

E-Filed 2/10/2011

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6 Attorneys for Plaintiff EBAY, INC.
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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11	EBAY, INC.,)	Case No. CV 08-04052 JF PSG
12)	
13	Plaintiff,)	STIPULATION AND [PROPOSED]-
14	v.)	ORDER CONTINUING CASE
15	DIGITAL POINT SOLUTIONS, INC.,)	MANAGEMENT CONFERENCE
16	SHAWN HOGAN, KESSLER'S FLYING)	
17	CIRCUS, THUNDERWOOD HOLDINGS,)	
18	INC.K TODD DUNNING, DUNNING)	Judge: Hon. Jeremy Fogel
19	ENTERPRISE, INC., BRIAN DUNNING,)	Dept.: Courtroom 3
20	BRIANDUNNING.COM, and DOES 1-20,)	
21	Defendants.)	

22 **THE PARTIES TO THE ABOVE-ENTITLED ACTION HEREBY STIPULATE**
 23 **PURSUANT TO CIVIL LOCAL RULE 7-12 AND 16-2:**

24 1. Plaintiff alleges that Defendants, as participants in eBay's affiliate marketing
 25 program, engaged in cookie stuffing intended to defraud Plaintiff. Defendants deny Plaintiff's
 26 allegations.

27 2. Defendants Shawn Hogan and Brian Dunning were indicted on June 24, 2010.
 28 *United States v. Hogan*, CR 10-0495 JF (N.D. Cal. June 24, 2010); *United States v. Dunning*, CR
 10-0494 JF (N.D. Cal. June 24, 2010). The indictments are based on the same alleged cookie
 stuffing scheme at issue in this civil action.

3. On June 29, 2010, the United States filed a Notice of Related Case stating that

1 defendants Shawn Hogan and Brian Dunning in the instant action are alleged to have engaged in
2 the same cookie stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court
3 issued an order finding that the instant civil action and the aforementioned criminal cases are
4 related.

5 4. Based on the foregoing, on July 28, 2010, the parties to this action stipulated and
6 moved that this civil action be stayed in its entirety as to all parties until further order by the Court.
7 The parties also stipulated and moved the Court to vacate the existing case management dates,
8 including but not limited to the fact and expert discovery cut-off dates, the pretrial conference date,
9 and the jury trial date. The parties stipulated and moved that a further case management
10 conference be set for February 11, 2011.

11 5. On August 3, 2010, the Court, pursuant to the parties' stipulation and motion,
12 stayed the case in its entirety as to all parties and vacated all existing case management dates.
13 The Court set a further case management conference for February 11, 2011 at 10:30 a.m.

14 6. The criminal cases against defendants Shawn Hogan and Brian Dunning are
15 ongoing, and no trial dates have been set in those matters.

16 7. The parties stipulate and request that the Court continue the case management
17 conference scheduled for February 11, 2011 at 10:30 a.m. until August 12, 2011, or as otherwise
18 convenient for the Court. If either or both of the criminal cases are resolved prior to the
19 rescheduled case management conference, the parties shall timely inform the Court.

20 8. Notwithstanding the foregoing, the parties further stipulate that any party may
21 move at any time to lift the current stay or to set a case management conference before August
22 12, 2011.

23 **IT IS SO STIPULATED.**

24 DATED: January 26, 2011

25 DAVID R. EBERHART
26 SHARON M. BUNZEL
27 NORA PUCKETT
28 O'MELVENY & MYERS LLP

By: /s/ David R. Eberhart
David R. Eberhart

Attorneys for Plaintiff EBAY, INC.

1 DATED: January 26, 2011

SEYAMACK KOURETSCHIAN
ROSS M. CAMPBELL
COAST LAW GROUP LLP

2
3 By: /s/ Ross M. Campbell
4 Ross M. Campbell

5 Attorneys for Defendants SHAWN HOGAN and
6 DIGITAL POINT SOLUTIONS, INC.

7 DATED: January 26, 2011

LEO J. PRESIADO
RUS, MILIBAND & SMITH

8
9 By: /s/ Leo J. Presiado
Leo J. Presiado

10 Attorneys for Defendants THUNDERWOOD
11 HOLDINGS, INC., BRIAN DUNNING and
12 BRIANDUNNING.COM

13 DATED: January 26, 2011

PATRICK K. MCCLELLAN
LAW OFFICE OF PATRICK K. MCCLELLAN

14
15 By: /s/ Patrick K. McClellan
16 Patrick K. McClellan

17 Attorneys for Defendant KESSLER's FLYING
18 CIRCUS

19
20 DATED: January 26, 2011

TODD DUNNING

21 By: /s/ Todd Dunning
22 Todd Dunning

23 *Pro Se*

24
25 DATED: January 26, 2011

DUNNING ENTERPRISE, INC.

26 By: /s/ Todd Dunning
27 Todd Dunning

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ATTESTATION

Pursuant to General Order No. 45 X(B), I hereby attest that concurrence in the filing of this document has been obtained from each of the above-listed signatories.

By: /s/ David R. Eberhart

David R. Eberhart

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ORDER

Pursuant to the foregoing stipulation, and good cause appearing therefor, IT IS HEREBY ORDERED that the case management conference scheduled for February 11, 2011 at 10:30 a.m. shall be continued until August 12, 2011 at 10:30 am. This stipulation is without prejudice to any party moving to lift the current stay before the continued case management conference should the circumstances so warrant. Any party may also move the Court to set a case management conference before August 12, 2011.

IT IS SO ORDERED.

Dated: 2/10/2011



The Honorable Jeremy Fogel
United States District Court Judge
Northern District of California

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