

EXHIBIT 22

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EBAY INC.,

Plaintiff,

v.

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

Defendants.

Case No. C 08-04052 JF

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

Plaintiff eBay Inc. ("eBay") hereby makes the following amended initial disclosures of information pursuant to Federal Rule of Civil Procedure 26(a)(1). These disclosures are based on information reasonably available to eBay as of April 2, 2009. eBay's investigation of the facts relating to this action is ongoing, and the following disclosures are made without prejudice to eBay's right, at any time up to and including the time of trial and consistent with the Federal Rules of Civil Procedure, to supplement these disclosures as additional information becomes known to it. By making these disclosures of information, eBay does not waive, but expressly preserves, any and all objections,

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	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	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	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	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	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	Investigation and analysis of Defendants' fraud
8 9 10	Dey, Santanu	c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700	Investigation and analysis of Defendants' fraud
11 12 13 14	Rosner, Stefan	c/o O'Melveny & Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8700	Investigation and analysis of Defendants' fraud

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16 **B. Documents**

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

24	Location	Description
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

	<p>- Documents concerning the discovery and investigation of Defendants' fraudulent activities</p> <p>- Documents concerning the damages suffered by eBay as a result of Defendants' fraudulent activities</p> <p>- Documents concerning Defendants' effort to avoid eBay's detection of their fraudulent activities</p>
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C. Damages

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

1. Compensatory damages according to proof at trial, to be determined by calculating, *inter alia*, the commissions paid to Defendants for Revenue Actions that resulted from Defendants' cookie stuffing schemes;
2. Losses and damage to eBay pursuant to 18 U.S.C. § 1030, including but not limited to economic losses caused by any impairment of eBay's computer networks or data, or any costs to eBay resulting from investigating, responding to and remedying Defendants' unlawful conduct;
3. Disgorgement of ill-gotten gains and restitution to eBay of the funds by which Defendants have been unjustly enriched, to be determined by calculating, *inter alia*, the commissions paid to Defendants for Revenue Actions that resulted from Defendants' cookie stuffing schemes;
4. Statutory treble damages pursuant to 18 U.S.C. § 1964 against Defendants Shawn Hogan, Brian Dunning and Todd Dunning;
5. Punitive damages according to proof at trial;
6. Attorneys' fees and costs pursuant to 18 U.S.C. § 1964 against Defendants Shawn Hogan, Brian Dunning and Todd Dunning

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7. Pre-judgment and post-judgment interest.

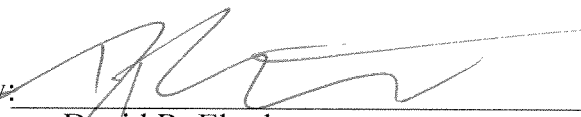
eBay will not be able to state with specificity the amount of these damages, nor provide a computation thereof, until it has conducted additional discovery and investigation.

D. Insurance Agreements

Not applicable.

Dated: April 2, 2009

DAVID R. EBERHART
SHARON M. BUNZEL
COLLEEN M. KENNEDY
O'MELVENY & MYERS LLP

By: 
David R. Eberhart

Attorneys for Plaintiff
eBay Inc.

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PROOF OF SERVICE

I, Michael O'Donnell, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is Two Embarcadero Center, 28th Floor, California 94111. On April 2, 2009, I served the within documents:

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

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by transmitting in PDF format by electronic mail to the following person(s) at the email addresses set forth below.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2009, at San Francisco, California.



Michael O'Donnell

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SERVICE LIST

eBay Inc. v. Digital Point Solutions, et al.
U.S.D.C. Case No. C08-04052 JF

<p>Seyamack Kouretchian Coast Law Group, LLP 169 Saxony Road, Suite 204 Encinitas, CA 92024 T: (760) 942-8505 / F: (760) 942-8151 seyamak@coastlawgroup.com <i>Attorneys for Defendant Digital Point and Defendant Shawn Hogan</i></p>	<p>Leo J. Presiado Rus, Miliband & Smith, APC 2211 Michelson Drive, 7th Floor Irvine, CA 92612 T: (949) 752-7100 / F: (949) 252-1514 lpresiado@rusmiliband.com <i>Attorneys for Defendant Thunderwood Holdings, Inc.; Brian Dunning; and BrianDunning.com</i></p>
<p>Law Offices of Patrick K. McClellan 2211 Michelson Drive, Suite 700 Irvine, CA 92612 T: (949) 261-7615 / F: (949) 851-2772 pkellymc@pacbell.net <i>Attorneys for Defendant Kessler's Flying Circus</i></p>	<p>Stewart H. Foreman Freeland Cooper & foreman LLP 150 Spear Street, Suite 17800 San Francisco, CA 94105 T: (415) 541-0200 / F: (415) 495-4332 foreman@freelandlaw.com <i>Attorneys for Defendant Todd Dunning</i></p>

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