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

Proceeding	91266802
Party	Plaintiff ITS, Inc.
Correspondence Address	CLINTON G. NEWTON SHOOK, HARDY & BACON L.L.P. 2555 GRAND BLVD. KANSAS CITY, MO 64108 UNITED STATES Primary Email: cgntmdocket@shb.com 816-474-6550
Submission	Other Motions/Submissions
Filer's Name	Clinton G. Newton
Filer's email	cgntmdocket@shb.com
Signature	/CGN #42,930/
Date	12/06/2021
Attachments	2021-12-06 - ITS Motion to Extend_Suspend_Quash 4872-3864-1413 v3.pdf (58704 bytes) 2021-12-06 - ITS Motion to Extend_Suspend_Quash - Exhibits A-E.pdf(473765 bytes)

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

In the matter of: Trademark Application Serial No. 88/891,706



For the Mark:

Published in the Official Gazette: September 1, 2020

ITS, Inc.,

Opposer,

v.

Opposition No. 91266802
Serial No. 88/891,706

Sezzle Inc.,

Applicant.

**ITS' OPPOSED MOTION TO EXTEND FACT DISCOVERY,
SUSPEND DEADLINES, AND QUASH SEZZLE'S 30(B)(6) NOTICE**

Pursuant Federal Rule of Civil Procedure 6(b) and 37 C.F.R. §§ 2.116(a), 2.117(c), ITS, Inc. ("ITS") moves the Board for an order extending fact discovery in this matter for the limited purpose of allowing ITS to depose Sezzle on the topics set forth in ITS' timely-served 30(b)(6) notice and to suspend all other deadline pending the completion of this deposition. In addition, ITS moves pursuant to TMBP § 521 to quash as untimely the 30(b)(6) deposition notice that Sezzle served on ITS on the eve of the discovery deadline.

I. INTRODUCTION

Fact discovery in this case closes today. ITS served document requests and a 30(b)(6) deposition notice well before the close of fact discovery in this case. In response, Sezzle agreed to produce documents and make a witness available for deposition. Nonetheless, Sezzle has still failed to produce any documents in this matter, identify the date that it will produce responsive documents, identify the date it will formally respond to ITS' 30(b)(6) notice, and identify the date

it will make a witness available for deposition. Accordingly, the Board should grant ITS' motion to extend the fact discovery period in this matter for the limited purpose of allowing ITS to depose Sezzle on the topics set forth in ITS' timely-served 30(b)(6) notice and to suspend all other deadlines pending completion of this deposition. In addition, on Friday, December 3, 2021, at 5:15 p.m., Sezzle served a 30(b)(6) deposition notice on ITS for Monday, December 6, 2021 at 9:00 a.m. This notice is wholly untimely and the Board should accordingly grant ITS' motion to quash this notice.

II. FACTS

Fact discovery closes today in this matter. Doc. 7 at 1. Well before this deadline, ITS served document requests and a 30(b)(6) notice on Sezzle. In particular, ITS served its document requests on October 22, 2021 (over six weeks before the close of discovery), and its 30(b)(6) notice on November 17, 2021 (over two weeks before the close of discovery). Ex. A at 10-11; Ex. B at 2. Sezzle confirmed that it would produce documents in response to ITS's requests and would formally respond to and make a witness available on ITS's 30(b)(6) notice. Ex. C at 2-10; Ex. D at 1-2. Over the past weeks, ITS unsuccessfully attempted to secure from Sezzle a date certain regarding its document production, formal response to ITS's 30(b)(6) notice, and available deposition dates. Ex. D at 1-3. On Friday, December 3, 2021 at 5:15 p.m., Sezzle served ITS with a 30(b)(6) deposition notice for Monday, December 6, 2021 at 9:00 a.m., the same date and time that ITS had noticed up for its 30(b)(6) deposition of Sezzle weeks ago and was subsequently told by Sezzle that Monday, December 6th was not available for the deposition. Ex. E; Ex. D at 3. As of the filing of the current motion on December 6, 2021, Sezzle has still failed to provide the date(s) that it will produce documents, formally respond to ITS's 30(b)(6) notice, and make a witness available on the topics set forth in this notice.

III. GOOD CAUSE SUPPORTS EXTENDING THE FACT-DISCOVERY DEADLINE

ITS requests that the Board extend the fact-discovery deadline in this case solely to allow ITS to depose Sezzle on the topics set forth in ITS's timely-served 30(b)(6) notice and to suspend all other deadlines until this deposition is completed. A party moving for an extension of time and/or to suspend prior to the expiration of the period in which an act must be done must show good cause for the requested extension and/or suspension. Fed. R. Civ. P. 6(b)(1)(A); 37 C.F.R. § 2.117(c); *see also* TBMP § 509.01. Here, good cause exists for this limited extension and to suspend all other deadlines. Discovery in this proceeding is set to close today, Monday, December 6, 2021. Doc. 7 at 1. On October 22, 2021, and November 17, 2021, respectively, ITS timely served document requests and a 30(b)(6) notice on Sezzle. Exs. A and B. Sezzle confirmed that it would produce documents in response to ITS's requests and formally respond to and make a witness available on ITS's 30(b)(6) notice. Ex. C.; Ex. D at 1-3. As of the filing of this motion on December 6, 2021, however, Sezzle has still failed to provide the specific date(s) when it will produce documents and respond to and make a witness available on ITS's 30(b)(6) notice.

As the Board has made clear "the delay caused by an adversary that fails to timely respond to discovery . . . will constitute good cause for an extension of the discovery period." *Besurance Corp. v. WeSure Ins. Co.*, No. 91255768, 2021 WL 2287001, at * (T.T.A.B. May 26, 2021); *see also* *Miss Am. Pageant v. Petite Prods., Inc.*, No. 17,975, 1990 WL 354560, at *4 (T.T.A.B. Aug. 14, 1990) (noting that the "Board will, upon motion, reopen or extend discovery solely for benefit of party who was unfairly deprived of follow-up discovery by opponent who wrongfully refused to answer or delayed responses to discovery). Here, ITS's request for a limited extension of the fact discovery period is not the result of ITS's own failure to initiate discovery in time to be completed before the close the fact discovery but rather the result of Sezzle's failure to timely respond to this discovery.

