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Filing date: **10/15/2014**

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

Proceeding	91215251
Party	Plaintiff Hi Media SA
Correspondence Address	JEFFREY A LINDENBAUM COLLEN IP INTELLECTUAL PROPERTY LAW PC THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE OSSINING, NY 10562 UNITED STATES jlindenbaum@collenip.com, docket@collenip.com
Submission	Motion to Compel Discovery
Filer's Name	Jeffrey A. Lindenbaum
Filer's e-mail	jlindenbaum@collenip.com, docket@collenip.com
Signature	/Jeffrey A. Lindenbaum/
Date	10/15/2014
Attachments	HiPay Motion to Compel 10-15-14.pdf(13299 bytes) HiPay Discovery Requests.pdf(755079 bytes)

ATTORNEY DOCKET NO. M896

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

HI MEDIA SA, Opposer, v. iPAY INTERNATIONAL SA, Applicant.	**Opposition No.: 91215251 (Parent)** Serial No.: 85/781,396 Mark: IPAYTAG Opposition No.: 91215253 Serial No.: 85/781,428 Mark: IPAYWALLET Opposition No.: 91215254 Serial No.: 85/781,458 Mark: BUY WITH IPAYWALLET

OPPOSER'S MOTION TO COMPEL

Pursuant to 37 C.F.R. § 2.120(e) and Fed. R. Civ. P. 37, Hi Media SA ("Opposer") hereby respectfully moves the Board for an Order compelling Applicant to respond, without objection, to Opposer's First Set of Interrogatories, and First Request for Production of Documents.

On August 8, 2014, Opposer served its first set of Interrogatories, and first request for production of documents on Applicant, by delivering same to Applicant's counsel via US Mail (a courtesy copy was also emailed to Applicant's counsel on August 8, 2014).[1] A copy of Opposer's discovery requests and the certificate of service evidencing service are attached hereto as Exhibit 1. Applicant's deadline to respond to these requests (due 30 days after service, plus

[1] Opposer, on August 8, 2014, also served a First Set of Admissions on Applicant, which by law are now deemed admitted. Fed. R. Civ. P. 36(a)(3).

five days for mailing) was September 12, 2014. To date, Applicant has not responded to Opposer's discovery requests.

On October 7, 2014, Opposer's counsel emailed Applicant's counsel advising that Opposer has not received Applicant's discovery responses, and inquiring whether Applicant has served its responses, and if not, whether it intends to do so. Applicant's counsel responded that she was waiting for instructions from her client. Given that the deadline to respond to the discovery requests had already passed several weeks earlier, Opposer requested that Applicant's counsel provide a response by the end of the week. After not receiving any further response from the Applicant, Opposer, on October 10, 2014, inquired again whether the Applicant intended to respond to the overdue discovery requests. Applicant's counsel responded on October 10 indicating that she has reached out on several occasions to try to reach her client, but that her client (the Applicant) has not responded.

As of the filing of this motion, Applicant has still not responded to Opposer's discovery requests, and has made no indication that it has any intention to do so.

For the foregoing reasons, Opposer respectfully requests that the Board issue an Order compelling Applicant to respond, without objection,[2] to Opposer's First Set of Interrogatories and First Request for Production of Documents.

[2] *DeNicola v. Frontline Asset Strategies*, 279 F.R.D. 214, 215 (E.D.N.Y. 2012) ("by its failure to timely respond, the defendant has waived all objections as to the interrogatories (see Fed. R. Civ. P. 33(b)(4)) and all objections to the document demands except those based on privilege"); *Amazon Techs., Inc. v. Wax*, 93 U.S.P.Q.2D 1702, 2009 TTAB LEXIS 712, *6 (TTAB Nov. 4, 2009).

