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Filing date: **10/31/2013**

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

Proceeding	91207899
Party	Plaintiff PartyGaming IA Limited
Correspondence Address	SCOTT W JOHNSTON MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402-0910 UNITED STATES dmattessich@merchantgould.com, dockmpls@merchantgould.com
Submission	Motion for Summary Judgment
Filer's Name	Danielle I. Mattessich
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Signature	/daniellemattessich/
Date	10/31/2013
Attachments	PARTY MSJ.pdf(2200971 bytes)

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

PartyGaming IA Limited,	)	Opposition No. 91207899
Opposer,	)	Mark: **PARTY STAR POKER**
v.	)	Serial No.: 85/571,885
Yessenia Soffin,	)	Filing Date: March 16, 2012
Applicant.	)	Published: July 24, 2012

MOTION FOR SUMMARY JUDGMENT

On June 13, 2013, Opposer served Opposer's First Set of Requests for Admissions on Applicant. A copy of Opposer's First Set of Requests for Admissions as served is attached hereto as Exhibit A. Accounting for service by mail, Applicant's responses to Opposer's First Set of Requests for Admissions were due August 17, 2013. On or about June 21, 2013, Opposer agreed to extend Applicant's deadline to respond to Opposer's First Set of Requests for Admissions by 60 days, resetting Applicant's deadline to October 16, 2013. To date, Applicant has provided no responses to the Requests for Admissions despite Opposer's good faith efforts in resolving any potential discovery disputes with Applicant, which included unanswered telephone calls and emails to Applicant's counsel on the following dates: October 21, 2013, October 28, 2013, and October 29, 2013. Despite these efforts and Opposer's timely submission of its Responses to Applicant's Discovery Requests, Applicant has been unresponsive and appears to have lost interest in defending this opposition.

If a party upon whom requests for admissions have been served fails to timely respond thereto, the requests will stand admitted unless the party is able to show that its failure to timely

respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to Fed. R. Civ. P. 36(b), and granted by the Board. Hobie Designs, Inc. v. Fred Hayman Beverly Hills Inc., 14 U.S.P.Q.2d 2064 (T.T.A.B. 1990). Some of the matters admitted by Applicant along with their respective Request for Admission Nos. are listed below:

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

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

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

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

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

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

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 an **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.

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

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).

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

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.

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

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

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

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.

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

See Exhibit A (Opposer's First Set of Requests for Admissions).

Given that Applicant has admitted that Opposer has priority, that the parties' goods and services are related, and that the parties' marks are confusingly similar, there is no genuine issue of material fact as to whether Opposer is likely to be damaged by registration of Applicant's mark to Applicant. Consequently, Opposer respectfully requests that its Motion for Summary Judgment be granted.

In the event the Board denies this Motion for Summary Judgment, Opposer requests that the discovery and trial dates be extended sixty (60) days from the date of the Board's decision on this motion.

Respectfully submitted,

PARTYGAMING IA LIMITED

By its Attorneys,

Date: 10-31-13

Scott W. Johnston
Danielle I. Mattessich
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, MN 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT was served upon the following attorney for Applicant by First Class Mail, postage prepaid, this 31st day of October, 2013.

MATTHEW H SWYERS
THE TRADEMARK COMPANY
344 MAPLE AVENUE WEST, SUITE 151
VIENNA, VA 22180-5612

Scott W. Johnston

EXHIBIT A

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

PartyGaming IA Limited,	)	Opposition No. 91207899
Opposer,	)	Mark: PARTY STAR POKER
v.	)	Serial No.: 85/571,885
Yessenia Soffin,	)	Filing Date: March 16, 2012
Applicant.	)	Published: July 24, 2012

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Opposer, PartyGaming IA Limited, requests that Applicant, Yessenia Soffin, respond by admitting the truthfulness of the matters set forth below, within the time specified by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

DEFINITIONS AND INSTRUCTIONS

The Definitions and Instructions included in Opposer's First Set of Interrogatories are incorporated herein by reference.

MATTERS TO BE ADMITTED

1. Opposer has used its PARTYPOKER mark in the U.S. since at least July 1, 2001.
2. Opposer' use of its mark has been continuous and uninterrupted since at least July 1, 2001 with respect to computer game software distributed via the Internet; 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.
3. A Certificate of Registration, No. 2,986,410 issued for Opposer's PARTYPOKER mark on August 16, 2005.

