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Filing date: **06/04/2014**

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

Proceeding	91216077
Party	Defendant FUTURE PAYMENT TECHNOLOGIES, L.P.
Correspondence Address	JASON R. FULMER GARDERE WYNNE SEWELL LLP 1601 ELM ST STE 3000 DALLAS, TX 75201-4761 ip@gardere.com;jfulmer@gardere.com
Submission	Answer and Counterclaim
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Signature	/Kay Lyn Schwartz/
Date	06/04/2014
Attachments	Future PayTech - Answer and Counterclaim.pdf(247352 bytes)

Registration Subject to the filing

Registration No	4434614	Registration date	11/19/2013
International Re- gistration No.	NONE	International Re- gistration Date	NONE
Registrant	RevenueWire Inc. 102-3962 Borden Street Victoria, BC, V8P3H8 CANADA		

Goods/Services Subject to the filing

Class 036. First Use: 2013/06/00 First Use In Commerce: 2013/06/00 All goods and services in the class are requested, namely: credit service, namely, providing consumer credit and electronic payment services over various media including the telephone and the World Wide Web; providing revolving credit account services onlinebased on an instant approval mode and abusness to consumer model; providing credit services to businesses in a business to business model

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

REVENUE WIRE, INC. <p style="text-align: center;">Opposer,</p> v. FUTURE PAYMENT TECHNOLOGIES, L.P. <p style="text-align: center;">Applicant.</p>	§ § § § § §	<p style="text-align: center;">OPPOSITION No. 91216077</p> In the Matter of Trademark Application Serial Nos. 85/860,106 and 85/860,109 For the Marks: FUTURE PAYTECH and FUTURE PAYMENT TECHNOLOGIES
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ANSWER AND COUNTERCLAIM

Applicant Future Payment Technologies, L.P. ("***Applicant***") files this Answer and Counterclaim in response to Opposer Revenue Wire, Inc.'s ("***Opposer***") Notice of Opposition and would respectfully show the Board as follows:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of the first paragraph on page 1 of the Notice of Opposition and accordingly denies the same; Applicant denies the remainder of the allegations in the first paragraph on page 1 of the Notice of Opposition.

Applicant denies that Opposer has any grounds for this opposition. Further, to the extent that the heading appearing before ¶ 1 of the Notice of Opposition constitutes an allegation, Applicant denies the same.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 1 of the Notice of Opposition and accordingly denies the same.

2. Denied.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations in ¶ 3 of the Notice of Opposition and accordingly denies the same.

4. Denied.

5. Applicant denies that Opposer has any rights in and to the FUTUREPAY mark as alleged in ¶ 5 of the Notice of Opposition and accordingly denies the same; Applicant admits that it filed intent-to-use applications for the marks FUTURE PAYTECH and FUTURE PAYMENT TECHNOLOGIES and that those applications were published for opposition on February 25, 2014, but denies the remaining allegations alleged in ¶ 5 of the Notice of Opposition.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 6 of the Notice of Opposition and accordingly denies the same.

7. Denied.

8. Denied.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 9 of the Notice of Opposition and accordingly denies the same.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 10 of the Notice of Opposition and accordingly denies the same.

11. Denied.

12. Denied.

To the extent that the heading appearing before ¶ 13 of the Notice of Opposition constitutes an allegation, Applicant denies the same.

13. Admitted.

14. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 14 of the Notice of Opposition and accordingly denies the same. Denied.

15. Denied.

16. Denied.

Applicant denies the remainder of the allegations referenced in the WHEREFORE

paragraph following ¶ 15 of the Notice of Opposition.

AFFIRMATIVE AND OTHER DEFENSES

Applicant asserts the following affirmative and other defenses. Applicant does not intend hereby to assume the burden of proof with respect to those matters as to which, pursuant to law, Opposer bears the burden.

FIRST DEFENSE

Opposer's asserted trademark registration, and the alleged trademark rights associated therewith, are invalid, unenforceable and subject to cancellation on grounds including, but not limited to, that the designation "FUTUREPAY", when used on or in connection with the services of Opposer is merely descriptive of them.

