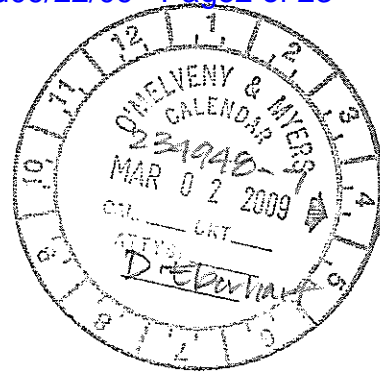


EXHIBIT 10



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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 REQUESTS FOR PRODUCTION
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 Requests for Production (Nos. 1-33) propounded by Plaintiff eBay
27 Inc. ("Plaintiff" and/or "Propounding Party") as follows:

28 ///

1 **GENERAL STATEMENT**

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 representative of Responding Party, and Mr. Dunning declines to sign these discovery
20 responses on behalf of Responding Party, counsel for Responding Party is signing these
21 responses pursuant to Federal Rules of Civil Procedure Rule 26(g). These responses to
22 requests for documents directed at Responding Party are not a waiver of Mr. Dunning's
23 privilege.

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

28 ///

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 requests below:

5 **RESPONSES**

6 **REQUEST FOR PRODUCTION NO. 1:**

7 All documents relating to eBay, including all agreements, terms of service and
8 terms and conditions.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

10 Responding Party objects on the ground that this request is vague and
11 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
12 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
13 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
14 and without waiving the foregoing objections and based on a reasonable interpretation as to the
15 meaning of this request, Responding Party responds as follows: Responding Party produced a
16 limited number of documents at the time of making its Initial Disclosures. Responding Party
17 has documents that may be responsive to this request that were produced to it by Commission
18 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v.*
19 *Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008
20 00101025. Accordingly, Responding Party is prohibited from producing these documents at
21 this time. Responding Party has no other documents in its possession, custody or control that
22 are responsive to this request.

23 **REQUEST FOR PRODUCTION NO. 2:**

24 All documents relating to, or Communications with, eBay or any current or
25 former employee of eBay.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

27 Responding Party objects on the ground that this request is vague and
28 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects

1 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
2 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
3 and without waiving the foregoing objections and based on a reasonable interpretation as to the
4 meaning of this request, Responding Party responds as follows: Responding Party produced a
5 limited number of documents at the time of making its Initial Disclosures. Responding Party
6 has documents that may be responsive to this request that were produced to it by Commission
7 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v.*
8 *Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008
9 00101025. Accordingly, Responding Party is prohibited from producing these documents at
10 this time. Responding Party has no other documents in its possession, custody or control that
11 are responsive to this request.

12 **REQUEST FOR PRODUCTION NO. 3:**

13 All documents relating to payment of commissions or other revenue obtained by
14 briandunning.com through participation in, interaction with or manipulation of eBay's Affiliate
15 Marketing Program.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

17 Responding Party objects on the ground that this request is vague and
18 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
19 on the grounds that the term "manipulation" is vague, argumentative and conclusory.
20 Responding Party further objects to this request on the grounds that, as phrased, the request
21 seeks documents the disclosure of which might violate the attorney-client privilege and/or the
22 work product doctrine. Responding Party further objects to this request on the ground that it
23 violates Responding Party's right to privacy, and seeks production of trade secrets or other
24 confidential information. Responding Party further objects on the ground that this information
25 is equally available to Plaintiff. Subject to and without waiving the foregoing objections and
26 based on a reasonable interpretation as to the meaning of this request, Responding Party
27 responds as follows: Responding Party produced a limited number of documents at the time of
28 making its Initial Disclosures. Responding Party has documents that may be responsive to this

1 request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in
2 the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court,
3 Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited
4 from producing these documents at this time. Responding Party has no other documents in its
5 possession, custody or control that are responsive to this request.