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.

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

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

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.

8. Opposer's mark is well known.

9. Opposer's mark is extremely valuable.

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.

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

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).

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.

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."

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.

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.

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.

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

19. Applicant is affiliated with ISocial Media LLC.

20. Applicant is Managing Member of ISocial Media LLC.

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

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

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

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

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

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

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

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

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

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

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

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 an **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.

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

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).

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

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.

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

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.

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

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.

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".

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.

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

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.

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

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

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

PARTYGAMING IA LIMITED

By its attorneys,

Date: 6-13-13

Scott W. Johnston
Danielle I. Mattessich
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
Telephone: (612) 332-5300
sjohnston@merchantgould.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF REQUEST FOR ADMISSIONS was served upon the following attorney of record for Applicant by email and First Class Mail, postage pre-paid, this 13th day of June, 2013:

Matthew H. Swyers
The Trademark Company
344 Maple Ave W., Ste. 151
Vienna, Virginia 22180-5612
mswyers@thetrademarkcompany.com

Amanda Avery

Amanda Avery

EXHIBIT A

Party Star Poker 3.6

We Recommend: Get 100% Free Cloud Storage!

Discover
best software in one place

Before you Continue:
Run a **FREE** scan for Outdated Drivers

Run a FREE Scan Now

We Recommend: Slow PC? Update Your Drivers Now!

Click the link below to proceed to the intended program's page:

Download from partystarpoker.com

fx-Calc
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.

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

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PartyPokerNet

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trusted
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751.92 KB

2.5 (2 votes)
Click to rate

2.4

This program received 2 awards

PartyGaming.Net

125 All versions

Downloaded:
927 times

751.92 KB

www.partypoker.com

Freeware

37 people

Questions & answers
Wiki
Suggest a correction

software.informer
FREE DOWNLOAD
Update
your applications instantly

Screenshots

View all

Editorial review

Comments

Claudia Liliana Timmer
Senior editor

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.

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

VPN Clients: Privacy Protected (?)
Pick the Best App for CD Labeling
Repair Tools: Save Your Videos
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Software informer client

