

Exhibit 62

Month	Merchant Express	Frontline Residual	Merchant Express	Remaining residual	Nathan County	DMS remaining profit from Account	Woodforest Residual	Metro Merchant	Remaining Residual	Nathan County	DMS remaining profit from Account
Sep-06	261.80	104.72	157.08	54.98	102.10	0.00	0.00	0.00	0.00	0.00	0.00
Oct-06	756.80	302.72	454.08	156.83	295.15	0.00	0.00	0.00	0.00	0.00	0.00
Nov-06	620.60	248.24	372.36	130.33	242.03	128.44	0.00	128.44	192.67	67.43	125.23
Dec-06	643.52	257.41	386.11	135.14	250.97	204.48	0.00	204.48	306.71	107.35	199.36
Jan-07	697.55	279.02	418.53	146.49	272.04	200.19	0.00	200.19	300.28	105.10	195.18
Feb-07	703.94	281.58	422.36	147.83	274.54	441.70	0.00	441.70	300.47	105.60	287.11
Mar-07	542.91	217.16	325.75	114.01	211.73	519.83	0.00	519.83	519.83	181.94	337.89
Apr-07	821.59	328.64	492.95	171.53	320.42	474.84	0.00	474.84	474.84	166.19	308.65
May-07	889.39	290.33	435.49	152.42	283.07	346.86	0.00	346.86	518.08	181.33	336.75
Jun-07	725.82	306.72	389.72	136.77	253.00	380.95	0.00	380.95	558.27	195.39	362.88
Jul-07	976.80	390.72	586.08	186.77	390.31	346.86	0.00	346.86	527.48	184.62	342.86
Aug-07	875.79	350.32	525.47	183.92	341.56	497.09	0.00	497.09	497.09	173.98	323.11
Sep-07	997.58	320.55	480.88	166.31	312.57	647.95	0.00	647.95	647.95	226.78	421.17
Oct-07	1300.07	399.03	598.55	209.49	389.06	346.01	0.00	346.01	647.95	226.78	421.17
Nov-07	1314.26	520.03	760.04	273.01	507.03	346.01	0.00	346.01	647.95	226.78	421.17
Dec-07	1314.26	520.03	760.04	273.01	507.03	346.01	0.00	346.01	647.95	226.78	421.17
Jan-08	937.51	370.70	566.81	194.62	376.19	519.69	0.00	519.69	519.69	181.89	337.80
Feb-08	1076.97	430.79	646.18	196.88	433.31	450.38	0.00	450.38	450.38	157.63	292.75
Mar-08	1126.74	480.79	646.95	196.88	480.07	678.32	0.00	678.32	678.32	237.41	440.91
Apr-08	660.53	264.21	396.32	136.71	257.61	349.69	0.00	349.69	349.69	122.39	227.30
May-08	773.27	109.31	663.96	187.39	476.57	223.97	0.00	223.97	223.97	78.39	145.58
Jun-08	185.33	74.13	111.20	38.92	72.28	447.86	0.00	447.86	447.86	156.25	291.61
Jul-08	10.34	4.14	6.20	2.17	4.03	22.51	0.00	22.51	22.51	7.88	14.63
Aug-08	0.14	0.06	0.08	0.03	0.05	38.36	0.00	38.36	38.36	13.43	24.93
Sep-08	0.07	0.03	0.04	0.01	0.03	14.07	0.00	14.07	14.07	4.91	9.15
Oct-08	0.00	0.00	0.00	0.00	0.00	0.11	0.00	0.11	0.11	0.14	0.27
Nov-08	18127.53	7251.01	39057.82	38057.82	7069.74	8935.89	0.00	8935.89	8935.89	2940.97	5461.92
Total Profit	27063.42										
Agent Payoffs											
Nathan County	6747.76										
Merchant Express	7251.01										
Metro Merchant	533.11										
Remaining residuals											
DMS	12531.55										
Metro Merchant											
Month by Month											
Provider											
Account Number											
Processing Volume											
Residual											
ResidualPerMonth											
Total Per Month											
Amount Paid Out											
Woodforest											
Bag Addition											
Setup fee											
total											
Nov-06											
Woodforest											
Bag Addition											
Setup fee											
total											
Dec-06											
Woodforest											
Bag Addition											
Setup fee											
total											
Jan-07											
Woodforest											
Bag Addition											
Setup fee											
total											
Feb-07											
Woodforest											
Bag Addition											
Setup fee											
total											
Mar-07											
Woodforest											
Bag Addition											
Setup fee											
total											

from this point on we stopped paying Metro Merchant due to agreement issue and put funds in to DMS flush fund