Accordingly, for good cause shown, the Board should grant ITS's request to extend the fact-discovery deadline in this matter for the limited purpose of allowing ITS to depose Sezzle on the topics set forth in its 30(b)(6) notice and to suspend all other deadlines until this deposition occurs. *See, e.g., Besurance Corp.*, 2021 WL 2287001, at *6 (finding good cause to grant opposer's request for a limited extension of the discovery period where applicant's delay in responding to opposer's timely-served discovery necessitated the request); *Edge Games Inc. v. Razer (Asia-Pacific) PTE Ltd.*, No. 9205854, 2015 WL 9913827, at *6 (T.T.A.B. Sept. 25, 2015) (finding good cause to grant discovery extension only to respondent where petitioner failed to timely serve discovery responses). Further, the deposition should not be required to take place until at least a week after Sezzle has produced documents responsive to ITS's document requests.

IV. THE BOARD SHOULD QUASH SEZZLE'S 30(B)(6) NOTICE AS UNTIMELY

ITS also moves the Board for an order quashing as untimely Sezzle's 30(b)(6) deposition notice of ITS. Sezzle served ITS with a 30(b)(6) notice at 5:15 p.m. on Friday, December 3rd and noticed that deposition for Monday, December 6, 2021 at 9 a.m. – the last day of fact discovery. Ex. E. The Board has consistently quashed deposition notices, such as this, which are served on the eve of the fact-discovery deadline. *See, e.g., Nat'l Football League v. DNH Mgmt., LLC*, No. 91176569, 2008 WL 258323, at *3 (T.T.A.B. Jan. 29, 2008) (quashing as untimely 30(b)(6) deposition notice served on the last day of the discovery period); *Gaudreau v. Am. Promotional Events Inc.*, No. 91125329, 2007 WL 499920, at *4 (T.T.A.B. Feb. 15, 2007) (two days' notice for deposition found unreasonable); *Duke Univ. v. Haggard Clothing Co.*, No. 108,304, 2000 WL 390037, at *2 (T.T.A.B. Mar. 16, 2000) (notice provided two days in advance of deposition unreasonable); *Elec. Indust. Assoc. v. Patrick H. Potega DBA Lifestyle Techs.*, No. 107,146, 1999 WL 375908, at *1 (T.T.A.B. Feb. 17, 1999) (finding two days' notice of deposition unreasonable); *Jean Patou Inc. v. Theon Inc.*, No. 80,345, 1990 WL 354591, at *2 (T.T.A.B. 1990) (twenty-four

hours' notice for deposition insufficient). Accordingly, the Board should quash Sezzle's 30(b)(6) notice as untimely.

V. CONCLUSION

For the foregoing reasons, ITS requests that the Board grant ITS's request to extend the fact-discovery deadline in this matter for the limited purpose of allowing ITS to depose Sezzle on the topics set forth in its 30(b)(6) notice after Sezzle produces documents responsive to ITS's document requests, to suspend all other deadlines until this deposition occurs, and to quash Sezzle's 30(b)(6) notice as untimely.

DATED: December 6, 2021

/Clinton G. Newton/

Clinton G. Newton (PTO #42930 / MO #46054)
Christine A. Guastello (PTO #58716 / MO #56917)
Reid L. Williams (MO #70458)

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ATTORNEYS FOR OPPOSER ITS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and exhibits have been filed through the TTAB's online filing system (ESTTA) and served by forwarding said copy and exhibits on December 6, 2021, via email to the following email addresses of record:

TODD R. FRONEK
tfronek@larkinhoffman.com

JOHN A. KVINGE
jkvinge@larkinhoffman.com

CHRISTOPHER A. YOUNG
cyoung@larkinhoffman.com

/Clinton G. Newton/ _____
Clinton G. Newton

ATTORNEY FOR OPPOSER ITS, INC.

EXHIBIT A

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

In the matter of: Trademark Application Serial No. 88/891,706



For the Mark:

Published in the Official Gazette: September 1, 2020

ITS, Inc.,

Opposer,

v.

Opposition No. 91266802
Serial No. 88891706

Sezzle Inc.,

Applicant.

**OPPOSER’S FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS TO APPLICANT (NOS. 1-24)**

Pursuant to Federal Rules of Civil Procedure 26 and 34 and 37 C.F.R. § 2.120, Opposer ITS, Inc. (“ITS” or “Opposer”) requests that Sezzle Inc. (“Sezzle” or “Applicant”) produce all of the following Documents and Things that are in Sezzle’s possession, custody, or control. Sezzle shall produce the Documents and Things within thirty (30) days of service of these requests to attorneys for ITS, at the offices of Shook, Hardy & Bacon L.L.P., 2555 Grand Boulevard, Kansas City, Missouri 64108.

INSTRUCTIONS

The following instructions apply:

1. The Requests require production of all Documents and Things, wherever located, in Sezzle’s actual or constructive possession, custody, or control, or in the possession, custody, or control of Sezzle’s attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on Sezzle’s behalf.

2. If there are no responsive documents to a particular request, Applicant shall so state.
3. If Sezzle objects to a document request because of a claim of privilege, identify: (a) the author of the document, (b) a list of addressees, (c) the identity of any person referenced in the document, (d) the date of the document, (e) a general description of the type of document (e.g., letter, memorandum, etc.), and (f) a summary of the subject matter of the document.
4. If Sezzle objects to a definition, provide a reasonable, alternative definition of that term. Separate responses shall be provided for each request, and each response shall set forth the request in full before stating a response.
5. These discovery requests are deemed to be continuing in nature and require further answer and supplementation in accordance with Federal Rule of Civil Procedure 26(e).

