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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GUCCI AMERICA, INC.	:	
	:	Civil Action No. 09-6925-HB
Plaintiff,	:	
v.	:	District Judge Harold Baer, Jr.
	:	
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	

**DECLARATION OF RHONDA LEMOS IN SUPPORT OF DEFENDANT
WOODFOREST'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, RHONDA LEMOS, declare and state as follows:

1. I am the Vice President of Risk Management of Delta Card Services, Inc. I have personal knowledge of the facts and matters discussed in this declaration, and if called as a witness, could and would testify to the matters set forth below.

2. Replica merchants were but a small subset of the high-risk merchants serviced by Delta Card. Delta Card has only been able to identify approximately twenty merchants that *may* have been selling replica products that it serviced in the last five years. This represented less than one-tenth of one percent of our merchants.

3. Today, Delta Card has no replica merchants because we decided in early May 2008 no longer to accept any new merchants selling replica products. Attached as Exhibit A is a true and accurate copy of the e-mail of May 5, 2008, from Francisco Rivera setting forth this policy. This decision was made solely due to the high amount of charge backs for

nonreceipt of merchandise associated with these types of merchants. The memorandum also says that MasterCard prohibits replicas to ensure that our employees follow the policy, even though MasterCard has not changed its policy. Our decision not to approve additional Internet merchants selling replicas was made before any notice from Gucci or knowledge about the allegations against the Laurette company, which was first received over two months later in July 2008.

4. Woodforest makes very little money off of its involvement in credit card processing. Woodforest's entire compensation in all cases is two cents per transaction. This amount is not affected by the size of the transaction, the type of goods or services sold by the merchant, or the merchant's classification as high risk or not. In the case of Laurette, the total gross revenue received by Woodforest for the entire time Delta Card provided processing services was \$69.46.

5. Even if one includes along with Woodforest the other companies associated with the processing credit card payments for Laurette, very little revenue was received by the entire group. Attached as Exhibit B is a chart of the revenues for all processing for Laurette. The maximum revenues received by Woodforest and Delta Card were \$16,505.86, as set forth in the far right column on the chart.

6. Delta Card has policies in place which prohibit it from accepting merchants engaged in illegal activities. These policies prevent Delta Card from accepting merchants engaged in such illegal sales activities over the Internet as child pornography, firearms, drugs, alcohol, and tobacco.

7. Delta Card's policies did not prohibit us from accepting merchants who were said to sell replicas. I understand that this policy is consistent with the policies of Visa and

MasterCard which allow their credit cards to be listed for replica merchants, but not for counterfeiters.

8. On or about November 13, 2006, Delta Card accepted an application for the Laurette Company. I understand that the Laurette Company was an Internet merchant which advertised replica handbags for sale. Delta Card's policies would not have prohibited us from accepting credit card processing services at that time for Internet merchants selling replicas. Laurette was the first replica merchant that was approved for processing by Delta Card.

9. Delta Card began processing credit card payments for the Laurette Company in November 2006. At this time, Laurette's Web site had been fully completed and was in operation. We understood that the Web site had been approved for credit card processing by another bank, Frontline. We were never informed that Laurette's Web site had been closed down before its application to us for any reason.

10. Neither Woodforest nor Delta Card had any involvement in setting up the Web site or the content of the Web site. We continued to process payments for Laurette until about July 8, 2008, at which time we understand that Gucci obtained a "freeze order," prohibiting the Laurette Company from doing further business on its Web site.

11. Before we accept a new merchant, a reviewer from Delta Card is required to fill out a checklist. The reviewers who perform this job do not have the training, sophistication, or experience to make determinations about issues of trademark infringement. They are not trained to make judgments as to whether products shown on a Web site are counterfeit products as opposed to replicas. Our reviewers are paid in the range of \$15-18 per hour. The checklist requires that a Web site must be reviewed, and has a box for the reviewer to determine whether it has a "complete description of the goods or services offered." A copy of the checklist for

Laurette's Web site is attached as Exhibit C. The reviewer checks the goods or services shown on the Web site to determine whether they match the goods for which the merchant applied. For example, if a merchant submitted an application for handbags, and a review of the Web site determined that the merchant was selling tobacco products, the reviewer would indicate this, and the application would be rejected.

