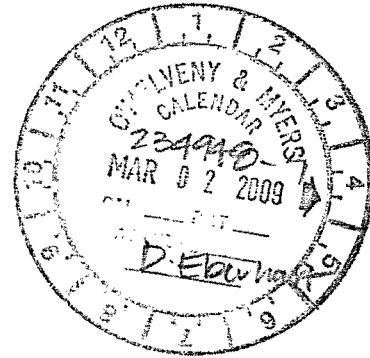


## **EXHIBIT 6**

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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 ADMISSION  
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 Admission (Nos. 1-25) propounded by Plaintiff eBay  
27 Inc. ("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 **RESPONSES**

4 **REQUEST FOR ADMISSION NO. 1:**

5 Admit that briandunning.com conducted business with eBay during at least some  
6 portion of 2007.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

8 Responding Party objects to this request on the grounds that it violates  
9 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
10 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
11 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
12 section 940. Responding Party further objects on the ground that this request is vague and  
13 ambiguous.

14 **REQUEST FOR ADMISSION NO. 2:**

15 Admit that briandunning.com conducted business with eBay during at least some  
16 portion of 2006.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

18 Responding Party objects to this request on the grounds that it violates  
19 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
20 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
21 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
22 section 940.

23 **REQUEST FOR ADMISSION NO. 3:**

24 Admit that briandunning.com conducted business with eBay during at least some  
25 portion of 2005.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

27 Responding Party objects to this request on the grounds that it violates  
28 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the

1 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
2 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
3 section 940. Responding Party further objects on the ground that this request is vague and  
4 ambiguous.

5 **REQUEST FOR ADMISSION NO. 4:**

6 Admit that briandunning.com conducted business with eBay during at least some  
7 portion of 2004.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

9 Responding Party objects to this request on the grounds that it violates  
10 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
11 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
12 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
13 section 940. Responding Party further objects on the ground that this request is vague and  
14 ambiguous.

15 **REQUEST FOR ADMISSION NO. 5:**

16 Admit that briandunning.com conducted business with eBay during at least some  
17 portion of 2003.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

19 Responding Party objects to this request on the grounds that it violates  
20 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
21 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
22 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
23 section 940. Responding Party further objects on the ground that this request is vague and  
24 ambiguous.

25 **REQUEST FOR ADMISSION NO. 6:**

26 Admit that briandunning.com participated in an eBay Affiliate Marketing  
27 Program or programs.

28 / / /

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

2           Responding Party objects to this request on the grounds that it violates  
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
6 section 940. Responding Party further objects on the ground that this request is vague and  
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 7:**

9           Admit that, while participating in an eBay Affiliate Marketing Program or  
10 programs, briandunning.com utilized software programs and/or code that caused some Users'  
11 computers to access an eBay website without the User's knowledge.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

13           Responding Party objects to this request on the grounds that it violates  
14 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
15 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
16 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
17 section 940. Responding Party further objects on the ground that this request is vague and  
18 ambiguous.

19 **REQUEST FOR ADMISSION NO. 8:**

20           Admit that, while participating in an eBay Affiliate Marketing Program or  
21 programs, briandunning.com utilized software programs and/or code that caused some Users'  
22 computers to access an eBay web server without the User's knowledge.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

24           Responding Party objects to this request on the grounds that it violates  
25 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
26 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
27 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

28 / / /



1 section 940. Responding Party further objects on the ground that this request is vague and  
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 9:**

4 Admit that, while participating in an eBay Affiliate Marketing Program or  
5 programs, briandunning.com utilized software programs and/or code that redirected a User to  
6 an eBay website without the User knowingly clicking on an Advertisement Link.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

8 Responding Party objects to this request on the grounds that it violates  
9 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
10 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
11 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
12 section 940. Responding Party further objects on the ground that this request is vague and  
13 ambiguous.

14 **REQUEST FOR ADMISSION NO. 10:**

15 Admit that, while participating in an eBay Affiliate Marketing Program or  
16 programs, briandunning.com utilized software programs and/or code that redirected a User to  
17 an eBay web server without the User knowingly clicking on an Advertisement Link.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

19 Responding Party objects to this request on the grounds that it violates  
20 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
21 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
22 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
23 section 940. Responding Party further objects on the ground that this request is vague and  
24 ambiguous.

25 **REQUEST FOR ADMISSION NO. 11:**

26 Admit that, while participating in an eBay Affiliate Marketing Program or  
27 programs, briandunning.com utilized software programs and/or code that performed Cookie  
28 Stuffing.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

2           Responding Party objects to this request on the grounds that it violates  
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
6 section 940. Responding Party further objects on the ground that this request is vague and  
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 12:**

9           Admit that briandunning.com used methods, techniques and/or technological  
10 measures to avoid detection by eBay of certain aspects of how briandunning.com interacted  
11 with eBay's Affiliate Marketing Program or programs.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

13           Responding Party objects to this request on the grounds that it violates  
14 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
15 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
16 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
17 section 940. Responding Party further objects on the ground that this request is vague and  
18 ambiguous.