Have a question?
Type your question...
Ask on answers.informer

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
DOWNLOAD
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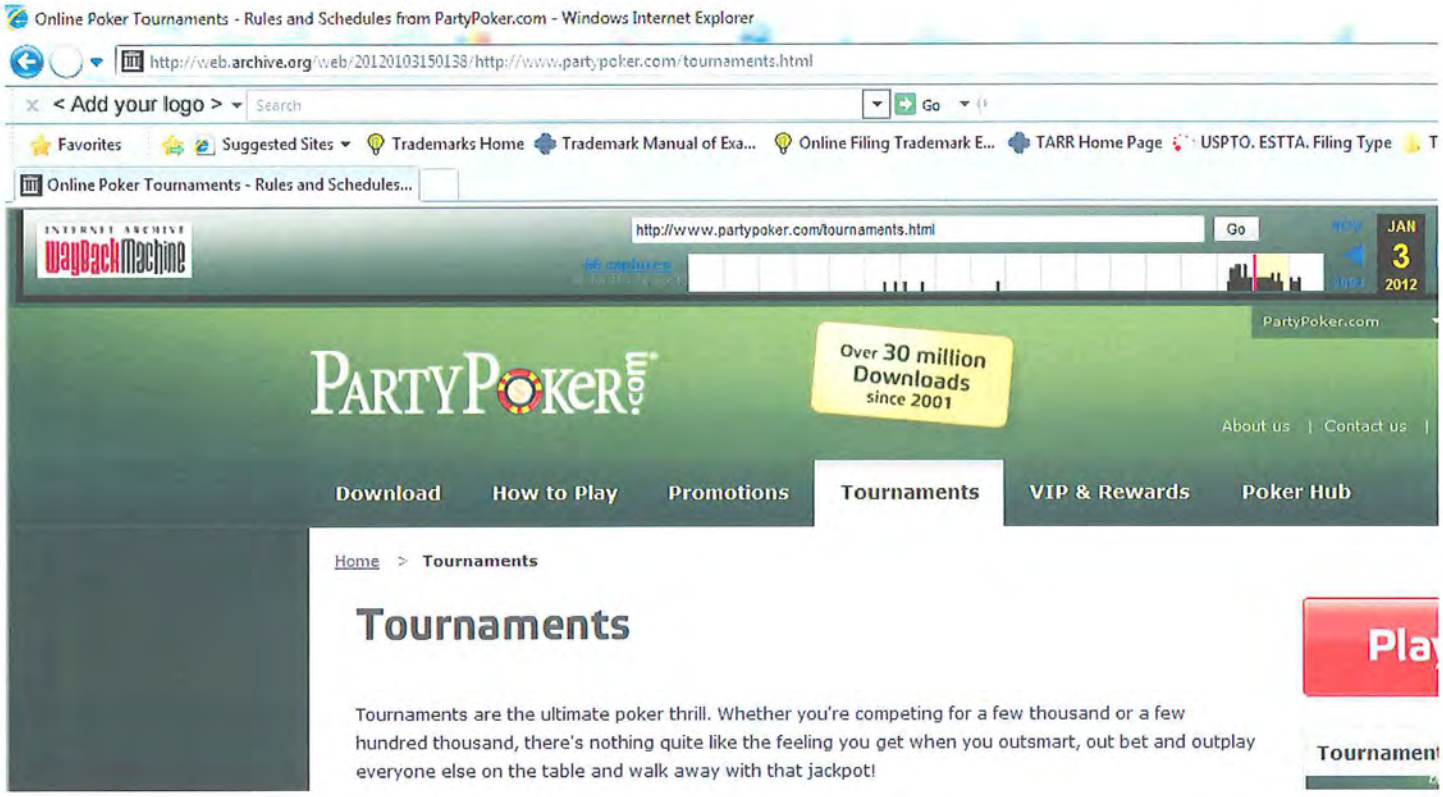
EXHIBIT B

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



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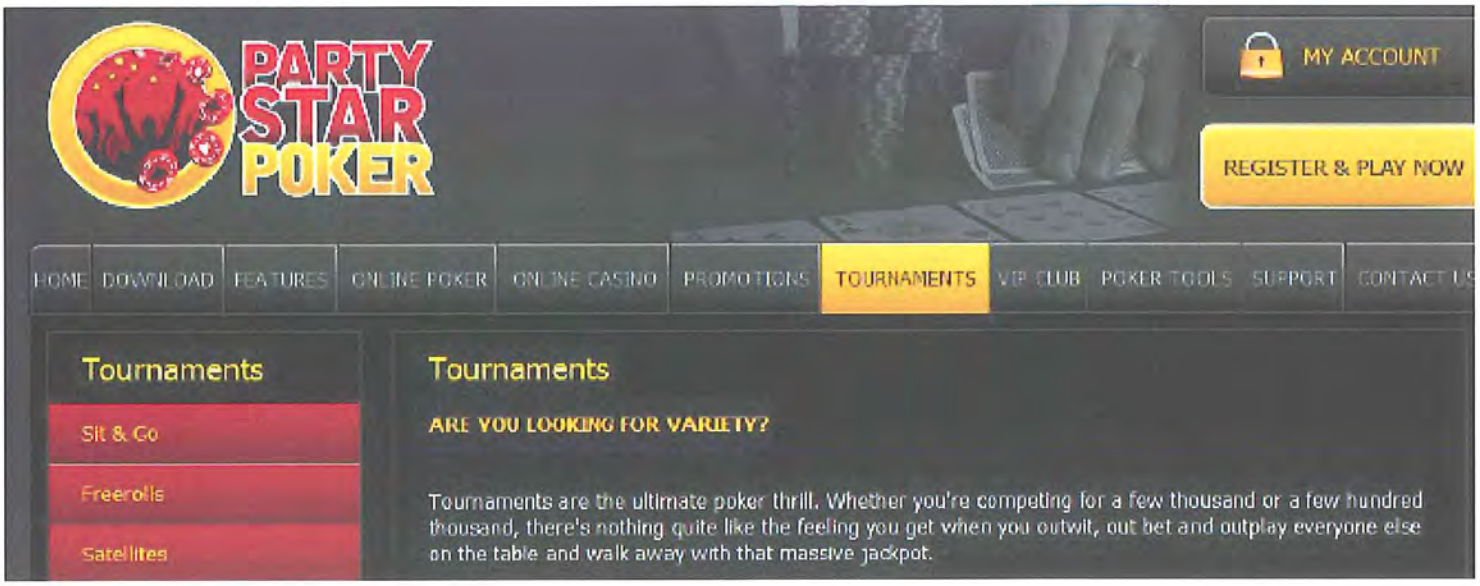