6 **REQUEST FOR PRODUCTION NO. 4:**

7 All documents relating to eBay's Affiliate Marketing Program, including, but
8 not limited to, all methods and technologies used by briandunning.com to obtain revenue from,
9 manipulate or otherwise interact with, eBay's Affiliate Marketing Program, including, but not
10 limited to, all software, source code, Javascript, and HTML code.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

12 Responding Party objects on the ground that this request is vague and
13 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
14 on the grounds that the term "manipulate" is vague, argumentative and conclusory.
15 Responding Party further objects to this request on the grounds that, as phrased, the request
16 seeks documents the disclosure of which might violate the attorney-client privilege and/or the
17 work product doctrine. Responding Party further objects to this request on the ground that it
18 seeks production of trade secrets or other confidential information. Subject to and without
19 waiving the foregoing objections and based on a reasonable interpretation as to the meaning of
20 this request, Responding Party responds as follows: Responding Party produced a limited
21 number of documents at the time of making its Initial Disclosures. Responding Party has
22 documents that may be responsive to this request that were produced to it by Commission
23 Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v.*
24 *Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008
25 00101025. Accordingly, Responding Party is prohibited from producing these documents at
26 this time. Responding Party has no other documents in its possession, custody or control that
27 are responsive to this request.

28 / / /

1 **REQUEST FOR PRODUCTION NO. 5:**

2 All documents relating to advertisements for eBay used, or purported to be used,
3 on any website or ad network that directed or referred Users to eBay as part of eBay's Affiliate
4 Marketing Program.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

6 Responding Party objects on the ground that this request is vague and
7 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
8 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
9 which might violate the attorney-client privilege and/or the work product doctrine. Responding
10 Party further objects to this request on the ground that it seeks production of trade secrets or
11 other confidential information. Subject to and without waiving the foregoing objections and
12 based on a reasonable interpretation as to the meaning of this request, Responding Party
13 responds as follows: Responding Party produced a limited number of documents at the time of
14 making its Initial Disclosures. Responding Party has documents that may be responsive to this
15 request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in
16 the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court,
17 Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited
18 from producing these documents at this time. Responding Party has no other documents in its
19 possession, custody or control that are responsive to this request.

20 **REQUEST FOR PRODUCTION NO. 6:**

21 All documents reflecting the number of Users who allegedly clicked on an
22 advertisement for eBay used, or purported to be used, by briandunning.com to direct or refer
23 Users to eBay as part of eBay's Affiliate Marketing Program.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

25 Responding Party objects on the ground that this request is vague and
26 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
27 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
28 which might violate the attorney-client privilege and/or the work product doctrine. Responding

1 Party further objects to this request on the ground that it seeks production of trade secrets or
2 other confidential information. Subject to and without waiving the foregoing objections and
3 based on a reasonable interpretation as to the meaning of this request, Responding Party
4 responds as follows: Responding Party produced a limited number of documents at the time of
5 making its Initial Disclosures. Responding Party has documents that may be responsive to this
6 request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in
7 the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court,
8 Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited
9 from producing these documents at this time. Responding Party has no other documents in its
10 possession, custody or control that are responsive to this request.

11 **REQUEST FOR PRODUCTION NO. 7:**

12 All documents relating to methods or techniques intended to, or causing, a
13 User's browser to load any eBay webpage, webpage content or data therefrom.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

15 Responding Party objects on the ground that this request is vague and
16 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
17 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
18 which might violate the attorney-client privilege and/or the work product doctrine. Responding
19 Party further objects to this request on the ground that it seeks production of trade secrets or
20 other confidential information. Subject to and without waiving the foregoing objections and
21 based on a reasonable interpretation as to the meaning of this request, Responding Party
22 responds as follows: Responding Party produced a limited number of documents at the time of
23 making its Initial Disclosures. Responding Party has documents that may be responsive to this
24 request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in
25 the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court,
26 Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited
27 from producing these documents at this time. Responding Party has no other documents in its
28 possession, custody or control that are responsive to this request.

1 **REQUEST FOR PRODUCTION NO. 8:**

2 All documents sufficient to identify all advertising networks, advertising
3 syndication services or websites used or purportedly used by briandunning.com to advertise
4 or promote eBay or to interact in any way with eBay or eBay's Affiliate Marketing Programs.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

6 Responding Party objects on the ground that this request is vague and
7 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
8 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
9 which might violate the attorney-client privilege and/or the work product doctrine. Responding
10 Party further objects to this request on the ground that it seeks production of trade secrets or
11 other confidential information. Subject to and without waiving the foregoing objections and
12 based on a reasonable interpretation as to the meaning of this request, Responding Party
13 responds as follows: Responding Party produced a limited number of documents at the time of
14 making its Initial Disclosures. Responding Party has documents that may be responsive to this
15 request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in
16 the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court,
17 Orange County, Case No. 30-2008 00101025. Accordingly, Responding Party is prohibited
18 from producing these documents at this time. Responding Party has no other documents in its
19 possession, custody or control that are responsive to this request.

