless otherwise stated, all monetary amounts referenced in this Third Report are expressed in United States dollars. Capitalized terms not otherwise defined are as defined in the Second Report.

3.2 In preparing this Third Report, the Receiver has relied upon audited and unaudited financial information provided by the Company and its direct and indirect subsidiaries, including their books and records, financial information, and forecasts and analysis, in addition to discussions with various parties, including senior management (“**Management**”) of the Company and its direct and indirect subsidiaries (collectively, the “**Information**”).

3.3 Except as otherwise described in this Third Report:

a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided to it by Management in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

b) The Receiver has not examined or reviewed financial forecasts and projections referred to in the First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

3.4 Future oriented financial information reported or relied on in preparing the Third Report is based on Management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

3.5 The Receiver has assumed the integrity and truthfulness of the information and explanations presented to it by Management. The Receiver has not independently audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information contained in the Third Report. The Receiver assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this Third Report or for any use which any person or entity makes of the Third Report, or any reliance on or a decision made based upon the Third Report, other than for the express purposes as set out in this Third Report.

#### **4.0 UPDATE ON RECEIVERSHIP**

4.1 Since the Receiver's Second Report, the Receiver has been working on the following:

- a) The closing of the Transaction;
- b) Continuing to market the unsold assets of the Company to interested parties (as described below);
- c) Resolution of the Gotham Green Litigation;
- d) Resolution of the Flow Capital Dispute;
- e) Administering the receipts and disbursements in the Receiver's estate accounts for the Company; and
- f) Updating the SP1, on the status of the receivership.

4.2 As described in further detail in the Receiver's First and Second Reports to Court posted on the Receiver's website (<http://cfcanada.fticonsulting.com/DionyMed/reports.htm>), the Company and Herban 2 were indebted to Gotham Q and Gotham Green pursuant to two Secured Notes in the aggregate principal amount of \$2 million (USD).

4.3 Herban CA, Herban Delaware and GGR guaranteed the Secured Notes. The Secured Notes are secured by security granted over substantially all of the assets of Herban 2 and GGR only. On September 16, 2019, Gotham Green demanded repayment in full of the Secured Notes from the Company and Herban 2.



- 4.4 The Company and Herban 2 failed to pay the amounts outstanding under the Secured Notes and on October 30, 2019, Gotham Q and Gotham Green filed a lawsuit against the Company, Herban 2, Herban Delaware and Herban CA in the Superior Court of the State of California, County of Los Angeles, Central Division, in relation to the outstanding Gotham Green Debt and Security.
- 4.5 As of the date of the First Report, the Receiver was of the view that it would be detrimental to the Company and the proposed marketing and sale process of its Property if the Gotham Green Litigation were to continue. On November 26, 2019, this Honourable Court pronounced the Bidding Procedures and Funding Order that, among other things, authorized the Receiver to provide financing to Herban Delaware to acquire the Gotham Green Debt and Security as the Receiver considered necessary or desirable.
- 4.6 Given the result of the sale process, and specifically the fact that GGR and its assets are not part of the Transaction, the Receiver has determined that it is not necessary or desirable to directly or indirectly acquire the Gotham Green Debt and Security.
- 4.7 The initial sale of a substantial part of the company's assets did not include the assets that were part of the Gotham Green Litigation and security. The Receiver has spent approximately two months attempting to market and sell the assets relating to the same and was not able to do so in an amount in excess of the Secured Notes. Therefore, the Receiver, with the consent of SP1 turned over the assets to Gotham Green in accordance with their security.
- 4.8 Gotham Green appointed a private receiver to attempt and sell the assets. The Receiver is following up to determine if there will be any proceeds available for the Dionymed estate.

- 4.9 As set out in the Receiver's First and Second Reports, the Company is indebted to Flow Capital pursuant to two Royalty Purchase Agreements dated April 4, 2018 and May 25, 2018. On or about September 2019, Flow Capital registered the Flow Capital Registrations under the *Uniform Commercial Code* in effect in California and certain other states and against the Company under the *Personal Property Security Act* (British Columbia).
- 4.10 On November 11, 2019, counsel for the Receiver sent a letter to counsel for Flow Capital requesting that it withdraw the security registrations, or in the alternative, provide the Receiver with any missing documentation justifying the Flow Capital Registrations. The basis of this request was that the Receiver did not believe any security interests were granted by the Company or any of its subsidiaries in favour of Flow Capital pursuant to the Royalty Purchase Agreements which began the Flow Registrations Dispute.
- 4.11 Following the November 11, 2019 letter and a detailed response from Flow Capital's counsel the Receiver and Flow Capital, through their respective counsel, engaged in discussions and negotiations regarding the resolution of the Flow Registrations Dispute, and reached a consensual resolution which was memorialized in a binding term sheet.
- 4.12 In summary, Flow Capital agreed to discharge its debt and security against any purchased assets in any transaction to be completed by the Receiver to allow a transaction to be effected free of Flow Capital's debt and security, but to the extent any transaction created sufficient net proceeds to result in a distribution to Flow Capital in accordance with its priorities, Flow Capital would still be entitled to such a distribution to the extent it was determined its debt and security are valid. In the circumstances, the current sale transactions will not result in any proceeds for Flow Capital.