Respectfully submitted,

__/Jeffrey A. Lindenbaum/_____
Jeffrey A. Lindenbaum
Collen IP Intellectual Property Law
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
(914) 941-5668 (tel)
(914) 941-6091 (fax)
jlindenbaum@collenip.com
Attorneys for Opposer

Dated: October 15, 2014

P1386_motion to compel_141015

CERTIFICATE OF FILING AND SERVICE

I, Jeffrey A. Lindenbaum, hereby certify that I caused a true and correct copy of Opposer's Motion to Compel to be filed electronically with the Trademark Trial and Appeal Board, and to be served upon the following counsel of record, via first class mail, postage prepaid and email this 15th Day of October, 2014:

BARBARA H LOEWENTHAL
GOTTLIEB RACKMAN & REISMAN
270 MADISON AVE, FL 8
NEW YORK, NY 10016-0601
bloewenthal@grr.com

_/Jeffrey A. Lindenbaum/__

EXHIBIT 1

EXHIBIT 1

COLLEN *IP*
INTELLECTUAL PROPERTY LAW
Telephone (914) 941-5668
Facsimile (914) 941-6091
www.collen*IP*.com
E-mail: jlindenbaum@collen*IP*.com

August 8, 2014

BY FIRST CLASS MAIL
VIA EMAIL: (bloewenthal@grr.com)
Gottlieb Rackman & Reisman
270 Madison Ave. Fl 8
New York, New York 10016-0601
Attention: Ms. Barbara H. Loewenthal

Re: U.S. Consolidated Trademark Opposition No. 91215251
HI MEDIA v. iPay International SA
Our Refs: P1386, P1387, P1388

Dear Ms. Loewenthal:

Enclosed please find Opposer's First Set of Interrogatories, First Request for Production of Documents and First Set of Admissions.

Very truly yours,
COLLEN *IP*

Jeffery A. Lindenbaum

JAL:mcm
Enclosure: Interog., Admiss., Doc. Req.

P1386_Ltr to Lowenthal with discovery requests_140808

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ATTORNEY DOCKET NO. M896

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

HI MEDIA SA, Opposer, v. iPAY INTERNATIONAL SA, Applicant.	**Opposition No.: 91215251 (Parent)** Serial No.: 85/781,396 Mark: IPAYTAG Opposition No.: 91215253 Serial No.: 85/781,428 Mark: IPAYWALLET Opposition No.: 91215254 Serial No.: 85/781,458 Mark: BUY WITH IPAYWALLET

OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Opposer Hi Media SA, ("Opposer") hereby requests that Applicant iPay International SA ("Applicant") respond under oath or by affirmation to the following Interrogatories. The Interrogatories shall be deemed continuing and Applicant is requested to serve upon Opposer, in the form of supplementary Answers, any additional information requested herein that may be known to Applicant after the date of its Answers to these Interrogatories.

INSTRUCTIONS AND DEFINITIONS

The following definitions and instructions are applicable to Opposer's First Set of Interrogatories, Opposer's First Request for the Production of Documents and Things, and Opposer's First Set of Requests for Admission:

A. "Opposer" means the Opposer, Hi Media SA, captioned above including its divisions, departments, subsidiaries, parents, partners, joint venture partners, officers, directors, owners, agents, employees, accountants, attorneys, any predecessor—or successor-in-interest thereof, and all other persons acting on behalf of or for the benefit of Hi Media SA.

B. "Applicant" or "you" shall mean the named Applicant, iPay International SA including its divisions, departments, officers, directors, owners, agents, employees, members, and all other persons acting on behalf of or for the benefit of iPay International SA, such as subsidiaries, parents, partners, joint venture partners, accountants, attorneys, any predecessor or successor in interest thereof.

C. The term "Opposer's Marks" means the trademarks identified in the following U.S. trademark registration:

HIPAY	Reg. No.	3,616,157

D. The term "Applicant's Marks" means the trademarks identified in the following United States Trademark Applications:

IPAYTAG	Serial No.	85/781,396
IPAYWALLET	Serial No.	85/781,428
BUY WITH IPAYWALLET	Serial No.	85781458

E. The terms "Goods", "Products", and "Services" means the items marketed and distributed or intended to be marketed and distributed by Applicant and/or the Services provided or intended to be provided.

F. The terms "data", "document" and "documents" means any writing of any kind, in any form or format, including all originals, copies, non-identical copies of all correspondence, papers, books, messages, publications, recordings, literature, letters, email communications, photographs, price lists, brochures, memoranda, notes, reports, drawings, diaries, graphic, aural, mechanical or electronic records, or any information that is stored electronically or otherwise and is capable of being retrieved, and any other writings whether in final or draft form and whether or not such draft was actually used or completed, or any "document" as otherwise described in Federal Rule of Civil Procedure 34 which is in your actual or constructive possession, custody or control.