20 **REQUEST FOR PRODUCTION NO. 9:**

21 All documents sufficient to identify all Affiliate Marketing Programs, not
22 including eBay's Affiliate Marketing Program, with whom briandunning.com obtained revenue
23 or otherwise interacted.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

25 Responding Party objects on the ground that this request is vague and
26 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
27 that to the extent this request seeks documents related to programs other than eBay's Affiliate
28 Marketing Program, the request is neither relevant to the subject matter of this action, nor

1 reasonably calculated to lead to the discovery of admissible evidence. Responding Party further
2 objects to this request on the grounds that, as phrased, the request seeks documents the
3 disclosure of which might violate the attorney-client privilege and/or the work product
4 doctrine. Responding Party further objects to this request on the ground that it seeks
5 production of trade secrets or other confidential information. Subject to and without waiving
6 the foregoing objections and based on a reasonable interpretation as to the meaning of this
7 request, Responding Party responds as follows: Responding Party does not have any
8 responsive documents in its possession, custody or control.

9 **REQUEST FOR PRODUCTION NO. 10:**

10 All documents relating to and/or describing methods and techniques used by any
11 other Affiliate Marketing Program that briandunning.com interacted with, participated in or
12 manipulated.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

14 Responding Party objects on the ground that this request is vague and
15 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
16 on the grounds that the term "manipulated" is vague, argumentative and conclusory.
17 Responding Party further objects that to the extent this request seeks documents related to
18 programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the
19 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
20 evidence. Responding Party further objects to this request on the grounds that, as phrased, the
21 request seeks documents the disclosure of which might violate the attorney-client privilege
22 and/or the work product doctrine. Responding Party further objects to this request on the
23 ground that it seeks production of trade secrets or other confidential information. Subject to
24 and without waiving the foregoing objections and based on a reasonable interpretation as to the
25 meaning of this request, Responding Party responds as follows: Responding Party does not
26 have any responsive documents in its possession, custody or control.

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1 **REQUEST FOR PRODUCTION NO. 11:**

2 All documents sufficient to identify the source of any technology, technique or
3 method used by briandunning.com to participate in, manipulate or interact with the eBay
4 Affiliate Marketing Program, or any other Affiliate Marketing Program.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

6 Responding Party objects on the ground that this request is vague and
7 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
8 on the grounds that the term "manipulate" is vague, argumentative and conclusory.
9 Responding Party further objects that to the extent this request seeks documents related to
10 programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the
11 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
12 evidence. Responding Party further objects to this request on the grounds that, as phrased, the
13 request seeks documents the disclosure of which might violate the attorney-client privilege
14 and/or the work product doctrine. Responding Party further objects to this request on the
15 ground that it seeks production of trade secrets or other confidential information. Subject to
16 and without waiving the foregoing objections and based on a reasonable interpretation as to the
17 meaning of this request, Responding Party responds as follows: Responding Party does not
18 have any responsive documents in its possession, custody or control.

19 **REQUEST FOR PRODUCTION NO. 12:**

20 All documents sufficient to identify any individuals, groups, books, manuals or
21 other materials consulted by briandunning.com while developing any technology, technique
22 or method used by briandunning.com to participate in, manipulate or interact with the eBay
23 Affiliate Marketing Program, or any other Affiliate Marketing Program.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

25 Responding Party objects on the ground that this request is vague and
26 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
27 on the grounds that the term "manipulate" is vague, argumentative and conclusory.
28 Responding Party further objects that to the extent this request seeks documents related to

1 programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the
2 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
3 evidence. Responding Party further objects to this request on the grounds that, as phrased, the
4 request seeks documents the disclosure of which might violate the attorney-client privilege
5 and/or the work product doctrine. Responding Party further objects to this request on the
6 ground that it seeks production of trade secrets or other confidential information. Subject to
7 and without waiving the foregoing objections and based on a reasonable interpretation as to the
8 meaning of this request, Responding Party responds as follows: Responding Party does not
9 have any responsive documents in its possession, custody or control.

10 **REQUEST FOR PRODUCTION NO. 13:**

11 All documents relating to Commission Junction, including all agreements, terms
12 of service and terms and conditions.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

14 Responding Party objects on the ground that this request is vague and
15 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
16 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
17 which might violate the attorney-client privilege and/or the work product doctrine. Responding
18 Party further objects to this request on the ground that it seeks production of trade secrets or
19 other confidential information. Subject to and without waiving the foregoing objections and
20 based on a reasonable interpretation as to the meaning of this request, Responding Party
21 responds as follows: Responding Party does not have any responsive documents in its
22 possession, custody or control.