12. I also understand, based on my review of documents, that during the period from November 2006 until May 2008, Delta Card accepted applications from other Internet merchants offering replica products. Over this entire period of time, Delta Card never received a single notice, letter, complaint, lawsuit, or subpoena from any trademark owner complaining that the products sold on these Web sites were counterfeit Gucci products, and not just replicas. During this entire period of time, Delta Card proceeded under the belief, confirmed by the absence of any complaint about the sales on these Web sites, that there was nothing illegal with the replicas sold on these Web sites.

13. Had Delta Card received a notice from Gucci establishing that TheBagAddiction was selling counterfeit Gucci goods, we would have investigated the issue. If we had determined that the client was selling illegal merchandise, Delta Card would have canceled our services.

14. At no time while Woodforest was processing credit card payments for the Laurette Company were we informed that the products of TheBagAddiction were not replicas, but counterfeit products.

15. Delta Card also has procedures in place to monitor Internet merchants' Web sites for illegal or prohibited merchandise or services. We contract the services of a company called G-2. On a monthly basis, G-2 scans the Web sites of all of our Internet merchants to identify merchants that may be selling prohibited products or services (*e.g.*, drugs, firearms, or tobacco),

or otherwise violating Visa or MasterCard rules. As replicas were not on any prohibited lists, and Woodforest believed that the sale of replicas was not prohibited or illegal, G-2 was not tasked with locating merchants selling replica products. Also a key word search for "counterfeits" would not have located TheBagAddiction as selling prohibited products because Laurette did not describe its products as counterfeit or fake.

I declare under penalty and perjury the foregoing is true and correct.

Executed on July 30, 2010


By:  _____
Rhonda Lemos

EXHIBIT A

From: Rivera, Francisco
Sent: Monday, May 05, 2008 7:07 PM
To: Apps Dept
Subject: Replicas, copies, fakes -- accts

As a general rule of thumb we are no longer approving merchants that sell Replicas, Copies, or Fake items. This is one of the few business types that MasterCard Prohibits.

Francisco Rivera
MCCS-Manager
Applications Dept
800-327-0093 ext 4479
frivera@deltacard.com

