

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

AC DIRECT, INC.,

Case No. 6:10-bk-00080-ABB

Chapter 11

Debtor.

ORDER TO SHOW CAUSE

This matter came before the Court on the Emergency Motion (Doc. No. 31) filed by the Debtor AC Direct, Inc. (“Debtor”) requesting the entry of an order allowing the Debtor continued use of its merchant account with PayPal, Inc. (“PayPal”) and for sanctions. The Emergency Motion was served on PayPal’s various business offices via mail and on its legal department via mail, FedEx overnight delivery, and facsimile on January 29, 2010 (Doc. No. 31). An evidentiary hearing was duly noticed (Doc. No. 33) and held on February 4, 2010 at which counsel for the Debtor and counsel for the Office of the United States Trustee appeared. PayPal filed no response to the Emergency Motion and failed to appear at the hearing.

The Debtor has been in business since 2001 distributing residential and commercial heating and air conditioning systems and accessories through a web-based storefront known as www.acdirect.com. The Internet is its sole source of customers and it conducts all of its business through the Internet. The Debtor utilizes a merchant account with PayPal for its transactions with customers pursuant to a written merchant account agreement. The PayPal merchant account is essential to the Debtor’s business operations, allowing it to accept orders and receive payment through the Internet.

The Debtor filed this case on January 5, 2010 and is a debtor-in-possession. PayPal is its only merchant account. PayPal, pursuant to an email issued by a PayPal Risk Management Analyst (Doc. No. 31, Ex. A.), terminated the Debtor's merchant account on January 20, 2010 asserting the "account poses an unreasonably high risk exposure to PayPal." PayPal has frozen and seized all funds in the Debtor's merchant account and has cancelled every money request since 2008. The Debtor asserts it is unable to operate and has been damaged by PayPal's actions.

The Debtor, via email to PayPal on January 21, 2010, informed PayPal the Debtor is in bankruptcy and requested PayPal contact the Debtor's counsel. The Debtor has attempted to communicate with PayPal via every possible means--email, telephone, first-class mail, facsimile, and overnight delivery. PayPal has failed to respond to the communications.

The Debtor's PayPal merchant account may constitute an executory contract that may be assumed by the Debtor and may not be automatically terminated due to the bankruptcy filing. 11 U.S.C. §§ 365 (c)(2), (e)(1); Citizens and S. Nat'l Bank v. Thomas B. Hamilton Co., Inc. (In re Thomas B. Hamilton Co., Inc.) 969 F.2d 1013, 1020-1022 (11th Cir. 1992). A merchant account agreement may not be terminated absent relief from the automatic stay of 11 U.S.C. Section 362(a) pending the Debtor's assumption or rejection of the agreement. Id. The credit card sales and the funds seized by PayPal may constitute property of the bankruptcy estate pursuant to 11 U.S.C. Section 541(a). Section 542(a) of the Bankruptcy Code requires all entities in possession of property of the estate account for and turnover such property.

PayPal has not sought relief from the automatic stay and its actions may constitute a willful violation of the automatic stay pursuant to 11 U.S.C. Section 362(k). The Debtor asserts PayPal has not accounted for and turned over the seized credit card sales and funds pursuant to 11 U.S.C. Section 542(a).

The Debtor requests the entry of an order reinstating the PayPal merchant account, directing the turnover of all funds seized by PayPal, and imposing sanctions against PayPal, including compensatory and punitive damages.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that PayPal, Inc. is hereby directed to appear on February 17, 2010 at 2:00 p.m. in Courtroom A, Fifth Floor, 135 West Central Boulevard, Orlando, Florida, to show cause, if any, why it should not be held in contempt of Court and why sanctions should not be imposed against it pursuant to 11 U.S.C. Sections 365(k) and 105(a) and the Court's inherent powers for:

- (i) its failure to appear at the February 4, 2010 hearing;
- (ii) its termination of the merchant account without obtaining relief from the automatic stay of 11 U.S.C. Section 362(a); and
- (iii) its alleged seizure of property of the bankruptcy estate and failure to comply with the accounting and turnover provisions of 11 U.S.C. Section 542.

Dated this 9th day of February, 2010.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge