AO 120 (Rev. 08/10)

TO:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Florida on the following

☑ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
16cv24725	11/15/2016	Southern District of Florida

PLAINTIFF	DEFENDANT
Pushpay IP Limited	Pushpay, Inc.

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	4,448,373	2/16/2002	Pushpay
2	3,096,435	1/21/2004	Pushpay
3	87/067,992	6/10/2016	Pushpay
4	4,444,457	2/3/2012	Pushpay
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
Steven M. Larimore	Faithtrina Bynum-Stinson	11/15/2016

Copy 1—Upon initiation of action, mail this copy to Director **Copy 3—Upon termination of action, mail this copy to Director**
Copy 2—Upon filing document adding patent(s), mail this copy to Director **Copy 4—Case file copy**

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and analysis services; Monetary affairs services in the form of monetary strategy consultation and research and monetary exchange operations; Financial and monetary affairs transaction management services, namely, providing secure commercial transaction services and payment options and providing an internet website portal in the field of financial transaction and payment processing services; Financial and monetary affairs, namely, financial information, management and analysis services; Payment processing, namely, credit card and debit card transaction processing services; Online payment and transaction processing services; Financial payment and financial transaction services in the form of credit card, debit card loyalty program and payment transaction processing services; Financial transaction services, namely, providing secure commercial transactions and payment options; Financial transaction services, namely, providing secure commercial transactions and payment options using a mobile device at a point of sale; Merchant services, namely, payment transaction processing services; Providing financial data analysis for others, namely, compiling and analyzing church tithing collection statistics for financial purposes; Online banking services accessible by means of downloadable mobile applications in Class 36; *Computer and scientific; Computer software development; Computer software development for others, namely, custom development, deployment, and management of mobile application software for others; Computer services, namely, remote management of databases for others; Software as a service (SAAS) services featuring data dashboards for use in monitoring and managing of church tithing collection operations and providing collection trend visualization for others; Software as a service (SAAS) for e-mail campaign management, and development and management of charitable donations and pledges; Software as a service (SAAS) services featuring of information in the field of customer service*

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relationship management in Class 42 (hereinafter "the '992 Application"). The status report for the '992 Application from the USPTO is attached hereto and incorporated herein as Exhibit C.

19. Examples showing the manner in which Pushpay has used the mark PUSH TO PAY are depicted in Exhibit A, set forth above.

20. Pushpay is entitled to rights inuring from use of the mark PUSH TO PAY in US commerce at least as early as May 25, 2005, as referenced in the status report and registration certificate of the '435 Registration from the USPTO as attached hereto and incorporated herein as Exhibit D.

21. Pushpay is the owner of U.S. Trademark Registration No. 4,444,457, having an effective filing date of February 3, 2012, for the mark JUST PUSH PAY directed to the following goods and services: *Computer application software for mobile phones, namely, software for use in payment transaction processing* in Class 9; and *Merchant services, namely, payment transaction processing services* in Class 36 (hereinafter "the '457 Registration");

22. Pushpay is the owner of U.S. Trademark Registration No 4,448,373 having an effective filing date of February 16, 2012, for the mark JUST PUSH PAY & Design,

directed to *Computer application software for mobile phones and handheld computing devices, namely, software for enabling payment processing and transactions* in Class 9; and *Providing online payment and transaction processing services* in Class 36 (hereinafter "the '373 Registration").

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23. Pushpay's JUST PUSH PAY word and JUST PUSH PAY & Design,

were used in U.S. commerce at least as early as January 31, 2013, as referenced in the status reports and registration certificates of the '457 Registration and the '373 Registration from the USPTO as attached hereto and incorporated herein as Exhibit E.

24. The foregoing registrations and applications are currently in full force and effect, unrevoked, and/or subsisting.

25. Pushpay has accrued common law rights throughout the United States to its marks PUSHPAY, PUSH TO PAY, JUST PUSH PAY, and JUST PUSH PAY & Design through use with goods and services related to its mobile payment application program, including at least those goods and services set forth in Pushpay's registrations and applications above.

26. Among other domain names, Pushpay is the owner and operator of the <pushpay.com> domain name that is associated with its primary website pages from which are depicted in Exhibit A, set forth above.

27. Through Pushpay's use of the aforementioned marks by it and its related companies and predecessors in interest, and by virtue of Pushpay's registrations and applications of the foregoing marks in connection with its various, aforesaid goods and services, Pushpay has acquired valuable common law and statutory rights and goodwill in and to said marks.

Defendant's Infringement

28. Upon information and belief, the name of Defendant prior to use of its current trade name was Wildcard.

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29. Upon information and belief, under the former Wildcard company, Defendant operated a platform that processed real-time payment transactions for various companies and included providing mobile payment processing services.