23 **REQUEST FOR PRODUCTION NO. 14:**

24 All documents relating to, or Communications with, Commission Junction or
25 any current or former employee of Commission Junction.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

27 Responding Party objects on the ground that this request is vague and
28 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects

1 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
2 which might violate the attorney-client privilege and/or the work product doctrine. Responding
3 Party further objects to this request on the ground that it seeks production of trade secrets or
4 other confidential information. Subject to and without waiving the foregoing objections and
5 based on a reasonable interpretation as to the meaning of this request, Responding Party
6 responds as follows: Responding Party does not have any responsive documents in its
7 possession, custody or control.

8 **REQUEST FOR PRODUCTION NO. 15:**

9 All documents relating to, or Communications with, Digital Point Solutions,
10 Inc., Kessler's Flying Circus, Thunderwood Holdings, Inc., or Dunning Enterprise, Inc.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

12 Responding Party objects on the ground that this request is vague and
13 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
14 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
15 which might violate the attorney-client privilege and/or the work product doctrine. Responding
16 Party further objects to this request on the ground that it seeks production of trade secrets or
17 other confidential information. Subject to and without waiving the foregoing objections and
18 based on a reasonable interpretation as to the meaning of this request, Responding Party
19 responds as follows: Responding Party does not have any responsive documents in its
20 possession, custody or control.

21 **REQUEST FOR PRODUCTION NO. 16:**

22 All Communications with Shawn Hogan, Todd Dunning or Brian Dunning.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

24 Responding Party objects on the ground that this request is vague and
25 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
26 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
27 which might violate the attorney-client privilege and/or the work product doctrine. Responding
28 Party further objects to this request on the ground that it violates privacy rights of third parties.

1 Subject to and without waiving the foregoing objections and based on a reasonable
2 interpretation as to the meaning of this request, Responding Party responds as follows:
3 Responding Party does not have any responsive documents in its possession, custody or
4 control.

5 **REQUEST FOR PRODUCTION NO. 17:**

6 All documents relating to, or Communications with, Rachael Hughes, or any
7 companies or entities owned, controlled, affiliated with or used by Rachael Hughes, relating to
8 eBay's Affiliate Marketing Program including, but not limited to, any agreements with Rachael
9 Hughes and company and any technology transferred to or from Rachael Hughes and company.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

11 Responding Party objects to this request on the grounds that Rachel Hughes is
12 unknown to Responding Party, therefore no response is possible and all objections are reserved
13 until eBay properly identifies this person or entity.

14 **REQUEST FOR PRODUCTION NO. 18:**

15 All documents sufficient to describe all phone numbers, email addresses, web
16 pages, instant messenger or mail accounts and social network accounts maintained, formerly
17 maintained or registered to briandunning.com.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

19 Responding Party objects on the ground that this request is vague and
20 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this
21 request seeks documents which are neither relevant to the subject matter of this action, nor
22 reasonably calculated to lead to the discovery of admissible evidence. Responding Party
23 further objects to this request on the ground that it seeks production of trade secrets or other
24 confidential information. Subject to and without waiving the foregoing objections and based on
25 a reasonable interpretation as to the meaning of this request, Responding Party responds as
26 follows: Responding Party does not have possession, custody, or control of any responsive
27 documents.

28 / / /

1 **REQUEST FOR PRODUCTION NO. 19:**

2 Documents sufficient to identify any Aliases used by briandunning.com in any
3 Internet Forum at or within which Briandunning.com discussed any aspect of their participation
4 in, manipulation of or interaction with eBay's Affiliate Marketing Program, or any other
5 Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs,
6 Usenet newsgroups or chat rooms.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

8 Responding Party objects on the ground that this request is vague and
9 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
10 on the grounds that the term "manipulation" is vague, argumentative and conclusory.
11 Responding Party further objects that to the extent this request seeks documents related to
12 programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the
13 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
14 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
15 interpretation as to the meaning of this request, Responding Party responds as follows:

16 Responding Party does not have possession, custody, or control of any responsive documents.

17 **REQUEST FOR PRODUCTION NO. 20:**

18 Documents sufficient to identify any Internet Forum at or within which
19 briandunning.com discussed any aspect of their participation in, manipulation of or interaction
20 with eBay's Affiliate Marketing Programs, or any other Affiliate Marketing Programs,
21 including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat
22 rooms.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