19 **REQUEST FOR ADMISSION NO. 13:**

20           Admit that briandunning.com used methods, techniques and/or technological  
21 measures to avoid detection by Commission Junction of certain aspects of how  
22 briandunning.com interacted with eBay's Affiliate Marketing Program or programs.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

24           Responding Party objects to this request on the grounds that it violates  
25 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
26 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
27 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

28 *///*



1 section 940. Responding Party further objects on the ground that this request is vague and  
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 14:**

4 Admit that briandunning.com utilized methods, techniques and/or technological  
5 measures to avoid detection by eBay of Cookie Stuffing caused by briandunning.com.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

7 Responding Party objects to this request on the grounds that it violates  
8 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
9 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
10 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
11 section 940. Responding Party further objects on the ground that this request is vague and  
12 ambiguous.

13 **REQUEST FOR ADMISSION NO. 15:**

14 Admit that briandunning.com utilized methods, techniques and/or technological  
15 measures to avoid detection by Commission Junction of Cookie Stuffing caused by  
16 briandunning.com.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

18 Responding Party objects to this request on the grounds that it violates  
19 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
20 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
21 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
22 section 940. Responding Party further objects on the ground that this request is vague and  
23 ambiguous.

24 **REQUEST FOR ADMISSION NO. 16:**

25 Admit that, while participating in an eBay Affiliate Marketing Program or  
26 programs, briandunning.com utilized software and/or code to determine the geographic  
27 location of a User.

28 / / /

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

2           Responding Party objects to this request on the grounds that it violates  
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
6 section 940. Responding Party further objects on the ground that this request is vague and  
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 17:**

9           Admit that, while participating in an eBay Affiliate Marketing Program or  
10 programs, briandunning.com utilized software and/or code to determine whether a User was  
11 located in San Jose, CA.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

13           Responding Party objects to this request on the grounds that it violates  
14 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
15 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
16 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
17 section 940. Responding Party further objects on the ground that this request is vague and  
18 ambiguous.

19 **REQUEST FOR ADMISSION NO. 18:**

20           Admit that, while participating in an eBay Affiliate Marketing Program or  
21 programs, briandunning.com utilized software and/or code to determine whether a User was  
22 located in Santa Barbara, CA.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

24           Responding Party objects to this request on the grounds that it violates  
25 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
26 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
27 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
28 *///*

1 section 940. Responding Party further objects on the ground that this request is vague and  
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 19:**

4 Admit that, while participating in an eBay Affiliate Marketing Program or  
5 programs, briandunning.com utilized software and/or code that would disable or not engage  
6 briandunning.com's Cookie Stuffing technology if a User's computer was located in San Jose,  
7 CA.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

9 Responding Party objects to this request on the grounds that it violates  
10 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
11 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
12 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
13 section 940. Responding Party further objects on the ground that this request is vague and  
14 ambiguous.

15 **REQUEST FOR ADMISSION NO. 20:**

16 Admit that, while participating in an eBay Affiliate Marketing Program or  
17 programs, briandunning.com utilized software and/or code that would disable or not engage  
18 briandunning.com's Cookie Stuffing technology if a User's computer was located in Santa  
19 Barbara, CA.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

21 Responding Party objects to this request on the grounds that it violates  
22 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
23 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
24 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
25 section 940. Responding Party further objects on the ground that this request is vague and  
26 ambiguous.

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28 ///

1 **REQUEST FOR ADMISSION NO. 21:**

2 Admit that briandunning.com received commissions from eBay, whether directly  
3 or through Commission Junction, that were based, in whole or in part, on Users whose  
4 computers were directed to eBay's website without the User's knowledge.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

6 Responding Party objects to this request on the grounds that it violates  
7 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
8 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
9 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
10 section 940. Responding Party further objects on the ground that this request is vague and  
11 ambiguous.

12 **REQUEST FOR ADMISSION NO. 22:**

13 Admit that briandunning.com received commissions from eBay, whether directly  
14 or through Commission Junction, that were based, in whole or in part, on Users who had never  
15 actually clicked on a briandunning.com-sponsored eBay advertisement link.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

17 Responding Party objects to this request on the grounds that it violates  
18 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
19 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
20 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
21 section 940. Responding Party further objects on the ground that this request is vague and  
22 ambiguous.

23 **REQUEST FOR ADMISSION NO. 23:**

24 Admit that briandunning.com received commissions from eBay, whether directly  
25 or through Commission Junction, that were based, in whole or in part, Cookie Stuffing caused  
26 by briandunning.com.

27 ///

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

2 Responding Party objects to this request on the grounds that it violates  
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
6 section 940. Responding Party further objects on the ground that this request is vague and  
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 24:**

9 Admit that briandunning.com engaged in Cookie Stuffing with the intent to  
10 defraud eBay.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

12 Responding Party objects to this request on the grounds that it violates  
13 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
14 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
15 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
16 section 940. Responding Party further objects on the ground that this request is vague,  
17 ambiguous, and constitutes a legal conclusion.

18 **REQUEST FOR ADMISSION NO. 25:**

19 Admit that briandunning.com defrauded eBay.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

21 Responding Party objects to this request on the grounds that it violates  
22 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
23 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
24 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

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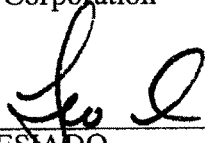
1 section 940. Responding Party further objects on the ground that this request is vague,  
2 ambiguous, and constitutes a legal conclusion.

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DATED: February 26, 2009

RUS, MILIBAND & SMITH  
A Professional Corporation

By: \_\_\_\_\_



LEO J. PRESIADO  
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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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