30. On or about May 31, 2016, Defendant formed its Push Pay Inc. company, a corporation organized under the laws of the state of Delaware, and providing the same or similar goods/services that were provided under its predecessor in interest Wildcard entity.

31. Prior to 2016, Defendant did not use any trade name or trademark incorporating the terms "Push Pay" or "Pushpay" or any confusingly similar designations thereto.

32. Defendant continues to operate under the Push Pay Inc. trade name.

33. Defendant has used and continues to use in the United States the marks PUSH PAY, PUSH PAYMENTS and the logo PUSH PAYMENTS (hereinafter "the Infringing Marks"), in connection with, at least, the provision of a technology platform for various companies to include features relative to mobile application, payment processing services, custom payment solution and real-time payment transactions.

34. Defendant has also used and continues to use one or more of the Infringing Marks on various webpages operating from the website <www.pushpayments.com>. *See* attached screenshots from the website attached hereto and incorporated herein as Exhibit F.

35. The domain <www.pushpayments.com> was registered on September 24, 2015 per the attached copy of the WhoIs report for the <www.pushpayments.com> attached hereto and incorporated herein as Exhibit G.

36. Upon information and belief, Defendant has registered, operates, controls and/or has possession of the <www.pushpayments.com> domain and the webpages operating therefrom.

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37. On June 20, 2016, Pushpay sent a letter to the Defendant, whereby Pushpay put Defendant on notice of Pushpay's rights in the marks PUSHPAY, , JUST PUSH PAY, and (hereinafter the "Noticed Marks") and asserted its demands that Defendant cease all usage of any mark/name that is confusingly similar to Pushpay's Noticed Marks along with the request that Defendant transfer to Pushpay its unauthorized <www.pushpayments.com> domain name. A copy of this demand letter is attached and incorporated herein as Exhibit H.

38. Defendant provided its substantive response on July 8, 2016, wherein it alleged that there is no likelihood of confusion between the Noticed Marks and the mark PUSH PAYMENTS (without addressing its use of Push Pay, Inc. and PUSH PAY). A copy of this letter is attached and incorporated herein as Exhibit I.

39. As of the date of this filed Complaint, and notwithstanding having been on actual and constructive notice of Pushpay's rights to its foregoing marks, Defendant continues its use of the Infringing Marks.

40. Subsequent to Pushpay having put Defendant on notice of its rights pursuant to the aforementioned demand letter, Defendant applied for federal registration of the mark PUSH PAYMENTS with the USPTO on July 8, 2016 under U.S. Application Serial No. 87/097,895 in connection with *Payment processing services in the field of credit transfer payments* in Class 36

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(hereinafter "Defendant's '895 Application"). The status report for Defendant's '895 Application from the USPTO is attached hereto and incorporated herein as Exhibit J.

41. Defendant's '895 Application claims June 2016 as the date of first use of the PUSH PAYMENTS mark relative to the applied-for services as alleged above.

42. On August 11, 2016, Pushpay filed a Letter of Protest against Defendant's '895 Application asserting prior rights and alleging a likelihood of confusion arising from the PUSH PAYMENTS mark that is the subject of Defendant's '895 Application. A copy Pushpay's Letter of Protest is attached hereto and incorporated herein as Exhibit K.

43. The USPTO, in a Letter of Protest Memorandum issued on September 19, 2016, accepted the Letter of Protest Pushpay filed against Defendant's '895 Application on the basis that the evidence Pushpay submitted is relevant and may support a reasonable ground for refusal in an *ex parte* examination of Defendant's '895 Application. A copy of the USPTO's Letter of Protest Memorandum is attached hereto and incorporated herein as Exhibit L.

44. Per Trademark Manual of Examining Procedure § 1715.01, the USPTO accepts a letter of protest only if said letter presents issues and evidence relevant to a ground for refusing registration during the *ex parte* examination of an application.

45. In its Letter of Protest Memorandum, the ground for refusal for which the USPTO accepted Pushpay's Letter of Protest against Defendant's '895 Application and instructed the Examining Attorney to consider is a likelihood of confusion with Pushpay's Noticed Marks and the '435 Registration.

46. On October 18, 2016, the USPTO issued an Office Action advising that Defendant's '895 Application could be refused registration on the basis that the PUSH PAYMENTS mark is likely to cause confusion with Pushpay's U.S. Trademark Application No.

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86/256,086 for the mark PUSHPAY; U.S. Trademark Application No. 86/794,934 for the mark PUSHPAY FASTPAY; and U.S. Trademark Application No. 85/688,248 for the mark P PUSHPAY & Design , should these applications mature to registration. A copy of the Office Action the USPTO has issued against Defendant's'895 Application is attached hereto and incorporated herein as Exhibit M.

