

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
GUCCI AMERICA, INC.	:	
	:	
Plaintiff,	:	
	:	09 Civ. 6925 (HB)
-against-	:	
	:	
FRONTLINE PROCESSING CORPORATION;	:	
WOODFOREST NATIONAL BANK; DURANGO	:	
MERCHANT SERVICES LLC d/b/a NATIONAL	:	
BANKCARD SYSTEMS OF DURANGO; ABC	:	
COMPANIES; and JOHN DOES,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
-----	X	

**PLAINTIFF’S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS BY
DEFENDANT DURANGO MERCHANT SERVICES LLC**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Gucci America, Inc., by and through its undersigned counsel, hereby requests that Defendant Durango Merchant Services LLC d/b/a National Bankcard Systems of Durango produce the following documents, tangible things, and electronically stored documents, at the offices of Gibson, Dunn & Crutcher, LLP, 200 Park Avenue, 47th Floor, New York, New York 10016, within thirty (30) days after service hereof.

DEFINITIONS

1. “All” includes the term “each” or “any,” and vice versa. The singular shall include the plural, and the disjunctive shall include the conjunctive, and vice versa.
2. “Communication” means every conceivable manner or means of disclosure, transfer, or exchange of oral, electronic, digital or written information between or among one or

more persons or entities, including, but not limited to, writings, correspondence, meetings, conferences, conversations, dialogues, discussions, interviews, consultations, agreements, inquiries, and any other expressions or understandings, whether made face-to-face, by telephone, mail, facsimile, computer or otherwise.

3. “Complaint” means the complaint filed in the action captioned *Gucci America, Inc. v. Frontline Processing Corp., et al.*, 09 Civ. 6925 (HB).

4. “Concerning” means, in whole or in part with respect to, in connection with, referring to, relating to, describing, evidencing, constituting, substantiating, purporting, embodying, establishing, identifying, listing, stating, comprising, connected with, memorializing, recording, commenting on or upon, responding to, showing, demonstrating, analyzing, reflecting, representing, supporting, explaining, consisting of, regarding, discussing, containing, setting forth, disclosing, explaining, summarizing, pertaining to, or otherwise having any logical or factual connection to the subject matter, of the document request.

5. “Defendants” means Woodforest National Bank, Frontline Processing Corporation, and Durango Merchant Services LLC doing business as National Bankcard Systems of Durango.

6. “Document” is synonymous with the usage of that term in Rule 34 of the Federal Rules of Civil Procedure, and includes, without limitation, writings, e-mails, reports, papers, notes, accounts, memoranda, correspondence, communications, worksheets, workpapers, analyses, contracts, charts, spreadsheets, agreements, working papers, corporate records, minutes of meetings, books of account, ledger books, notebooks, desk calendars, photographs, films, slides, audiotape, videotape, appointment books, diaries, drafts, memoranda of meetings or conversations, graphs, telephone records, computer tapes, computer discs, optical discs, laser

discs, computer cards and computer printouts and other data compilations from which information can be obtained or translated all electronic, mechanical, magnetic, optical or electric data, records or representations of any kind (including computer data, computer files, computer programs, hard drives, floppy disks, compact disks, tapes and cards existing on desktop computers, laptop computers, notebook computers, personal digital assistant computers, servers, backup tapes or any other medium), and all other electronically stored information. The term includes all drafts of a document, the original document, and all copies that differ in any way from the original (including as to any notations, underlinings, or other markings).

7. “Durango” means Durango Merchant Services LLC, doing business as National Bankcard Systems of Durango, including, but not limited to, its predecessors, parents, affiliates, subsidiaries, officers, directors, board members, managers, attorneys, employees, agents, representatives, consultants, or any other person or entity acting for, at the direction of, or on behalf of Durango.

8. “Frontline” means Frontline Processing Corporation, including, but not limited to, its predecessors, parents, affiliates, subsidiaries, officers, directors, board members, managers, attorneys, employees, agents, representatives, consultants, or any other person or entity acting for, at the direction of, or on behalf of Frontline.

9. “Gucci Marks” means the federally registered trademarks owned by Gucci America, Inc. as set forth in the Complaint at ¶¶ 25-26 and annexed thereto as Exhibit 1.

10. “Laurette” means the named defendants in the action captioned *Gucci America, Inc., et al. v. Laurette Company, Inc., et al.*, 08 Civ. 5065 (L.A.K.) (S.D.N.Y.)—Laurette Company, Inc., Jennifer Marie Mattchen a/k/a Jennifer Marie Kirk a/k/a Jennifer Besson, and

Patrick B. Kirk, all doing business as TheBagAddiction.com—as well as their officers, directors, agents, representatives, and all persons acting on their behalf.

