

GIBSON DUNN

May 10, 2010

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VIA HAND DELIVERY

Hon. Harold Baer, Jr.
United States District Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 2230
New York, New York 10007-1312

Re: Gucci America, Inc. v. Frontline Processing Corp., et al., 09 Civ. 6925 (SDNY) (HB)

Dear Judge Baer:

I write on behalf of Plaintiff Gucci America, Inc. in reference to the above-captioned action. Plaintiff respectfully requests a conference with the Court to discuss the Pretrial Scheduling Order and certain deficiencies in the discovery responses of Defendants Woodforest National Bank, Frontline Processing Corporation, and Durango Merchant Services (collectively, "Defendants").

Pursuant to the Pretrial Scheduling Order entered on October 22, 2009, the fact discovery deadline for this action is June 15, 2010, and Plaintiff has diligently pursued discovery from Defendants in accordance with that schedule. On December 4, 2009, Plaintiff served discovery requests on all Defendants and, as set forth below, has since been attempting (unsuccessfully so far) to get Defendants to comply fully with those requests. In addition, Plaintiff has noticed a total of ten witnesses from all three Defendants for depositions between May 17, 2010 and June 14, 2010. Plaintiff itself has produced in excess of 48,000 pages in response to Defendants' discovery requests and expects to produce its remaining documents shortly. In sum, Plaintiff has been diligently attempting to prepare this case for trial in September 2010, as set forth in the Pretrial Scheduling Order. In contrast, Plaintiff's discovery requests to Defendants have gone largely unanswered. Plaintiff therefore requests a conference with the Court to resolve the Defendants' failures to comply with their discovery obligations, which are set forth in further detail below.

Prior to contacting the Court regarding the requested conference, Plaintiff contacted each of the Defendants regarding the deficiencies in their respective discovery responses. Specifically, Plaintiff raised serious concerns with the Defendants about their failure to produce more than a handful of e-mails in response to Plaintiff's discovery requests. For example, it was only after several letters from Plaintiff that Defendant Woodforest finally informed Plaintiff that it was taking the position that it possesses no additional responsive documents, electronic or otherwise. To date, Woodforest has produced less than 20 e-mails

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in response to Plaintiff's requests, all of which appear to have been sent in or around August 2009 after Plaintiff initiated the instant litigation against the Defendants. Although Woodforest identified 21 individuals as having knowledge of facts relevant to this lawsuit in response to Plaintiff's interrogatories, Woodforest has failed to confirm that it searched the files and electronic communications of these 21 individuals—among whom are two individuals who appear to have actually reviewed and/or approved Laurette's merchant account application for TheBagAddiction.com. In addition, although such documents are clearly responsive to Plaintiff's requests and relevant to the central issues in this litigation, Woodforest has failed to provide complete account files for a number of replica merchants, such as the Internet Merchant Review Checklist used by Woodforest as part of its application review process or the monthly account statements reflecting the volume of business Woodforest processed for such merchants.

Similarly, in response to Plaintiff's discovery requests, Defendants Durango and Frontline have produced less than 200 pages combined. Frontline's production includes no e-mails and Durango has produced only six pages of e-mails, which Durango had previously produced in response to a third-party subpoena in another lawsuit. Durango has failed to confirm that it has actually conducted a search for electronic documents in this litigation even though it is not disputed that Durango's account manager, Nathan Counley, corresponded with his customers regularly by e-mail. Additionally, Durango has refused to produce *any* documents in response to a number of Plaintiff's requests even though the requested documents bear directly on the issues in this litigation, such as documents concerning Durango's definition of the terms "High Risk" and "Replica Products," which appear on Durango's website among the categories of merchants it services. Defendants have provided no indication to Plaintiff that they intend to remedy these deficiencies.

Lastly, under Local Rule 33.3(c), Plaintiff must serve its contention interrogatories upon Defendants by Friday, May 14, 2010, *i.e.*, "at least 30 days prior to the discovery cut-off date." *See* S.D.N.Y. Local Rule 33.3(c). As the Court is aware, Defendants filed motions to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6), which are currently pending before the Court. In light of the fact that Defendants have not yet filed an answer to the complaint in this action, a brief extension of the current fact discovery deadline would allow the parties to better frame the issues for trial. As plaintiff, Gucci obviously does not want a lengthy delay. We would therefore request that any extension of the fact discovery deadline be only as long as the Court deems necessary so that issue can be joined and discovery can be completed.

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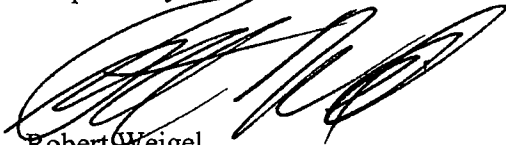
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Plaintiff therefore requests a conference with the Court at its convenience to discuss the issues outlined above.

Respectfully submitted,



Robert Weigel

RLW/jch

cc: Fritz Pierce, Esq. (via e-mail)
William Mentlik, Esq. (via e-mail)
Todd Wengrovsky, Esq. (via e-mail)