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

Proceeding	91219364
Party	Plaintiff The Smiley Company SPRL
Correspondence Address	STEVEN L BARON MANDELL MENKES LLC ONE NORTH FRANKLIN SUITE 3600 CHICAGO, IL 60606 UNITED STATES sbaron@mandellmenkes.com
Submission	Motion for Sanctions
Filer's Name	Steven L. Baron
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Signature	/s/ Steven L. Baron
Date	09/30/2015
Attachments	THE SMILEY COMPANY SPRL - Motion for Sanctions Against Applicant with Exhibits A-C.pdf(617929 bytes)

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

In the Matter of Serial No.: 86/152,603
For the Mark: SMILEY
Filed: December 26, 2013
Date of Publication: September 9, 2014

THE SMILEY COMPANY SPRL,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91219364
)	
SIMPLEDEAL, INC.)	
)	
Applicant.)	

OPPOSER’S MOTION FOR SANCTIONS AGAINST APPLICANT

Under Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §§ 411.02 and 411.05, Opposer Smiley Company SPRL (“Opposer”) requests this Court grant Opposer’s motion for sanctions against Applicant SimpleDeal, Inc. (“Applicant”) for failure of Applicant to respond to Opposer’s discovery requests. In support of its motion, Opposer states as follows:

1. On November 17, 2014, Opposer filed the above-captioned Notice of Opposition against Applicant for its registration of the mark SMILEY in Trademark and ServiceMark Application Serial No. 86/152,603 for goods and services in International Commerce Classes 9 and 35 (the “Application”) and corresponding proceedings before the Trademark Trial and Appeal Board (the “Board”).

2. On June 29, 2015, Opposer served interrogatories and requests for production of documents on Applicant. (See **Exh. A** attached hereto.) Applicant’s responses were due within 30 days of service of discovery, on July 28, 2015.

3. On August 26, 2015, Opposer's attorney requested that Applicant's attorney provide responses to Opposer's discovery requests. Applicant's attorney replied that he had not been in contact with Applicant and that he did not intend to respond to any of Opposer's discovery requests. (See **Exh. B** attached hereto.) On September 1, 2015, Opposer's attorney, Rebecca A. Edwards, conferred with Applicant's attorney by telephone, and Applicant's attorney explained that Applicant will not pursue the Application, and refused to answer Opposer's discovery requests. (See **Exh. C** attached hereto.)

4. TBMP §411.02 provides that a party seeking interrogatory responses or production of documents may seek immediate entry of sanctions for no response if the responding party has expressly informed the inquiring party that no response will be made to the discovery requests.

5. TBMP §411.05 provides that the Board may impose as a sanction, entry of judgment against the disobedient party for failure to provide disclosures or discovery under 37 CFR § 2.120(g)(which provides that "[i]f a party, or an officer, director, or managing agent of a party, ... fails to provide any response to a set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney or other authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in paragraph (g)(1) of this section.")

6. 37 CFR § 2.120(g)(1) provides: that "... the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure."

Fed. R. Civ. Pro. 37(b)(2) provides that as a sanction, a court may dismiss an action or proceeding in whole or in part; or render a default judgment against the disobedient party.

WHEREFORE, Opposer The Smiley Company SPRL, prays this Court enter an order (a) sustaining Opposer's Notice of Opposition and (b) denying Applicant's registration of the mark SMILEY in Trademark and Service Mark Application Serial No. 86/152,603, as sanctions against Opposer for not responding to discovery requests under Trademark Trial and Appeal Board Manual of Procedure §411.05.

