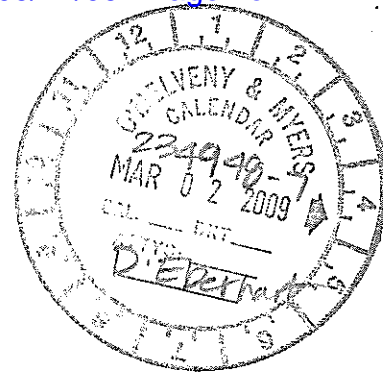


EXHIBIT 3



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7 Attorneys for Defendants
8 THUNDERWOOD HOLDINGS, INC.,
BRIAN DUNNING, and BRIANDUNNING.COM
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 EBAY INC.,)

14 Plaintiff,)

15 vs.)

16 DIGITAL POINT SOLUTIONS, INC.;)
17 SHAWN HOGAN; KESSLER's FLYING)
CIRCUS; THUNDERWOOD HOLDINGS,)
18 INC.; TODD DUNNING; DUNNING)
ENTERPRISES, INC.; BRIAN DUNNING;)
19 BRIANDUNNING.COM; and DOES 1-20,)

20 Defendants.)

CASE NO. C 08-4052 JF

**RESPONSES OF DEFENDANT
BRIANDUNNING.COM TO
FIRST SET OF INTERROGATORIES
PROPOUNDED BY PLAINTIFF
EBAY INC.**

21
22 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

23 RESPONDING PARTY: DEFENDANT BRIANDUNNING.COM

24 SET NO.: ONE (1)

25 Defendant BrianDunning.com ("Defendant" and/or "Responding Party") hereby
26 responds to the First Set of Interrogatories (Nos. 1-2) propounded by Plaintiff eBay Inc.
27 ("Plaintiff" and/or "Propounding Party") as follows:

28 ///

GENERAL STATEMENT

1
2 Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was
3 granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been
4 dismissed with leave to amend. No amended complaint has been filed and/or served in
5 this action. As such, there is no pending claim against Defendant and Defendant is not
6 required to respond to Plaintiff's discovery request. In this regard, Defendant requested
7 that Plaintiff acknowledge that no response is required or, in the alternative, grant
8 Defendant an extension of time to respond to the discovery requests until some time after
9 Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused
10 Defendant's request without explanation. Defendant serves these responses out of an
11 abundance of caution in the event it is determined that such responses are required despite
12 the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves
13 the right to withdraw these responses in total and otherwise object to the use, reference to,
14 or disclosure of these responses in any manner for any purpose.

15 Brian Dunning ("Mr. Dunning") has invoked his privilege against
16 self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
17 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of
18 the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is
19 the sole authorized representative of Responding Party, and the only person who can verify
20 discovery responses on behalf of Responding Party, Responding Party cannot provide any
21 verified responses without compromising Mr. Dunning's right against self-incrimination.

22 Should Mr. Dunning determine that there is no longer the threat of potential
23 criminal prosecution and elect to withdraw his privilege against self-incrimination in the future,
24 Responding Party expressly reserves the right to supplement its responses.

25 Furthermore, the Federal Bureau of Investigation has seized all documents and
26 computers, disk drives, hard drives, cell phones and servers containing information potentially
27 related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this
28 investigation has refused all requests to provide Defendants with a copy of the material seized

1 by the FBI. Those items and records may contain information responsive to the requests
2 below, but those items and records are not in the possession, custody or control of Defendants.

3 Without waiving any of the foregoing, Responding Party responds to the
4 interrogatories below:

5 **RESPONSES**

6 **SPECIAL INTERROGATORY NO. 1:**

7 Identify all persons or entities with knowledge regarding BrianDunning.com's
8 participation, manipulation or interaction in any Affiliate Marketing Program including eBay's
9 Affiliate Marketing Programs including, but not limited to, all methods, techniques and
10 technologies, software, source code, Javascript and HTML code, used by BrianDunning.com
11 to obtain revenue from, or otherwise interact with, participate in or manipulate any Affiliate
12 Marketing Program.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

14 Responding Party objects to this interrogatory on the grounds that it violates
15 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
16 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
17 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
18 section 940. Responding Party further objects on the ground that this interrogatory is vague
19 and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further
20 objects on the grounds that the term "manipulation" and "manipulate" are vague, argumentative
21 and conclusory. Responding Party further objects that to the extent this interrogatory seeks
22 information related to programs other than eBay's Affiliate Marketing Program, the
23 interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated
24 to lead to the discovery of admissible evidence. Responding Party further objects to this
25 interrogatory on the ground that it seeks production of trade secrets or other confidential
26 information.

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1 **SPECIAL INTERROGATORY NO. 2:**

2 Identify all Internet Forums at, within or through which BrianDunning.com
3 discussed any aspect of their participation in, manipulation of or interaction with eBay's
4 Affiliate Marketing Programs, or any other Affiliate Marketing Program.

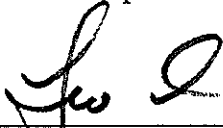
5 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

6 Responding Party objects to this interrogatory on the grounds that it violates
7 Mr. Dunning's privilege against self-incrimination pursuant Fifth Amendment to the U.S.
8 Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule
9 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section
10 940. Responding Party further objects on the ground that this interrogatory is vague and
11 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
12 that to the extent this interrogatory seeks documents related to programs other than eBay's
13 Affiliate Marketing Program, the interrogatory is neither relevant to the subject matter of this
14 action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding
15 Party further objects on the grounds that the term "manipulation" is vague, argumentative and
16 conclusory. Responding Party further objects to this interrogatory on the ground that it seeks
17 production of trade secrets or other confidential information.

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DATED: February 26, 2009

RUS, MILIBAND & SMITH
A Professional Corporation

By: 
LEO J. PRESIADO
Attorneys for Defendants
Thunderwood Holdings, Inc., Brian Dunning
and BrianDunning.com

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PROOF OF SERVICE

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On **February 26, 2009**, I served the foregoing documents described as **RESPONSES OF DEFENDANT BRIANDUNNING.COM TO FIRST SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

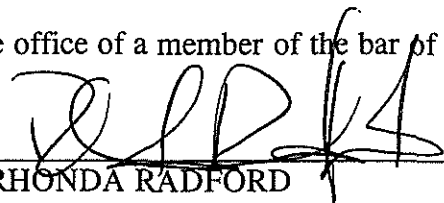
(By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

(By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

(By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on **February 26, 2009**, at Irvine, California.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


RHONDA RADFORD

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SERVICE LIST

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052

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