

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

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GUCCI AMERICA, INC.,

Plaintiff,

-against-

FRONTLINE PROCESSING CORPORATION,
WOODFOREST NATIONAL BANK, AND
DURANGO MERCHANT SERVICES, LLC., d/b/a
NATIONAL BANKCARD SYSTEMS OF DURANGO,

Defendants.
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**DURANGO'S RESPONSE
TO PLAINTIFF'S
RULE 56.1 STATEMENT**

Civil Index No. 09-6925

Pursuant to Local Rule 56.1, Defendant Durango Merchant Services, LLC. ("Durango") hereby responds to the Local Rule 56.1 Statement of Plaintiff Gucci America, Inc. ("Gucci"), which was filed in support of Gucci's Motion for Summary Judgment.

1. Gucci's statement is undisputed.

2. Gucci's statement is undisputed.

3. Gucci's statement is undisputed.

4. Gucci's statement is undisputed.

5. Gucci's statement is undisputed.

6. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

7. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

8. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

9. Gucci's statement is undisputed.

10. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

11. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

12. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

13. Gucci's statement is disputed because the Laurette Defendants could have accepted other forms of payment whether or not its principal, Jennifer Kirk has admitted to same.

14. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

15. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

16. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

17. Gucci's statement is undisputed.

18. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

19. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

20. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

21. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

22. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

23. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

24. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

25. Gucci's statement is undisputed.

26. Gucci's statement is undisputed.

27. Gucci's statement is disputed, as Durango is neither Frontline's nor Woodforest's agent.

28. Gucci's statement is disputed, as Durango is unable to independently verify the representations therein.

29. Gucci's statement is disputed, as Counley did not "review the website." Rather, Counley merely confirmed that certain elements required by the processing bank, Frontline, were included on the website. Counley and Durango in no way reviewed the *product line*, as such is well outside the function and responsibility of Durango, who is merely a broker with no underwriting department.

30. Gucci's statement is disputed, as Durango absolutely did not know that the Laurette defendants were accused of selling products bearing copies of Gucci's trademarks until Durango received papers from Gucci.

31. Gucci's statement is undisputed.

32. Gucci's statement is undisputed.

33. Gucci's statement accurately quotes the subject communication, but Durango notes that the processing bank, Frontline, indicated that replica accounts were acceptable. Durango further notes that "replica" and "counterfeit" are not synonymous.

34. Gucci's statement is undisputed.

35. Gucci's statement is undisputed.

36. Gucci's statement is undisputed.

37. Gucci's statement is undisputed.

38. Gucci's statement is disputed, as the suggestion did not originally come from Durango (who is only a broker), but rather came from defendant Frontline (who was the credit card processing bank).

39. Gucci's statement is undisputed.

40. Gucci's statement is disputed, as Walker's e-mail was ambiguous at best. Counley did not, and could not know from Walker's e-mail that Louis Vuitton was contemplating legal action against Walker, particularly since Counley worked on dozens of new leads every day. Though Counley replied to Walker's e-mail, Counley did nothing more than confirm that Walker may add another website to her merchant account without the need to open a second account, which in no way equates to knowledge of cease and desist warnings.

41. Gucci's statement is undisputed.

42. Gucci's statement is disputed, as Durango is unable to independently verify the representation as to the Laurette Defendants' sales figures.

43. Gucci's statement is accurate, but Durango further notes that Durango acted as a broker for the Laurette account in exchange for a flat set up fee of \$195.00, plus a miniscule

residual percentage of sales processed by this merchant. Such amounted to a mere total of \$13,544.75 in profits to Durango. (Kairalla Aff. ¶ 14).

44. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

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66. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

67. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

68. Gucci's statement is disputed, as there was no boasting by Counley.

69. Gucci's statement is disputed, as Durango is unable to independently verify every representation therein.

70. Gucci's statement is undisputed.

71. Gucci's statement does not relate to Durango Merchant Services, LLC., therefore no response is necessary.

72. Gucci's statement is accurate, but Durango further notes that Durango acted as a broker for the Laurette account in exchange for a flat set up fee of \$195.00, plus a miniscule residual percentage of sales processed by this merchant. Such amounted to a mere total of \$13,544.75 in profits to Durango. (Kairalla Aff. ¶ 14).

73. Gucci's statement is undisputed.

74. Gucci's statement is undisputed.

75. Gucci's statement is disputed, as it implies that Counley deleted all of his e-mails. To the contrary, Durango produced over one thousand e-mails to Gucci, including over five hundred from Counley.

76. Gucci's statement is undisputed.

77. Gucci's statement is undisputed.

78. Gucci's statement is accurate, but Durango further notes that such was for security purposes and was regarding unrelated matter.

79. Gucci's statement is undisputed.

Dated: Calverton, New York
August 1, 2010

/s/ Todd Wengrovsky
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