Respectfully submitted,

THE SMILEY COMPANY SPRL

Date: September 30, 2015

By: /s/ Steven L. Baron
Attorney for Opposer

Steven L. Baron
Natalie A. Harris
Rebecca A. Edwards
Mandell Menkes LLC
One North Franklin St., Suite 3600
Chicago, IL 60606
(312) 251-1000

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a copy of Opposer's Motion for Sanctions against Applicant has been served upon all parties, at their address on record, by First-Class Mail and electronic mail on September 30, 2015:

Vic Y. Lin
Innovation Capital Law Group, LLP
19800 MacArthur Boulevard, Suite 270
Irvine, California 92612
VLin@icaplaw.com

Attorney for Applicant
SimpleDeal, Inc.

/s/ Steven L. Baron

EXHIBIT A

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

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Applicant.)	

**OPPOSER'S FIRST SET OF INTERROGATORIES TO
APPLICANT SIMPLEDEAL, INC.**

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 405, Opposer Smiley Company SPRL hereby propounds its first set of interrogatories, to be answered by Applicant SimpleDeal, Inc., within thirty (30) days of service hereof.

DEFINITIONS

For purposes of these Interrogatories, the following definitions apply:

1. "Applicant," "SimpleDeal," "you," or "your" means Applicant SimpleDeal, Inc. and any person or entity acting on your behalf or at your direction.
2. "Opposer" or "TSC" means Opposer Smiley Company SPRL, including its affiliates, officers, directors, employees, agents, predecessors, and assigns.
3. The term "Opposer's Marks" means Opposer's "SMILEY" marks that are the basis for this Opposition.

4. The term “Applicant’s Mark” means “SMILEY”, and/or any mark, name or logo consisting of either the design or word element of “SMILEY”, alone, or in combination with any other element.

5. The term “Goods and Services” means Applicant’s downloadable mobile applications for use in searching location specific consumer information related to the goods and services of others, and promoting the goods and services of others through the website located at <http://www.simpledealapp.com/> featuring coupons, price comparisons, product reviews and special offers for the goods and services of others.

6. “Notice of Opposition” or “Opposition” means the above-captioned Notice of Opposition filed in this action by Opposer against Applicant on November 17, 2014 and corresponding proceedings before the Trademark Trial and Appeal Board.

7. “Requests” means Opposer’s First Set of Requests For Production of Documents in this Opposition.

8. The term “person” means any individual, corporation, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, or other entity.

9. “Document” means any written, recorded or graphic matter, whether in tangible physical form or digital form, however produced or reproduced, including all non-identical copies containing notations not contained on the original thereof, and including all digitally stored material, including but not limited to Documents resulting from computer programs, database files, electronic mail, miscellaneous files or file fragments and any other digital material stored on optical media (such as CD, DVD, and BluRay), digital and magnetic tapes, hard-discs, cloud-based data storage systems, storage area network (SAN) data, solid state media, or data

stored in cellular phones, smart phones, or other portable electronic devices, together with the software and any other materials or hardware necessary to view and understand the materials.

10. “Communication” means any oral or written statement transmitted by Person(s) to other Person(s), including Documents.

11. The phrases “relate to,” “related to,” “in relation to,” or “relating to” means constitute, comprise, set forth, show, disclose, describe, explain, summarize, pertain to, concern, refer to, consist of, reflect on, evidence, support, compose, arise out of, or in any way or manner legally, factually, or logically connect with the matter discussed, directly or indirectly.

12. Any undefined term herein shall be interpreted in the broadest manner possible, so as to make the language inclusive rather than exclusive. For example, the terms “all” and “each” shall both be construed to include the other term, the terms “and” and “or” shall both be construed to include the other term, the use of the singular form of any word shall also include the plural and vice versa, and the past tense shall be construed to include the present tense and vice versa.