Woodforest	Bag Addition	518.83	40%	207.33	207.33
	Setup fee			0.00	0.00
	total			207.33	207.33
Apr-07					
Woodforest	Bag Addition	474.84	40%	189.94	189.94
	Setup fee			0.00	0.00
	total			189.94	189.94
May-07					
Woodforest	Bag Addition	518.08	40%	207.23	207.23
	Setup fee			0.00	0.00
	total			207.23	207.23
Jun-07					
Woodforest	Bag Addition	558.27	40%	223.31	223.31
	Setup fee			0.00	0.00
	total			223.31	223.31
Jul-07					
Woodforest	Bag Addition	527.48	40%	210.99	210.99
	Setup fee			0.00	0.00
	total			210.99	210.99
Aug-07					
Woodforest	Bag Addition	497.09	40%	198.84	198.84
	Setup fee			0.00	0.00
	total			198.84	198.84
Sep-07					
Woodforest	Bag Addition	647.95	40%	259.18	259.18
	Setup fee			0.00	0.00
	total			259.18	259.18
Oct-07					
Woodforest	Bag Addition	346.01	40%	138.40	138.40
	Setup fee			0.00	0.00
	total			138.40	138.40
Nov-07					
Woodforest	Bag Addition	518.09	40%	207.24	207.24
	Setup fee			0.00	0.00
	total			207.24	207.24
Dec-07					
Woodforest	Bag Addition	450.38	40%	180.15	180.15

Exhibit 63

PENGAD 800-631-6888
EXHIBIT
Counley
 6-74-10

Month	Account Name Prime Time	Total residual	Agents residual	Counley Commerce LLC	DMS Residual
Dec-06				13.13025	24.38475
Jan-07		75.03	0.00	0	0
Feb-07		116.54	58.27	20.3945	37.8755
Mar-07		161.81	80.91	28.31675	52.58825
Apr-07		143.42	71.71	25.0985	46.6115
May-07		194.08	97.04	33.964	63.076
Jun-07		189.76	94.88	33.208	61.672
Jul-07		187.52	93.76	32.816	60.944
Aug-07		0	0.00	0	0
Sep-07		168.43	84.22	29.47525	54.73975
Oct-07		172.73	86.37	30.22775	56.13725
Nov-07		274.37	137.19	48.01475	89.17025
Dec-07		216.45	108.23	37.87875	70.34625
Jan-08		35.51	17.76	6.21425	11.54075
Feb-08		0.68	0.34	0.119	0.221
Mar-08		-0.02	-0.01	-0.0035	-0.0065
Apr-08		-0.05	-0.03	-0.00875	-0.01625
May-08		-0.11	-0.06	-0.01925	-0.03575
Jun-08		-0.11	-0.06	-0.01925	-0.03575
Jul-08		-0.36	-0.18	-0.063	-0.117
Aug-08		-0.11	-0.06	-0.01925	-0.03575
		1935.57	967.79	338.72	629.06
	Dress 4 Envy				
Nov-07		13.65	6.825	2.38875	4.43625
Dec-07		29.73	14.865	5.20275	9.66225
Jan-08		12.25	6.125	2.14375	3.98125
Feb-08		11.51	5.755	2.01425	3.74075
Mar-08		14.6	7.30	2.555	4.745
Apr-08		4.31	2.155	0.75425	1.40075
May-08		31.8	15.90	5.565	10.335
Jun-08		7.88	3.94	1.379	2.561
Jul-08		20.61	10.305	3.60675	6.69825
Aug-08		36.20	18.10	6.335	11.765
Sep-08		24.72	12.36	4.326	8.034
Oct-08		18.44	9.22	3.227	5.993
Nov-08		4.50	2.25	0.7875	1.4625
Dec-08		29.30	14.65	5.1275	9.5225
Jan-09		9.90	4.95	1.7325	3.2175
Feb-09		0.28	0.14	0.049	0.091
Mar-09		-0.11	-0.055	-0.01925	-0.03575
Apr-09		-0.11	-0.055	-0.01925	-0.03575
May-09		-0.11	-0.055	-0.01925	-0.03575
Jun-09		-0.11	-0.055	-0.01925	-0.03575
Jul-09		-0.11	-0.055	-0.01925	-0.03575
Aug-09		-0.11	-0.055	-0.01925	-0.03575
		269.02	134.51	47.08	87.43
	Bagrama - Pinkcalyx				
Nov-06		98.48	49.24	17.234	32.006
Dec-06		51.03	25.515	8.93025	16.58475
Jan-07		57.18	28.59	10.0065	18.5835
Feb-07		0.00	0	0	0
Mar-07		110.45	55.225	19.32875	35.89625
Apr-07		135.44	67.72	23.702	44.018
Totals					

