

# EXHIBIT 33

SUBP-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): RONALD RUS, #67369/LEO J. PRESIADO, #166721 RUS, MILIBAND & SMITH, A Professional Corporation 2600 Michelson Drive Seventh Floor Irvine, California 92612 TELEPHONE NO.: (949) 752-7100 FAX NO. (Optional): (949) 252-1514 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant BRIAN DUNNING		SUBP-010 FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: CENTRAL JUSTICE CENTER		
PLAINTIFF/PETITIONER: COMMISSION JUNCTION, INC.		
DEFENDANT/RESPONDENT: THUNDERWOOD HOLDINGS, INC., et al.		
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS		
		CASE NUMBER: 00101025

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known)*:  
EBAY, INC. (Custodian of Records)

**1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS** described in item 3, as follows:

To (name of deposition officer): First Legal Support Services  
On (date): April 15, 2008 At (time): 10:00 a.m.  
Location (address): 301 Civic Center Drive West, Santa Ana, CA 92701, (714) 541-1110

**Do not release the requested records to the deposition officer prior to the date and time stated above.**

- a. ☒ by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
  - b. ☐ by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
  - c. ☐ by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*
3. **The records to be produced are described as follows:**

☒ Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: March 12, 2008  
LEO J. PRESIADO

(TYPE OR PRINT NAME)

RUS/ MILIBAND & SMITH, APC

(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorneys for Defendant BRIAN DUNNING  
(TITLE)

(Proof of service on reverse)

1 ATTACHMENT "3"

2 DEFINITIONS AND INSTRUCTIONS

3  
4 1. As used herein, the terms "YOU," "YOUR" and "EBAY" shall refer to  
5 Ebay, Inc., and any and all of its subsidiaries or affiliates and all present or former officers,  
6 directors, employees (including, but not limited to, Christine Kim), agents and representatives.

7 2. As used herein, the term "CJI" shall refer to Commission Junction, Inc.,  
8 and any and all of its predecessors and successors in interest, parent companies (including, but  
9 not limited to, Valueclick), subsidiaries, affiliates, managing agents and general partners, and  
10 all present or former officers, directors, employees, partners, attorneys, agents and  
11 representatives.

12 3. As used herein, the term "KFC" shall refer to Kessler's Flying Circus  
13 and all of its present or former officers, directors, employees, partners, agents and  
14 representatives, including, but not limited to, Brian Dunning and Todd Dunning.

15 4. As used herein, the term "DOCUMENT(S)" is used in its broadest sense  
16 to include all forms of tangible expression falling within the scope of California *Evidence Code*  
17 § 250. Without limitation, the term "DOCUMENT(S)" shall include any written, type written,  
18 printed, electronic, or graphic material, any tangible means of recording any form of a  
19 statement, communication or representation, and all other data compilations in which  
20 information can be obtained (translated, if necessary, by YOU or detection devices into a  
21 reasonably usable form), any writings and all non-identical copies of drafts thereof, notes,  
22 memoranda, letters, calendars, appointment books, diaries, records, ledgers, ledger cards,  
23 correspondence, microfiche, notes or minutes of meetings or conversations, catalogues,  
24 pamphlets, periodicals, written agreements, microfilm, graphs, charts, drawings, plans,  
25 computer tapes, computer discs, computer cards, computer printouts, tapes and sound  
26 recordings, photo records, e-mails, inter-office and intra-office communications, reports,  
27 photographs, cables, telexes, telegrams, telecopies, account books, ledger sheets, canceled  
28 checks, invoices, bills, receipts, and financial statements.

1           5.       If DOCUMENTS responsive to these requests are withheld on grounds  
 2 of attorney-client or any other privilege, YOU are to identify each writing by stating its date,  
 3 author, originator, the date authorized or originated, the name of each person to whom the  
 4 original or copy was addressed or delivered, a brief description of the type of writing,  
 5 (e.g., "letters," "memorandum," etc.), a brief description of the subject matter of the  
 6 DOCUMENT and the request to which the DOCUMENT is responsive and the privilege  
 7 asserted.