## **5.0 ASSET REALIZATIONS**

5.1 The Receiver's marketing process as described in the Receiver's First and Second Reports resulted in three (3) offers prior to the Bid Deadline, including an offer submitted by the Purchaser.

5.2 Following the Bid Deadline, the Receiver, with the assistance of Management, assisted the Purchaser with an extensive and lengthy due diligence exercise, while also negotiating the asset purchase agreement submitted.

5.3 The Receiver recommended and the purchase price was sealed for the reasons described in the Receiver's Second Report to the Court.

5.4 The purchase price is made up of (i) Series C Preferred Shares of the Purchaser, (ii) the Warrants (both as defined pursuant to the asset purchase agreement related to the Transaction), and (iii) the assumption of certain liabilities. The purchase price is less than the amounts owing to SP1.

5.5 The Receiver directed the Series C Preferred Shares and the Warrants be issued directly to SP1 in accordance with the Approval, Vesting and Distribution Order. Any Transfer Taxes are the responsibility of and for the account of the Purchaser.

5.6 The Transaction closed on January 21, 2020.

## **6.0 UNREALIZED ASSETS HELD BY THE RECEIVER**

6.1 The Receiver continues to solicit and market the assets of Dionymed that were not sold as part of the Transaction which include:

- a) Holds House Brands and Chill technology; and

b) Shares in Herban Oregon; and

6.2 The Receiver is currently in discussions with parties for the sale of the aforementioned assets in paragraph 6.1 and will report on the same in future reports.

## 7.0 RECEIPTS AND DISBURSMENTS

7.1 The Receiver's receipts and disbursements to from October 29, 2019 through April 24, 2020 are:

	<b>Total USD</b>
<b>Receipts</b>	
Advances from Secured Creditor	5,000,000.00
Interest	6,171.11
<b>Total Receipts</b>	<b>5,006,171.11</b>
<b>Disbursements</b>	
Funding to Herban Industries Inc.	(3,475,736.82)
Funding to Dionymed Brands Inc.	(62,334.80)
Professional Fees	(1,424,162.48)
Other Disbursements	(8,196.09)
<b>Total Disbursements</b>	<b>(4,970,430.19)</b>
Foreign Exchange Gain/(loss)*	(4,656.88)
<b>Net Receipts and Disbursements</b>	<b>31,084.04</b>

\*CAD denominated transactions were translated using the Bank of Canada USD/CAD exchange rate as of April 24, 2020.

7.2 The \$5,000,000.00 of Advances from Secured Creditor consist of advances made by SP1 pursuant to the Receivership Order which are secured by the Receiver's Borrowing Charge as defined therein. The funds advanced were used to fund the disbursements required for the administration of the receivership proceedings.

7.3 \$3,475,736.82 of funds were used to fund Dionymed's subsidiary Herban Delaware, prior to the close of the Transaction. The funds were provided to Herban for critical expenditures such

as payroll to maintain the value of the business while the while the Receiver conducted the sales and marketing process authorized by the Court in the Bidding Procedures and Funding Order.

7.4 \$62,635.93 of funds were used to fund Dionymed for the purpose of funding Dionymed's payroll as the employees of the Company assisted the Receiver in the marketing of Dionymed's assets and closing the Transaction.

7.5 Professional Fees and Expenses of \$1,424,162.48 for the Receiver and its legal counsel of which \$760,488.82 of the Receiver's fees and expenses and \$164,946.69 (\$216,720.08 CAD) for its counsel's fees and expenses were approved by the Court in the First Fee Approval Order.

7.6 Other Disbursements consist of bank charges, costs paid to Dionymed's transfer agent and the filing fee paid to the Office of the Superintendent of Bankruptcy pursuant to the *Bankruptcy and Insolvency Act*.

## **8.0 COMPLETION OF THE RECEIVERSHIP PROCEEDINGS**

8.1 The following activities must still be performed in order to complete the receivership proceedings:

- a) Sell the remaining assets of the Company.
- b) Obtain sales tax refunds for the recoverable sales taxes paid on the Receiver's expenses.
- c) Prepare any additional interim reports as required and the Receiver's final report.
- d) Distribute any residual funds to SP1.

\*\*\*

**FTI Consulting Canada Inc., solely in its capacity as**

**Court-appointed Receiver of Dionymed Brands Inc.  
and not in its personal or corporate capacity**



Per:  
Jeffrey Rosenberg, MBA, CPA, CA, CIRP  
Licensed Insolvency Trustee  
Senior Managing Director  
FTI Consulting Canada Inc.



Per:  
Michael Basso, CPA, CA, CIRP  
Licensed Insolvency Trustee  
Senior Director  
FTI Consulting Canada Inc.