May-07	96.14	48.07	16.8245	31.2455
Jun-07	109.83	54.915	19.22025	35.69475
Jul-07	60.92	30.46	10.661	19.799
Aug-07	123.34	61.77	21.6195	40.1505
Sep-07	120.32	60.16	21.056	39.104
Oct-07	86.07	43.035	15.06225	27.97275
Nov-07	141.39	70.695	24.74325	45.95175
Dec-07	102.14	51.07	17.8745	33.1955
Jan-08	131.51	65.755	23.01425	42.74075
Feb-08	86.91	43.455	15.20925	12.47025
Mar-08	64.70	32.35	11.3225	28.24575
Apr-08	33.39	16.695	5.84325	21.0275
May-08	15.98	7.99	2.7965	10.85175
Jun-08	0.00	0	0	5.1935
Jul-08	0.00	0	0	0
Aug-08	27.47	13.735	4.80725	8.92775
Sep-08	18.08	9.04	3.164	5.876
Oct-08	34.25	17.125	5.99375	11.13125
Nov-08	18.30	9.15	3.2025	5.9475
Dec-08	18.30	9.15	3.2025	5.9475
Jan-09	18.51	9.255	3.23925	6.01575
Feb-09	18.44	9.22	3.227	5.993
Mar-09	0.00	0	0	0
Apr-09	19.12	9.56	3.346	6.214
May-09	17.14	8.57	2.9995	5.5705
Jun-09	18.53	9.265	3.24275	6.02225
Jul-09	19.87	9.935	3.47725	6.45775
Sep-09	20.06	10.03	3.5105	6.5195
Oct-09	20.33	10.165	3.55775	6.60725
Nov-09	41.55	20.775	7.27125	13.50375
Dec-09	23.15	11.575	4.05125	7.52375
Jan-10	0.00	0	0	0
Feb-10	20.43	10.215	3.57525	6.63975
Mar-10	19.58	9.79	3.4265	6.3695
Apr-10	19.11	9.555	3.34425	6.21075
Totals	2056.01	1028.01	359.80	668.20
				Account still processing -selling
				hand made jewellery
				to our knowledge.
Apr-07	10.27	5.135	1.79725	3.33775
May-07	108.53	54.265	18.99275	35.27225
Jun-07	59.89	29.945	10.48075	19.46425
Jul-07	43.67	21.835	7.64225	14.19275
Aug-07	56.03	28.015	9.80525	18.20975
Sep-07	51.24	25.62	8.967	16.653
Oct-07	10.50	5.25	1.8375	3.4125
Nov-07	9.27	4.635	1.62225	3.01275
Dec-07	35.27	17.635	6.17225	11.46275
Jan-08	3.11	1.555	0.54425	1.01075
Feb-08	-0.11	-0.055	-0.01925	-0.03575
Mar-08	-0.11	-0.055	-0.01925	-0.03575
Apr-08	-0.11	-0.055	-0.01925	-0.03575
May-08	-0.11	-0.055	-0.01925	-0.03575
Jun-08	-0.11	-0.055	-0.01925	-0.03575
Jul-08	-0.11	-0.055	-0.01925	-0.03575
				Account Closed

Totals	387.12	193.56	67.75	125.81
Carbon Copy Replicas				
Apr-07	25.31	12.655	4.42925	8.22575
May-07	65.87	32.935	11.52725	21.40775
Jun-07	10.80	5.40	1.89	3.51
Jul-07	36.15	18.075	6.32625	11.74875
Aug-07	35.63	17.815	6.23525	11.57975
Sep-07	26.18	13.09	4.5815	8.5085
Oct-07	20.32	10.16	3.556	6.604
Nov-07	23.87	11.935	4.17725	7.75775
Dec-07	14.85	7.425	2.59875	4.82625
Jan-08	17.90	8.95	3.1325	5.8175
Feb-08	-0.11	-0.055	-0.01925	-0.03575
Mar-08	14.09	7.045	2.46575	4.57925
Apr-08	14.54	7.27	2.5445	4.7255
May-08	30.50	15.25	5.3375	9.9125
Jun-08	14.84	7.42	2.597	4.823
Jul-08	14.84	7.42	2.597	4.823
Aug-08	12.41	6.205	2.17175	4.03325
Sep-08	14.84	7.42	2.597	4.823
Oct-08	14.84	7.42	2.597	4.823
Nov-08	14.84	7.42	2.597	4.823
Dec-08	14.84	7.42	2.597	4.823
Jan-09	14.84	7.42	2.597	4.823
Feb-09	14.84	7.42	2.597	4.823
Mar-09	14.84	7.42	2.597	4.823
Apr-09	14.85	7.425	2.59875	4.82625
May-09	30.50	15.25	5.3375	9.9125
Jun-09	14.85	7.425	2.59875	4.82625
Jul-09	14.85	7.425	2.59875	4.82625
Aug-09	3.94	1.97	0.6895	1.2805
Sep-09	3.83	1.915	0.67025	1.24475
Oct-09	3.83	1.915	0.67025	1.24475
Nov-09	3.83	1.915	0.67025	1.24475
Dec-09	3.83	1.915	0.67025	1.24475
Jan-10	3.94	1.97	0.6895	1.2805
Feb-10	3.94	1.97	0.6895	1.2805
Mar-10	3.94	1.97	0.6895	1.2805
Apr-10	0.00	0	0	0
Totals	587.89	293.95	102.88	191.06
Charismatic Style				
Jun-07	0.00	0	0	0
Jul-07	26.39	10.556	3.6946	6.8614
Aug-07	0.67	0.268	0.0938	0.1742
Sep-07	-0.11	-0.044	-0.0154	-0.0286
Oct-07	-0.11	-0.044	-0.0154	-0.0286
Nov-07	-0.11	-0.044	-0.0154	-0.0286
Dec-07	-0.11	-0.044	-0.0154	-0.0286
Jan-08	-0.11	-0.044	-0.0154	-0.0286
Feb-08	-0.11	-0.044	-0.0154	-0.0286
Mar-08	-0.11	-0.044	-0.0154	-0.0286
Totals	26.29	10.52	3.68	6.84
Summer Sunglasses				
Feb-08	0.00	0	0	0
Mar-08	36.90	16.605	5.81175	10.79325