G. "Person" means any individual, firm, corporation, partnership, proprietorship, cooperative, association, joint venture, organization, governmental body, group of natural persons, or any other entity.

H. The term "identify" or "specify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in possession of Applicant, and whether or not alleged to be privileged, including the following information:

1) The present depository or depositories and the name and address of the person or persons having custody of any item to be identified unless the item is a patent, public document or person;
2) If the item to be identified is a person, his or her full name, address, job title, and present employers;
3) If the item to be identified is a document or paper, its character, title, date, addressee or recipient and author, signatory, or sender;
4) If the item to be identified is printed material, its title, author, publication date, volume and relevant page numbers;
5) If the identity sought is information about a situation or set of circumstances, all of the facts relating to or relevant to such a situation including the identity of persons with knowledge of such situation and the identity of all documents relating to, referring to, or otherwise pertinent to such a situation.
6) If the person to be identified is a corporation, or other legal entity, the laws under which it is organized, and the date of organization.

I. The term "mark(s)" means and includes trademarks, service marks, trade names, corporation names, and any other symbol or device used to identify the source, affiliation, or identity of any product, service or person.

J. The term "advertisement" means and includes all communications to third parties fixed in a tangible medium of expression and intended to promote or encourage the purchase or sale of goods or services in the United States.

K. The term "advertising" means and includes all advertisement and all other communications to third parties intended to promote or encourage the purchase or sale of goods or services in the United States.

L. The term "media outlet" is defined as any individual printed publication such as a newspaper or magazine; broadcast television or radio station; cable channel; or Internet website.

M. If in response to the following Interrogatories, Request for Production of Documents and Things and/or Requests for Admission, privilege is alleged as to information or materials, or if an Interrogatory, Document Request or Request for Admission is otherwise not answered in full, state the specific grounds for not answering in full, and answer said Interrogatory, Document Request or Request for Admission to the extent to which it is not objected, including the identification of all information or material for which privilege may be claimed.

N. All questions are to be read so as to give the question the broadest possible meaning, so that, for example, when either of the terms "and" or "or" is used, it is to be construed as "and/or". Similarly use of the singular also includes the plural, use of any female pronouns also includes the male, and so forth.

O. Unless otherwise noted, the terms "sell," "license," "advertise," "market," and "promote" are to be interpreted as encompassing both the present act and the future intended act (e.g., "sell"

shall also mean "intend to sell").

P. Unless otherwise noted, the geographic scope of these discovery requests is limited to the United States.

INTERROGATORIES

1. Indicate the name and business address of each place of business which Applicant presently maintains in connection with trademark usage or trademark licensing in the United States, and describe the type of business activities in each place of business.

2. Describe each Product and Service sold, offered, or intended to be sold or offered in connection with Applicant's Marks.

3. For each Product and Service identified in response to Interrogatory No. 2, above, identify the earliest date susceptible to proof when Applicant used Applicant's Marks in the United States.

4. For each Product and Service identified in response to Interrogatory No. 2, above, identify the earliest date susceptible to proof when Applicant intends to make sales of each Product and Service in the United States.

5. For each Product and Service identified in response to Interrogatory No. 2, above, identify documents sufficient to demonstrate a bona fide intent to use Applicant's Marks in the United States in connection with each Product and Service.

6. Identify each person having knowledge of the dates and/or circumstances surrounding Applicant's intention to use, and adoption of Applicant's Marks.

7. Identify three individuals most knowledgeable about the nature of the Applicant's business including the advertising, marketing, manufacturing, sales and/or licensing of Products and Services offered in connection with Applicant's Marks.

8. For each Product and Service identified by Applicant in response to Interrogatory No. 2, above, as intended to be offered under Applicant's Marks, set forth the amount of projected or actual sales in dollars in the United States on a yearly basis.

9. Identify the total proposed or actual amount of marketing and/or advertising expenditures for Products and Services offered in connection with Applicant's Marks in the United States to be incurred by Applicant.

