

# **EXHIBIT 3**

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7 Attorneys for Defendants, SHAWN HOGAN  
8 and DIGITAL POINT SOLUTIONS, INC.

9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 EBAY, INC., ) Case No. CV 08-04052 JF PVT  
13 )  
14 Plaintiff, )  
15 v. ) DEFENDANT DIGITAL POINT  
16 ) SOLUTIONS, INC.'S SUPPLEMENTAL  
17 ) RESPONSES TO PLAINTIFF'S  
18 DIGITAL POINT SOLUTIONS, INC., SHAWN ) REQUESTS FOR ADMISSION (SET ONE)  
19 HOGAN, KESSLER'S FLYING CIRCUS, )  
20 THUNDERWOOD HOLDINGS, INC., TODD )  
21 DUNNING, DUNNING ENTERPRISE, INC., )  
22 BRIAN DUNNING, BRIANDUNNING.COM, )  
23 and Does 1-20, )  
24 Defendants. )  
25 )  
26 )  
27 )  
28 )

22 PROPOUNDING PARTY: Plaintiff EBAY, INC.  
23 RESPONDING PARTY: Defendant DIGITAL POINT SOLUTIONS, INC.  
24 SET NUMBER: One  
25

26 Defendant DIGITAL POINT SOLUTIONS, INC. ("Defendant") hereby provides supplemental  
27 responses to the Plaintiff EBAY, INC.'s ("Plaintiff's") First Set of Requests for Admission, as follows:  
28

1 **I. PRELIMINARY STATEMENT**

2 Defendant SHAWN HOGAN (“Mr. Hogan”) has asserted his privilege against self-incrimination  
3 under the Fifth Amendment to the United States Constitution (*United States v. Balsys* (1998) 524 U.S.  
4 666, 672; *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77); the Federal Rules of Evidence, Rule 501; the  
5 California Constitution, Article 1, Section 15; and California Evidence Code section 940. The provision  
6 of any responses by Defendant hereunder shall not be construed to be a waiver of the same.

7 Defendant further objects because conducting discovery is premature and inappropriate at this  
8 time given the ongoing criminal investigation of the FBI and U.S. Attorney’s Office. As has been noted,  
9 Defendant intends to seek a stay of this action (and/or any other appropriate relief), including a stay of  
10 all discovery in this matter, pending the resolution of any potential criminal proceedings and/or until the  
11 statute of limitations on any such criminal proceedings has run.

12 Defendant further objects to the definitions set forth in Plaintiff’s requests as compound, vague  
13 and ambiguous; these objections further include, but are not limited to, the following: “DPS” is  
14 overbroad, unduly burdensome and oppressive in that it purports to apply to third parties collectively  
15 and/or individually, to information subject to the attorney-client privilege, and purports to seek responses  
16 from Mr. Hogan as phrased. “eBay” is further unduly burdensome and oppressive in that the phrases  
17 “eBay’s internationally operated websites,” and “any and all divisions, subdivisions, departments or  
18 subsidiaries of eBay” reference information that is within Plaintiff’s control and/or is unknown to  
19 Defendant. Defendant further objects because the term “Cookie Stuffing” is vague and ambiguous

20 Defendant reserves the right to amend or further supplement these responses to the extent  
21 circumstances so warrant. Discovery is ongoing.

22 Defendant incorporates the foregoing into each of Defendant’s responses below.

23 **II. RESPONSES**

24 **REQUEST FOR ADMISSION NO. 1**

25 Admit that DPS conducted business with eBay prior to May 14, 2007.

26 **Response to Request for Admission No. 1:**

27 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
28 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant

1 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
2 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
3 SOLUTIONS, INC. conducted business with Plaintiff at any time, and on that basis denies this request.

4 **REQUEST FOR ADMISSION NO. 2**

5 Admit that DPS conducted business with eBay during at least some portion of 2006.

6 **Response to Request for Admission No. 2:**

7 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
8 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
9 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
10 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
11 SOLUTIONS, INC. conducted business with Plaintiff at any time, and on that basis denies this request.