Apr-08		44.36	19.962	6.9867	12.9753
May-08		9.00	4.455	1.55925	2.89575
Jun-08		0.00	0	0	0
Jul-08		10.29	4.6305	1.620675	3.009825
Aug-08		8.66	3.897	1.36395	2.53305
Sep-08		7.79	3.5055	1.226925	2.278575
Oct-08		11.39	5.1255	1.793925	3.331575
Nov-08		12.83	5.7735	2.020725	3.752775
Dec-08		12.83	5.7735	2.020725	3.752775
Jan-09		6.17	2.7765	0.971775	1.804725
Feb-09		-0.11	-0.0495	-0.017325	-0.032175
Mar-09		-0.11	-0.0495	-0.017325	-0.032175
Apr-09		-0.11	-0.0495	-0.017325	-0.032175
May-09		-0.11	-0.0495	-0.017325	-0.032175
Jun-09		-0.11	-0.0495	-0.017325	-0.032175
Jul-09		-0.11	-0.0495	-0.017325	-0.032175
Totals		160.46	72.21	25.27	46.93
	Costless Watches				
Jan-08		16.07	6.428	2.2498	4.1782
Feb-08		30.92	12.368	4.3288	8.0392
Mar-08		46.27	18.508	6.4778	12.0302
Apr-08		19.85	7.94	2.779	5.161
May-08		13.07	5.228	1.8298	3.3982
Jun-08		5.44	2.176	0.7616	1.4144
Jul-08		5.87	2.348	0.8218	1.5262
Aug-08		-0.11	-0.044	-0.0154	-0.0286
Sep-08		-0.11	-0.044	-0.0154	-0.0286
Oct-08		-0.11	-0.044	-0.0154	-0.0286
Nov-08		-0.11	-0.044	-0.0154	-0.0286
Dec-08		-0.11	-0.044	-0.0154	-0.0286
Jan-09		10.80	4.32	1.512	2.808
Feb-09		0	0	0	0
Mar-09		0	0	0	0
Apr-09		-0.11	-0.044	-0.0154	-0.0286
Totals		147.63	59.05	20.67	38.38
	Genuine Watches				
May-07		0	0	0	0
Jun-07		26.44	10.576	3.7016	6.8744
Jul-07		10.80	4.32	1.512	2.808
Aug-07		20.66	8.264	2.8924	5.3716
Sep-07		45.44	18.176	6.3616	11.8144
Oct-07		71.74	28.696	10.0436	18.6524
Nov-07		222.01	88.804	31.0814	57.7226
Dec-07		285.18	114.072	39.9252	74.1468
Jan-08		150.12	60.048	21.0168	39.0312
Feb-08		178.63	71.452	25.0082	46.4438
Mar-08		95.63	38.252	13.3882	24.8638
Apr-08		202.60	81.04	28.364	52.676
May-08		133.37	53.348	18.6718	34.6762
Jun-08		140.76	56.304	19.7064	36.5976
Jul-08		76.44	30.576	10.7016	19.8744
Aug-08		90.06	36.024	12.6084	23.4156

