

ESTTA Tracking number: **ESTTA576753**

Filing date: **12/16/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207899
Party	Defendant Soffin, Yessenia
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY 344 MAPLE AVENUE WEST, SUITE 151 VIENNA, VA 22180-5612 UNITED STATES mswyers@thetrademarkcompany.com, jamier@thetrademarkcompany.com
Submission	Opposition/Response to Motion
Filer's Name	Matthew Swyers
Filer's e-mail	mswyers@TheTrademarkCompany.com
Signature	/Matthew H. Swyers/
Date	12/16/2013
Attachments	Opposition to Motion for Summary Judgment - Resubmission.pdf(164639 bytes ) Opposition to Motion for Summary Judgment Exhibits.pdf(1059600 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

Serial No. 85/571,885,  
For the mark: PARTY STAR POKER,

PartyGaming IA Limited,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91207899
	:	
Yessina Soffin,	:	
	:	
Applicant.	:	

**OPPOSITION TO MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

COMES NOW Applicant Yessina Soffin (hereinafter “Applicant”), by and through counsel The Trademark Company, PLLC, in accordance with the applicable Federal Rules of Civil Procedure and rules of the Trademark Trial and Appeal Board, and provides the instant Opposition to the Motion for Summary Judgment filed by PartyGaming IA Limited (hereinafter “Opposer”) to be answered within the time provided by the applicable rules of court.

**STATEMENT OF FACTS**

1. On or about November 7, 2012 Opposer instituted the instant proceeding seeking to block the registration of the applied-for mark on the grounds that, if registered, Applicant’s mark would create a likelihood of confusion with a prior registered mark owned by the Opposer.

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<sup>1</sup> Per the Board’s Request, the instant opposition is being resubmitted in its entirety due to an upload issue which evidently caused the instant opposition to be unintelligible. So as to avoid any appearance of impropriety, all language, dates, and text in this opposition are being kept exactly as they were filed on December 5, 2013 save for the instant footnote including, but not limited to, the date of the pleading as well as the Certificate of Service. Counsel for the Applicant hereby certifies that the instant re-submitted pleading is being forwarded, via U.S. Mail as well as electronic mail, to Scott Johnson of Merchant & Gould, P.C. as more fully set forth in the certificate of service below this 16<sup>th</sup> day of December, 2013. /Matthew H. Swyers/

2. On or about January 17, 2013 the parties conducted their required discovery conference and, thereafter, served upon one another their respective initial disclosures as required under the rules.

3. On or about June 13, 2013 Opposer submitted, among other discovery, Opposer's First Set of Requests for Admissions to Applicant. See Opposer's Motion for Summary Judgment at Exhibit A.

4. Applicant's responses to opposer's discovery, and specifically Opposer's First Set of Requests for Admissions to Applicant, were due July 18, 2013.

5. During the morning of July 18, 2013 Applicant's counsel called Opposer's counsel to request an extension of time to respond to Opposer's discovery to Applicant.

6. Unsure as to whether Opposer's counsel would grant the requested extension, Applicant prepared Applicant's Responses to Opposer's First Set of Requests for Admissions. See Exhibit A.

7. Applicant's counsel has attached a screenshot of the Word properties page for the document entitled Applicant's Responses to Opposer's Admissions.docx in support of the time of the preparation of said responses. See Exhibit B.

8. As can be seen from the properties of the document, the Opposer's First Set of Requests for Admissions to Applicant, the underlying document, was created on Thursday, July 18, 2013 at 12:30 pm. See Exhibit B.

9. Not having received a response from Opposer's counsel to the request for an extension and believing that it was under an obligation to provide responses to Opposer's First Set of Requests for Admissions to Applicant on July 18, 2013, Applicant completed its Applicant's Responses to Opposer's First Set of Requests for Admissions on July 18, 2013 at

1:37 pm (See [last] Modified on Exhibit B) and mailed the same to counsel for the Opposer via U.S. Mail. See Exhibit A.