13. The terms “identify,” “identity,” “identification,” “describe,” and “description” shall have the following meanings when used in the following contexts:

- (1) With Respect to Persons. Give, to the extent known, the person’s full name; present or last known address; and, when referring to a natural person, present or last known telephone number, and the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

- (2) With Respect to Documents. Provide the location and possessor of the document; its date; its author; its addressee or recipient; a description of the document with sufficient particularity so that it may be identified in a request for production of documents; and an indication whether such document will be produced without a further request for production of documents.
- (3) With Respect to Events. State, to the extent known, all facts known by Applicant pertaining to such event; descriptions of all documents concerning the event; all persons with personal knowledge of the events described; all persons who were present for the event; and all dates relevant to the event.
- (4) With Respect to Communications. List the participants, date, location, subject matter, method of communication, and substance of each such communication, meeting, act, or event.

15. In lieu of identifying a document or thing, you may respond by supplying a copy thereof and by designating each document as responsive to the particular interrogatory calling for its identification.

INSTRUCTIONS

A. In answering these interrogatories, you are to rely on any information that is known or available to you or within your possession or control, including information in the possession of your accountants and attorneys or other persons acting on your behalf or under your accountants' or attorneys' employment or direction.

B. If you cannot respond to any interrogatory fully and completely after exercising due diligence to make inquiries and secure documents necessary to do so, so state, and respond to each such interrogatory to the fullest extent you deem possible; specify the portion of such

interrogatory that you claim you are unable to answer fully and completely; state the facts on which you rely to support your contention that you are unable to respond to such fully and completely; and state what knowledge, information and/or belief you have concerning the unanswered portion of such Interrogatory.

C. If any information sought by these interrogatories is being withheld under a claim of privilege, provide a statement that sets forth the following information in sufficient detail for the court to be able to rule on the claim of privilege:

- (1) The privilege or privileges asserted;
- (2) The place, approximate date, and manner of recording any document related to the asserted privilege;
- (3) The name and title of the sender and the name and title of the recipient of the document;
- (4) The name and title of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the document.

D. These interrogatories are continuing and you are required to supplement each answer, if necessary, until the conclusion of the litigation.

E. If you object to any interrogatory on the basis of burdensomeness, then in connection with the objection please do the following:

- (1) Respond to as great a degree as can be done without undue burden;
- (2) State the basis for each objection with particularity including:
 - (a) A description of the process or method required to obtain an answer to the interrogatory; and
 - (b) The estimated cost and time required to answer the interrogatory.

F. The timeframe covered by these Interrogatories is January 1, 2013 through the present unless otherwise indicated.

INTERROGATORIES

1. Identify by name, employer, job title or position, address, and telephone number each person who provided information for, or who was consulted in the preparation and

formulation of these responses to interrogatories and include as part of the identification the specific answers each identified person contributed to in any respect.

2. Identify all persons with knowledge of any facts related to the allegations in the Opposition and Applicant's Answer and Affirmative Defenses and for each person state with particularity the substantive area(s) of knowledge.

3. Identify each person employed by Applicant, or each outside agency, agent, vendor or contractor retained by Applicant, who has been, or now is responsible for the following activity with respect to any Goods and Services intended to be offered or rendered or actually offered or rendered under or in connection with Applicant's Mark:

- a. Marketing;
- b. Advertising and promotion; and
- c. Bookkeeping and accounting.

4. Identify all facts related to the conception, selection, and adoption of Applicant's Mark including, without limitation, the date on which Applicant decided to adopt Applicant's mark, the circumstances and method by which Applicant adopted Applicant's Mark, and the reasons why any proposed marks or names, if any, were rejected.

5. Identify every instance in which the Applicant's Mark has been used under or in connection with the sale of Goods and Services, marketing, or other advertising.

6. Identify each Goods and Services that Applicant offers, has offered, or intends to offer for sale under or in connection with Applicant's Mark.

7. Identify any person to whom Applicant has ever licensed, or with whom Applicant has engaged in communications regarding licensing, assigning or otherwise granting rights, to use Applicant's Mark.