10. Describe in detail the reasons for the selection of Applicant's Marks, including any connotations or meanings underlying or intended to be conveyed by Applicant's Mark.

11. Identify any uses of Applicant's Marks in which the IPAY portion of Applicant's Mark is emphasized, isolated or otherwise distinguished from the other elements of Applicant's Mark.

12. Describe in detail the channels of trade through which Applicant's Products and Services are offered or intended to be offered in connection with Applicant's Marks.

13. Identify all third party uses, through license agreements or otherwise, of Applicant's Marks in the United States, including but not limited to uses of Applicant's Marks in the singular, plural, or uses in combination with other words, phrases or designs.

14. Identify any assignment, license, royalty or other permitted use agreements with respect to any Products or Services offered in connection with Applicant's Marks.

15. Identify the target market and target consumers to whom Applicant intends to offer or advertise its Products and Services in connection with Applicant's Marks.

16. Indicate the price range for each Product and Service that Applicant intends to offer in connection with Applicant's Marks.

17. Identify the specific media outlets through which Applicant intends to advertise Products and Services offered in connection with Applicant's Marks in the United States.

18. Identify any websites through which Applicant currently advertises Products or Services in connection with Applicant's Marks.

19. Identify any and all other trademarks - other than Applicant's Marks - under which Applicant sells or has offered the Products and Services identified in the applications which are the subject of these Opposition proceedings.

20. Identify the date on which Applicant first became aware of Opposer's Marks, and describe how Applicant first became aware of it.

21. Identify all persons who have participated in any way in the preparation of the answers or responses to these Interrogatories. If more than one individual is identified, state specifically, with reference to Interrogatory numbers, the areas of participation of each such person.

22. Identify any communication or instance where a person has contacted or communicated with you believing you are related to, sponsored by, or controlled by Opposer.

Respectfully submitted,

/Jeffrey A. Lindenbaum/
Jeffrey A. Lindenbaum
Collen IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
(914) 941-5668 Tel.
(914) 941-6091 Fax
jlindenbaum@collenip.com
Attorney for Opposer

Dated: August 8, 2014

P1386_Opposer's First Set of Interrogatories_140804

CERTIFICATE OF SERVICE

I, Jeffrey A. Lindenbaum, hereby certify that I caused a true and correct copy of Opposer's First Set of Interrogatories, First Request for Production of Documents and First Set of Admissions to be served upon:

BARBARA H LOEWENTHAL
GOTTLIEB RACKMAN & REISMAN
270 MADISON AVE, FL 8
NEW YORK, NY 10016-0601
bloewenthal@grr.com

via first class mail, postage prepaid and via email.

Said service having taken place this 8th Day of August, 2014.

/Jeffrey A. Lindenbaum/

ATTORNEY DOCKET NO. M896

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

HI MEDIA SA, Opposer, v. iPAY INTERNATIONAL SA, Applicant.	**Opposition No.: 91215251 (Parent)** Serial No.: 85/781,396 Mark: IPAYTAG Opposition No.: 91215253 Serial No.: 85/781,428 Mark: IPAYWALLET Opposition No.: 91215254 Serial No.: 85/781,458 Mark: BUY WITH IPAYWALLET

OPPOSER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Opposer, Hi Media SA ("Opposer") submits herewith for Production of Documents by Applicant, iPay International SA ("Applicant"), pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office.

Opposer hereby requests that Applicant produce the following documents and tangible things to the attention and at the address of the Opposer's undersigned counsel's offices at Collen *IP*, THE HOLYOKE-MANHATTAN BUILDING, 80 South Highland Avenue, Ossining, New York, 10562 within thirty (30) days after service of these requests. These Requests shall be deemed continuing and require production of any documents called for herein or any such documents which shall come within the custody or control of Applicant, or their agents or

representatives at any time between Applicant's initial production and the further prosecution of this action.

Please note the instructions and definitions included in the Opposer's First Set of Interrogatories, served contemporaneously herewith, which are incorporated by reference and made a part hereof, as if fully stated herein.

DOCUMENTS TO BE PRODUCED

1. All documents which refer to, relate to, or evidence Applicant's first use in interstate commerce in the United States of Applicant's Marks.

