

EXHIBIT 21

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 EBAY INC.,

12 Plaintiff,

13 v.

14 DIGITAL POINT SOLUTIONS, INC.,
SHAWN HOGAN, KESSLER'S
15 FLYING CIRCUS, THUNDERWOOD
HOLDINGS, INC., TODD DUNNING,
16 DUNNING ENTERPRISE, INC.,
BRIAN DUNNING,
17 BRIANDUNNING.COM, and DOES 1-
20,

18 Defendants.
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Case No. C 08-04052 JF

**PLAINTIFF EBAY INC.'S INITIAL
DISCLOSURES PURSUANT TO
RULE 26**

20 Plaintiff eBay Inc. ("eBay") hereby makes the following initial disclosures of
21 information pursuant to Federal Rule of Civil Procedure 26(a)(1). These disclosures are
22 based on information reasonably available to eBay as of January 8, 2009. eBay's
23 investigation of the facts relating to this action is ongoing, and the following disclosures
24 are made without prejudice to eBay's right, at any time up to and including the time of
25 trial and consistent with the Federal Rules of Civil Procedure, to supplement these
26 disclosures as additional information becomes known to it. By making these disclosures
27 of information, eBay does not waive, but expressly preserves, any and all objections,
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1 claims of privilege, and/or work product protections.

2 **A. Potential Witnesses**

3 Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), eBay hereby discloses the following
 4 individuals likely to have discoverable information that eBay may use to support its
 5 claims or defenses, unless solely for impeachment. eBay has in good faith listed the
 6 general subject matters about which each witness likely has knowledge, but this general
 7 description does not limit the information that each witness may provide for use in this
 8 action. eBay shall supplement these disclosures pursuant to Federal Rule of Civil
 9 Procedure 26(e) if necessary. The potential witnesses at this time are:

| Individual | Address & Phone Number | Subject of the Information |
|-------------------|--|---|
| Ackley, Matthew | c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 | Background, investigation and analysis of Defendants' fraud |
| Kim, Christine | c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 | Background, investigation and analysis of Defendants' fraud |
| Laguna, Jorge | c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 | Background, investigation and analysis of Defendants' fraud |
| Madrigal, Matt | c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 | Background, investigation and analysis of Defendants' fraud |

| | | |
|-----------------------------------|--|---|
| 1 2 3 4 Rushton, Paul | c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 | Background, investigation and analysis of Defendants' fraud |
| 5 6 7 Wehrmaker, Chad | c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700 | Background, investigation and analysis of Defendants' fraud |

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9 **B. Documents**

10 Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii), and based upon a good faith and
11 reasonable investigation of the allegations in this case, eBay provides the following
12 description by category of the documents in its possession, control, or custody that may be
13 used to support its claims or defenses in this action, unless solely for impeachment. eBay
14 shall supplement this disclosure pursuant to Fed. R. Civ. P. 26(e) if necessary. The
15 categories of documents are:

| 16 17 Location | Description |
|---|---|
| 18 19 20 21 22 23 24 25 26 27 28 Relevant documents described are located at eBay's various locations | - Agreements regarding Defendants' access to eBay's site - Documents reflecting payments made to Defendants - Documents concerning the discovery and investigation of Defendants' fraudulent activities - Documents concerning the damages suffered by eBay as a result of Defendants' fraudulent activities - Documents concerning Defendants' effort to avoid eBay's detection of their fraudulent activities |

1 **C. Damages**

2 Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(iii), eBay states that it
3 seeks damages in the following categories:

4 1. Compensatory damages according to proof at trial, to be determined by
5 calculating, *inter alia*, the commissions paid to Defendants for Revenue Actions that
6 resulted from Defendants' cookie stuffing schemes;

7 2. Losses and damage to eBay pursuant to 18 U.S.C. § 1030, including but not
8 limited to economic losses caused by any impairment of eBay's computer networks or
9 data, or any costs to eBay resulting from investigating, responding to and remedying
10 Defendants' unlawful conduct;

11 3. Disgorgement of ill-gotten gains and restitution to eBay of the funds by which
12 Defendants have been unjustly enriched, to be determined by calculating, *inter alia*, the
13 commissions paid to Defendants for Revenue Actions that resulted from Defendants'
14 cookie stuffing schemes;

15 4. Statutory treble damages pursuant to 18 U.S.C. § 1964 against Defendants
16 Shawn Hogan, Brian Dunning and Todd Dunning;

17 5. Punitive damages according to proof at trial;

18 6. Attorneys' fees and costs pursuant to 18 U.S.C. § 1964 against Defendants
19 Shawn Hogan, Brian Dunning and Todd Dunning

20 7. Pre-judgment and post-judgment interest.

21 eBay will not be able to state with specificity the amount of these damages, nor
22 provide a computation thereof, until it has conducted additional discovery and
23 investigation. In addition, the specification and computation of eBay's damages may
24 be the subject of expert testimony that will be disclosed in accordance with the FRCP,
25 L.R., and Orders of the Court, and not otherwise.

26 **D. Insurance Agreements**

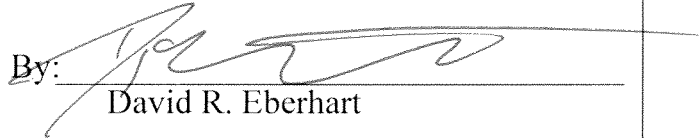
27 Not applicable.

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Dated: January 8, 2009

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By: 
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