8. Identify the date and circumstances under which Applicant first became aware of one or more of Opposer's Marks.

9. Identify each communication (oral or written) received by or known to Applicant which suggests, implies or infers that Applicant and/or his affiliates may be connected or associated with Opposer and/or Opposer's Marks, or which inquires as to whether there is or may be such a connection or association. For each communication, identify:

- a. The date(s) you received each inquiry;
- b. The name and address of each individual making the inquiry;
- c. Applicant's response(s) to the inquiry; and
- d. All documents that reflect, refer, or relate to any such inquiry.

10. Identify all instances where a person has been confused, mistaken, and/or deceived as to whether any Goods and Services advertised or sold under or in connection with Applicant's Mark were those of Opposer, or whether any Goods and Services advertised or sold under or in connection with Opposer's Marks were those of Applicant, and for each such instance provide:

- a. The date(s) of each instance;
- b. Identity of the person or entity;
- c. A detailed description of the circumstances of such confusion, mistake or deception; and
- d. All documents that reflect, refer, or relate to each instance.

11. Identify all advertising and/or marketing efforts undertaken by Applicant or Applicant's licensee(s) that utilize the Applicant's Mark, including, but not limited to, a list of all advertising materials placed with any organization for purposes of advertising, and the dates,

places, and media in which any Goods and Services or product offered by Applicant was advertised, marketed, or promoted.

12. Identify the dollar amount of the monthly sales (projected and actual) of Applicant's Goods and Services offered under or in connection with Applicant's Mark.

13. Identify the dollar amount of advertising expenditures (projected and actual) made in connection with all Goods and Services offered under or in connection with Applicant's Mark.

14. Identify the channels of trade through which Applicant's Mark is used or intended to be used, including the geographic area by city, state, and territory or possession in which Applicant's Mark is used, the geographical reach of each channel, and the approximate percentage of total sales (actual and projected) of Goods and Services offered under or in connection with Applicant's Mark through each channel.

15. Identify all customers who have purchased or intend to purchase Goods and Services offered under or in connection with Applicant's Mark.

16. Identify all books, media articles, programs, segments or stories related to Applicant's Mark and/or or Goods and Services offered under or in connection with Applicant's Mark published including, author, publisher and date of publication.

17. Identify the target audience and intended market for all Goods and Services marketed under or in connection with Applicant's Mark.

18. Identify all persons Applicant intends to use to provide opinion testimony on any issue, including, but not limited to, the issues of liability and damages. For each person identified, state or identify (a) the subject matter upon which the witness is expected to testify; (b) the conclusions and opinions of the witness as well as the basis for any opinion or conclusion; (c) the qualifications of the witness to provide the opinions or conclusions; (d) all

reports or statements generated by the witness; and (e) each and every case in which the witness was retained, gave a deposition, or testified at trial, and for each matter listed, include the case name and court number, the jurisdiction, and year the action or proceeding was filed.

Respectfully submitted,

THE SMILEY COMPANY SPRL

Date: June 29, 2015

By: /s/ Steven L. Baron
Attorney for Opposer

Steven L. Baron
Natalie A. Harris
Rebecca A. Edwards
Mandell Menkes LLC
One North Franklin St., Suite 3600
Chicago, IL 60606
(312) 251-1000

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of Opposer's First Set of Interrogatories to Applicant SimpleDeal, Inc. has been served upon all parties, at their address on record, by First-Class Mail and electronic mail on June 29, 2015:

Vic Y. Lin
Joseph G. Chu
Innovation Capital Law Group, LLP
19800 MacArthur Boulevard, Suite 270
Irvine, California 92612
VLin@icaplaw.com
jchu@icaplaw.com

*Attorneys for Applicant
SimpleDeal, Inc.*

/s/ Steven L. Baron

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

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v.)	Opposition No. 91219364
)	
SIMPLEDEAL, INC.)	
)	
Applicant.)	

**OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
APPLICANT SIMPLEDEAL, INC.**

Pursuant to Federal Rule of Civil Procedure 34 and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 406, Opposer Smiley Company SPRL hereby requests that Applicant SimpleDeal, Inc. produce at the offices of Mandell Menkes LLC, One North Franklin, Suite 3600, Chicago, Illinois, within thirty (30) days of service hereof, the following documents and tangible things.