8           6.       In producing DOCUMENTS and information, YOU are requested to  
 9 furnish all DOCUMENTS or things in YOUR possession, custody or control, or known or  
 10 available to YOU.

11           7.       Unless otherwise stated, the time period relevant to the foregoing  
 12 requests is January 1, 2005 to the present.

### 13                               REQUESTED DOCUMENTS

#### 14       REQUEST FOR PRODUCTION NO. 1:

15                       All DOCUMENTS which constitute or reflect communications between YOU  
 16 and CJI regarding KFC.

#### 17       REQUEST FOR PRODUCTION NO. 2:

18                       All DOCUMENTS which constitute or reflect communications between YOU  
 19 and CJI regarding any business practices of KFC.

#### 20       REQUEST FOR PRODUCTION NO. 3:

21                       All DOCUMENTS which constitute or reflect communications between YOU  
 22 and CJI regarding any software developed by KFC.

#### 23       REQUEST FOR PRODUCTION NO. 4:

24                       All DOCUMENTS which constitute or reflect communications between YOU  
 25 and CJI regarding KFC's business relationship with CJI.

#### 26       REQUEST FOR PRODUCTION NO. 5:

27                       All DOCUMENTS which constitute or reflect communications between YOU  
 28 and CJI regarding KFC's business relationship with YOU.

1 REQUEST FOR PRODUCTION NO. 6:

2 All DOCUMENTS which constitute or reflect communications between YOU  
3 and CJI regarding KFC's performance of services for CJI.

4 REQUEST FOR PRODUCTION NO. 7:

5 All DOCUMENTS which constitute or reflect communications between YOU  
6 and CJI regarding KFC's performance of services for YOU.

7 REQUEST FOR PRODUCTION NO. 8:

8 All DOCUMENTS which constitute or reflect communications between YOU  
9 and CJI regarding payment to CJI on account of services performed by KFC.

10 REQUEST FOR PRODUCTION NO. 9:

11 All DOCUMENTS which constitute or reflect communications between YOU  
12 and CJI regarding Myspace.com.

13 REQUEST FOR PRODUCTION NO. 10:

14 All DOCUMENTS which constitute or reflect communications between YOU  
15 and CJI regarding payment to KFC.

16 REQUEST FOR PRODUCTION NO. 11:

17 All DOCUMENTS which constitute or reflect communications between YOU  
18 and CJI regarding CJI's commencement of a lawsuit against KFC.

19 REQUEST FOR PRODUCTION NO. 12:

20 All DOCUMENTS which constitute or reflect communications between YOU  
21 and CJI regarding any litigation involving KFC.

22 REQUEST FOR PRODUCTION NO. 13:

23 All DOCUMENTS which constitute or reflect communications between YOU  
24 and CJI regarding monies owed by CJI to YOU, or monies owed by YOU to CJI.

25 REQUEST FOR PRODUCTION NO. 14:

26 All DOCUMENTS which reference telephone calls between YOU and CJI.

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1 REQUEST FOR PRODUCTION NO. 15:

2 All DOCUMENTS which reference telephone calls between YOU and KFC.

3 REQUEST FOR PRODUCTION NO. 16:

4 All invoices sent by CJI to YOU pertaining to services performed by KFC.

5 REQUEST FOR PRODUCTION NO. 17:

6 All DOCUMENTS which reflect payments made by YOU to CJI pertaining to  
7 services performed by KFC.

8 REQUEST FOR PRODUCTION NO. 18:

9 All DOCUMENTS which constitute or reflect communications between YOU  
10 and KFC.

11 REQUEST FOR PRODUCTION NO. 19:

12 All e-mails sent to, or received from, any of the following e-mail addresses:  
13 "volleybrian@gmail.com," "brian@briandunning.com," "info@wholinked.com,"  
14 "todd@dunningmarketing.com," "todd@todddunning.com," and/or "bdunning@mac.com."