24 Responding Party objects on the ground that this request is vague and
25 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
26 on the grounds that the term "manipulation" is vague, argumentative and conclusory.
27 Responding Party further objects that to the extent this request seeks documents related to
28 programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the

1 subject matter of this action, nor reasonably calculated to lead to the discovery of admissible
2 evidence. Subject to and without waiving the foregoing objections and based on a reasonable
3 interpretation as to the meaning of this request, Responding Party responds as follows:

4 Responding Party does not have possession, custody, or control of any responsive documents.

5 **REQUEST FOR PRODUCTION NO. 21:**

6 Documents sufficient to identify all internet service providers (ISPs) and IP
7 addresses used by briandunning.com.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

9 Responding Party objects on the ground that this request is vague and
10 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this
11 request seeks documents which are neither relevant to the subject matter of this action, nor
12 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without
13 waiving the foregoing objections and based on a reasonable interpretation as to the meaning of
14 this request, Responding Party responds as follows: Responding Party does not have
15 possession, custody, or control of any responsive documents.

16 **REQUEST FOR PRODUCTION NO. 22:**

17 Documents sufficient to identify all computers, servers, electronic data storage
18 and hosting companies, entities, or facilities used by briandunning.com.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

20 Responding Party objects on the ground that this request is vague and
21 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this
22 request seeks documents which are neither relevant to the subject matter of this action, nor
23 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without
24 waiving the foregoing objections and based on a reasonable interpretation as to the meaning of
25 this request, Responding Party responds as follows: To the extent that Responding Party was a
26 partner in Kessler's Flying Circus, which had computers and stored data, this material is
27 currently in the possession of the FBI and not available to Responding Party. Responding
28 Party does not have possession, custody, or control of any responsive documents.

1 **REQUEST FOR PRODUCTION NO. 23:**

2 Documents sufficient to identify any entity used or hired to maintain or restore
3 electronic data or systems relating to briandunning.com's participation in, manipulation of or
4 interaction with eBay's Affiliate Marketing Program.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

6 Responding Party objects on the ground that this request is vague and
7 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
8 on the grounds that the term "manipulation" is vague, argumentative and conclusory.
9 Responding Party further objects to this request on the ground that it seeks production of trade
10 secrets or other confidential information. Subject to and without waiving the foregoing
11 objections and based on a reasonable interpretation as to the meaning of this request,
12 Responding Party responds as follows: Responding Party does not have possession, custody,
13 or control of any responsive documents.

14 **REQUEST FOR PRODUCTION NO. 24:**

15 Documents sufficient to identify software used to clean, reformat or erase
16 hard-drives used by briandunning.com, or any equipment owned, used or maintained by
17 briandunning.com.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

19 Responding Party objects on the ground that this request is vague and
20 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
21 to this request on the ground that it seeks production of trade secrets or other confidential
22 information. Subject to and without waiving the foregoing objections and based on a
23 reasonable interpretation as to the meaning of this request, Responding Party responds as
24 follows: Responding Party does not have possession, custody, or control of any responsive
25 documents.

26 **REQUEST FOR PRODUCTION NO. 25:**

27 All documents sufficient to identify all business entities or fictitious business
28 names currently or formerly maintained by briandunning.com.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

2 Responding Party objects on the ground that this request is vague and
3 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
4 that this request seeks documents which are neither relevant to the subject matter of this action,
5 nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and
6 without waiving the foregoing objections and based on a reasonable interpretation as to the
7 meaning of this request, Responding Party responds as follows: Responding Party does not
8 have possession, custody, or control of any responsive documents.

9 REQUEST FOR PRODUCTION NO. 26:

10 All documents filed by briandunning.com with any Secretary of State.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

12 Responding Party objects on the ground that this request is overbroad, unduly
13 burdensome and oppressive. Responding Party further objects that this request seeks
14 documents which are neither relevant to the subject matter of this action, nor reasonably
15 calculated to lead to the discovery of admissible evidence. Subject to and without waiving the
16 foregoing objections and based on a reasonable interpretation as to the meaning of this request,
17 Responding Party responds as follows: Other than the documents Responding Party produced
18 as part of its Initial Disclosures, Responding Party has no other documents in its possession,
19 custody or control that are responsive to this request.