DEFINITIONS

The following definitions shall apply to the requests that follow:

1. The terms “Applicant,” “Sezzle,” “you” or “your” as used herein shall refer to Sezzle, Inc., as well as any parent, subsidiary, division, or related company, any business entity controlled by or operated on behalf thereof, any predecessors thereof, and any and all agents, directors, owners, officers, attorneys, employees, representatives, subcontractors, and/or any person or entity acting on their behalf.
2. The terms “Opposer,” or “ITS,” as used herein shall refer to ITS, Inc., as well as any parent, subsidiary, division, or related company, any business entity controlled by or operated on behalf thereof, any predecessors thereof, and any and all agents, directors, owners, officers, attorneys, employees, representatives, subcontractors, and/or any person or entity acting on their behalf, including but not limited to SHAZAM, Inc.
3. The term “ITS’s Mark” shall mean the mark set forth in ITS’s U.S. Federal

Trademark Registration No. 1,364, 885 (“the ‘885 registration”) and/or in ITS’s U.S. Federal Trademark Application Serial Nos. 90/430,347 (“the ‘347 application”) and/or 90/716,333 (“the ‘333 application”).

4. The term “Sezzle’s Mark” shall mean the mark set forth in Sezzle’s U.S. Federal Trademark Application Serial No. 88/891,706.

5. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the interrogatory inclusive rather than exclusive.

6. The terms “any” and “each” shall be construed to include and encompass “all.”

7. The term “including” shall not be construed as limiting any request, and shall mean the same as “including, but not limited to.”

8. The term “date” shall mean the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. The term “person” shall include, without limitation, natural persons, corporations, partnerships, business trusts, associations, and business or other entities, and any officer, director, employee, partner, corporate parent, subsidiary, affiliate, agent, representative, attorney, or principal thereof.

10. The term “communication” shall include, without limitation, any written or oral communication, including any conversation, discussion, or transmission of information in person or by telephone, e-mail, facsimile, telex, or any other means. A document or thing transferred, whether temporarily or permanently, from one person to another shall be deemed to be a communication between such persons whether or not such document or thing was prepared or created by the transferor or addressed to the transferee.

11. References to any natural person shall include, in addition to the natural person,

any agent, employee, representative, attorney, superior, or principal thereof.

12. References to any entity shall include, in addition to the entity, any officer, director, employee, partner, corporate parent, subsidiary, affiliate, agent, representative, attorney, or principal thereof.

13. The terms “relating to,” “related to,” “relate to,” “pertaining to,” or “pertains to” a given subject shall mean directly or indirectly concerning, constituting, containing, embodying, evidencing, showing, comprising, reflecting, identifying, illustrating, stating, referring to, dealing with, commenting on, responding to, describing, involving, mentioning, discussing, recording, supporting, or negating a given subject matter.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: Documents identified in Sezzle’s initial disclosures.

RESPONSE:

REQUEST NO. 2: Documents identified in response to ITS’s First Set of Interrogatories.

RESPONSE:

REQUEST NO. 3: Documents relied on by Sezzle in drafting the Answer to ITS’s Notice of Opposition.

RESPONSE:

REQUEST NO. 4: Documents concerning Sezzle’s denial of the allegations in paragraph 5 of the Notice of Opposition that “Applicant’s Mark, when used in connection with the goods and

services described in the Application, is likely to cause confusion, mistake or deception among consumers with Opposer's existing registered trademark and common law trademark rights."

RESPONSE:

REQUEST NO. 5: Documents concerning the allegations in paragraph 14 of the Notice of Opposition that "Applicant's good and services are so closely related to Opposer's good and services that they are and/or will be advertised, promoted, and sold through the same and/or similar channels of trade and to the same and/or similar general class of users and purchasers."

RESPONSE:

REQUEST NO. 6: Documents concerning Sezzle's denial of paragraph 15 of the Notice of Opposition, namely that ITS's Mark and Sezzle's Mark "are similar in appearance and pronunciation, and convey similar overall commercial impressions."

RESPONSE:

REQUEST NO. 7: Documents concerning Sezzle's denial of paragraph 16 of the Notice of Opposition that "Applicant's Mark, as applied to the goods and services in the Application, so resembles Opposer Mark, as to create a likelihood of confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act 1946, 15 U.S.C. § 1052(d).".

RESPONSE:

REQUEST NO. 8: Documents concerning Sezzle's decision to file the '706 Application and the reasons for that decision.

RESPONSE:

REQUEST NO. 9: Documents containing or concerning any analysis of alleged similarities between ITS's Mark and Sezzle's Mark.

RESPONSE:

REQUEST NO. 10: Documents concerning the goods and services offered by Sezzle in connection with Sezzle's Mark.

RESPONSE:

REQUEST NO. 11: Documents concerning the goods and services offered by ITS in connection with ITS's Mark.

RESPONSE:

REQUEST NO. 12: Documents concerning any alleged similarities between the goods and services offered by Sezzle in connection with Sezzle's Mark and the goods and services offered by ITS in connection with ITS's Mark.

RESPONSE:

REQUEST NO. 13: Documents evidencing Sezzle's marketing strategy in connection with Sezzle's Mark.

RESPONSE:

REQUEST NO. 14: Documents evidencing the customers targeted by Sezzle in connection with Sezzle's Mark.

RESPONSE:

REQUEST NO. 15: Documents concerning any alleged similarities between the customers targeted by ITS in connection with ITS's Mark and the customers targeted by Sezzle in connection with Sezzle's Mark.

RESPONSE:

REQUEST NO. 16: Documents concerning the reasons behind the design of Sezzle's Mark.

RESPONSE:

REQUEST NO. 17: Trademark searches, trademark clearances, internet print-outs, and other inquiries conducted by or on behalf of Sezzle concerning the availability to use or register Sezzle's Mark, and correspondence and documents relating thereto.