47. As of the date of this Complaint, Defendant has not yet submitted a response to the Office Action.

48. On October 4, 2016, Defendant, in further defiance of Pushpay's earlier demand letter and also the USPTO's September 19, 2016 Letter of Protest Memorandum, filed another application before the USPTO for the mark PUSH PAY PERFECT under U.S. Application Serial No. 87/192,949 in connection with *Payment processing services in the field of credit transfer payments* in Class 36 (hereinafter "Defendant's '949 Application"). The status report for Defendant's '949 Application from the USPTO is attached hereto and incorporated herein as Exhibit N. Defendant's '895 Application and Defendant's '949 Application held by Defendant are collectively referred to herein as the "Infringing Applications". The PUSH PAY PERFECT mark that is the subject of Defendant's '949 Application is incorporated into and included as the above-defined Infringing Marks.

49. Defendant's '949 Application claims June 2016 as the date of first use of the PUSH PAY PERFECT mark relative to the applied-for services as alleged above.

50. Defendant, by and through its President and CEO, Travis D. Dulaney, submitted a signed declaration in support of Defendant's '949 Application attesting that he believes Defendant to be the owner of the service mark sought to be registered, that Defendant is entitled to use the mark in commerce and that no other person has the right to use the mark in commerce.

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Such declaration was made under Defendant's acknowledgement that willful statements and the like are punishable and that such willful false statements and the like could jeopardize the validity of the application or any registration resulting therefrom. A copy of the October 4, 2016 application containing Defendant's executed declaration for Defendant's '949 Application is attached hereto as Exhibit O.

51. On October 19, 2016, Pushpay filed a Letter of Protest against Defendant's '949 Application asserting prior rights and alleging a likelihood of confusion arising from the PUSH PAY PERFECT mark that is the subject of Defendant's '949 Application. A copy Pushpay's Letter of Protest is attached hereto and incorporated herein as Exhibit P.

52. The USPTO, in a Letter of Protest Memorandum issued on November 7, 2016, accepted the Letter of Protest Pushpay filed against Defendant's '949 Application on the basis that the evidence Pushpay submitted is relevant and may support a reasonable ground for refusal in an *ex parte* examination of Defendant's '949 Application. A copy of the USPTO's Letter of Protest Memorandum is attached hereto and incorporated herein as Exhibit Q.

53. Again, per Trademark Manual of Examining Procedure § 1715.01, the USPTO accepts a letter of protest only if said letter presents issues and evidence relevant to a ground for refusing registration during the *ex parte* examination of an application.

54. In its Letter of Protest Memorandum, the ground for refusal for which the USPTO accepted Pushpay's Letter of Protest against Defendant's '949 Application and instructed the Examining Attorney to consider is a likelihood of confusion with Pushpay's Noticed Marks (absent the mark) and the '435 Registration.

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55. Upon information and belief, Defendant has taken the aforesaid actions with the intent to confuse actual and potential customers into believing that Defendant is affiliated with, sponsored by, or otherwise associated with Pushpay.

56. Pushpay's dates of first use relative to the marks PUSHPAY, PUSH TO PAY, and JUST PUSH PAY word and design, in connection with at least the goods and services alleged above at common law and under the '086 Application, the '435 Registration, the '992 Application, the '457 Registration and the '373 Registration precede the earliest date Defendant can possibly claim as its date of first use for the Infringing Marks.

57. Upon information and belief Defendant advertises and offers for sale, in the same or similar channels of trade, a payment transaction processing program using marks and a trade name that is identical and/or confusingly similar to Pushpay's marks for identical and/or similar services to those offered by Pushpay.

58. Defendant has even established a new entity under the name Push Pay, Inc. that is virtually identical to the trade name of Pushpay's sister company, Pushpay Inc., for similar and/or identical goods and/or services.

59. Upon information and belief, Defendant is knowingly, intentionally, and willfully infringing upon Pushpay's marks and exclusive right to use its marks in United States commerce.

60. Upon information and belief, Defendant's use of the Infringing Marks, and attempts to register the Infringing Applications, has either caused, or is likely to cause, confusion, mistake and/or deception amongst actual and potential consumers as to the source of the goods and services within the meaning of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to the detriment of Pushpay.

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61. Given the easy accessibility of the Internet, consumers are likely to come across Defendant's website at <www.pushpayments.com> and are likely to be confused by Defendant's use of marks very similar in appearance and sound to Pushpay's marks. Consumers will thus naturally wonder whether there is some affiliation or relationship between Defendant's and Pushpay's businesses, particularly because they both involve a payment transaction processing program that includes mobile application accessibility.