10. Thereafter, at 2:12 pm on July 18, 2013, Opposer's counsel emailed Applicant's counsel reminding Applicant's counsel that a 60-day extension had previously been granted and that Applicant's responses were not due until September 16, 2013. See Exhibits C and D.<sup>2</sup>

11. Notwithstanding the pleasant exchange, continued cooperation between counsels' respective offices, and the extension that had been agreed to, Applicant did, in fact, respond to the subject admissions on July 18, 2013. See Exhibit A.

### **ARGUMENT**

The burden is on the party moving for summary judgment to show the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); and *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). The evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor.

In considering the propriety of summary judgment, the Board may not resolve issues of material fact against the non-moving party; it may only ascertain whether such issues are present. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); *Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d

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<sup>2</sup> Of note, in the body of Opposer's Motion for Summary Judgment Opposer itself miscalculates or provides several dates that are not supported by the record. First, Opposer states properly that it's admissions were served upon Applicant on June 13, 2013. However, Opposer then provides that the responses were originally due roughly 65 days from the date of service. They were, in fact, due July 18, 2013.

Opposer then sets forth that on June 21, 2013 the parties agreed to a 60-day extension of their respective deadlines to respond to one another's discovery. This is accurate. See Exhibit D. Opposer's calculations as to the extended dates are again in error. Following the agreement as to the 60-day extension Applicant's responses to Opposer's discovery was actually due September 16, 2013. See Exhibit C.

However, as set forth above, this all appears to be moot as Applicant actually responded to the admissions at issue within the original 35 day period or by July 18, 2013. See Exhibits A and B.

1471 (Fed. Cir. 1993); and *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

**I. Applicant Responded to Opposer's Requests for Admissions**

In the instant case, Opposer's Motion for Summary Judgment is predicated upon the fact that Applicant failed to timely serve responses to Opposer's First Set of Requests for Admissions to Applicant. As the record indicates, however, that is not the case.

As set forth above, Opposer served Opposer's First Set of Requests for Admissions to Applicant on or about June 13, 2013. See Opposer's Motion for Summary Judgment at Exhibit A. Responses thereto were due no later than July 18, 2013. Unaware that a previous extension had been granted, Applicant completed Applicant's Responses to Opposer's First Set of Requests for Admissions on July 18, 2013 at 1:37 pm (See [last] Modified on Exhibit B) and mailed the same to counsel for the Opposer via U.S. Mail. See Exhibit A.

Thereafter, at 2:12 pm on July 18, 2013 Opposer's counsel graciously reminded Applicant's counsel of the 60-day extension granting the same until September 16, 2013. See Exhibit C. However, by that time said extension in regard to the instant admissions was rendered moot insofar as Applicant had already mailed Applicant's Responses to Opposer's First Set of Requests for Admissions to opposing counsel. See Exhibit A.

As such, it is respectfully submitted that the basis for Opposer's Motion for Summary Judgment is rendered moot by the Applicant having actually responded to the admissions which form the sole basis for the motion at issue.

**II. Genuine Issues of Material Fact Exist in Regard to Opposer's Claims**

Applicant timely responded and provided Applicant's Responses to Opposer's First Set of Requests for Admissions on July 18, 2013 at 1:37 pm (See [last] Modified on Exhibit B) and

mailed the same to counsel for the Opposer via U.S. Mail. See Exhibit A. As such, genuine issues of material fact exist in regard to the claims and contentions in this matter. Based upon Applicant's responses it cannot be said that no genuine issues of material fact exist suffice to award Opposer judgment as a matter of law. See Exhibit A.

Even if the Opposer continues to contend that it did not receive Applicant's responses to the admissions at issue following this opposition at a minimum the evidence herein submitted creates a genuine issue of material fact as to whether the admissions were timely responded to sufficient to avoid the entry of summary judgment at this time. Again, it is Applicant's contention that the same were delivered in a timely manner. But even assuming, en arguendo, there is a question in that regard, that question in and of itself creates the genuine issue of material fact sufficient to survive the instant motion.