RESPONSE:

REQUEST NO. 18: Studies, surveys, investigations, research, development, analyses, and opinions concerning Sezzle's Mark, including, but not limited to, any documents comparing

Sezzle's Mark to ITS's Mark or concerning any similarity, actual confusion, or likelihood of confusion between Sezzle's Mark and ITS's Mark or any mark that resembles Sezzle's Mark.

RESPONSE:

REQUEST NO. 19: Documents concerning any complaint, petition, demand, objection, civil action, or administrative proceeding relating to Sezzle's Mark.

RESPONSE:

REQUEST NO. 20: Documents concerning any observations, perceptions, impressions, or inquiries as to whether the goods or services sold or offered in connection with Sezzle's Mark are produced by, sponsored or endorsed by, or in any manner associated or affiliated with ITS or any goods or services offered in connection with ITS's Mark.

RESPONSE:

REQUEST NO. 21: Documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between good and services offered in connection with Sezzle's Mark and goods and services offered in connection with ITS's Mark.

RESPONSE:

REQUEST NO. 22: Documents concerning any communications in which any person inquired with Sezzle about, commented on, or mentioned ITS, ITS' Mark, ITS's '885 registration, ITS's '347 application, or ITS's goods or services in any way.

RESPONSE:

REQUEST NO. 23: Documents concerning ITS or any goods or services sold, offered, distributed, or licensed, directly or indirectly, by or on behalf of ITS under or in connection with ITS's Mark that are not responsive to or that you are otherwise not producing in response to any other request contained herein.

RESPONSE:

REQUEST NO. 24: To the extent not produced in response to the foregoing requests, all Documents that support or refute Sezzle's contentions in this proceeding, including, but not limited to, any Documents that support or refute any factual allegations or legal theories or conclusions Sezzle has presented or relied on or intends to present or rely on in connection with such contentions.

RESPONSE:

DATED: October 22, 2021

/Clinton G. Newton/
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CGNTMDocket@shb.com
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Fax: (816) 421-5547

ATTORNEYS FOR OPPOSER ITS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2021, I caused a true and correct copy of the foregoing document to be served by email upon the following attorney of record for Applicant:

TODD R. FRONEK, tfronek@larkinhoffman.com

/Clinton G. Newton/

Clinton G. Newton

EXHIBIT B

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

In the matter of: Trademark Application Serial No. 88/891,706



For the Mark:

Published in the Official Gazette: September 1, 2020

ITS, Inc.,

Opposer,

v.

Opposition No. 91266802
Serial No. 88/891,706

Sezzle Inc.,

Applicant.

ITS, INC.'S NOTICE OF RULE 30(b)(6) DEPOSITION OF SEZZLE INC.

PLEASE TAKE NOTICE, pursuant to Trademark Trial and Appeal Board Manual of Procedure Section 404 and Federal Rule of Civil Procedure 30(b)(6), that ITS, Inc. (“ITS”) will take the deposition of Sezzle Inc. (“Sezzle”) before a notary public or other officer authorized to administer oaths and record testimony. The deposition will take place on Monday, December 6, 2021, beginning at 9:00 a.m. or at a date and time mutually agreed to by the parties using a virtual platform, such as but not limited to Zoom, due to the ongoing COVID-19 pandemic. The deposition shall be recorded by stenographic means.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Sezzle is directed to designate one or more officers, directors, managing agents, or other persons who consent to testify upon Sezzle’s behalf and who has knowledge of, or are adequately prepared to testify concerning, the topics set forth in the attached Exhibit A. ITS requests that Sezzle identify in writing, no later than one (1) week prior to the deposition, the name(s) of the person(s) who will testify on Sezzle’s behalf concerning the topics specified in Exhibit A, and for each individual specified, the matter(s) to

which each person will testify. Pursuant to Federal Rule of Civil Procedure 30(b)(6), please provide a day and time to meet and confer, no later than Monday, November 29, 2021, with ITS regarding any objections to the topics for examination. The deposition will be taken for all purposes and uses authorized by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure, and you are invited to attend and cross-examine.

DATED: November 17, 2021

/Clinton G. Newton/

Clinton G. Newton (PTO #42930 / MO #46054)
Christine A. Guastello (PTO #58716 / MO #56917)
Reid L. Williams (MO #70458)

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rwilliams@shb.com

ATTORNEYS FOR OPPOSER ITS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ITS, INC.'S NOTICE OF RULE 30(b)(6) DEPOSITION OF SEZZLE INC. has been served on counsel for Applicant by forwarding said copy on November 17, 2021, via electronic mail to the following email addresses of record:

TODD R. FRONEK
LARKIN HOFFMAN DALY & LINDGREN LTD.
8300 NORMAN CENTER DRIVE, SUITE 1000
MINNEAPOLIS, MN 55437-1060
UNITED STATES
ipgroup@larkinhoffman.com
Phone: 952-896-3295

/Clinton G. Newton/ _____
Clinton G. Newton

ATTORNEY FOR OPPOSER ITS, INC.

EXHIBIT A

DEFINITIONS

ITS hereby incorporates by reference the definitions contained in ITS's First Set of Interrogatories served on October 22, 2021, with the addition of the following definition:

1. "buy now pay later option" means a payment option that allows a customer to pay in installments over time, including but not limited to those payment options offered by Affirm, Afterpay, Klarna, PayPal Credit, Sezzle, Zip, as well as credit companies, such as American Express, Chase, and Citi Bank.

2. "business customers" means those customers that offer goods and/or services for purchase to an ultimate end shopper.

INSTRUCTIONS

1. If Sezzle objects to a topic on the basis of privilege, respond to the portion of the topic Sezzle believes is not privileged and specifically identify the respect in which the topic is privileged.

2. If Sezzle objects to a topic as vague and/or ambiguous, specifically identify the respect in which the topic is vague and/or ambiguous and identify the portion of the topic (if any) for which you will produce a witness.