EXHIBIT B

MMYY	Sales	# of Sales	Returns	# of Returns	Chargebacks Received	# of Chargebacks/Reversals	Month End Fees (Total Card Fees, Monthly Service Fee, merchant support, Chargeback or Annual fee)	Daily Discount Paid	Net Profit	MUD Residual	MCPS Income
11-06	\$34,077.20	127	-\$773.75	3	\$190.00	1	\$258.41	\$1,277.97	895.97	358.39	537.58
12-06	\$52,398.26	207	-\$3,335.45	25	-\$190.00	1	\$501.68	\$1,964.99	1,447.61	579.04	868.57
01-07	\$51,805.55	177	-\$3,191.08	20	\$190.00	1	\$498.06	\$1,942.82	1,192.20	476.88	715.32
02-07	\$38,674.30	134	-\$4,615.90	29	-\$2,466.50	4	\$522.80	\$1,450.39	1,192.20	476.88	715.32
03-07	\$56,337.25	192	-\$6,293.67	31	\$1,516.50	5	\$636.81	\$2,112.69	1,036.14	681.36	354.78
04-07	\$54,735.00	173	-\$4,020.75	18	-\$783.90	4	\$579.86	\$2,052.62	1,569.05	627.62	941.43
05-07	\$58,545.25	211	-\$6,036.00	34	-\$2,516.50	6	\$618.72	\$2,195.51	1,714.42	685.77	1,028.65
06-07	\$59,309.52	195	-\$8,279.80	35	-\$1,221.50	4	\$725.85	\$2,224.19	1,848.40	739.36	1,109.04
07-07	\$58,751.12	211	-\$4,673.00	23	-\$1,863.75	6	\$709.64	\$2,203.24	1,745.77	698.31	1,047.46
08-07	\$58,063.50	223	-\$4,248.00	18	\$1,441.50	2	\$603.73	\$2,177.48	1,656.96	662.78	994.18
09-07	\$72,455.25	273	-\$5,230.25	23	-\$951.50	2	\$855.35	\$2,717.15	2,159.82	863.93	1,295.89
10-07	\$37,843.25	126	-\$4,634.50	15	-\$680.00	4	\$442.85	\$1,419.23	1,153.36	461.34	695.02
11-07	\$55,347.77	208	-\$4,145.00	13	-\$205.00	3	\$765.30	\$2,075.66	1,719.81	687.92	1,031.89
12-07	\$46,998.51	174	-\$5,728.75	28	-\$480.00	2	\$677.99	\$1,749.88	1,501.24	600.50	900.74
01-08	\$7,214.34	247	-\$5,134.62	23	-\$83.75	3	\$930.49	\$2,705.45	2,163.58	865.43	1,298.15
02-08	\$38,342.31	162	-\$2,523.87	13	\$0.00	4	\$509.72	\$1,437.89	1,165.62	466.25	699.37
03-08	\$25,810.42	102	-\$3,178.41	16	-\$580.00	45	\$323.73	\$967.93	746.58	298.63	447.95
04-08	\$38,601.50	135	-\$708.00	5	-\$67.50	2	\$467.16	\$1,447.55	1,089.73	435.89	653.84
05-08	\$54,948.51	189	-\$4,440.50	20	-\$377.50	4	\$711.65	\$2,060.61	1,592.87	637.15	955.72
06-08	\$2,777.00	7	\$0.00	0	-\$299.50	4	\$117.65	\$104.14	108.50	43.40	65.10
07-08	\$0.00	0	\$0.00	0	-\$2,926.71	14	\$0.00		75.02	30.01	45.01
08-08									127.87	51.15	76.72
09-08									46.90	18.76	28.14
10-08									0.71	0.28	0.43
11-08									-0.37	-0.15	-0.22
12-08									-0.37	-0.15	-0.22
	\$903,035.81	3473	\$81,191.30	392	\$12,545.61	120	\$11,457.45	\$36,287.39	\$27,949.59	\$11,446.73	\$16,505.86

5428141700013970
Laurette Company Inc
CE21 Nathan Counley
Charge-off \$7,138.71

Open 11-16-2006
Closed 07-08-2008
MUD # 278 Montella

EXHIBIT C

Internet Merchant Review Checklist

Review Type: New App

Reviewer's Name: Alva

Date: 11/16/06

Section One: Website Review

This section must be completed for all internet merchant audits.

www.BagAddiction.com

All Internet Merchants

List all websites associated with this merchant:

All sites must include the following:

- Request a user name and password – Inform the merchant that this must remain active as long as the merchant is online with MOCS.
User Name:
Password:
MOCS Email Account:
- Verify site is up and running
- Review membership information – We do not take memberships longer than 3 months
- Review for pay by the minute services – We do not take these.
- Complete description of the goods or services offered
- A toll free phone number or email address for customer service
- Clearly marked detail as to how the cardholder will be billed including what will show up on the cardholder's statement
- Refund Policy
- Transaction Currency
- Legal Restrictions
- Consumer Data Privacy Policy
- Security Method for the Transmission of Payment Data

Review the following:

- Google search the business phone and ensure that no restricted merchants are connected to the merchant
- Print screenshots of the site for the file

What payment gateway is the merchant using?

- eProcessing Network
- Authorize.net
- Plug & Pay
- Verisign
- Yahoo

If the merchant is using any other gateways, we cannot allow them to process.
List Others: _____

All High Risk Merchants

Review for the following restricted content:

(The site cannot contain any of this content for any reason.)

- Pornography depicting an individual being killed "Snuff"
- Child pornography or the illusion child pornography
- Bestiality
- Pornography depicting nonconsensual sex – This includes individuals appearing to be drugged, asleep, hypnotized, raped, etc.
- Pornography depicting sadistic or masochistic abuse
- Pornography depicting urination or defecation

All sites must include the following:

- Title 18 Section 2257 Compliance Statement

Section Two: Existing Merchants Only

This section should be completed for merchants after they have been processing for the first week, once per quarter, and annually as the merchants' registrations are due.

Shop the merchant

- Run a sale
- Request a refund
- Review what gateway the transaction went through on and ensure that it matches the provider listed above