62. Upon information and belief, the continued use of the Infringing Marks and a registration of the Infringing Applications by Defendant are likely to cause confusion, mistake and/or deception among United States consumers in the marketplace.

63. In view of the foregoing, Pushpay has been damaged and will continue to be damaged by virtue of Defendant's continued use of the Infringing Marks and any registration of the Infringing Applications.

COUNT I
Trademark Infringement
(15 U.S.C. §1114(1))

64. Pushpay specifically hereby incorporates by reference the allegations asserted in preceding paragraph numbers 1 – 63 as if fully set forth herein.

65. Pushpay's rights in its marks have priority over Defendant's use of the Infringing Marks and application for the Infringing Applications by virtue of Pushpay's continuous and extensive use and registration of its aforesaid marks in commerce that predate Defendant's use of the Infringing Marks and application for the Infringing Applications.

66. For the reasons set forth herein, Pushpay's prior rights in its marks entitle it to exclusive use and federal registration thereof.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

PUSHPAY IP LIMITED,

Plaintiff,

vs Jury Trial Demanded

PUSHPAY, INC.,
f/k/a Wildcard Payments, Inc.,
f/k/a Wildcard Consulting, Inc.,
also trading as Push Payments,

Defendant.
_____/

PLAINTIFF PUSHPAY IP LIMITED'S
COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Pushpay IP Limited (hereinafter "Pushpay"), by and through its undersigned attorneys, brings this action against Defendant Push Pay, Inc., formerly known as Wildcard Payments, Inc. and/or Wildcard Consulting, Inc. (hereinafter "Defendant") for trademark infringement, unfair competition and false designation of origin under the Lanham Act 15 U.S.C. § 1051 *et. seq*., unfair competition under Florida common law, Florida common law trademark infringement, and deceptive and unfair trade practices under Fla. Stat. § 501.204.

NATURE OF ACTION

1. This is an action for injunctive and other relief under the Federal Trademark Act, 15 U.S.C. § 1051, *et seq.* ("Lanham Act"), particularly for i) trademark infringement, 15 U.S.C. § 1114; and ii) unfair competition and false designation of origin, 15 U.S.C. § 1125(a). Plaintiff also claims relief under Florida's common law and/or statutes for unfair competition, trademark

67. Without the authorization or consent of Pushpay, Defendant has used and is using trademarks, a trade name and designations that are identical, confusingly similar to, a reproduction, copy or colorable imitation of Pushpay's registered marks for PUSH TO PAY and JUST PUSH PAY. Furthermore, Defendant, by and through its Infringing Marks, sells, offers for sale, distributes and/or advertises goods and services to the general, United States public in competition with Pushpay's sales, distribution, and advertisement of a mobile payment processing service under and through Pushpay's registered marks.

68. Defendant's actions in submitting the Infringing Applications and continuously using the Infringing Marks in commerce have occurred in the face of and notwithstanding Pushpay's express notice to Defendant regarding Pushpay's prior rights and/or the USPTO's position in its October 18, 2016 Office Action that Defendant's '895 Application could be refused registration on the grounds of likelihood of confusion with Pushpay's rights, namely, Pushpay's '086 Application for the mark PUSHPAY along with Pushpay's other marks for PUSHPAY FASTPAY under U.S. Trademark Application No. 86/794,934 and P PUSHPAY & Design under U.S. Trademark Application No. 85/688,248.

69. Defendant's use of trademarks, a trade name and designations that are identical, confusingly similar to, a reproduction, copy or colorable imitation of Pushpay's registered marks for PUSH TO PAY and JUST PUSH PAY, and in connection with competing goods and services, is likely to cause consumer confusion, mistake, and/or deception in the relevant market(s) as to the origin of the goods and services, and/or as to whether Defendant is sponsored by/affiliated with, or is otherwise connected to Pushpay, in violation of Section 32(1) of the Lanham Act, as amended, 15 U.S.C. § 1114(1).

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70. By using trademarks, a trade name and designations that are identical, confusingly similar to, a reproduction, copy or colorable imitation of Pushpay's registered marks, and by selling, offering for sale, distributing, and/or advertising goods and services to the general public in connection with said marks and designations or confusingly similar variants thereof, for profit and without Pushpay's authorization, Defendant is depriving Pushpay of its exclusive right to control, use and otherwise benefit from its registered trademarks (along with other marks Pushpay has applied for and/or uses at common law). If permitted to continue, Defendant's actions will nullify Pushpay's right to exclusive use of its registered trademarks, free from infringement, and will have a substantial and adverse effect on Pushpay's existing and projected future interstate business of marketing services identified by Pushpay's marks.