20 REQUEST FOR PRODUCTION NO. 27:

21 Documents sufficient to show the structure and organization of
22 briandunning.com and all companies or other entities owned or controlled by
23 briandunning.com that were involved in or interacted with any Affiliate Marketing Program.

24 RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

25 Responding Party objects on the ground that this request is overbroad, unduly
26 burdensome and oppressive. Responding Party further objects that this request seeks
27 documents which are neither relevant to the subject matter of this action, nor reasonably
28 calculated to lead to the discovery of admissible evidence. Subject to and without waiving the

1 foregoing objections and based on a reasonable interpretation as to the meaning of this request,
2 Responding Party responds as follows: Other than the documents Responding Party produced
3 as part of its Initial Disclosures, Responding Party has no other documents in its possession,
4 custody or control that are responsive to this request.

5 **REQUEST FOR PRODUCTION NO. 28:**

6 Documents sufficient to identify all employees, contractors or temporary
7 employees of briandunning.com, their dates of employment, duties, salary and any other
8 compensation.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

10 Responding Party objects on the ground that this request is overbroad, undue
11 burdensome and oppressive. Responding Party further objects that this request seeks
12 documents which are neither relevant to the subject matter of this action, nor reasonably
13 calculated to lead to the discovery of admissible evidence. Responding Party further objects to
14 this request on the ground that it violates privacy rights of third parties, seeks production of
15 trade secrets or other confidential information.

16 **REQUEST FOR PRODUCTION NO. 29:**

17 All documents constituting briandunning.com's annual, quarterly and monthly
18 audited, compiled, reviewed or unaudited financial statements, including all income statements
19 and balance sheets of briandunning.com.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

21 Responding Party objects on the ground that this request is overbroad, undue
22 burdensome and oppressive. Responding Party further objects that this request seeks
23 documents which are neither relevant to the subject matter of this action, nor reasonably
24 calculated to lead to the discovery of admissible evidence. Responding Party further objects to
25 this request on the ground that it seeks production of trade secrets and confidential financial
26 information, and invades Responding Party's rights of privacy.

27 ///

28 ///

1 **REQUEST FOR PRODUCTION NO. 30:**

2 All documents sufficient to identify all assets and financial accounts (including
3 those outside of the United States) maintained or formerly maintained by briandunning.com.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

5 Responding Party objects on the ground that this request is vague and
6 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
7 that this request seeks documents which are neither relevant to the subject matter of this action,
8 nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party
9 further objects to this request on the ground that it violates Responding Party's right to privacy,
10 and seeks production of trade secrets and confidential financial information.

11 **REQUEST FOR PRODUCTION NO. 31:**

12 Documents constituting briandunning.com's tax returns for the years 2003 to the
13 present.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

15 Responding Party objects that this request seeks documents which are neither
16 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery
17 of admissible evidence. Responding Party further objects to this request on the ground that it
18 violates Responding Party's right to privacy, seeks privileged financial information, see e.g.,
19 California Revenue and Taxation Code section 19542.

20 **REQUEST FOR PRODUCTION NO. 32:**

21 All documents relating to the transfer or assumption of any liability by
22 briandunning.com.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

24 Responding Party objects on the ground that this request is vague and
25 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party objects that this
26 request seeks documents which are neither relevant to the subject matter of this action, nor
27 reasonably calculated to lead to the discovery of admissible evidence. Responding Party
28 further objects to this request on the grounds that, as phrased, the request seeks documents the

1 disclosure of which might violate the attorney-client privilege and/or the work product
2 doctrine. Subject to and without waiving the foregoing objections and based on a reasonable
3 interpretation as to the meaning of this request, Responding Party responds as follows:
4 Responding Party does not have possession, custody, or control of any responsive documents.

5 **REQUEST FOR PRODUCTION NO. 33:**

6 All documents relating to any insurance policies relevant to this action.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

8 Responding Party objects on the ground that this request is vague and
9 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
10 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
11 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
12 and without waiving the foregoing objections and based on a reasonable interpretation as to the
13 meaning of this request, Responding Party responds as follows: Responding Party does not
14 have possession, custody, or control of any responsive documents.

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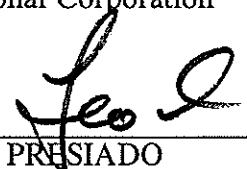
16 DATED: February 26, 2009

RUS, MILIBAND & SMITH
A Professional Corporation

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By: _____



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and BrianDunning.com

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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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