DEFINITIONS

For purposes of these Requests for Production of Documents, the following definitions apply:

1. “Applicant,” “SimpleDeal,” “you,” or “your” means Applicant SimpleDeal, Inc. and any person or entity acting on your behalf or at your direction.
2. “Opposer” or “TSC” means Opposer Smiley Company SPRL, including its affiliates, officers, directors, employees, agents, predecessors, and assigns.

3. The term “Opposer’s Marks” means Opposer’s “SMILEY” marks that are the basis for this Opposition.

4. The term “Applicant’s Mark” means “SMILEY”, and/or any mark, name or logo consisting of either the design or word element of “SMILEY” alone, or in combination with any other element.

5. The term “Goods and Services” means Applicant’s downloadable mobile applications for use in searching location specific consumer information related to the goods and services of others, and promoting the goods and services of others through the website located at <http://www.simpledealapp.com/> featuring coupons, price comparisons, product reviews and special offers for the goods and services of others.

6. “Notice of Opposition” or “Opposition” means the above-captioned Notice of Opposition filed in this action by Opposer against Applicant on November 17, 2014 and corresponding proceedings before the Trademark Trial and Appeal Board.

7. “Interrogatories” means Opposer’s First Set of Interrogatories to Applicant in this Opposition.

8. The term “person” means any individual, corporation, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, or other entity.

9. “Document” means any written, recorded or graphic matter, whether in tangible physical form or digital form, however produced or reproduced, including all non-identical copies containing notations not contained on the original thereof, and including all digitally stored material, including but not limited to Documents resulting from computer programs, database files, electronic mail, miscellaneous files or file fragments and any other digital material stored on optical media (such as CD, DVD, and BluRay), digital and magnetic tapes, hard-discs,

cloud-based data storage systems, storage area network (SAN) data, solid state media, or data stored in cellular phones, smart phones, or other portable electronic devices, together with the software and any other materials or hardware necessary to view and understand the materials.

10. “Communication” means any oral or written statement transmitted by Person(s) to other Person(s), including Documents.

11. The phrases “relate to,” “related to,” “in relation to,” or “relating to” means constitute, comprise, set forth, show, disclose, describe, explain, summarize, pertain to, concern, refer to, consist of, reflect on, evidence, support, compose, arise out of, or in any way or manner legally, factually, or logically connect with the matter discussed, directly or indirectly.

12. Any undefined term herein shall be interpreted in the broadest manner possible, so as to make the language inclusive rather than exclusive. For example, the terms “all” and “each” shall both be construed to include the other term, the terms “and” and “or” shall both be construed to include the other term, the use of the singular form of any word shall also include the plural and vice versa, and the past tense shall be construed to include the present tense and vice versa.

INSTRUCTIONS

A. Opposer requests that Applicant produce documents and electronically stored information in response to these requests in native format, with all metadata intact.

B. In answering these Requests, the Applicant is to produce any document that is known or available to the Applicant or within its possession or control, including documents in the possession of Applicant’s accountants and attorneys or other persons acting on Applicant’s behalf or under Applicant’s accountants’ or attorneys’ employment or direction.

C. If there is any document or thing which Applicant refuses to produce, on grounds of privilege or work product immunity, or if a document or thing once existed but can no longer be located or has been lost or destroyed, identify the document or thing generally, and give its approximate date, the names of the persons who prepared the document or thing, the names of the persons to whom the document or thing was distributed, the nature of the privilege or other ground for nondisclosure, and the facts giving rise to the privilege or other ground for nondisclosure, in sufficient detail for a court to be able to determine the validity of the privilege claim or other ground for nondisclosure.

D. If the response to any request consists, in whole or in part, of any objection relating to burdensomeness, then with respect to such response:

- a. Provide such documents or things as can be produced without undue burden;
- b. State with particularity the basis for such objection including:
 - i. A description of the process or method required to obtain any document or thing responsive to the request; and
 - ii. The estimated cost and time required to obtain any document or thing responsive to the request.

E. In producing documents and things, Applicant is to produce them as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to what request they are responsive.

F. The timeframe covered by these Requests is January 1, 2013 through the present unless otherwise indicated.

REQUESTS FOR PRODUCTION

1. All documents referenced, identified or referred to, in your responses to the Interrogatories or relied upon in connection with the preparation of those responses.

2. All documents related to Applicant's conception, development, selection, or adoption of the Applicant's Mark, including, but not limited to, documents reflecting discussions (either oral or written) regarding the SMILEY element of Applicant's Mark and any alternatives proposed or considered.

3. All trademark search reports conducted to determine the extent of third-party use of marks similar to Applicant's Mark or alternative marks proposed or considered by Applicant.

4. All documents relating to the dates of the first use of the Applicant's Mark on or in connection with a product and/or service.

5. Documents sufficient to identify all Goods and Services in connection with which Applicant uses and/or intends to use Applicant's Mark and/or any designation that includes the term SMILEY.

6. All documents that refer to, identify, or describe any instances in which any person has inquired of Applicant whether there was/is a relationship, connection, or affiliation between Applicant and Opposer and/or the Goods and Services offered by Applicant and Opposer.

7. All documents that refer to, identify, demonstrate, evidence, or describe any instances of actual confusion between Applicant and Opposer and/or the Goods and Services offered by Applicant and Opposer.

8. All documents involving any customer (or potential customer) of Applicant that expresses a complaint, criticism, dissatisfaction with, grievance, and/or objections about the quality, characteristics, attributes, and/or condition of the Applicants' Goods and Services.

9. All documents that refer to, identify, or describe the date and circumstances under which Applicant first became aware of Opposer and/or one or more of Opposer's Marks.

10. All documents in Applicant's possession or control that refer or relate to Opposer or Opposer's Marks.

11. Any and all state trademark or service mark applications and/or registrations filed by or on behalf of Applicant under or in connection with the Marks or Applicant's Mark and all documents referring or relating to any such registration or attempts to register.

12. Any and all domain name applications and/or registrations filed by or on behalf of Applicant in connection with the Marks or Applicant's Mark, and all documents referring or relating to any such registration or attempts to register.

13. Documents sufficient to identify each and every separate type of use by Applicant of the Applicant's Mark in relation to Applicant's Goods and Services, including but not limited to advertisements, forms, letterhead, business cards, vehicles, or signage (regardless of geographical location).

14. All documents sufficient to identify the types and classes of consumers to whom and the markets and channels of trade through which Applicant has marketed, offered for sale, or sold Goods and Services identified under the Applicant's Mark.

15. All documents and/or communications between or on behalf of Applicant and any third party relating to licensing of Applicant's Mark.

16. Documents sufficient to identify the amount of sales (actual and/or projected) by calendar quarter of all Goods and Services sold by Applicant or licensee(s) under or in connection with the Applicant's Mark.

17. All licensing agreements related to Applicant's Mark.

18. All documents sufficient to establish the number of customers and/or retailers that purchased Goods and Services marketed and/or sold under the Applicant's Mark.

19. Documents sufficient to identify the sales, income, receipts, profits, losses, capital expenditures, investments and financing related to Applicant's Goods and Services.

20. All Documents that record, refer to or relate to sales by or on behalf of Applicant of any Goods and Services under or in connection with Applicant's Mark including, without limitation, all purchase orders, invoices, receipts, contracts, agreements, and/or sales summaries, product or service sold or offered for sale, intended to be sold or intended to be offered for sale under or in connection with the Applicant's Mark, including any samples delivered or made available to purchasers and potential purchasers.

21. All documents relating to Applicant's creation of characters for www.simpledealapp.com.

22. All documents relating to Applicant's past and present efforts to promote or expand public awareness of the Applicant's Mark and/or Goods and Services marketed or sold utilizing the Applicant's Mark, including but not limited to amounts spent on such efforts.

23. Copies of all books, media articles, programs, segments or stories related to Applicant's Mark and/or Applicant's Goods and Services created including, date of publication, if applicable.

24. A copy of each advertising, marketing, or promotional document ("Promotional Materials") related to Goods and Services offered for sale under or in connection with Applicant's Mark including but not limited to Promotional Materials designed for or appearing in or on digital platforms (including websites, e-mail, social media, text messaging), catalogs, circulars, leaflets, direct mail pieces, brochures, point of sale pieces, press releases, marketing newspaper and magazine advertisements and articles, transcripts, and audio recordings for

television or radio advertisements, and transcripts and video recordings of television advertisements.

25. All documents related to the media placement of all Promotional Materials identified in response to Request No. 24.

26. Documents sufficient to identify Applicant's advertising and promotional expenditures (including expected advertising and promotional expenditures) for any Goods and Services offered under or in connection with the Applicant's Mark.

27. Produce each of the following:

- a. Federal tax returns, including all schedules and attachments thereto;
- b. State tax returns, including all attachments and schedules;
- c. Audited and unaudited, formal and informal, financial statements whether annual, quarterly or otherwise, including, without limitation, balance sheets, profit and loss statements, investment records, statements of net worth, financial ledgers, books of account, and other, similar financial statements of any kind or nature; Audited and unaudited, formal and informal, financial reports whether annual, quarterly or otherwise, submitted to owners, investors, lenders or providers of funds on any basis, or governmental agencies or entities;
- d. shareholder agreements;
- e. Buy/Sell Agreements;
- f. Loan Documents or other agreements pursuant to which you, alone or in conjunction with any other Person, are liable to advance or repay funds on any basis; and
- g. Guaranties or other agreements of any kind by which you, alone or in

conjunction with any other Person, were, are or may be liable or obligated to provide funds

28. All financial statements, budgets, audits, or other documents, whether formal or informal, reflecting or relating to the financial condition of any business related to Applicants Goods and Services, including without limitation any of the following:

- a. Quarterly and annual financial statements;
- b. Quarterly and annual balance sheets;
- c. Quarterly and annual profit and loss statements;
- d. Quarterly and annual statements of cash flows;
- e. Quarterly and annual statements of operations;
- f. Quarterly and/or annual returns, reports, or other filings submitted by you to any governmental taxing authority or any other governmental authority; and
- g. Mortgage, credit card or loan applications.

Respectfully submitted,

THE SMILEY COMPANY SPRL

Date: June 29, 2015

By: /s/ Steven L. Baron
Attorney for Opposer

Steven L. Baron
Natalie A. Harris
Rebecca A. Edwards
Mandell Menkes LLC
One North Franklin St., Suite 3600
Chicago, IL 60606
(312) 251-1000

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of Opposer's First Set of Requests for Production of Documents to Applicant SimpleDeal, Inc. has been served upon all parties, at their address on record, by First-Class Mail and electronic mail on June 29, 2015:

Vic Y. Lin
Joseph G. Chu
Innovation Capital Law Group, LLP
19800 MacArthur Boulevard, Suite 270
Irvine, California 92612
VLin@icaplaw.com
jchu@icaplaw.com

*Attorneys for Applicant
SimpleDeal, Inc.*

/s/ Steven L. Baron

EXHIBIT B

Rebecca A. Edwards

From: Vic Lin <vlin@icaplaw.com>
Sent: Wednesday, August 26, 2015 8:32 PM
To: Rebecca A. Edwards
Cc: Steven L. Baron; Karen Meier
Subject: RE: Smiley's discovery - SimpleDeal

Rebecca,

Joe is no longer with our firm. We have not been in contact with the client and do not intend to respond to the discovery requests.