### **CONCLUSION**

WHEREFORE in consideration of the above Applicant respectfully requests that the Board deny the instant motion. Applicant timely served its responses to the admissions as evidenced herein.<sup>3</sup> For whatever reason counsel for Opposer either did not receive the copy thereof mailed on July 18, 2013 or otherwise did not believe it had received the same. Notwithstanding this fact, the responses to admissions were timely served and, accordingly, the instant motion should be denied.

However, in the alternative Opposer requested that discovery be reopened and extended for sixty days and that all remaining dates be likewise extended. In consideration of the above Applicant consents to this request and alternative motion.

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<sup>3</sup> Of note, Applicant's position in this matter should not be taken in any manner as an attempt to impugn the character of opposing counsel with whom the respective offices have had a good working relationship. Rather, Applicant's responses must have been misplaced by the U.S. Mail or otherwise.

DATED this 5<sup>th</sup> day of December 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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[mswyers@TheTrademarkCompany.com](mailto:mswyers@TheTrademarkCompany.com)

Counsel for Applicant





4. U.S. Reg. No. 2,986,410 is incontestable and serves as conclusive evidence of the validity of the registered mark and of the registration of the **PARTYPOKER** mark, of Opposer's ownership of the **PARTYPOKER** mark, and of Opposer's exclusive right to use the registered **PARTYPOKER** mark.

**Response:** Denied.

5. Opposer's use of its **PARTYPOKER** mark commenced over ten (10) years before Applicant began using its PARTY STAR POKER mark.

**Response:** Denied.

6. Opposer's **PARTYPOKER** mark registered over six (6) years before Applicant filed its PARTY STAR POKER trademark application.

**Response:** Admitted.

7. Opposer has priority of use over Applicant with respect to marks that include the term PARTY and its phonetic equivalents for gambling and related casino and gaming services.

**Response:** Denied.

8. Opposer's mark is well known.

**Response:** Denied.

9. Opposer's mark is extremely valuable.

**Response:** Denied.

10. Opposer offers "computer game software distributed via the Internet; and electronic newsletters distributed via the Internet and electronic mail" and "arranging, organizing and conducting entertainment services in the form of online contests and games of chance" under the **PARTYPOKER** brand.

**Response:** Denied.

11. Consumers of online games of chance and online contents associate Opposer with the mark **PARTYPOKER**.

**Response:** Denied.

12. Applicant offered "gambling services" and/or "a web-based system and online portal for customers to participate in online gambling, operation and coordination of game tournaments, leagues and tours" under the PARTY STAR POKER brand on March 16, 2012 (the filing date of Trademark App. Serial No. 85/571885).

**Response:** Admitted.

13. Applicant does not currently offer "gambling services" and/or "a web-based system and online portal for customers to participate in online gambling, operation and coordination of game tournaments, leagues and tours" under the PARTY STAR POKER brand.

**Response:** Admitted.

14. Applicant has no intentions of resuming use of the PARTY STAR POKER

mark on "gambling services" and/or "a web-based system and online portal for customers to participate in online gambling, operation and coordination of game tournaments, leagues and tours."

**Response:** Denied.

15. Applicant uses the PARTY STAR POKER mark, or intends to use the PARTY STAR POKER mark, in connection with computer game software distributed via the Internet.

**Response:** Denied.

16. In October 2006, The Unlawful Internet Gambling Enforcement Act (**UIGEA**) was passed, prohibiting gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law.

**Response:** Applicant is without knowledge of this specific law and its passage date, if any. This would be a matter of judicial record. However, to the extent a response is required it is denied only as to Applicant's knowledge of the same.

17. After the enactment of UIGEA, Opposer was prohibited from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law.

**Response:** Applicant is without knowledge of the legality of Opposer's acts and services. However, to the extent a response is required it is admitted insofar as the Opposer appears to be admitted that its own acts were illegal following the passage of this legislation.

18. After the enactment of UIGEA, Opposer was prohibited from offering online gambling services in the U.S.

**Response:** Applicant is without knowledge of the legality of Opposer's acts and services. However, to the extent a response is required it is admitted insofar as the Opposer appears to be admitted that its own acts were illegal following the passage of this legislation.