Sep-08	18.20	7.28	2.548	4.732
Oct-08	10.80	4.32	1.512	2.808
Nov-08	10.80	4.32	1.512	2.808
Dec-08	10.80	4.32	1.512	2.808
Jan-09	0.00	0	0	0 Account Closed
Totals	1800.48	720.19	252.07	468.12
Lil Trendy Babies				
Dec-06	30.74	12.296	4.3036	7.9924
Jan-07	21.17	8.468	2.9638	5.5042
Feb-07	11.99	4.796	1.6786	3.1174
Mar-07	14.68	5.872	2.0552	3.8168
Apr-07	14.09	5.636	1.9726	3.6634
May-07	14.56	5.824	2.0384	3.7856
Jun-07	14.55	5.82	2.037	3.783
Jul-07	14.55	5.82	2.037	3.783
Aug-07	14.55	5.82	2.037	3.783
Sep-07	6.75	2.70	0.945	1.755
Oct-07	6.75	2.70	0.945	1.755
Nov-07	6.75	2.70	0.945	1.755
Dec-07	22.35	8.94	3.129	5.811
Jan-08	6.75	2.70	0.945	1.755
Feb-08	6.75	2.70	0.945	1.755
Mar-08	6.75	2.70	0.945	1.755
Apr-08	6.75	2.70	0.945	1.755
May-08	6.75	2.70	0.945	1.755
Jun-08	6.75	2.70	0.945	1.755
Jul-08	6.75	2.70	0.945	1.755
Aug-08	6.75	2.70	0.945	1.755
Sep-08	6.75	2.70	0.945	1.755
Oct-08	0	0	0	0
Nov-08	3.00	1.20	0.42	0.78
Dec-08	15.49	6.196	2.1686	4.0274
Jan-09	-0.11	-0.044	-0.0154	-0.0286
Feb-09	-0.11	-0.044	-0.0154	-0.0286
Mar-09	-0.11	-0.044	-0.0154	-0.0286
Apr-09	-0.11	-0.044	-0.0154	-0.0286
May-09	-0.11	-0.044	-0.0154	-0.0286
Jun-09	-0.11	-0.044	-0.0154	-0.0286
Jul-09	0	0	0	0 Account Closed
Totals	279.86	111.94	39.18	72.76
World of 23				
Mar-07	0	0	0	0
Apr-07	132.73	53.092	18.5822	34.5098
May-07	151.80	60.72	21.252	39.468
Jun-07	179.21	71.684	25.0894	46.5946
Jul-07	236.93	94.772	33.1702	61.6018
Aug-07	276.37	110.548	38.6918	71.8562
Sep-07	97.09	38.836	13.5926	25.2434
Oct-07	39.54	15.816	5.5356	10.2804
Nov-07	1.17	0.468	0.1638	0.3042
Dec-07	-0.05	-0.02	-0.007	-0.013

Jan-08	-0.03	-0.012	-0.0042	-0.0078
Feb-08	-0.11	-0.044	-0.0154	-0.0286
Mar-08	0	0	0	0 Account Closed
Totals	1114.65	445.86	156.05	289.81
Grand Totals	8764.98	4037.58	1413.15	2624.42

Exhibit 64

Month	Account Name	Total profit	Agents Revenue Share	Counley Commerce LLC	DMS Revenue
Sep-06	Discount Replica	0			0
Oct-06		15.13		5.30	9.83
Nov-06		16.82		5.89	10.93
Dec-06		216.14		75.65	140.49
Jan-07		218.21		76.37	141.84
Feb-07		192.57		67.40	125.17
Mar-07		226.63		79.32	147.31
Apr-07		226.63		79.32	147.31
May-07		150.31		52.61	97.70
Jun-07		3.52		1.23	2.29
Jul-07		0.32		0.11	0.21
Aug-07		0.14		0.05	0.09
Sep-07		-0.11		-0.0385	-0.0715
Oct-07		-0.11		-0.0385	-0.0715
Nov-07		-0.11		-0.0385	-0.0715
Dec-07		-0.11		-0.0385	-0.0715
Jan-09		0		0	0
Totals		1265.98		443.09	822.89
	Fresh Styles				
Jan-07		14.60		5.11	9.49
Feb-07		82.88		29.008	53.872
Mar-07		78.77		27.5695	51.2005
Apr-07		58.04		37.726	20.314
May-07		84.86		29.701	55.159
Jun-07		62.06		21.721	40.339
Jul-07		59.52		20.832	38.688
Aug-07		51.92		18.172	33.748
Sep-07		60.23		21.0805	39.1495
Oct-07		73.59		25.7565	47.8335
Nov-07		64.59		22.6065	41.9835
Dec-07		96.89		33.9115	62.9785
Jan-08		53.28		18.648	34.632
Feb-08		82.21		28.7735	53.4365
Mar-08		57.74		20.209	37.531
Apr-08		50.94		17.829	33.111
May-08		45.61		15.9635	29.6465
Jun-08		53.84		18.844	34.996
Jul-08		58.41		20.4435	37.9665
Aug-08		0		0	0
Sep-08		29.24		10.234	19.006
Oct-08		38.96		13.636	25.324
Nov-08		24.68		8.638	16.042
Dec-08		32.02		11.207	20.813
Jan-09		21.14		7.399	13.741
Feb-09		43.88		15.358	28.522
Mar-09		30.53		10.6855	19.8445
Apr-09		28.50		9.975	18.525
May-09		23.54		8.239	15.301
Jun-09		21.91		7.685	14.2415
Jul-09		19.01		6.6535	12.3565