3. If Sezzle objects to a topic as overbroad, unduly burdensome, and/or disproportionate to the needs of the case, specifically identify the respect in which the topic is overbroad, unduly burdensome, and/or disproportionate to the needs of the case, and identify the portion of the topic (if any) for which Sezzle will produce a witness.

4. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

5. The singular form of any word shall be deemed to include the plural, and vice versa.

TOPICS FOR EXAMINATION

1. The conception, selection, clearance, and adoption of Sezzle's Mark, including any alternative marks considered and any search reports or investigations conducted in connection with such selection.

2. The commercial impression of Sezzle's Mark.

3. Sezzle's first awareness of ITS's Mark and any investigations of the foregoing.

4. The factual bases supporting Sezzle's filing of the application for Sezzle's Mark as a use based application, including use of Sezzle's Mark with each and every good and service listed in the application for Sezzle's Mark prior to filing the application.

5. Your awareness of actual instances of confusion between products and/or services offered in connection with Sezzle's Mark and products and/or services offered in connection with ITS's Mark.

6. Marketing and advertising in the United States for the products and/or services offered in connection with Sezzle's Mark for the past six years, including the types of marketing and advertising, such as but not limited to electronic (including but not limited to online and social media), print, radio, and/or television, and the dollar amount spent on an annual basis.

7. Your future plans to advertise, market, distribute, sell or provide products and/or services in connection with Sezzle's Mark.

8. The channels of trade through which products and/or services offered in connection with Sezzle's Mark are marketed, advertised, and sold.

9. An identification of your past, present, and prospective business customers for goods and/or services offered in connection with Sezzle's Mark and the general type of business with which these customers are involved.

10. Your revenue in the United States on a yearly basis for the past six years through sales of products and/or services offered in connection with Sezzle's Mark.

11. Your awareness of retailers that give their customers the choice to pay for goods and/or or services using a credit/debit option or a buy now pay later option.

12. Your awareness of entities that process credit/debit transactions and offer a buy now pay later option.

13. The fame and goodwill, if any, associated with Sezzle's Mark.

EXHIBIT C

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

ITS, INC.,

Opposition No. 91266802
Serial Nos. 88891706

Opposer,

v.

SEZZLE, INC.,

**APPLICANT’S RESPONSES TO
OPPOSER’S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS AND
THINGS (NOS. 1-24)**

Applicant.

To: Opposer ITS, Inc. and its attorneys, Clinton G. Newton, Christine A. Guastello and Reid L. Williams, Shook, Hardy & Bacon L.L.P., 2555 Grand Blvd., Kansas City, Missouri 64108.

Pursuant to Fed. R. Civ. P. 26, 34 and 37 C.F.R. § 2.120, Applicant Sezzle, Inc. (“Sezzle” or “Applicant”), by and through its counsel, hereby submits its objections and responses to Opposer ITS, Inc.’s (“ITS” or “Opposer”) First Requests for Production of Documents and Things (the “Requests for Production”).

GENERAL OBJECTIONS

Applicant makes the following general responses and objections (“General Objections”) to the definitions, instructions, and requests in the Requests for Production. These General Objections are hereby incorporated into each specific response. The assertion of the same, similar, or additional objections or partial responses to individual Requests for Production does not waive any of Applicant’s General Objections.

1. Each of these General Objections are incorporated by reference into each of the responses that follow as if set forth fully therein regardless of whether any General Objections are asserted in response to the specific requests.

2. Applicant objects to Opposer's definitions of "Applicant," "Sezzle," and "You" on the ground that they result in requests for production of documents that are not in the possession, custody, or control of Applicant. Applicant will not search for or provide information that is not within its possession, custody, or control.

3. Applicant objects to Opposer's definition of "Sezzle's Marks" as overly broad and irrelevant to the extent that it seeks to encompass any goods and services not falling within the Opposed Applications (as defined in ITS's First Requests for Production of Documents and Things to Applicant).

4. Applicant objects to Opposer's requests because Applicant is not required to disclose the entirety of its proposed evidence in support of its case during discovery.

5. Applicant objects to Opposer's requests to the extent that Opposer is seeking the disclosure of documents constituting attorney-client communications and/or containing information subject to attorney work-product immunity.

6. These responses are based on discovery available as of the date hereof. Further discovery, independent investigation, or other analysis may lead to the discovery of additional information, which may lead to additions or changes to the responses set forth herein. These responses are given without prejudice to Applicant's right to disclose and rely on subsequently discovered information.

REQUEST NO. 1:

Documents identified in Sezzle's initial disclosures.

RESPONSE TO REQUEST NO. 1:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 2:

Documents identified in response to ITS's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 2:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 3:

Documents relied on by Sezzle in drafting the Answer to ITS's Notice of Opposition.

RESPONSE TO REQUEST NO. 3:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 4:

Documents concerning Sezzle's denial of the allegations in paragraph 5 of the Notice of Opposition that "Applicant's Mark, when used in connection with the goods and services described in the Application, is likely to cause confusion, mistake or deception among consumers with Opposer's existing registered trademark and common law trademark rights."

RESPONSE TO REQUEST NO. 4:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 5:

Documents concerning the allegations in paragraph 14 of the Notice of Opposition that "Applicant's good and services are so closely related to Opposer's good and services that they are and/or will be advertised, promoted, and sold through the same and/or similar channels of trade and to the same and/or similar general class of users and purchasers."

RESPONSE TO REQUEST NO. 5:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 6:

Documents concerning Sezzle's denial of paragraph 15 of the Notice of Opposition, namely that ITS's Mark and Sezzle's Mark "are similar in appearance and pronunciation, and convey similar overall commercial impressions."

RESPONSE TO REQUEST NO. 6:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 7:

Documents concerning Sezzle's denial of paragraph 16 of the Notice of Opposition that "Applicant's Mark, as applied to the goods and services in the Application, so resembles Opposer Mark, as to create a likelihood of confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act 1946, 15 U.S.C. § 1052(d)."