19. Applicant is affiliated with !Social Media LLC.

**Response:** Admitted.

20. Applicant is Managing Member of !Social Media LLC.

**Response:** Admitted.

21. Applicant assigned the POKER PRO trademark, U.S. Reg. No. 4241118 to !Social Media LLC on or about March 8, 2013.

**Response:** Admitted.

22. Applicant and/or !Social Media LLC approached Opposer about an opportunity to advertise in POKER PRO magazine/website.

**Response:** Admitted.

23. Applicant and/or !Social Media LLC approached Opposer about an opportunity to advertise in POKER PRO magazine/website on or before October 2011.

**Response:** Admitted.

24. Applicant was aware of Opposer and Opposer's **PARTYPOKER** mark prior to October 2011.

**Response:** Admitted only as to knowledge of existence outside of the U.S. Denied otherwise.

25. Applicant's mark and Opposer's mark both include the terms PARTY and POKER.

**Response:** Admitted.

26. The dominant part of Applicant's mark and Opposer's mark is the term PARTY.

**Response:** Denied.

27. The mark PARTY STAR POKER is similar in sound to the mark  .

**Response:** Denied.

28. The mark PARTY STAR POKER is similar in appearance to the mark  .

**Response:** Denied.

29. The mark PARTY STAR POKER is similar in meaning to the mark  .

**Response:** Denied.

30. The mark PARTY STAR POKER connotes a similar commercial impression as the mark  .

**Response:** Denied.

31. Applicant's services are offered and/or will be offered in the same channels of trade as Opposer's goods and services.

**Response:** Denied.

32. Applicant's services are offered and/or will be offered to the same consumers as Opposer's goods and services.

**Response:** Denied.

33. Applicant's PARTY STAR POKER products/services are offered on (or will be offered on) and/or advertised (or will be advertised) on the same Internet

websites, as demonstrated by the attached documents from software.informer attached in **Exhibit A** containing a link to Opposer's PARTYPOKER services on a web page where Applicant's PARTY STAR POKER software will be available for download.

**Response:** Denied.

34. Applicant was aware of Opposer's mark when selecting Applicant's mark.

**Response:** Admitted.

35. Applicant relied upon and copied some of the content of Opposer's website at partypoker.com when creating and designing Applicant's partystarpoker.com website, as evidenced by the attached exhibits (**Exhibit B**) comparing the content of Applicant's specimen of use (filed with its trademark application) with the content posted on Opposer's website prior to the filing date of Applicant's application (taken from archive.org).

**Response:** Denied.

36. Applicant relied upon and deliberately copied elements of Opposer's mark when creating and designing Applicant's mark.

**Response:** Denied.

37. Applicant selected Applicant's mark with the intent to cause a likelihood of confusion, mistake or deception with Opposer's mark, and to trade on Opposer's good will.

**Response:** Denied.

38. Instances of actual confusion between Applicant's mark and Opposer's

mark would damage Opposer.

**Response:** Denied.

39. Applicant is aware of actual confusion that has occurred, or is occurring, between Applicant's mark and Opposer's mark.

**Response:** Denied.

40. Applicant's PARTY STAR POKER mark is confusingly similar to Opposer's

**PARTYPOKER** mark.

**Response:** Denied.

41. Applicant's mark creates a false perception that Applicant's services are affiliated with, provided by, or endorsed by Opposer when the same is not true.

**Response:** Denied.

42. Opposer will be damaged by the registration of the mark in U.S. App. No. 85/571885.

**Response:** Denied.

43. The documents produced by Applicant in response to Opposer's First Request for Production of Documents and Things and First Set of Interrogatories are authentic, original documents, or true and correct copies of authentic, original documents.

**Response:** Admitted.

44. Applicant has plans to use Applicant's mark in connection with products and/or services other than "gambling services" and/or "a web-based system and online

portal for customers to participate in online gambling, operation and coordination of game tournaments, leagues and tours".

**Response:** Admitted.

45. Consumers encountering PARTY STAR POKER gambling and entertainment services will falsely conclude that the services of Applicant originate from, are sponsored by or affiliated with Opposer.

**Response:** Denied.

46. Documents produced by Applicant are original, authentic documents, or true and correct copies of original, authentic documents.