11. “MCCS” means Merchants’ Choice Card Services, now known as Merchants’ Choice Payment Solutions (“MCPS”), including, but not limited to, its predecessors, parents, affiliates, subsidiaries, officers, directors, board members, managers, attorneys, employees, agents, representatives, consultants, or any other person or entity acting for, at the direction of, or on behalf of MCCS. The term includes Delta Card Services, Inc. (“Delta Card Services”).

12. “Referring” or “Relating” means, in whole or in part with respect to, in connection with, concerning, describing, evidencing, constituting, substantiating, purporting, embodying, establishing, identifying, listing, stating, comprising, connected with, memorializing, recording, commenting on or upon, responding to, showing, demonstrating, analyzing, reflecting, representing, supporting, explaining, consisting of, regarding, discussing, containing, setting forth, disclosing, explaining, summarizing, pertaining to, or otherwise having any logical or factual connection to the subject matter, of the document request.

13. “Replica Products” means any goods, including, but not limited to, handbags, wallets, belts, jewelry, shoes, clothing, or accessories that are described as “replica,” “counterfeit,” “knockoff,” “mirror image,” “fake,” “imitation,” “not authentic,” “not original,” “not genuine,” or for which the seller “cannot guarantee the authenticity,” or that Durango, upon investigating, determined were not genuine or authentic.

14. “Woodforest” means any member bank or organization of Woodforest National Bank, including, but not limited to, its predecessors, parents, affiliates, subsidiaries, officers, directors, board members, managers, attorneys, employees, agents, representatives, consultants,

or any other person or entity acting for, at the direction of, or on behalf of Woodforest National Bank.

15. “You” and “Your” mean Durango, as defined above.

INSTRUCTIONS

The definitions and rules of construction set forth in Rule 34 of the Federal Rules of Civil Procedure and Rule 26.3 of the Local Rules of the Southern District of New York are hereby incorporated and apply to this request for the production of documents.

1. In answering and responding to these document requests, please furnish each and every document that is in your possession, custody, or control, or that is in the possession, custody, or control of your principals, agents, employees, attorneys, representatives, insurers, and any other persons or entities acting on your behalf.

2. Each request for documents seeks production of the document in its entirety, without abbreviation, redaction, or modification, including all attachments, enclosures, or other matters affixed thereto

3. Where the documents responsive to a request are stored electronically, any responsive e-mails, Word documents, and other unstructured data are to be produced in TIFF format. Any responsive Excel charts, databases, and other structured data are to be produced in native format.

4. Documents shall be produced in an order corresponding to each paragraph of these document requests, or, in the alternative, they may be produced in the same order in which they are maintained in the usual course of business.

5. If any responsive document is no longer in existence, cannot be located or is not in your possession, custody or control, identify it, describe its subject matter and describe its

disposition, including, without limitation, identifying the person or persons: (a) having knowledge of the contents of the document and/or its destruction, deletion or disposition; and (b) responsible for its destruction, deletion or other disposition.

6. Draft or non-identical copies are to be considered separate documents for purposes of these requests.

7. If any of the information or documents supplied in response to these discovery requests does not come from your records, please specify the source of the documents.

8. If any request or any portion thereof is objected to, state the grounds for objection with specificity and produce documents to the extent the request is not objected to.

9. If you withhold any document, or any portion of any document, under a claim of attorney-client, work product, or other privilege, you shall produce, in accordance with Rule 26 of the Federal Rules of Civil Procedure and Rule 26.2 of the Local Rules of the Southern District of New York, a written privilege log that sets forth: (a) the author of the document; (b) the type of document, *e.g.*, letter or memorandum; (c) the date of the document; (d) all recipients of the document; (e) such other information as is sufficient to identify the document; and (f) the nature of the privilege asserted.

10. These document requests are continuing in nature. If, after producing any documents in response to these document requests, you obtain or become aware of additional responsive information, you are required to provide such information or documents by way of a supplemental production.

RELEVANT TIME PERIOD

The relevant time period, unless otherwise indicated, shall be from January 1, 2003 through present and shall include all documents and information which relate in whole or in part

to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period.

REQUESTS FOR DOCUMENTS AND THINGS

Please produce the following documents or things in your custody, possession or control:

1. All documents, including any documents stored electronically, relating to Laurette.
2. All documents, including any documents stored electronically, relating to the submission, review, acceptance, and servicing of Laurette's merchant services agreement with Durango, including, but not limited to, all internal memoranda, e-mails, account statements, requests for chargebacks, and correspondence.
3. All documents, including any documents stored electronically, relating to Durango's review of Laurette's website, business model, or business operations, including, but not limited to, internal memoranda, e-mails, and correspondence.
4. All communications, including any communications stored electronically, between Nathan Counley and Laurette, including, but not limited to, e-mails, faxes, and other correspondence.
5. All communications, including any communications stored electronically, between Durango and any credit card processing service providers regarding Laurette, including, but not limited to, all e-mails, faxes, and other correspondence with Woodforest, MCCS, or Frontline.
6. All documents, including any documents stored electronically, relating to Laurette's merchant services accounts with Woodforest and Frontline.
7. All documents, including any documents stored electronically, relating to Gucci.