71. As a result of Defendant's infringing conduct, Pushpay has suffered substantial damages, as well as the continuing loss of the goodwill and reputation established by Pushpay under its federally registered and other marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Pushpay has no adequate remedy at law. Pushpay will continue to suffer irreparable harm unless this Court enjoins Defendant's conduct.

72. By using, without Pushpay's authorization, trademarks, a trade name and designations that are identical, confusingly similar to, a reproduction, copy or colorable imitation of Pushpay's registered marks and by selling, offering for sale, distributing, and/or advertising goods and services to the general public in connection with the Infringing Marks, Defendant has intentionally and knowingly infringed Pushpay's rights, thus making this an exceptional case under 15 U.S.C. § 1117(a).

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COUNT II
Unfair Competition and False Designation of Origin
(15 U.S.C. §1125(a))

73. Pushpay specifically hereby incorporates by reference the allegations asserted in preceding paragraph numbers 1 – 63 as if fully set forth herein.

74. Defendant's unauthorized use of trademarks, a trade name, a device and designations that are identical and/or confusingly similar to Pushpay's marks in connection with identical and/or confusingly similar goods or services is likely to cause confusion, mistake, and/or deception among the general public as to the origin of the goods and services, or as to whether Defendant is sponsored by, affiliated with, originated from or otherwise connected with Pushpay, in violation of Section 43(a) of the Lanham Act, as amended, 15 U.S.C. §1125(a).

75. As a result of Defendant's infringing conduct, Pushpay has suffered substantial commercial and other damages, as well as the continuing loss of the goodwill and reputation established by Pushpay in its marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Pushpay has no adequate remedy at law. Pushpay will continue to suffer irreparable harm unless this Court enjoins Defendant's conduct.

76. By violating 15 U.S.C. §1125(a) through the use of trademarks, a trade name, a device and designations that are identical, confusingly similar to, a reproduction, copy or colorable imitation of Pushpay's marks in connection with the selling, offering for sale, distributing, and/or advertising goods and services to the general public under and through the Infringing Marks, Defendant has intentionally and knowingly infringed Pushpay's rights, thus making this an exceptional case under 15. U.S.C. § 1117(a).

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COUNT III
Common Law Trademark Infringement and Unfair Competition
(Florida Common Law)

77. Pushpay specifically hereby incorporates by reference the allegations asserted in preceding paragraph numbers 1 – 63 as if fully set forth herein.

78. Pushpay engages in interstate activities designed to promote its goods and services sold, as well as the goodwill associated with its trademarks, in Florida, and throughout the United States.

79. Pushpay, by and through itself, its licensees, related companies and/or its assignors, have used the marks and/or trade name PUSHPAY, and/or PUSH TO PAY in the state of Florida as a source identifier and a means of establishing goodwill and reputation in connection with its goods and services alleged herein, and to describe, identify or denominate said goods and services rendered or offered by Pushpay under its marks as distinguishable from similar good or services rendered or offered by others.

80. Pushpay, by and through itself, its licensees, related companies and/or its assignors, first adopted and used in Florida commerce its aforesaid marks in connection with the goods and services set forth above prior to any date of first use upon which the Defendant can rely in its Infringing Marks and Infringing Application.

81. Through its association with the aforesaid services and goods relative to its mobile payment application program, Pushpay's marks have acquired special significance in Florida and throughout the United States relative to the aforesaid services and goods because Pushpay's marks are inherently distinctive or have acquired a secondary, special meaning as indicating, describing, identifying or denominating Pushpay as the source of said services and goods.

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82. Pushpay's marks have been, and will continue to be, known throughout Florida and the United States as identifying and distinguishing Pushpay's business.

83. Without authorization or the consent of Pushpay, Defendant has used, and continues to use trademarks, a trade name, a device and a designation identical or confusingly similar to Pushpay's marks in connection with the sale, offering for sale, distribution, and advertising of identical or confusingly similar goods and/or services to the general public in the State of Florida in competition with Pushpay in the same or similar trade area in which Pushpay has already established its prior trademark rights.

84. Defendant's use of identical and/or confusingly similar trademarks, a trade name, a device and designations to Pushpay's marks in connection with the sale, offering for sale, distribution, and/or advertising of the same or similar goods and services in the State of Florida is likely to cause confusion, mistake, and deception among the general public as to the origin of Defendant's goods and services and/or as to sponsorship by, affiliation with, and/or connection to Pushpay.

