

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In re:

Bky. Case No. 00-33612  
Chapter 7

International Beauty Network, Inc.,

Debtor.

-----  
John A. Hedback, Trustee for the  
Bankruptcy Estate of International Beauty  
Network, Inc.,

Plaintiff,

v.

Adv. Pro. No. 02-3204

Daloris Lowenthal, The Richard and Daloris  
Lowenthal Family Trust, Garry N. Lowenthal,  
Equilink LLC, Old Oak Fund, Inc.,  
Harbor View Fund, Inc., and HSBC Bank USA,  
f/k/a Republic National Bank of New York,

Defendants.

-----  
**NOTICE OF HEARING ON APPLICATION FOR  
ENTRY OF DEFAULT JUDGMENT FOR AVOIDANCE  
OF TRANSFERS TO LOWENTHAL DEFENDANTS**

To: The above-named Defendants and to counsel of record:

1. John A. Hedback, Trustee, by and through his undersigned counsel, hereby gives notice of hearing on Plaintiff's Application for Default Judgment filed and served August 24, 2004.

**Notice of Hearing**

2. The Court will hold a hearing on Plaintiff's Application for Default Judgment on September 15, 2004, at 2:30 p.m., or as soon thereafter as counsel can be heard, before the

Honorable Gregory F. Kishel, in Courtroom No. 228B, 200 U.S. Courthouse, 316 North Robert Street, St. Paul, MN 55101.

3. Any response to this motion must be filed and delivered not later than 2:30 p.m. on September 12, 2004, which is three days before the time set for the hearing, or filed and served by mail not later than September 8, 2004, which is seven days before the hearing date. PURSUANT TO LOCAL RULE 9013-2, UNLESS A RESPONSE OPPOSING THE REQUEST IS TIMELY FILED, THE COURT MAY GRANT THE REQUESTED RELIEF WITHOUT A HEARING.

### **Motion**

4. As set forth in Plaintiff's Application for Default Judgment, Plaintiff moves the Court pursuant to Rule 7055, Federal Rules of Bankruptcy Procedure, and Local Rule 7055-1, for entry of default judgment against Defendants Daloris Lowenthal, The Richard and Daloris Lowenthal Family Trust, and Garry N. Lowenthal, on Counts One and Three of Plaintiff's Complaint to avoid security interests granted to them.

5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this case as an involuntary bankruptcy was filed on August 31, 2000, and the order for relief was entered on September 21, 2000. The case is now pending in this Court.

6. This motion arises under 11 U.S.C. §§ 547 and 550 and Fed. R. Bankr. P. 7055. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 3. Movant requests entry of default judgment on Counts One and Three of Plaintiff's Complaint to avoid the security interests and perfection thereof as therein alleged.

7. Grounds for the motion are set forth in the accompanying Affidavit of Default,

Affidavit of Identification, Affidavit of Trustee on the Merits Supporting the Application for Default Judgment, exhibits thereto, and in the memorandum filed herewith.

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff's application for default judgment and enter judgment on Counts One and Three of the Complaint as set forth in the proposed Findings of Fact, Conclusions of Law, and Order for Default Judgment.

August 25, 2004

KALINA, WILLS, GISVOLD & CLARK, P.L.L.P.

By:     /e/ Gordon B. Conn, Jr.  
6160 Summit Drive, Suite 560  
Minneapolis, MN 55430  
Tel. (612) 789-9000  
Fax (763) 503-7070  
Attorneys for Plaintiff  
John A. Hedback, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In re:

Bky. Case No. 00-33612  
Chapter 7

International Beauty Network, Inc.,

Debtor.

-----  
John A. Hedback, Trustee for the  
Bankruptcy Estate of International Beauty  
Network, Inc.,

Plaintiff,

v.

Adv. Pro. No. 02-3204

Daloris Lowenthal, The Richard and Daloris  
Lowenthal Family Trust, Garry N. Lowenthal,  
Equilink LLC, Old Oak Fund, Inc.,  
Harbor View Fund, Inc., and HSBC Bank USA,  
f/k/a Republic National Bank of New York,

Defendants.