**Response:** Admitted.

47. Documents produced by Applicant were made by a person with knowledge of, or made from information transmitted by a person with knowledge of, the acts and events appearing in them.

**Response:** Admitted.

48. Documents produced by Applicant were made at or near the time of the acts and events appearing in them.

**Response:** Admitted.

49. It is the regular practice of Applicant to make the documents produced by Applicant.

**Response:** Admitted.

50. The documents produced by Applicant were kept in the course of a regularly conducted business activity.

**Response: Admitted.**

DATED this 18<sup>th</sup> day of July 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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Facsimile (270) 477-4574

[mshyers@TheTrademarkCompany.com](mailto:mshyers@TheTrademarkCompany.com)

Counsel for Applicant



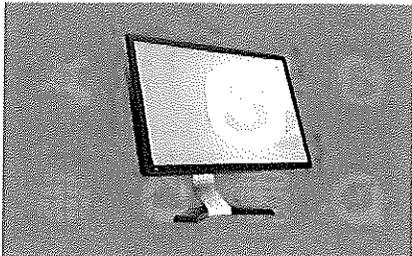
# EXHIBIT A



# Party Star Poker 3.6

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fx-Calc lets you define, visualize and calculate scientific functions.



**Red Star Poker**

Come sit down and enjoy online poker with competition from around the world



**CelebPoker**

CelebPoker is the online poker room choice for poker players.



**PartyPokerNet**

Party Poker is one of the most renowned online poker rooms.



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FreePHG grabs .hfh files from Party Poker and save them to disk.

**Before you Continue:**

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This program received 2 awards

PartyGaming.Net

125 All versions

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927 times

751.92 KB

www.partypoker.com

Freeware

37 people

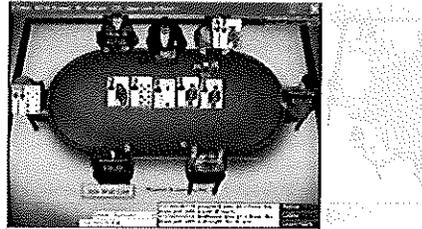
Questions & answers

Wiki

Suggest a correction



### Screenshots



View all

### Editorial review



Claudia Liliana Timmer  
Senior editor

Comments

Party Poker, part of the Party Gaming family, is one of the most renowned online poker rooms. Whether you are a Poker fan or a beginner, there is something for everyone at Party Poker. You will find ring games, where players can compete with one another in single-table tournaments, and multi-table tournaments. For beginners, there are several ways to make you acquainted with the rules, such as online video tutorials, with the basics of poker, poker tips and more. For usual players, there is a Poker Trainer that will help improve your skills and strategic abilities.

To play at Poker Party, you need to download a software and create an account. This software is available in 12 languages. Party Poker players have to pay a fee for every hand of real money they play, which means that you can also practise and play for fun before deciding to play for real. Party Poker offers lots of promotions and imaginative bonus for new players, such a welcome bonus up to \$500, with a minimum deposit of \$25. One of the most important aspects is that it provides their customers a secure and confidential gaming experience, as the software has the highest standards in encryption technologies to assure security and integrity of personal data and accounts. In addition, players have a 24/7 customer care, to contact via telephone or email.

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The software, in spite of being plain and simple, is very easy to use and intuitive. Once it is running, is quite fast, however you may experience some delays when the software main screen is loading.

#### Pros

- + easy to use
- + 24/7 customers care
- + good sign up bonus

#### Cons

- software loading may be rather slow

This software was checked for viruses and was found to be clean. Click [here](#) to see antivirus report.

trusted  
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# **EXHIBIT B**

http://web.archive.org/web/20120103150138/http://www.partypoker.com/tournaments.html

Online Poker Tournaments - Rules and Schedules from PartyPoker.com - Windows Internet Explorer

http://web.archive.org/web/20120103150138/http://www.partypoker.com/tournaments.html

Go

Wayback Machine

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JAN 3 2012

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## Tournaments

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Tournaments are the ultimate poker thrill. Whether you're competing for a few thousand or a few hundred thousand, there's nothing quite like the feeling you get when you outsmart, out bet and outplay everyone else on the table and walk away with that jackpot!