85. Defendant has willfully, intentionally, and knowingly used trademarks, a trade name, a device and designations that are identical and/or confusingly similar to Pushpay's marks in connection with the sale, offering for sale, distribution, and/or advertising of the same or similar goods and/or services in the State of Florida.

86. By using trademarks, a trade name and designations that are identical and/or confusingly similar to Pushpay's marks, in connection with the sale, offering for sale, distribution, and/or advertising of the same or similar goods and/or services in the State of Florida, Defendant has wrongfully profited from its infringement of such marks. If permitted to continue, Defendant's actions will nullify Pushpay's right to the exclusive use of its marks, free

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from infringement, and will have a substantial and adverse effect on Pushpay's goodwill and business identified by its trademarks.

COUNT IV
Violation of Florida's Deceptive and Unfair Trade Practices Act
(FLA. STAT. § 501.204)

87. Pushpay specifically hereby incorporates by reference the allegations asserted in preceding paragraph numbers 1 – 63 as if fully set forth herein.

88. Defendant's use of Pushpay's marks is likely to mislead and deceive Florida consumers within the meaning of Fla. Stat. § 501.204(1).

89. Defendant's unauthorized use of Pushpay's marks constitutes an unfair method of competition, an unconscionable act or practice, and/or an unfair or deceptive act or practice in the conduct of trade or commerce within the meaning of Fla. Stat. § 501.204(1).

90. By using Pushpay's marks and confusingly similar designations, and by selling, offering for sale, distributing, and/or advertising competing goods and services to Florida consumers in connection with such marks, Defendant has intentionally and knowingly violated Florida's Deceptive and Unfair Trade Practices Act, FLA. STAT. § 501.204.

91. Pushpay has been damaged by Defendant's activities and conduct. Unless Defendant's conduct is enjoined, Florida consumers and Pushpay will continue to suffer irreparable injury that cannot be adequately calculated or compensated by money damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Pushpay IP Limited respectfully requests that this Court:

i. Enter an order preliminarily and permanently enjoining Defendant Push Pay, Inc., and all persons acting in concert with Defendant, or purporting to act on its behalf or in active concert or in participation therewith, from using Pushpay's

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trademarks and any confusingly similar marks or designations, and from continuing its unfair methods of competition and unfair and deceptive acts and practices, and requiring Defendant to immediately discontinue its current infringing practices and discontinue seeking registration for the Infringing Applications or any applications confusingly similar thereto.

ii. Enter judgment in favor of Pushpay on each of the counts asserted herein and award Pushpay all damages caused by the acts forming the basis of this Complaint, including, without limitation, Defendant's profits and Pushpay's actual damages;

iii. Award treble damages to Pushpay pursuant to 15 U.S.C. §1117(b) due to Defendant's willful, knowing, and intentional infringement of Pushpay's trademarks;

iv. Enter an order requiring Defendant Push Pay, Inc. to pay Pushpay the cost of this action and Pushpay's reasonable attorneys' fees pursuant to 15 U.S.C. §1117(a) and Fla. Stat. § 501.2105;

v. Enter an order requiring Defendant to destroy all products, items, articles, labels, signs, prints, packages, wrappers, receptacles and print/online advertisements bearing the Infringing Marks or any other mark that is confusingly similar to Pushpay's marks pursuant to 15 U.S.C. § 1118;

vi. Enter an order requiring the Defendant to cease all use of the Infringing Marks as part of its trade or business name;

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vii. Enter an order, pursuant to 15 U.S.C. § 1114, 1115, and 1125(a), transferring the domain name <www.pushpayments.com> to Pushpay; and

viii. Award Pushpay such further relief as the Court deems just, proper and equitable.

JURY DEMAND

Plaintiff Pushpay IP Limited hereby demands a trial by jury on all issues so triable, pursuant to Federal Rule of Civil Procedure 38.

[signature on following page]

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Date: November 15, 2016

Respectfully submitted,

LOTT & FISCHER, PL

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**To be admitted Pro Hac Vice*

Attorneys for Plaintiff

infringement and deceptive an unfair trade practices, FLA. STAT. § 501.204.

JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over Pushpay's claims under the Lanham Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) because these claims arise under federal statutes, namely, 15 U.S.C. §§ 1114, 1116, 1117, and 1125(a). In addition, supplemental jurisdiction over the related state law claims is conferred upon this Court by 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over Defendant, pursuant to Fla. Stat. § 48.193(1)(a)(1) and (2), because, as further alleged below: (i) Defendant conducts business, namely, rendering and/or offering to render products or services, including those central to the allegations of this lawsuit, in the state of Florida and in this judicial district; and (ii) Defendant has committed tortious acts within the state of Florida and in this judicial district.

