

GIBSON DUNN

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May 5, 2010

VIA E-MAIL (Contact@TWLegal.com)Todd Wengrovsky
Law Office of Todd Wengrovsky, PLLC
285 Southfield Road, Box 585
Calverton, NY 11933Re: *Gucci America, Inc. v. Frontline Processing Corp., et al.*,
No. 09 Civ. 6925 (SDNY) (HB)

Dear Mr. Wengrovsky:

I write on behalf of Plaintiff Gucci America, Inc. in the above-captioned action regarding the numerous deficiencies in Defendant Durango Merchant Services' ("Durango") responses to Plaintiff's Interrogatories and Requests for Production ("RFPs"). As set forth below, we request that Durango provide written confirmation that these deficiencies will be remedied no later than Monday, May 10, 2010.

On December 4, 2009, Plaintiff served its discovery requests on Durango. Durango responded to these discovery requests on February 3, 2010.¹ In response to Plaintiff's RFPs, Durango committed to searching for and producing documents, including electronic communications, responsive to Plaintiff's requests. Included in the categories of documents Durango committed to producing were all documents and communications relating to Laurette, other merchants selling so-called "replica products," and any notice Durango

¹ As previously conveyed to you on January 28, 2010 and February 3, 2010, Durango neither requested nor received an extension of time to respond to Plaintiff's Interrogatories, and the responses were due within thirty days of December 4, 2009. Because Durango failed to respond to the Interrogatories within the thirty days provided in Fed. R. Civ. P. 33, any objections raised by Durango in response to Plaintiff's Interrogatories are deemed waived. See *Techsearch Svcs., Inc. v. Gorman*, 1999 WL 33024, at *2 (S.D.N.Y. Jan. 21, 1999) ("A party cannot with impunity ignore the time limits of Fed. R. Civ. P. 33. . . . Since defendant's answers and objections to plaintiff's interrogatories were not served timely, all the objections to the interrogatories are waived."). Having waived its objections, Durango must therefore "provide complete answers to plaintiff's initial set of interrogatories," *id.*, including Interrogatory Nos. 6-15.

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received that its merchants might be infringing upon the trademarks of others, including Plaintiff. On February 25, 2010, Durango made its first and only document production, which consisted of a handful of documents amounting to approximately 50 pages.

Documents produced in this litigation show that Nathan Counley was the sales agent for a number of other replica products merchants, including Stephanie Walker (PurseScene.com), Melissa Gampel (PurseBoutique.com), Rashida Ayers (Charismaticstyle.com), and Jean Pharel (Freshstyle.com). *See, e.g.*, WNB-00569, WNB-00925, WNB-00966, WNB-01078. It also appears that Mr. Counley corresponded by email with at least one of these merchants regarding a brand owner's notice to the merchant alleging trademark violations. *See* GUCCI-0048264-267. The existence of these documents and Durango's failure to produce such documents and correspondence, as well as the paucity of documents produced thus far, suggests that Durango has not conducted a diligent and thorough search of its records and electronic communications or is being deliberately obstructionist by refusing to produce such documents.

Additionally, Durango's stated refusal to produce any documents in responses to RFP Nos. 11, 16, 18, 19, 23, 24, 25, 26, and 27, which have direct bearing and relevance on the issues in this litigation, is without basis or justification. For example, RFP No. 11, requests the production of documents "concerning Durango's definition of the terms 'High Risk Merchant' and 'Replica Products' merchant." Durango response that "their definition of 'replica' is identified in the Memorandum in Support of Defendants' Motion to Dismiss" and that "'high risk' is an industry term" is not responsive to Plaintiff's request. Further, Durango's refusal to produce *any* documents in response to this request is inexplicable. The terms "High Risk Merchant" and "Replica Products" appeared on Durango's website among the categories of merchants Durango services, and these terms are specifically referenced in Plaintiff's Complaint. *See, e.g.*, Compl. ¶ 48. There is no question that the documents requested, which Durango refuses to produce, bear directly on the claims in this litigation.

Given the substantial deficiencies in Durango's discovery responses, please confirm in writing no later than Friday, May 7, 2010, that: 1) Durango has conducted a complete search for documents responsive to Plaintiff's requests, including a diligent search of the electronic communications of the individuals identified in Durango's responses to the Interrogatories—Shane Kairalla, Bill Demopolis, and Nathan Counley; and 2) Durango will produce all responsive documents, including electronic communications, no later than Monday, May 10, 2010, including those documents that Durango initially withheld from production in response to RFP Nos. 11, 16, 18, 19, 23, 24, 25, 26, and 27.

In light of the June 15, 2010 fact discovery deadline, and the upcoming depositions that have been noticed for the week of May 17th, we intend to raise this issues with the Court

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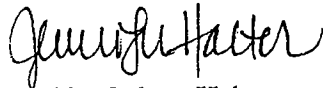
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at the earliest possible date if we do not receive the requested written confirmation by Friday, May 7, 2010.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Colgan Halter".

Jennifer Colgan Halter

JCH/jch