RESPONSE TO REQUEST NO. 7:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 8:

Documents concerning Sezzle's decision to file the '706 Application and the reasons for that decision.

RESPONSE:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 9:

Documents containing or concerning any analysis of alleged similarities between ITS's Mark and Sezzle's Mark.

RESPONSE:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 10:

Documents concerning the goods and services offered by Sezzle in connection with Sezzle's Mark.

RESPONSE TO REQUEST NO. 10:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 11:

Documents concerning the goods and services offered by ITS in connection with ITS's Mark.

RESPONSE TO REQUEST NO. 11:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 12:

Documents concerning any alleged similarities between the goods and services offered by Sezzle in connection with Sezzle's Mark and the goods and services offered by ITS in connection with ITS's Mark.

RESPONSE TO REQUEST NO. 12:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 13:

Documents evidencing Sezzle's marketing strategy in connection with Sezzle's Mark.

RESPONSE TO REQUEST NO. 13:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 14:

Documents evidencing the customers targeted by Sezzle in connection with Sezzle's Mark.

RESPONSE TO REQUEST NO. 14:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 15:

Documents concerning any alleged similarities between the customers targeted by ITS in connection with ITS's Mark and the customers targeted by Sezzle in connection with Sezzle's Mark.

RESPONSE TO REQUEST NO. 15:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 16:

Documents concerning the reasons behind the design of Sezzle's Mark.

RESPONSE TO REQUEST NO. 16:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 17:

Trademark searches, trademark clearances, internet print-outs, and other inquiries conducted by or on behalf of Sezzle concerning the availability to use or register Sezzle's Mark, and correspondence and documents relating thereto.

RESPONSE TO REQUEST NO. 17:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 18:

Studies, surveys, investigations, research, development, analyses, and opinions concerning Sezzle's Mark, including, but not limited to, any documents comparing Sezzle's Mark to ITS's Mark or concerning any similarity, actual confusion, or likelihood of confusion between Sezzle's Mark and ITS's Mark or any mark that resembles Sezzle's Mark.

RESPONSE TO REQUEST NO. 18:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 19:

Documents concerning any complaint, petition, demand, objection, civil action, or administrative proceeding relating to Sezzle's Mark.

RESPONSE TO REQUEST NO. 19:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 20:

Documents concerning any observations, perceptions, impressions, or inquiries as to whether the goods or services sold or offered in connection with Sezzle's Mark are produced by, sponsored or endorsed by, or in any manner associated or affiliated with ITS or any goods or services offered in connection with ITS's Mark.

RESPONSE TO REQUEST NO. 20:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

REQUEST NO. 21:

Documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between good and services offered in connection with Sezzle's Mark and goods and services offered in connection with ITS's Mark.

RESPONSE TO REQUEST NO. 21:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, there are no documents responsive to this request.

REQUEST NO. 22:

Documents concerning any communications in which any person inquired with Sezzle about, commented on, or mentioned ITS, ITS' Mark, ITS's '885 registration, ITS's '347 application, or ITS's goods or services in any way.

RESPONSE TO REQUEST NO. 22:

Sezzle incorporates its General Objections as if set forth fully herein.

Without waiver of the foregoing objections, there are no documents responsive to this request.

REQUEST NO. 23:

Documents concerning ITS or any goods or services sold, offered, distributed, or licensed, directly or indirectly, by or on behalf of ITS under or in connection with ITS's Mark that are not responsive to or that you are otherwise not producing in response to any other request contained herein.

RESPONSE TO REQUEST NO. 23:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle further objects that this request for production, as phrased, is overbroad and irrelevant because it potentially seeks the production of documents having nothing to do with Sezzle's Mark. Sezzle further objects that this request is overbroad, unduly burdensome, and seeks information not proportional to the needs of the case or not relevant to the claims and defenses.

Based on the foregoing objections, responsive documents are withheld. Sezzle declines to respond to this request as posed but invites Opposer to meet and confer regarding the relevance of the documents requested.

REQUEST NO. 24:

To the extent not produced in response to the foregoing requests, all Documents that support or refute Sezzle's contentions in this proceeding, including, but not limited to, any Documents that support or refute any factual allegations or legal theories or conclusions Sezzle has presented or relied on or intends to present or rely on in connection with such contentions.

RESPONSE TO RESPONSE NO. 24:

Sezzle incorporates its General Objections as if set forth fully herein. Sezzle objects to this request to the extent it seeks any documents or other things that are protected by the attorney-client privilege, work product immunity, or any other applicable privilege.

Without waiver of the foregoing objections, Sezzle will produce, at a mutually agreed-upon time, non-privileged, responsive documents, if any exist, that are located during a reasonable search.

Dated: November 22, 2021

/Christopher A. Young/

John A. Kvinge

Todd R. Fronek

Christopher A. Young

Sarah Voeller

Larkin Hoffman Daly & Lindgren Ltd.

8300 Norman Center Drive

Suite 1000

Minneapolis, Minnesota 55437-1060

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tfronek@larkinhoffman.com

cyoung@larkinhoffman.com

svoeller@larkinhoffman.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2021, I caused a true and correct copy of the foregoing Applicant's Responses to Opposers First Requests for Production of Documents and Things, to be served by email upon the following attorneys of record for Opposer:

Clinton Newton, CNEWTON@shb.com, CGNTMDocket@shb.com.

/Christopher A. Young/
Christopher A. Young
Attorney for Sezzle Inc.