3. Alternatively, this Court has personal jurisdiction over Defendant pursuant to Fla. Stat. § 48.193(2) because Defendant is engaged in substantial and not isolated activity within the state of Florida as further alleged below.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the acts complained of herein occurred in this judicial district, because the injuries from the Defendant's actions are felt in this district, and because the Defendant is subject to personal jurisdiction in this judicial district.

THE PARTIES

5. Pushpay is a New Zealand limited company having a registered address of Level 6, 167 Victoria Street West, Auckland, New Zealand 1010.

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6. Pushpay also operates a place of business at 18300 Redmond Way, #301, Redmond, Washington 98052.

7. Upon information and belief, Defendant was formerly known as Wildcard Payments, Inc. and/or Wildcard Consulting, Inc. (collectively, "Wildcard").

8. Upon information and belief, Wildcard is a predecessor in interest of Push Pay, Inc.

9. Upon further information and belief, Defendant Push Pay, Inc. is a Delaware corporation with a principal place of business and operating at 305 S. Andrews Blvd, Suite 204, Fort Lauderdale, Florida 33301 and/or at 151 N Nob Hill Road, Suite 108, Plantation, Florida 33324.

10. Upon further information and belief, Push Pay, Inc. is registered to do business in the state of Florida as a foreign corporation.

FACTUAL BACKGROUND

Pushpay's Rights

11. Pushpay and its related companies, including its sister company Pushpay, Inc., offer financial goods and services. The goods and services include those set forth within its various trademark applications and registrations, some of which are detailed below, and also include those related to a mobile application program designed to run on smartphones and other mobile devices that allows users to quickly and easily make direct, secure mobile payments to registered companies and organizations.

12. Pushpay Inc., one of Pushpay IP's sister companies, is incorporated under the laws of the State of Washington as of December 30, 2013 with a principal place of business at 18300 Redmond Way, #301, Redmond, Washington 98052.

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13. Pushpay is the owner of U.S. Trademark Application No 86/256,086, having an effective filing date of April 18, 2014, for the mark PUSHPAY directed to the following goods and services: *Computer software for facilitating financial transactions, namely, e-commerce software to allow users to perform electronic business transactions via a global computer network; Apparatus for recording, transmission or reproduction of sound or images; Computer application software for mobile phones and handheld computing devices, namely, electronic financial platform software that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment for use in payment processing and transactions, and software for use in payment transaction processing; Computer software for use in processing tithing payments for churches, compiling and generating reports comprised of information and analysis about church collection activity; Computer application software for mobile phones, portable media players, handheld computers, tablet computers, namely, software for use in processing tithing payments for churches, compiling and generating reports comprised of information and analysis about church collection activity; Computer application software for mobile devices, namely, mobile phones and tablet computers, namely, software for use in processing tithing payments for churches, compiling and generating reports comprised of information and analysis about church collection activity; Computer software for event registration; Financial reconciliation software; Computer software for customer relationship management; Computer software for use in accessing downloadable MP3 files and MP3 recordings of podcasts in the field of financial information* in Class 9; *Advertising; Business management; Business administration; Office functions; Providing an online portal for event registration and for fundraising; Providing incentive award programs for customers through processing of debit card loyalty program points for on-line purchase transactions of a company's*

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goods and services; Providing incentive award programs for customers through processing of debit card loyalty program points for on-line purchase transactions of a company's goods and services; Customer relationship management in Class 35; *Financial services rendered in connection with the issuance, receipt and transfer of lines of credit, namely, credit processing services; Financial services, namely, providing electronic transfer of a virtual currency for use by members of an on-line community via a global computer network; Financial services, namely, business fundraising provided over a computer network such as the Internet and providing on-line stored value accounts in an electronic commerce environment; Financial affairs, namely, financial information, management and analysis services; Monetary affairs services in the form of monetary strategy consultation and research and monetary exchange operations; Financial and monetary affairs transaction management services, namely, providing secure commercial transaction services and payment options and providing an internet website portal in the field of financial transaction and payment processing services; Payment processing, namely, credit card and debit card transaction processing services; Online payment and transaction processing services; Financial payment and financial transaction services in the form of credit card, debit card loyalty program and payment transaction processing services; Transaction services in the form of providing cash and other rebates for credit card use and debit card use as part of a customer credit card and debit card loyalty program; Financial transaction services, namely, providing secure commercial transactions and payment options; Financial transaction services, namely, providing secure commercial transactions and payment options using a mobile device at a point of sale; Merchant services, namely, payment transaction processing services; Providing financial data analysis for others, namely, compiling and analyzing church tithing collection statistics for financial purposes* in Class 36; *Financial services rendered in connection with the*