SECOND DEFENSE

Upon information and belief, Opposer lacks standing to bring and maintain one or more of the claims asserted in its Notice of Opposition.

THIRD DEFENSE

Upon information and belief, Opposer's Notice of Opposition, in whole or in part, fails to state a claim for which relief can be granted.

COUNTERCLAIMS

Applicant, Future Payment Technologies, through its counsel, hereby asserts the following counterclaims ("Counterclaims") against Opposer:

Parties

1. Future Payment Technologies, L.P. is a limited partnership organized and existing under the laws of the State of Texas with a principal place of business located at 12700 Park Central Drive, Suite 1100, Dallas, Texas 75251.

2. Opposer, Revenue Wire Inc., has alleged that it is a corporation of Canada with its principal place of business at 102-3962 Borden Street, Victoria, BC V8P3H8, Canada.

Facts

3. On or about December 15, 2011, Opposer filed an application with the United States Patent and Trademark Office (“PTO”), assigned U.S. Application Serial No. 85/496,752 (“the ‘752 Application”) that requested registration of the designation “FUTUREPAY” as a trademark, asserting an intent to use the designation in U.S. commerce in connection with “credit service, namely, providing consumer credit and payment services over various media including the telephone and the World Wide Web; providing revolving credit accounts online based on an instant approval model, a B2C model and offering credits to businesses in a B2B model.”

4. The ‘752 Application was subsequently amended and on July 22, 2013, Opposer, through its counsel, submitted a Declaration under penalty of perjury, that the designation FUTUREPAY “is in use in commerce on or in connection with the following...services...: credit service, namely, providing consumer credit and electronic payment services over various media including the telephone and the World Wide Web; providing revolving credit account services online based on an instant approval mode and a business to consumer model.” Opposer also submitted in a sworn declaration, under penalty of perjury, that the designation FUTUREPAY was “first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/00/2013, and first used in commerce at least as early as 06/00/2013, and is now in use in such commerce.”

5. The PTO issued Registration No. 4,434,614 (“the ‘614 Registration”) for the designation “FUTUREPAY” for use in connection with “credit service, namely, providing consumer credit and electronic payment services over various media including the telephone

and the World Wide Web; providing revolving credit account services online based on an instant approval mode and a business to consumer model”

Cancellation of U.S. Reg. No. 4,434,614

6. Upon information and belief, the ‘614 Registration, and the alleged trademark rights associated therewith, are invalid, unenforceable and subject to cancellation on grounds including, but not limited to, that the designation FUTUREPAY is merely descriptive.

7. Applicant seeks cancellation of U.S. Reg. No. 4,434,614 because the designation “FUTUREPAY” is merely descriptive of the services set out in the registration.

PRAYER FOR RELIEF

WHEREFORE, Applicant, Future Payment Technologies, L.P., prays that the Board:

1. Dismiss all claims in Opposer's Notice of Opposition with prejudice and order that Opposer take nothing by way of this action;
2. Declare that Opposer's alleged trademark rights in and to the merely descriptive designation "FUTUREPAY" for services enabling consumers to pay in the future is invalid and unenforceable.
3. Cancel U.S. Trademark Registration No. 4,434,614; and
4. Grant Applicant such other and further relief as the Board deems just and proper.

Respectfully submitted,



Kay Lyn Schwartz
Jason R. Fulmer

Date: June 4, 2014

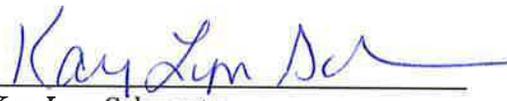
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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2014, I have served the foregoing Applicant's Answer and Counterclaims on counsel of record for Opposer as indicated below via first class mail correctly addressed to:

Michelle S. Katz
ADVITAM IP, LLC
160 N. Wacker Drive
Chicago, IL 60606
ATTORNEYS FOR OPPOSER



Kay Lyn Schwartz
Jason R. Fulmer