EXHIBIT D

From: Fronek, Todd R. <tfronek@larkinhoffman.com>

Sent: Wednesday, December 1, 2021 3:38 PM

To: Newton, Clint (SHB) <CNEWTON@shb.com>

Subject: RE: ITS, Inc. vs. Sezzle Inc - S Logo - Opposition No. 91266802 - Settlement Discussion - SHB File No. 41057.349358

EXTERNAL

Hi Clint,

Sorry for the delay, still looking to connect with my client. Hoping to get some answers soon. I'll address as best I can:

1. Not yet.
2. Not yet, but I'm hopeful for a suspension.
3. Working on it.
4. Should be in the next day or so.
5. Not right now, but reserve the right to object.
6. Will work with the client to get the exact persons.

Hoping to get you more information soon.

Thanks,
Todd

From: Newton, Clint (SHB) <CNEWTON@shb.com>

Sent: Wednesday, December 1, 2021 2:48 PM

To: Fronek, Todd R. <tfronek@larkinhoffman.com>

Subject: RE: ITS, Inc. vs. Sezzle Inc - S Logo - Opposition No. 91266802 - Settlement Discussion - SHB File No. 41057.349358

Importance: High

This Message Is External to Larkin Hoffman.

Todd,

I just left you a voicemail. Can you please provide answers today to the questions below?

Thanks.

Clint.

Clinton (Clint) G. Newton | *Partner – Intellectual Property Section*

Shook, Hardy & Bacon L.L.P. | 2555 Grand Blvd., Kansas City, MO 64108 | 816.559.2155 | cnewton@shb.com

From: Newton, Clint (SHB)

Sent: Monday, November 29, 2021 12:28 PM

To: 'Fronek, Todd R.' <tfronek@larkinhoffman.com>

Subject: RE: ITS, Inc. vs. Sezzle Inc - S Logo - Opposition No. 91266802 - Settlement Discussion - SHB File No. 41057.349358

Todd,

I hope all is well and that you had a good Thanksgiving break.

I am just following up on my e-mail below.

- 1) Have you heard back from your client regarding alternate dates for the **meeting**?
- 2) Have you heard anything back about a **suspension** to give us more flexibility in getting it scheduled?
- 3) Can you please provide me with alternate dates for the **30(b)(6) deposition**?
- 4) When can we expect **documents** to be produced?

Also, today was the day I originally requested answers to the following additional questions:

- 5) Will you have any objections to the 30(b)(6) topics?
- 6) Who are you designating for each 30(b)(6) topic?

Thanks and I look forward to your reply.

Clint.

Clinton (Clint) G. Newton | *Partner – Intellectual Property Section*

Shook, Hardy & Bacon L.L.P. | 2555 Grand Blvd., Kansas City, MO 64108 | 816.559.2155 | cnewton@shb.com

From: Newton, Clint (SHB)

Sent: Tuesday, November 23, 2021 10:53 PM

To: 'Fronek, Todd R.' <tfronek@larkinhoffman.com>

Subject: RE: ITS, Inc. vs. Sezzle Inc - S Logo - Opposition No. 91266802 - Settlement Discussion - SHB File No. 41057.349358

Todd,

Thanks for sending word to your client about alternate dates for the meeting between the parties and the possibility of a suspension while we discuss settlement.

As for the 30(b)(6) deposition, please provide me with some proposed alternate dates. Will it be later the same week? As you likely know, the 6th was the last day of discovery, but the parties can take a deposition outside the discovery period by agreement.

Also, I am still going through your discovery responses, but I noticed you produced no documents. When can we expect the responsive documents to be produced? We will need the documents produced at least a week before the rescheduled deposition.

Thanks.

Clint.

Clinton (Clint) G. Newton | *Partner – Intellectual Property Section*

Shook, Hardy & Bacon L.L.P. | 2555 Grand Blvd., Kansas City, MO 64108 | 816.559.2155 | cnewton@shb.com

From: Fronek, Todd R. <tfronek@larkinhoffman.com>

Sent: Tuesday, November 23, 2021 4:40 PM

To: Newton, Clint (SHB) <CNEWTON@shb.com>

Subject: RE: ITS, Inc. vs. Sezzle Inc - S Logo - Opposition No. 91266802 - Settlement Discussion - SHB File No. 41057.349358

EXTERNAL

Thanks Clint. I've sent word to my client about alternative dates and the suspension.

I do know there is a conflict on December 6, so we'll have to put that day aside and look for alternatives.

Regards,
Todd

From: Newton, Clint (SHB) <CNEWTON@shb.com>
Sent: Monday, November 22, 2021 10:41 PM
To: Fronek, Todd R. <tfronek@larkinhoffman.com>
Subject: RE: ITS, Inc. vs. Sezzle Inc - S Logo - Opposition No. 91266802 - Settlement Discussion - SHB File No. 41057.349358

This Message Is External to Larkin Hoffman.

Todd,

I guess I jinxed us. I just heard from my client that one of the key participants from our side has been called away and has to travel overseas on the 2nd and will now not be able to make the call. They have proposed the following alternate dates and times:

December 9th from 8:00-9:00am;
December 10th from 8:00-9:00am; or
December 13th from 11:00am-12:00pm, all times Central.

Would you please check with your client and see if any of them work?

Also, since we are discussing settlement, it might be beneficial to suspend the matter for 30-days. So, please check with your client on that as well.

If they do not want a suspension, please confirm the 30(b)(6) deposition on December 6th is acceptable.

Thanks and sorry for the change.

Clint.

Clinton (Clint) G. Newton | *Partner – Intellectual Property Section*
Shook, Hardy & Bacon L.L.P. | 2555 Grand Blvd., Kansas City, MO 64108 | 816.559.2155 | cnewton@shb.com

EXHIBIT E

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

ITS, Inc.,

Opposer,

v.

Sezzle, Inc.,

Applicant.

Opposition No. 91266802

Serial No. 88891706

APPLICANT’S NOTICE OF RULE 30(b)(6) DEPOSITION OF ITS, Inc.