Feel free to contact me if you have any other questions.

Thanks.

Vic Lin

Patent Attorney | Managing Partner

Innovation Capital Law Group, LLP

19800 MacArthur Blvd., Suite 270, Irvine, CA 92612

Direct: 949.223.9623 | @myipattorney | [linkedin.com/in/linvic/en](https://www.linkedin.com/in/linvic/en)

From: Rebecca A. Edwards [mailto:redwards@mandellmenkes.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Joseph Chu
Cc: Vic Lin; Steven L. Baron
Subject: RE: Smiley's discovery - SimpleDeal

Joe,

We have not received responses to Smiley's interrogatories and requests for production of documents, which were due over a month ago.

Please let us know when to expect responses.

Rebecca A. Edwards | Mandell Menkes LLC

One North Franklin, Suite 3600

Chicago, Illinois 60606

(312) 251-1016 phone | (312) 759-2765 fax

redwards@mandellmenkes.com | www.mandellmenkes.com

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From: Rebecca A. Edwards
Sent: Monday, June 29, 2015 11:19 AM
To: 'Joseph Chu'

Cc: vlin@icaplaw.com; Steven L. Baron
Subject: Smiley's discovery - SimpleDeal

Joe,

Attached are Smiley's interrogatories and requests for production of documents.

Rebecca A. Edwards | Mandell Menkes LLC
One North Franklin, Suite 3600
Chicago, Illinois 60606
(312) 251-1016 phone | (312) 759-2765 fax
redwards@mandellmenkes.com | www.mandellmenkes.com

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From: Joseph Chu [<mailto:jchu@icaplaw.com>]
Sent: Tuesday, June 09, 2015 7:18 PM
To: Rebecca A. Edwards
Cc: Steven L. Baron; processing@icaplaw.com
Subject: RE: SIM1.TTB.01 RE: TSC v Simple Deal

Hi Rebecca:

Unfortunately, we have not received any instructions from our client.

Joseph Chu
Registered Patent Attorney
Innovation Capital Law Group, LLP
19800 MacArthur Boulevard, Suite 270
Irvine, CA 92612
USA

Tel: 949.954.5430
Fax: 949.954.8528
Email: jchu@icaplaw.com
Website: www.icaplaw.com
LinkedIn: www.linkedin.com/in/joegchu
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From: Rebecca A. Edwards [<mailto:redwards@mandellmenkes.com>]
Sent: Tuesday, June 09, 2015 11:42 AM

EXHIBIT C

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

In the Matter of Serial No.: 86/152,603
For the Mark: SMILEY
Filed: December 26, 2013
Date of Publication: September 9, 2014

THE SMILEY COMPANY SPRL,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91219364
)	
SIMPLEDEAL, INC.)	
)	
Applicant.)	

DECLARATION OF REBECCA A. EDWARDS

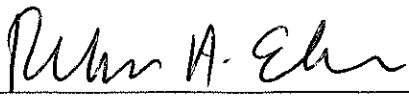
I, Rebecca A. Edwards, declare on oath that I have personal knowledge of the facts set forth below, and, if called as a witness in this matter, would testify to the following:

1. I am an attorney duly licensed to practice in the State of Illinois and am an associate attorney at the law firm Mandell Menkes LLC. I am one of the attorneys representing Opposer The Smiley Company SPRL (“Opposer”) in the above-captioned matter.

2. On September 1, 2015, I spoke with counsel for Applicant SimpleDeal, Inc. (“Applicant”), Vic Y. Lin. During that telephone call, Mr. Lin explained that Applicant will not pursue the application at issue in the above-captioned matter, and informed me that Applicant refuses to answer Opposer’s discovery requests.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

Dated: September 30, 2015



Rebecca A. Edwards