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 EXHIBIT
 28
 Counley
 6-14-10

AUG-09	15.81	5.5935	10.2765
Sep-09	17.57	6.1495	11.4205
Oct-09	20.32	7.112	13.208
Nov-09	18.88	6.608	12.272
Dec-09	11.49	4.0215	7.4685
Jan-10	4.2	1.47	2.73
Feb-10	3.75	1.3125	2.4375
Mar-10	-1.05	-0.3675	-0.6825
Apr-10	0	0	0
Totals	1594.36	558.03	1036.33
			account closed
Fresh Kicks			
Apr-08	44.87	15.7045	29.1655
May-08	3.64	1.274	2.366
Jun-08	0	0	0
Jul-08	0	0	0
Aug-08	-0.11	-0.0385	-0.0715
Sep-08	-0.11	-0.0385	-0.0715
Oct-08	-0.11	-0.0385	-0.0715
Totals	48.18	16.86	31.32
			account closed
Fresh New Kickz			
Nov-07	0	0	0
Dec-07	20.17	7.0595	13.1105
Jan-08	3.75	1.3125	2.4375
Feb-08	7.18	2.513	4.667
Mar-08	14.55	5.0925	9.4575
Apr-08	-0.11	-0.0385	-0.0715
May-08	-0.11	-0.0385	-0.0715
Jun-08	0	0	0
Jul-08	-0.11	-0.0385	-0.0715
Aug-08	-0.11	-0.0385	-0.0715
Totals	45.21	15.82	29.39
			account closed
Hot Shot Watches			
Apr-07	25.33	8.8655	16.4645
May-07	97.23	34.0305	63.1995
Jun-07	35.03	12.2605	22.7695
Jul-07	34.28	11.998	22.282
Aug-07	17.19	6.0165	11.1735
Sep-07	13.64	4.774	8.866
Oct-07	10.80	3.78	7.02
Nov-07	10.80	3.78	7.02
Dec-07	10.80	3.78	7.02
Jan-08	10.80	3.78	7.02
Feb-08	10.80	3.78	7.02
Mar-08	10.80	3.78	7.02
Apr-08	10.80	3.78	7.02
May-08	26.40	9.24	17.16
Jun-08	10.80	3.78	7.02
Jul-08	10.80	3.78	7.02
Aug-10	10.80	3.78	7.02
Sep-08	10.80	3.78	7.02
Oct-08	10.80	3.78	7.02
Nov-08	10.80	3.78	7.02

Dec-08			10.80		3.78	7.02
Jan-09			10.80		3.78	7.02
Feb-09			10.80		3.78	7.02
Mar-09			10.80		3.78	7.02
Apr-09			-0.11		-0.0385	-0.0715
May-09			-0.11		-0.0385	-0.0715
Jun-09			-0.11		-0.0385	-0.0715
Jul-09			-0.11		-0.0385	-0.0715
Aug-09			-0.11		-0.0385	-0.0715
Totals			432.15		151.25	280.90
Michelle's Boutique						
Nov-07			4.67		1.6345	3.0355
Dec-07			4.19		1.4665	2.7235
Jan-08			4.50		1.575	2.925
Feb-08			4.50		1.575	2.925
Mar-08			4.50		1.575	2.925
Apr-08			4.50		1.575	2.925
May-08			-0.11		-0.0385	-0.0715
Jun-08			-0.11		-0.0385	-0.0715
Jul-08			-0.11		-0.0385	-0.0715
Aug-08			-0.11		-0.0385	-0.0715
Sep-08			-0.11		-0.0385	-0.0715
Oct-08			-0.11		-0.0385	-0.0715
Totals			26.20		9.17	17.03
Simply Chic Purses-Strive Handbags						
Feb-07			0.00		0	0.00
Mar-07			285.53		99.9355	185.59
Apr-07			521.42		182.497	338.92
May-07			223.13		78.0955	145.03
Jun-07			248.44		86.954	161.49
Jul-07			493.14		172.599	320.54
Aug-07			577.41		202.0935	375.32
Sep-07			295.03		103.2605	191.77
Oct-07			405.48		141.918	263.56
Nov-07			259.45		90.8075	168.64
Dec-07			140.51		49.1785	91.33
Jan-08			56.63		19.8205	36.81
Feb-08			10.30		3.605	6.70
Totals			3516.47		1230.76	2285.71
Account Name						
Month			Total Profit		Counley Commerce LLC	DMS Revenue
Purse Boutique						
Mar-07			17.50		6.125	11.375
Apr-07			330.01		115.5035	214.5065
May-07			90.34		31.619	58.721
Jun-07			115.32		40.362	74.958
Jul-07			347.62		121.667	225.953
Aug-07			225.06		78.771	146.289
Sep-07			441.12		154.392	286.728
Oct-07			732.91		256.5185	476.3915
Nov-07			823.62		288.267	535.353
Dec-07			786.27		275.1945	511.0755