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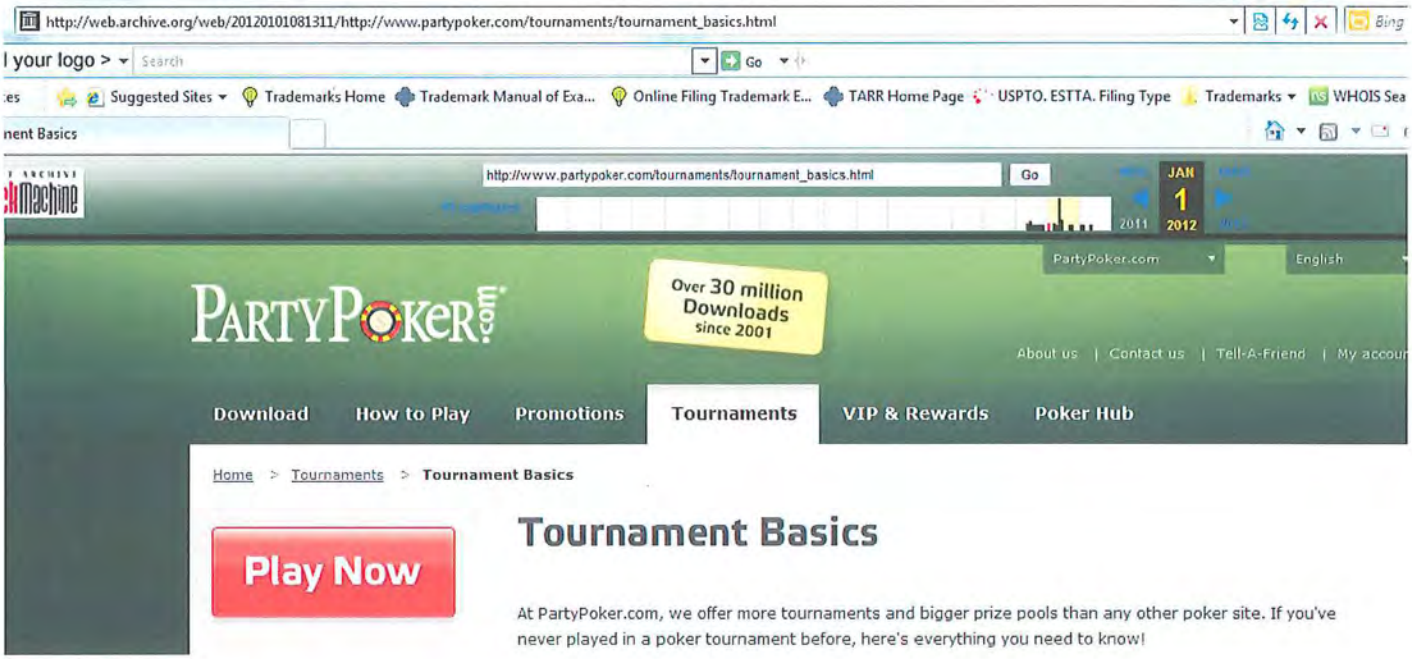
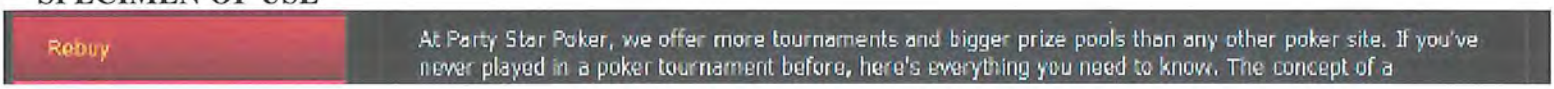
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