12 **REQUEST FOR ADMISSION NO. 3**

13 Admit that DPS conducted business with eBay during at least some portion of 2005.

14 **Response to Request for Admission No. 3:**

15 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
16 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
17 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
18 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
19 SOLUTIONS, INC. conducted business with Plaintiff at any time, and on that basis denies this request.

20 **REQUEST FOR ADMISSION NO. 4**

21 Admit that DPS conducted business with eBay during at least some portion of 2004.

22 **Response to Request for Admission No. 4:**

23 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
24 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
25 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
26 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
27 SOLUTIONS, INC. conducted business with Plaintiff at any time, and on that basis denies this request.

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1 **REQUEST FOR ADMISSION NO. 5**

2 Admit that DPS conducted business with eBay during at least some portion of 2003.

3 **Response to Request for Admission No. 5:**

4 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
5 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
6 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
7 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
8 SOLUTIONS, INC. conducted business with Plaintiff at any time, and on that basis denies this request.

9 **REQUEST FOR ADMISSION NO. 6**

10 Admit that DPS participated in an eBay Affiliate Marketing Program or programs.

11 **Response to Request for Admission No. 6:**

12 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
13 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
14 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
15 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
16 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
17 request.

18 **REQUEST FOR ADMISSION NO. 7**

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

22 **Response to Request for Admission No. 7:**

23 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
24 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
25 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
26 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
27 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
28 request.

1 **REQUEST FOR ADMISSION NO. 8**

2 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
3 utilized software programs and/or code that caused some Users' computers to access an eBay web server  
4 without the User's knowledge.

5 **Response to Request for Admission No. 8:**

6 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
7 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
8 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
9 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
10 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
11 request.

12 **REQUEST FOR ADMISSION NO. 9**

13 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
14 utilized software programs and/or code that redirected a User to an eBay website without the User  
15 knowingly clicking an Advertisement Link.

16 **Response to Request for Admission No. 9:**

17 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
18 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
19 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
20 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
21 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
22 request.

23 **REQUEST FOR ADMISSION NO. 10**

24 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
25 utilized software programs and/or code that redirected a User to an eBay web server without the User  
26 knowingly clicking an Advertisement Link.

27 **Response to Request for Admission No. 10:**

28 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is

1 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
2 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
3 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
4 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
5 request.

6 **REQUEST FOR ADMISSION NO. 11**

7 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
8 utilized software programs and/or code that performed Cookie Stuffing.

9 **Response to Request for Admission No. 11:**

10 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
11 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
12 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
13 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
14 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
15 request.

16 **REQUEST FOR ADMISSION NO. 12**

17 Admit that DPS used methods, techniques and/or technological measures to avoid detection by  
18 eBay of certain aspects of how DPS interacted with eBay's Affiliate Marketing Program or programs.

19 **Response to Request for Admission No. 12:**

20 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
21 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
22 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
23 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
24 SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any such  
25 methods, techniques or measures, and on that basis denies this request.

26 **REQUEST FOR ADMISSION NO. 13**

27 Admit that DPS used methods, techniques and/or technological measures to avoid detection by  
28 Commission Junction of certain aspects of how DPS interacted with eBay's Affiliate Marketing Program

1 or programs.

2 Response to Request for Admission No. 13:

3 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
4 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
5 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
6 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
7 SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any such  
8 methods, techniques or measures, and on that basis denies this request.

9 **REQUEST FOR ADMISSION NO. 14**

10 Admit that DPS utilized methods, techniques and/or technological measures to avoid detection  
11 by eBay of Cookie Stuffing caused by DPS.

12 Response to Request for Admission No. 14:

13 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
14 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
15 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
16 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
17 SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any such  
18 methods, techniques or measures, and on that basis denies this request.

19 **REQUEST FOR ADMISSION NO. 15**

20 Admit that DPS utilized methods, techniques and/or technological measures to avoid detection  
21 by Commission Junction of Cookie Stuffing caused by DPS.