-----  
**PLAINTIFF'S MEMORANDUM IN SUPPORT**  
**OF APPLICATION FOR ENTRY OF DEFAULT JUDGMENT FOR**  
**AVOIDANCE OF TRANSFERS TO LOWENTHAL DEFENDANTS**

Plaintiff John A. Hedback, Trustee, submits this memorandum in support of his application for entry of default judgment on Counts One and Three of his Complaint as against Defendants Daloris Lowenthal, The Richard and Daloris Lowenthal Family Trust and Garry N. Lowenthal to avoid the grant and perfection of security interests to those insider defendants.

## **General Background**

The Debtor, International Beauty Network, Inc. ("IBN"), was a Minnesota corporation formed in September 1991. IBN was engaged in the business of manufacturing, distributing, and selling licensed toiletries for children under various brand names. Prior to October 1999, Defendant Garry N. Lowenthal was President and Chief Executive Officer of IBN and was its largest shareholder. IBN encountered financial difficulties, and its 1998 audited financial statements showed it to be insolvent, with a negative net worth. (Hedback Aff., Ex. A).

To finance its operations, IBN borrowed money from Garry Lowenthal and his mother and family trust; it appears that as of August 1999, IBN owed Daloris Lowenthal \$155,234.25, and owed Garry Lowenthal \$558,565, as reflected in various promissory notes (Hedback Aff., ¶¶ 8,9). In addition, Garry Lowenthal claimed that IBN owed him an additional \$229,444 (Hedback Aff., Ex. F).

To secure the antecedent debt, on August 12, 1999, IBN executed security agreements to the Lowenthal defendants (Hedback Aff., ¶¶ 11 – 14, Ex. G, I). The security interests were perfected by filing financing statements on October 26, 1999 (Hedback Aff., Ex. H, J).

On August 31, 2000, various creditors filed an involuntary petition against IBN, and the Order for Relief was entered by the Bankruptcy Court September 21, 2000, and John A. Hedback was appointed trustee.

This adversary proceeding was commenced September 20, 2002, against Garry Lowenthal, his family trust, HSBC, and certain other insiders, seeking, among other things, avoidance and preservation of insider liens granted to Lowenthal and his family, and alleging

that the other Defendants' receipt of payments from the proceeds of the sale of IBN's assets made them liable for conversion.

The summons and complaint in this adversary proceeding were duly served by certified mail on all defendants; return receipts of service upon the Lowenthal defendants are attached to the accompanying Affidavit of Default. Despite such service, the Lowenthal defendants have not answered or otherwise defended in this adversary proceeding, and Plaintiff accordingly moves for entry of default judgment avoiding the transfers to the Lowenthal defendants.

### **ARGUMENT**

The granting and perfection of security interests to the Lowenthal defendants constituted transfers to insiders on account of antecedent debt within one year prior to bankruptcy. IBN was plainly insolvent at the times of such transfers, such that the transfers are avoidable as insider preferences under 11 U.S.C. §547. Pursuant to 11 U.S.C. § 551, the avoided transfers are preserved for the benefit of the estate. Although duly served, the Lowenthal defendants have not answered or otherwise defended in this matter, and Plaintiff respectfully requests that the Court grant his application for default judgment and enter judgment avoiding the transfers to the Lowenthal defendants.

August 25, 2004.

KALINA, WILLS, GISVOLD & CLARK, P.L.L.P.

By: /e/ Gordon B. Conn, Jr.  
Gordon B. Conn, Jr. (#18375)  
6160 Summit Drive, Suite 560  
Minneapolis, MN 55430  
Tel. (612) 789-9000  
Fax (763) 503-7070  
Attorneys for Plaintiff  
John A. Hedback, Trustee



## SERVICE LIST

Matthew R. Burton  
Leonard, O'Brien, Wilford, Spencer & Gale  
100 South Fifth Street  
Suite 1200  
Minneapolis, MN 55402-1216

Todd C. Pearson  
Dorsey & Whitney LLP  
50 South Sixth Street, #1500  
Minneapolis, MN 55402-1498

Daloris Lowenthal  
2717 S. Gregory Drive  
Billings, MT 59102

The Richard and Daloris Lowenthal  
Family Trust  
2717 S. Gregory Drive  
Billings, MT 59102

Garry N. Lowenthal  
1836 N. Prior Avenue  
St. Paul, MN 55113