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issuance, receipt and transfer of lines of credit, namely, credit processing services; Financial services, namely, providing electronic transfer of a virtual currency for use by members of an on-line community via a global computer network; Financial services, namely, business fundraising provided over a computer network such as the Internet and providing on-line stored value accounts in an electronic commerce environment; Financial affairs, namely, financial information, management and analysis services; Monetary affairs services in the form of monetary strategy consultation and research and monetary exchange operations; Financial and monetary affairs transaction management services, namely, providing secure commercial transaction services and payment options and providing an internet website portal in the field of financial transaction and payment processing services; Payment processing, namely, credit card and debit card transaction processing services; Online payment and transaction processing services; Financial payment and financial transaction services in the form of credit card, debit card loyalty program and payment transaction processing services; Transaction services in the form of providing cash and other rebates for credit card use and debit card use as part of a customer credit card and debit card loyalty program; Financial transaction services, namely, providing secure commercial transactions and payment options; Financial transaction services, namely, providing secure commercial transactions and payment options using a mobile device at a point of sale; Merchant services, namely, payment transaction processing services; Providing financial data analysis for others, namely, compiling and analyzing church tithing collection statistics for financial purposes in Class 42 (hereinafter the "'086 Application")[1].

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[1] On or about October 19, 2016, after Pushpay made the Defendant aware of its rights (discussed below), the Defendant filed a Notice of Opposition against the '086 Application before the United States Trademark Trial and Appeal Board (the "TTAB"). In its Notice of Opposition, Defendant alleges, *inter alia*, that the mark PUSHPAY that is the subject of the '086 Application is merely descriptive and deceptively misdescriptive. Pushpay

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14. Examples of the manner in which Pushpay uses the PUSHPAY mark as set forth in the '086 Application are depicted in Exhibit A hereto.

15. Pushpay has used the PUSHPAY mark that is the subject of the '086 Application in US commerce at least as early as February 2013 for the Classes 9, 35 and 36 goods/services and at least as early as April 5, 2016 for the Class 42 services, as referenced in the status report of the '086 Application from the United States Patent and Trademark Office ("USPTO") as attached hereto and incorporated herein as Exhibit B hereto,

16. Pushpay is the owner of U.S. Trademark Registration No. 3,096,435, having an effective filing date of January 21, 2004, for the mark PUSH TO PAY directed to the following services: *Direct dial payment processing feature of financial services, namely, electronic funds transfer, including wireless* in Class 36 (hereinafter "the '435 Registration").

17. The PUSH TO PAY mark that is the subject of the '435 Registration has become incontestable pursuant to 15 U.S.C. § 1065.

18. Pushpay is the owner of U.S. Application Serial No. 87/067,992, having an effective filing date of June 10, 2016, for the mark PUSH TO PAY directed to the following goods and services: *Electrical and scientific apparatus; Computer software; Computer software for use in database management, use as a spreadsheet, and word processing; Computer software for computer system and application development, deployment and management; Computer software for computer system and mobile application development, deployment and management; Computer software for facilitating financial transactions, namely, e-commerce software to allow users to perform electronic business transactions via global computer network;*

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denies all such allegations, particularly considering the USPTO's recognition that the PUSHPAY mark is inherently distinctive. Accordingly, upon the filing of the subject Complaint, Pushpay will seek to have the TTAB suspend the pending opposition proceedings relative to the '086 Application.

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Apparatus for recording, transmission or reproduction of sound or images; Computer application software for mobile phones and handheld computing devices, namely, electronic financial platform software that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment for use in payment processing and transactions, and software for use in payment transaction processing; Computer application software for mobile phones and handheld computing devices, namely, software for use in payment processing and transactions, and software for use in payment transaction processing; Computer software for use in processing tithing payments for churches, compiling and generating reports comprised of information and analysis about church collection activity; Computer application software for mobile phones, portable media players, handheld computers, tablet computers, namely, software for use in processing tithing payments for churches, compiling and generating reports comprised of information and analysis about church collection activity; Computer software for event registration; Financial reconciliation software; Computer software for customer relationship management; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media in Class 9; *Providing an online portal for fundraising; Customer relationship management; Developing and managing the charitable giving programs of others* in Class 35; *Insurance and financial; Financial services, namely, financial advisory, analysis, consultancy and research; Financial analysis, namely, compiling and analyzing statistics, data and other sources of information for financial purposes; Financial services rendered in connection with the issuance, receipt and transfer of lines of credit, namely, credit processing services; Financial services, namely, business fundraising provided over a computer network such as the Internet and providing on-line stored value accounts in an electronic commerce environment; Financial affairs, namely, financial information, management*

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