2. All documents which refer to, relate to, or demonstrate a bona fide intent to use Applicant's Marks in the United States.

3. All documents relating to any application ever filed in the United States for federal or state registration of Applicant's Marks.

4. All documents that constitute, evidence, reflect, describe, refer to, or relate to the selection or creation of Applicant's Marks, or any reason why Applicant selected, adopted or applied to register this Marks.

5. All documents evidencing, reflecting, or referring to the selection, availability, adoption, creation, design, use or proposed use of Applicant's Marks, including without limitation, any notes from any meetings or any telephone or video conferences at which such topics were discussed.

6. Documents relating to the development of Products and Services to be offered in connection with Applicant's Marks in the United States.

7. Representative documents evidencing each Product with which the Applicant's Marks are used in the United States.

8. Samples of actual Products sold in the United States under the Applicant's Marks, with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by others in the ordinary course of business.

9. A sample of the complete packaging in which each and every Product sold or distributed by Applicant in the United States under the Applicant's Marks are:

a. shipped from Applicant to Applicant's customers;

b. displayed at the point of sale to the ultimate users; and/or

c. contained when sold or distributed to the ultimate users.

10. Documents evidencing Applicant's yearly sales (in dollars) in the United States of Products bearing Applicant's Marks.

11. Documents evidencing Applicant's yearly sales (in dollars) in the United States of Services offered under Applicant's Marks.

12. Representative invoices evidencing the sale of each Product or Service on which Applicant's Marks are used, for each year since the date of first use of Applicant's Marks.

13. Representative documents identifying the number of Products bearing Applicant's Marks sold by Applicant in the United States.

14. Representative documents identifying Products bearing Applicant's Marks or Services offered under Applicant's Marks that are, or were, sold or advertised by Applicant in the United States.

15. Representative documents identifying Products or Services Applicant plans to sell, market, offer or develop in the United States under the Applicant's Marks in the future.

16. Any tags or labels used by Applicant in connection with the sale of Products under the Applicant's Marks in the United States.

17. All licenses, agreements, consents or other documents concerning third-party use of Applicant's Marks in the United States.

18. All documents concerning third-party use of Applicant's Marks, whether authorized or unauthorized, in the United States.

19. Representative documents evidencing each Product and Service with which the Applicant's Marks are intended to be used in the United States.

20. Documents evidencing Applicant's projected or actual yearly sales (in dollars) in the United States for the Products and Services offered in connection with Applicant's Marks.

21. All documents identifying the Products and Services Applicant plans to sell, market or develop in the United States in connection with Applicant's Marks in the future.

22. Samples of promotional and advertising materials used or sold by Applicant in the United States, on which Applicant's Marks (alone or in connection with other elements) are printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

23. All promotional and advertising materials used or sold by Applicant in the United States, on which the term IPAY is emphasized, isolated or otherwise distinguished from the other elements of Applicant's Mark.

24. All communications relating or referring to, or concerning the significance of Applicant's Marks.

25. A representative sample of documents relating to the advertising in the United States of any Products or Services offered by Applicant in connection with Applicant's Marks.

26. A representative sample of documents relating to the promotion and marketing, including, but not limited to, point of sale and point of purchase materials, of any Products or

Services offered by Applicant in the United States in connection with Applicant's Marks.

27. All documents identifying the channels of trade through which Applicant intends to offer Services or sell Products in connection with Applicant's Marks in the United States.

28. All documents relating or referring to the targeted consumers for any Products or Services offered in connection with Applicant's Marks.

29. A listing of Applicant's intended customers in the United States for Products or Services offered in connection with Applicant's Marks.

30. A listing of Applicant's distributors in the United States of Products or Services offered in connection with Applicant's Marks.

31. A listing of all third parties licensed by Applicant to use Applicant's Marks in connection with Products or Services sold or marketed in the United States.

32. Samples of all marketing and promotional materials, including, without limitation, brochures, advertisements, pamphlets, manuals, service information sheets, and any other promotional merchandise or literature, on which Applicant's Marks have been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

33. All documents in Applicant's possession or control that refer or relate to Opposer or to Opposer's Mark.

34. All trademark searches, surveys, polls, consumer perception studies, focus group studies, market research studies, or other investigations, searches, studies, or reports that Applicant conducted, caused to be conducted, or obtained in connection with the selection of the Applicant's Marks.