### SPECIMEN OF USE



MY ACCOUNT

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## Tournaments

SIT & Go

Freerolls

Satellites

## Tournaments

ARE YOU LOOKING FOR VARIETY?

Tournaments are the ultimate poker thrill. Whether you're competing for a few thousand or a few hundred thousand, there's nothing quite like the feeling you get when you outwit, out bet and outplay everyone else on the table and walk away with that massive jackpot.

[http://web.archive.org/web/20120101081311/http://www.partypoker.com/tournaments/tournament\\_basics.html](http://web.archive.org/web/20120101081311/http://www.partypoker.com/tournaments/tournament_basics.html)

The screenshot shows a web browser window displaying the PartyPoker.com website. The address bar shows the URL: [http://web.archive.org/web/20120101081311/http://www.partypoker.com/tournaments/tournament\\_basics.html](http://web.archive.org/web/20120101081311/http://www.partypoker.com/tournaments/tournament_basics.html). The website header includes the PartyPoker logo and a navigation menu with links for Download, How to Play, Promotions, Tournaments, VIP & Rewards, and Poker Hub. A prominent banner on the right side of the header states "Over 30 million Downloads since 2001". Below the navigation menu, the breadcrumb trail reads "Home > Tournaments > Tournament Basics". The main content area features a large "Play Now" button on the left and the heading "Tournament Basics" on the right. Below the heading, the text reads: "At PartyPoker.com, we offer more tournaments and bigger prize pools than any other poker site. If you've never played in a poker tournament before, here's everything you need to know!"

## SPECIMEN OF USE

Rebby

At Party Star Poker, we offer more tournaments and bigger prize pools than any other poker site. If you've never played in a poker tournament before, here's everything you need to know. The concept of a



## Matthew H. Swyers

---

**From:** Danielle I. Mattessich <DMattessich@merchantgould.com>  
**Sent:** Thursday, July 18, 2013 2:12 PM  
**To:** mswyers@thetrademarkcompany.com  
**Cc:** 17339.0009US01.active@ef.merchantgould.com; Scott W. Johnston  
**Subject:** Yessenia Soffin vs. PartyGaming (Opp. No. 91207899)

RE: Yessenia Soffin vs. PartyGaming (Opp. No. 91207899)

Matt,

I received your voice mail message. We actually agreed to mutual extensions back in June, so I believe your responses are not due until September 16, 2013 (and I believe ours are due to you on September 3, 2013). Please let me know if you have a different understanding.

**Danielle I. Mattessich**  
Attorney at Law  
Merchant & Gould P.C.  
3200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2215  
USA

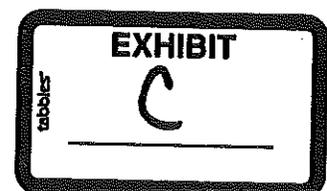
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## Matthew H. Swyers

---

**From:** Jamie Reynolds <jamier@thetrademarkcompany.com>  
**Sent:** Friday, June 21, 2013 8:42 AM  
**To:** 'sjohnston@merchantgould.com'  
**Cc:** marym@thetrademarkcompany.com; ValerieK@TheTrademarkCompany.com  
**Subject:** PartyGaming IA Limited vs. Soffin, Yessenia

Scott,

We are in receipt of your voicemail to Matt requesting a 60 day extension to respond to discovery requests and all dates for both parties. We consent to the request. Please file the motion and serve us via email.

Please confirm the new dates as follows:

Our responses were due to your office by July 18<sup>th</sup>, now will be due September 16, 2013  
Your responses were due to our office by July 5<sup>th</sup>, now will be due September 3, 2013.

Thank you in advance for filing the Consent Motion to extend the trial dates by 60 days.

/Jamie R. Reynolds/  
Litigation Manager  
The Trademark Company  
2703 Jones Franklin Road, Suite 206  
Cary, NC 27518  
tel. (800) 906-8626 Ext. 105  
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