8. All documents, including any documents stored electronically, concerning Durango's solicitation or acceptance of business from merchants of Replica Products.

9. All documents, including any documents stored electronically, concerning or reflecting the volume of sales, fees, or other monies charged or earned by Durango from Laurette and any other internet merchants selling Replica Products.

10. All documents, including any documents stored electronically, concerning or reflecting the volume of sales, fees, or other monies charged or earned by Durango from Woodforest, MCCS, or Frontline.

11. All documents, including any documents stored electronically, concerning Durango's definition of the terms "High Risk Merchant" and "Replica Products" merchant.

12. All documents, including any documents stored electronically, relating to Durango's decision to accept or reject applications for merchant credit card processing services from High Risk Merchants or merchants selling Replica Products, including, but not limited to, memoranda, written internal policies or procedures, e-mails, minutes of meetings, and notes relating to any decision by Durango to accept or reject such business.

13. All documents, including any documents stored electronically, referring or relating to merchants whose websites sell Replica Products, including, but not limited to, any applications, account statements of such merchants, diligence materials, approval memoranda, sales data, e-mails, and other correspondence.

14. All documents, including any documents stored electronically, concerning Durango's receipt or acceptance of merchant applications from any merchants selling handbags or accessories that display the name "Gucci" or any of the Gucci Marks, including, without

limitation, any applications, account statements of such merchants, diligence materials, approval memoranda, sales data, e-mails and others correspondence.

15. All documents, including any documents stored electronically, reflecting notifications received by Durango that any of its merchants may be infringing upon trademarks or selling counterfeit goods, including, but not limited to, any cease-and-desist letters.

16. All documents, including any documents stored electronically, relating to the sale, marketing, or promotion of Durango's broker services to High Risk Merchants or merchants of Replica Products.

17. All documents, including any documents stored electronically, relating to any current or prior Durango policy or policies that prevented or were designed to prevent the provision of broker services to merchants engaged in illegal activities, such as trademark infringement and counterfeiting, including, but not limited to, policy manuals, employee handbooks, and training manuals.

18. All documents, including any documents stored electronically, relating to any analysis, review, consideration, deliberations, debate, or other communications by or on behalf of Durango with respect to Durango providing broker services to Replica Products merchants.

19. All documents, including any documents stored electronically, concerning any internal audits of Durango's business that refer or relate to Durango providing broker services for High Risk Merchants or merchants selling Replica Products.

20. All documents, including any documents stored electronically, concerning any examination by Durango's external auditors that refer or relate to Durango providing broker services to High Risk Merchants or merchants selling Replica Products, including, but not limited to, correspondence, management letters, and work papers.

21. All documents, including any documents stored electronically, that refer or relate to the drafting or modification of any account application materials used by Durango in deciding to accept an internet merchant as a customer, including, but not limited to drafts, e-mails, and correspondence.

22. All communications, including any communications stored electronically, between Durango and MasterCard, Visa, Discover, American Express, Woodforest, MCCS, or Frontline concerning the sale or return of any Replica Products.

23. All agreements, including any agreements stored electronically, entered into between Durango and JP Morgan Chase Bank, BankcorpSouth Inc., US Bank of Minneapolis, MasterCard, Visa, Discover, American Express, Frontline, Woodforest, or MCCS relating to Durango's brokerage services or the counterparty's credit card processing services.

24. All documents, including any documents stored electronically, concerning or reflecting the volume of sales by, or chargebacks against, Durango merchants that were processed through the New York offices of MasterCard, Visa, Discover, American Express, or JP Morgan Chase Bank.

25. Documents, including any documents stored electronically, sufficient to show any accounts held by or on behalf of Durango into which payments from MasterCard, Visa, Discover, or American Express were deposited, and any accounts into which such payments may have been transferred.

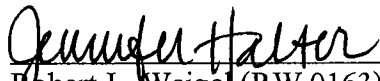
26. All documents, including any documents stored electronically, concerning or reflecting the volume of sales, fees, or other monies charged or earned by Durango from sales charged or shipped to New York State residents.

27. All documents, including any documents stored electronically, concerning or reflecting the volume of sales, fees, or other monies charged or earned by Durango from merchants located in New York State.

28. All documents, including any documents stored electronically, concerning or reflecting any efforts by Durango to generate business from merchants located in New York State.

Dated: New York, New York
December 3, 2009

GIBSON, DUNN & CRUTCHER LLP

By: 
Robert L. Weigel (RW 0163)
Howard S. Hogan (HH 7995)
Jennifer C. Halter (JH 7032)
Anne M. Coyle (AC 3158)

200 Park Avenue, 47th Floor
New York, New York 10166-0193
(212) 351-4000

Attorneys for Plaintiff Gucci America, Inc.