35. All trademark searches, surveys, polls, consumer perception studies, focus group

studies, market research studies, or other investigations, searches, studies, or reports that include any reference to Opposer, Opposer's Mark, Applicant, or Applicant's Marks, and all documents that refer or relate to any such search, survey, poll, study, investigation or report.

36. All communications with any person other than Opposer concerning a dispute or potential dispute between Applicant and Opposer regarding trademark ownership rights in the United States.

37. All documents that constitute, evidence, reflect, describe, refer to, or relate to any confusion expressed or experienced by any person between Applicant's Marks and Opposer's Mark, or between any Products or Services offered in connection with Applicant's Marks and any Product or Service offered for sale under Opposer's Mark.

38. All documents identifying any domain names or websites owned or operated by Applicant that include the Applicant's Marks, or the term IPAY, alone or in combination with other elements.

39. All documents identifying any domain names or websites owned or operated by third parties through which Services are offered in connection with Applicant's Marks.

40. All documents on which Applicant intends to rely on in this proceeding, including all documents that Applicant intends to offer in evidence in this proceeding.

41. All documents identifying, any person whom Applicant intends to call as a fact or expert witness in this proceeding.

42. All documents Applicant has provided or shown to any person whom Applicant intends to call as a fact or expert witness in this proceeding.

43. All statements, affidavits, declarations, reports and communications Applicant has received from any person who is expected to give expert testimony as an expert witness on

behalf of Applicant in this proceeding.

44. All documents identified by Applicant in response to Opposer's First Set of Interrogatories served contemporaneously herewith.

45. All documents that Applicant contends are relevant to this proceeding.

46. All documents supporting the Affirmative Defense stated in Paragraph 14 of Applicant's Answer.

47. All documents supporting the Affirmative Defense stated in Paragraph 15 of Applicant's Answer.

48. All documents supporting the Affirmative Defense stated in Paragraph 16 of Applicant's Answer.

49. All documents supporting the Affirmative Defense stated in Paragraph 17 of Applicant's Answer.

Respectfully submitted,

/Jeffrey A. Lindenbaum/
Jeffrey A. Lindenbaum
Collen IP
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80 South Highland Avenue
Ossining, New York 10562
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(914) 941-6091 Fax
jlindenbaum@collenip.com
Attorney for Opposer

Dated: August 8, 2014

P1386_Opposer's First Set of Interrogatories_140804

CERTIFICATE OF SERVICE

I, Jeffrey A. Lindenbaum, hereby certify that I caused a true and correct copy of Opposer's First Set of Interrogatories, First Request for Production of Documents and First Set of Admissions to be served upon:

BARBARA H LOEWENTHAL
GOTTLIEB RACKMAN & REISMAN
270 MADISON AVE, FL 8
NEW YORK, NY 10016-0601
bloewenthal@grr.com

via first class mail, postage prepaid, and via email.

Said service having taken place this 8th Day of August, 2014.

/Jeffrey A. Lindenbaum/

ATTORNEY DOCKET NO. M896

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

HI MEDIA SA, Opposer, v. iPAY INTERNATIONAL SA, Applicant.	**Opposition No.: 91215251 (Parent)** Serial No.: 85/781,396 Mark: IPAYTAG Opposition No.: 91215253 Serial No.: 85/781,428 Mark: IPAYWALLET Opposition No.: 91215254 Serial No.: 85/781,458 Mark: BUY WITH IPAYWALLET

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Opposer, Hi Media SA ("Opposer"), through its undersigned counsel, hereby requests Applicant, iPay International SA ("Applicant"), within thirty (30) days after service of these requests to make the following admissions, pursuant to Fed. R. Civ. P. 36.