22 Response to Request for Admission No. 15:

23 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
24 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
25 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
26 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
27 SOLUTIONS, INC. participated in any eBay affiliate marketing programs and/or that it used any such  
28 methods, techniques or measures, and on that basis denies this request.



1 **REQUEST FOR ADMISSION NO. 16**

2 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
3 utilized software and/or code to determine the geographic location of a User.

4 **Response to Request for Admission No. 16:**

5 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
6 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
7 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
8 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
9 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
10 request.

11 **REQUEST FOR ADMISSION NO. 17**

12 Admit that, while participating in an eBay Affiliate Marketing Program or programs, DPS  
13 utilized software and/or code to determine whether a User was located in San Jose, CA.

14 **Response to Request for Admission No. 17:**

15 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
16 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
17 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
18 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
19 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
20 request.

21 **REQUEST FOR ADMISSION NO. 18**

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

24 **Response to Request for Admission No. 18:**

25 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
26 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
27 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
28 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT

1 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
2 request.

3 **REQUEST FOR ADMISSION NO. 19**

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

7 **Response to Request for Admission No. 19:**

8 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
9 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
10 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
11 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
12 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
13 request.

14 **REQUEST FOR ADMISSION NO. 20**

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

18 **Response to Request for Admission No. 20:**

19 Objection. This request, including the use of the definitions provided for "DPS" and "eBay," is  
20 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
21 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
22 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
23 SOLUTIONS, INC. participated in any eBay affiliate marketing programs, and on that basis denies this  
24 request.

25 **REQUEST FOR ADMISSION NO. 21**

26 Admit that DPS received commissions from eBay, whether directly or through Commission  
27 Junction, that were based, in whole or in part, on Users whose computers were directed to eBay's website  
28 without the User's knowledge.

1 Response to Request for Admission No. 21:

2           Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
3 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
4 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
5 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
6 SOLUTIONS, INC. received any commissions from eBay at any time, and on that basis denies this  
7 request.

8 **REQUEST FOR ADMISSION NO. 22**

9           Admit that DPS received commissions from eBay, whether directly or through Commission  
10 Junction, that were based, in whole or in part, on Users who had never actually clicked on a  
11 DPS-sponsored eBay advertisement link.

12 Response to Request for Admission No. 22:

13           Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
14 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
15 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
16 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
17 SOLUTIONS, INC. received any commissions from eBay at any time, and on that basis denies this  
18 request.

19 **REQUEST FOR ADMISSION NO. 23**

20           Admit that DPS received commissions from eBay, whether directly or through Commission  
21 Junction, that were based, in whole or in part, Cookie Stuffing caused by DPS.

22 Response to Request for Admission No. 23:

23           Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
24 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
25 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
26 waiving these objections, Defendant responds as follows: Defendant denies that DIGITAL POINT  
27 SOLUTIONS, INC. received any commissions from eBay at any time, and on that basis denies this  
28 request.

1 **REQUEST FOR ADMISSION NO. 24**

2 Admit that DPS engaged in Cookie Stuffing with the intent to defraud eBay.

3 **Response to Request for Admission No. 24:**

4 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
5 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
6 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
7 waiving these objections, Defendant responds as follows: Defendant denies this request.

8 **REQUEST FOR ADMISSION NO. 25**

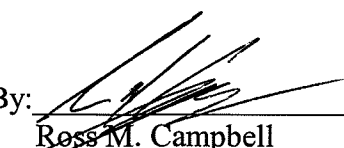
9 Admit that DPS defrauded eBay.

10 **Response to Request for Admission No. 25:**

11 Objection. This request, including the use of the definitions provided for “DPS” and “eBay,” is  
12 vague and ambiguous, overbroad, and unduly burdensome and oppressive. Further, Defendant  
13 incorporates the above Preliminary Statement herein by reference in full. Subject to and without  
14 waiving these objections, Defendant responds as follows: Defendant denies this request.

15 DATED: September 23, 2009

COAST LAW GROUP LLP

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17  
18 By:   
19 Ross M. Campbell  
20 Attorneys for Defendants, Shawn Hogan  
21 and Digital Point Solutions, Inc.  
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