Jan-08	633.50			221.725	411.775
Feb-08	999.14			349.699	649.441
Mar-08	899.94			314.979	584.961
Apr-08	1037.50			363.125	674.375
May-08	859.57			300.8495	558.7205
Jun-08	764.00			267.40	496.60
Jul-08	743.53			260.2355	483.2945
Aug-08	597.18			209.013	388.167
Sep-08	458.25			160.3875	297.8625
Oct-08	599.31			209.7585	389.5515
Nov-08	384.64			134.624	250.016
Dec-08	477.11			166.9885	310.1215
Jan-09	362.81			126.9835	235.8265
Feb-09	327.49			114.6215	212.8685
Mar-09	282.32			98.812	183.508
Apr-09	448.90			157.115	291.785
May-09	162.64			56.924	105.716
Jun-09	165.58			57.953	107.627
Jul-09	126.6			44.31	82.29
Aug-09	98.19			34.3665	63.8235
Sep-09	31.88			11.158	20.722
Oct-09	20.00			7.00	13.00
Nov-09	20.00			7.00	13.00
Dec-09	0.00			0	0
Totals	14409.85			5043.45	9366.40
Grand totals	21338.40			7468.44	13869.96

Exhibit 65

USDS SDNY
DOCUMENT
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DOC #:
DATE FILED: 7-2-10

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
GUCCI AMERICA, INC.

Plaintiff,

- against -

**FRONTLINE PROCESSING CORP., WOODFOREST :
NATIONAL BANK, DURANGO MERCHANT :
SERVICES LLC, d/b/a NATIONAL BANKCARD :
SYSTEMS OF DURANGO, "ABC COMPANIES," and :
"JOHN DOES,"**

Defendants.
-----X

09 Civ. 6925 (HB)

ORDER

Hon. Harold Baer, Jr., District Judge:

Presently before this court is a motion by plaintiff Gucci America, Inc. ("Plaintiff" or "Gucci") to sanction defendant Durango Merchant Services LLC ("Defendant" or "Durango") as a consequence of allegations charging spoliation of evidence. This issue arose following the deposition of Nathan Counley ("Counley"), a sales agent for Durango, and a prospective witness in this litigation. Plaintiff claims that it was Counley, on Durango's behalf, who convinced counterfeiting "replica" merchants to submit applications with credit card processing companies, and thereby make it possible for the counterfeit websites to sell their fake Gucci wares. Counley testified at his deposition that he bought a file-scrubbing program—a program that permanently deletes files so that they are completely unable to be recovered—a "couple of weeks ago" and used it to wipe clean the hard drives of two laptop computers that he used while working for Durango. The program was last run a day or so prior to his deposition. Notably, he testified that he used email as his main mode of communication and transmission of documents to merchants he worked with, including replica merchants. He further testified that he was unfamiliar with the concept of a "litigation hold," and continued his practice of deleting emails after receipt of the complaint in August 2009.

An evidentiary hearing before this Court was held on June 30, 2010. In his testimony at the hearing, Counley largely confirmed what he testified to at his deposition. He claimed that he only ran the file-scrubbing software on the computer's "free space" and only did so because of

concerns over theft of the computer and potential liability for any sensitive identifying information from customers that may be lost as a result of such a theft. Gucci, however, pointed out (1) that Durango and Counley knew Gucci sought discovery of business documents which would likely buttress its trademark infringement suit, particularly merchant applications; (2) that Durango and Counley never produced any merchant applications and claimed it was because they routinely delete them; and (3) Counley's decision to run the file-scrubbing software on the free space had the "coincidental" effect of ensuring that a forensic expert hired by Gucci could not reconstruct any previously deleted applications. Moreover, the software was run after Gucci raised the prospect of "imaging" Durango hard drives for the purpose of reconstructing deleted documents. Another Durango employee and/or owner,¹ William Dimopolis, testified that he also ran file-scrubbing software around the same time as Counley, but that it deleted information related only to the sales agents who solicited accounts for Durango. Finally, Plaintiff highlighted the fact that the informal discovery conference with this Court that was set up, in part, because Durango had only produced six (6) emails and no merchant applications. Following this conference, and apparently *after* the file-scrubbing program was run, Durango produced approximately 480 more emails on the eve of Counley's deposition, and another 500 emails shortly before the spoliation hearing.