In answering these requests for admission, Applicant is required to admit or deny each request based on information as is available to Applicant and its agents, including information in the possession of Applicant's attorneys, investigators and other representatives. For each of these requests for admission to which Applicant responds by asserting that it lacks sufficient information and/or knowledge, state in detail the information required to answer said admission, and the steps taken by Applicant to investigate and/or obtain information in order to answer said admission request. These requests are deemed continuing and, to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by Applicant

subsequent to the service of answers hereto, Applicant is requested promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

Please note the instructions and definitions included in the Opposer's First Set of Interrogatories, served contemporaneously herewith, which are incorporated by reference and made a part hereof, as if fully stated herein.

REQUESTS

1. All documents produced by Applicant in response to Opposer's Request for the Production of Documents and Things in this proceeding are authentic pursuant to the Federal Rules of Evidence.

2. All documents produced by Applicant in response to Opposer's Request for the Production of Documents and Things in this proceeding are part of the business records of Applicant kept in the normal course of Applicant's business.

3. All documents produced by Applicant in response to Opposer's First Request for the Production of Documents and Things in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Applicant on the grounds of relevance.

4. Prior to the filing of its Application, Applicant did not use Applicant's Mark in the United States for any of the Products and Services listed in United States Trademark Application Serial Numbers 85/781,396, 85/781,428, and 85/781,458.

5. Prior to the filing of its Application, Applicant did not use Applicant's Mark in the United States for all of the Products and Services listed in United States Trademark Application Serial Numbers 85/781,396, 85/781,428, and 85/781,458.

6. Applicant does not use Applicant's Mark in the United States on the Products and Services listed in United States Trademark Application Serial Numbers 85/781,396, 85/781,428, and 85/781,458.

7. Prior to filing its Application, Applicant did not have an intent to use Applicant's Marks on each of the Products and Services listed in United States Trademark Application Serial Numbers 85/781,396, 85/781,428, and 85/781,458.

8. Applicant offers Products and Services under Applicant's Marks in the United States through similar channels of trade as the products and services Opposer offers under Opposer's Marks.

9. Applicant intends to offer Products and Services under Applicant's Marks in the United States through similar channels of trade as the products Opposer offers under Opposer's Mark.

10. Applicant offers Products and Services under Applicant's Marks in the United States to the same class of consumers as Opposer offers its products and services under Opposer's Mark.

11. Applicant intends to offer Products and Services under Applicant's Mark in the United States to the same class of consumers as Opposer offers its products and services under Opposer's Mark.

12. Applicant was aware of Opposer's Mark prior to adoption of Applicant's Marks.

13. Applicant was aware of Opposer's Mark prior to the use of Applicant's Marks.

14. Prior to Applicant's filing of the opposed application, Applicant was aware of Opposer.

15. The date of first use of Opposer's Mark pre-dates the use of Applicant's Marks.

16. The date of first use of Opposer's Mark pre-dates the filing date of Applicant's U.S Trademark Application Serial Nos. 85/781,396, 85/781,428, and 85/781,458.

17. Applicant is not challenging Opposer's priority in this Opposition.

18. Opposer's Mark is well-known in the United States.

19. Opposer's Mark is famous in the United States.

20. Opposer's Mark is highly distinctive.

21. Registration of Applicant's Marks is likely to confuse consumers as to the source, sponsorship and/or affiliation of Applicant's goods and services.

22. Opposer will be damaged by registration of Applicant's Marks.

23. Opposer has not acquiesced to Applicant's use or registration of Applicant's Marks.

24. Opposer's Mark and Applicant's Marks are confusingly similar.

25. Opposer's Mark and Applicant's Marks look the same.

26. Opposer's Mark and Applicant's Marks sound the same.

Respectfully submitted,

/Jeffrey A. Lindenbaum/
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Dated: August 8, 2014

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CERTIFICATE OF SERVICE

I, Jeffrey A. Lindenbaum, hereby certify that I caused a true and correct copy of Opposer's First Set of Interrogatories, First Request for Production of Documents and First Set of Admissions to be served upon:

BARBARA H LOEWENTHAL
GOTTLIEB RACKMAN & REISMAN
270 MADISON AVE, FL 8
NEW YORK, NY 10016-0601
bloewenthal@grr.com

via first class mail, postage prepaid, and via email.

Said service having taken place this 8th Day of August, 2014.

/Jeffrey A. Lindenbaum/