

# **EXHIBIT L**

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REFERENCE NUMBER  
2785-0002

May 29, 2009

*VIA FACSIMILE AND U.S. MAIL*

Colleen M. Kennedy, Esq.  
O'Melveny & Myers LLP  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, CA 94111

Re: *eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
USDC Case No. CV-08-4052 JF

Dear Colleen:

This letter is written in response to your "meet and confer" letter dated May 14, 2009, regarding the discovery responses of Thunderwood Holdings, Inc. and BrianDunning.com (collectively, "Thunderwood Defendants") dated February 26, 2009.

First, the Thunderwood Defendants are not required to provide responses to the subject discovery on account of the Fifth Amendment privilege against self-incrimination enjoyed by Mr. Dunning. Indeed, the cases you cite support the Thunderwood Defendants' argument in this regard. More specifically, the Supreme Court in *United States v. Kordel*, 379 U.S. 1, 8 (1970) held that an agent of a corporation is not required to furnish information in response to discovery requests propounded on the corporation were the agent cannot do so "without fear of self-incrimination." In this case, Brian Dunning is the *only* agent of Thunderwood Defendants. Moreover, as pointed out by the Court in *Priebe v. World Ventures, Inc.*, 407 F. Supp. 1244, 1245 (9<sup>th</sup> Cir. 1976), the privilege against self-incrimination applies where there exists "almost any conceivable danger" of self-incrimination, "even if the risk of criminal prosecution is remote."

Second, your contention that the attorneys for the Thunderwood Defendants can and should verify the discovery responses of the Thunderwood Defendants is not well taken. The Thunderwood Defendants did not have attorneys prior to the commencement of this case.

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As such, there are no attorneys that have knowledge of the substantive information requested in eBay's Interrogatories and Requests for Admissions. Moreover, any information communicated by the Thunderwood Defendants to their attorneys is privileged and not subject to disclosure or verification by any such attorneys.

eBay's requests for discovery are premature in any event. As you are aware, the Court granted the Thunderwood Defendant's motion to dismiss your client's First Amended Complaint, and is likely to grant a similar motion as to eBay's Second Amended Complaint. It seems a waste of everyone's time and resources to pursue these discovery issues until a ruling is made on the pending motion to dismiss which is set to be heard a few weeks from now on June 26, 2009 - particularly since the subject discovery responses were served on your client *some 3 months ago* and your client is only now raising these issues.

Finally, the specific Requests for Production referenced in your letter are objectionable. The Thunderwood Defendants' tax returns and financial information is not relevant to this action. Indeed, you make no attempt to justify the relevance of the Requests in your letter.

In the event your client still believes it is entitled to further responses as argued in your letter, please contact me so we can further discuss the matter. In addition, please be prepared to discuss why discovery in this case should not be held in abeyance pending a ruling on the Thunderwood Defendants' motion to dismiss.

I look forward to hearing from you.

Very truly yours,

RUS, MILIBAND & SMITH  
A Professional Corporation



LEO J. CRESIADO

cc: Ronald Rus, Esq.

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**TELECOPIER INFORMATION SHEET**

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**DATE:** May 29, 2009  
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**COMMENTS:** *Please see letter dated May 29, 2009.*

**eBay, Inc. v. Digital Point Solutions, Inc., et al.**

If you do not receive all of the pages or there is any other transmittal problem, please contact Rhonda Radford at (949) 752-7100.

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