SPOLIATION & SANCTIONS

"Spoliation is the destruction or significant alteration of evidence, or failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *Allstate Ins. Co. v. Hamilton Beach/Proctor Silex, Inc.*, 473 F.3d 450, 457 (2d Cir. 2007) (internal quotations omitted). Pursuant to Rule 37, a district court may impose sanctions against a party who fails to preserve evidence, Fed.R.Civ.P. 37, and may also impose sanctions for spoliation based on the inherent power to control litigation. *See West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 106-07 (2d Cir. 2002). There are three broad issues when considering sanctions for spoliation: (1) the duty to preserve; (2) the scope of the duty and (3) the specific types of materials that need be retained. *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216-19 (S.D.N.Y. 2003).

¹ The party was unclear as to whether he actually had an ownership interest in Durango.

The duty to preserve arises when a party has notice that evidence is relevant to litigation or when a party should have known that it may be relevant to future litigation. *See Fujitsu Ltd. v. Federal Express Corp.*, 247 F.3d 423, 436 (2d Cir. 2001); *Zubulake*, 220 F.R.D. 212 at 216. This typically means that a duty to preserve arises at the latest when the complaint has been filed and can frequently mean even earlier. *See Zubulake*, 220 F.R.D. at 216. Here, there appears to be little question that a duty to preserve has existed at least since Gucci filed its complaint in 2009, well before the erasures occurred. The scope of preservation has been defined as “[w]hat it knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request.” *Id.* at 217. This essentially means any documents, emails, and so forth, created by or for the “key players” or about key issues in a case. *See id.* Finally, the party is supposed to retain all relevant documents in existence at the time the duty to preserve attaches, and any relevant docs created thereafter. *Id.* at 218. Here, Counley is quite obviously a key player in this litigation, and his testimony demonstrates that his actions, whether deliberate or otherwise, ensured that potentially relevant merchant applications he had previously deleted could never be recovered by Gucci.²

Once it is determined that party had obligation to preserve the documents in question, a court must then consider whether it was destroyed intentionally and the likely contents. *Fujitsu*, 247 F.3d at 436. The appropriate sanctions for spoliation is within the sound discretion of the district court, assessed on case-by-case basis, *see id.*, and includes paying costs associated with resolving the dispute, deeming the facts involved as established, prohibiting the party from supporting or opposing certain claims or introducing certain evidence, striking pleadings, delaying the start of trial, or giving an adverse inference instruction to the jury. *See Residential Funding*, 306 F.3d at 107; Fed.R.Civ.P. 37(b)(2)(A)(i)-(vii). Whether Durango’s employees ran the software to permanently delete files to frustrate Plaintiff’s discovery is an open question that merits further inquiry. But the actions can most kindly be described as negligent, on both the part of Durango and its employees, and its counsel who was under an obligation to be sure his client retained any potentially relevant materials. Given the rather coincidental timing of the purchase and use of this program after litigation began, after an informal discovery conference

² Defendant asserts that the documents were already deleted and the program was only run on free space, but that is precisely the point Plaintiff makes: by doing so, they ensured that none of the previously deleted documents could be recovered.

about the lack of Durango's disclosures, and before other relevant documents miraculously appeared, Durango's assurance that nothing deleted was relevant is at best suspect and cold comfort for this Court and even more so for Gucci.

Based on the above, I must conclude that Durango's destroyed potentially relevant documents in violation of its duty to preserve, and as such, it is hereby

ORDERED, that Durango shall not run any further "file-scrubbing"-type software on any computers that may contain documents or data relevant to this litigation, nor otherwise delete or destroy documents that could be relevant to this litigation; and it is further,

ORDERED, that Durango allow Gucci to have a forensic expert "image" the hard drives of computers owned by William Dimopolis and Nathan Counley, and provide the imaged drives to Plaintiff. Durango shall pay the costs for the imaging and reconstruction process.³ The parties are instructed to confer and establish a proper method to exclude privileged documents (i.e. a privilege log) in this process or before the imaged drives are turned over to Gucci. If Gucci believes it needs to image any other computer hard drives controlled by Durango, it will file a letter brief with this court that explains why it seeks to do so; and it is further,

ORDERED, that should new information come to light or if Plaintiff feel that further sanctions are necessary, it will make this request in its dispositive motion papers, should any be filed.

SO ORDERED.

New York, New York
July 2, 2010



HAROLD BAER, JR.
U.S.D.J.

³ The Court recognizes that imaging is potentially fruitless because of the software that was run. However, at the very least it will "freeze" whatever information remains on the hard drives, may clarify what documents were selected for file-scrubbing, and could uncover further discovery malfeasance (i.e. more relevant documents that were not turned over).