PLEASE TAKE NOTICE, pursuant to Trademark Trial and Appeal Board Manual of Procedure Section 404 and Federal Rule of Civil Procedure 30(b)(6), that Sezzle, Inc. (“Sezzle”) will take the deposition of ITS, Inc. (“ITS”) before a notary public or other officer authorized to administer oaths and record testimony. The deposition will take place on Monday, December 6, 2021, beginning at 9:00 a.m. or at a date and time mutually agreed to by the parties using a virtual platform, such as but not limited to Zoom, due to the ongoing COVID-19 pandemic. The deposition shall be recorded by stenographic means.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), ITS is directed to designate one or more officers, directors, managing agents, or other persons who consent to testify upon ITS’s behalf and who has knowledge of, or are adequately prepared to testify concerning, the topics set forth in the attached Exhibit A. Sezzle requests that ITS identify in writing in advance of the deposition, the name(s) of the person(s) who will testify on ITS’s behalf concerning the topics specified in Exhibit A, and for each individual specified, the matter(s) to which each person will

testify. Pursuant to Federal Rule of Civil Procedure 30(b)(6), please provide a day and time to meet and confer with Sezzle regarding any objections to the topics for examination. The deposition will be taken for all purposes and uses authorized by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure, and you are invited to attend and cross-examine.

Dated: December 3, 2021

Attorneys for Sezzle Inc.

/John A. Kvinge/ _____

John A. Kvinge

Todd R. Fronck

Christopher A. Young

Larkin Hoffman Daly & Lindgren Ltd.

8300 Norman Center Drive, Suite 1000

Minneapolis, Minnesota 55437

Tel.: 952-835-3800

Fax: 952-896-3333

Attorneys for Sezzle Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2021, I caused a true and correct copy of the foregoing Applicant's Notice of 30(b)(6) Deposition of ITS, Inc., in Word and PDF format, to be served by email upon the following attorneys of record for Opposer:

Clinton Newton, CNEWTON@shb.com, CGNTMDocket@shb.com.

/John A. Kvinge/
John A. Kvinge
Attorney for Sezzle Inc.

EXHIBIT A

DEFINITIONS

1. “Sezzle” or “Applicant” means Sezzle, Inc., the Applicant in the above-captioned proceeding.

2. “Opposer”, “you,” or ‘your” means Opposer ITS, Inc., its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of its employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. The “‘706 Application” means the application that is the subject of U.S. Trademark Application Serial No. 88891706 and this proceeding.

4. The “Opposed Application” means the mark identified in Paragraph 3 above.

5. The “‘885 Registration” means U.S. Registration No. 1364885.

6. The “‘347 Application” means U.S. Application No. 90430347.

7. The “ITS Mark(s)” means one or more of the marks claimed in the ‘885

Registration and/or ‘347 Application, including but not limited to the mark,



8. The “Asserted Registration/Application” means the registration and applications identified in paragraphs 6 and 9 of the Notice of Opposition in this proceeding, including U.S. Registration No. 1364885 and U.S. Application No. 90430347.

9. “Document” is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term “document” refers to any document now or at any time in Opposer’s possession, custody, or control. A person is deemed in control of a document if the person has

any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

10. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

11. “Concerning” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

12. “Demonstrating” shall mean and include: referring to, pertaining to, being relevant to, including, memorializing, reflecting, embodying, containing, constituting, identifying, stating, concerning, supporting, refuting, providing, disproving, and negating.

13. The terms “identity” and “identify,” when used with respect to a person, shall mean to state the present or last known full name, all previous and registered and/or operating names, if any, present or last known business and residential addresses and telephone numbers, and, if applicable, the nature of the business entity or organization.

14. The terms “identity” and “identify,” when used with respect to a document shall mean to state the date the document was prepared or created, its author, a summary of its contents, its length, the recipients of the document, and the present custodian of the document and location of any copies of the document.

15. The terms “identity” and “identify,” when used with respect to a date, shall mean to state the exact date, month and year. If you cannot furnish an exact date in response to any of the following interrogatories, after exercising due diligence to secure the information necessary to do so, you are required to provide an estimated date to the extent possible specifying the basis on which the estimate is made, and, if possible, the upper or lower boundaries of the estimate.

16. The term “mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.

17. A reference to a “person” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

18. The phrase “use in commerce” shall have the same meaning as ascribed to it pursuant to 15 U.S.C. § 1127.

19. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

20. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

21. The use of singular form includes plural, and vice versa.

22. The use of present tense includes past tense, and vice versa.

TOPICS FOR EXAMINATION

1. The conception, selection, clearance, and adoption of the ITS Mark(s), including any alternative marks considered and any search reports or investigations conducted in connection with such selection.
2. The commercial impression of the ITS Mark(s).
3. ITS’s first awareness of the marks in the Opposed Application and any investigations of the foregoing.

4. The use of the ITS Mark(s) with each and every good and service listed in the '885 Registration and the '347 Application".
5. Your awareness of actual instances of confusion between products and/or services offered in connection with the marks in the Opposed Application and products and/or services offered in connection with the ITS Mark(s).
6. Marketing and advertising in the United States for the products and/or services offered in connection with the ITS Mark(s) for the past six years, including the types of marketing and advertising, such as but not limited to electronic (including but not limited to online and social media), print, radio, and/or television, and the dollar amount spent on an annual basis.
7. Your future plans to advertise, market, distribute, sell or provide products and/or services in connection with the ITS Mark(s).
8. The channels of trade through which products and/or services offered in connection with the ITS Mark(s) are marketed, advertised, and sold.
9. An identification of your past, present, and prospective business customers for goods and/or services offered in connection with the ITS Mark(s) and the general type of business with which these customers are involved.
10. Your revenue in the United States on a yearly basis for the past six years through sales of products and/or services offered in connection with the ITS Mark(s).
11. Your awareness of retailers that give their customers the choice to pay for goods and/or services using a credit/debit option or a buy now pay later option.

12. Your awareness of entities that process credit/debit transactions and offer a buy now pay later option.

13. The fame and goodwill, if any, associated with ITS's Mark

4868-8375-3733, v. 1