15 REQUEST FOR PRODUCTION NO. 20:

16 All DOCUMENTS which constitute or reflect communications between YOU and  
17 Brian Dunning.

18 REQUEST FOR PRODUCTION NO. 21:

19 All DOCUMENTS which constitute or reflect communications between YOU and  
20 Todd Dunning.

21 REQUEST FOR PRODUCTION NO. 22:

22 Any and all written agreements between YOU and CJI which pertain in any way  
23 to KFC.

24 REQUEST FOR PRODUCTION NO. 23:

25 All DOCUMENTS which constitute or reflect communications between YOU  
26 and Myspace.com regarding the advertising of YOUR services on Myspace.com pages.

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1 REQUEST FOR PRODUCTION NO. 24:

2 All DOCUMENTS which constitute or reflect communications between YOU  
3 and CJI regarding the advertising of YOUR services on Myspace.com pages.

4 REQUEST FOR PRODUCTION NO. 25:

5 All DOCUMENTS which constitute or reflect communications between YOU  
6 and KFC regarding the advertising of YOUR services on Myspace.com pages.

7 REQUEST FOR PRODUCTION NO. 26:

8 All DOCUMENTS which constitute or reflect communications between YOU  
9 and Myspace.com regarding the appearance of YOUR trade name and/or trademark on  
10 Myspace.com pages.

11 REQUEST FOR PRODUCTION NO. 27:

12 All DOCUMENTS which constitute or reflect communications between YOU  
13 and CJI regarding the appearance of YOUR trade name and/or trademark on Myspace.com  
14 pages.

15 REQUEST FOR PRODUCTION NO. 28:

16 All DOCUMENTS which constitute or reflect communications between YOU  
17 and KFC regarding the appearance of YOUR trade name and/or trademark on Myspace.com  
18 pages.

19 REQUEST FOR PRODUCTION NO. 29:

20 All DOCUMENTS which constitute or reflect communications between YOU  
21 and any branch, department, office or bureau of the federal government regarding CJI.

22 REQUEST FOR PRODUCTION NO. 30:

23 All DOCUMENTS which reflect any and all commission payments made by  
24 YOU to CJI relating to KFC.

25 REQUEST FOR PRODUCTION NO. 31:

26 All DOCUMENTS which reflect any and all commission payments made by  
27 YOU to, or for the benefit of, KFC.

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1 REQUEST FOR PRODUCTION NO. 32:

2 All DOCUMENTS which reflect the calculation of commissions paid to, or for  
3 the benefit of, KFC.

4 REQUEST FOR PRODUCTION NO. 33:

5 All DOCUMENTS which reflect the transactions which underlie any and all  
6 commissions earned by KFC.

7 REQUEST FOR PRODUCTION NO. 34:

8 All sales records which relate in any way to the payment of commissions by  
9 YOU to, or for the benefit of, KFC.

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**PROOF OF SERVICE**

*Commission Junction, Inc. v. Thunderwood Holdings, Inc., et. al.*  
OCSC Case No. 00101025

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2600 Michelson Drive, Seventh Floor, Irvine, California 92612.

On **March 12, 2008**, I served the foregoing documents described as **DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS OF EBAY, INC. (CUSTODIAN OF RECORDS)** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ (By Electronic Transmission (E-Mail)) I e-mailed the above-referenced document(s) as indicated in the attached service list.
- ☐ (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted as indicated in the attached service list.
- ☐ (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the office(s) of the addressee(s) noted on the attached service list.
- ☐ (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office(s) of the addressee(s) noted on the attached service list.

Executed on **March 12, 2008**, at Irvine, California.

- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
MARIA Q. HERNANDEZ

**SERVICE LIST**

*Commission Junction, Inc. v. Thunderwood Holdings, Inc., et. al.*  
OCSC Case No. 00101025

ATTORNEYS FOR PLAINTIFF  
COMMISSION JUNCTION, INC.:

John H. Ernster, Esq.  
Phil J. Montoya, Jr., Esq.  
Ernster Law Offices, P.C.  
70 South Lake Avenue, Suite 750  
Pasadena, CA 91101  
Telephone: (626) 844-8800  
Facsimile: (626) 844-8944

ATTORNEYS FOR CO-DEFENDANTS  
KESSLER'S FLYING CIRCUS AND  
TODD DUNNING:

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# California Business Portal

Secretary of State DEBRA BOWEN

**DISCLAIMER:** The information displayed here is current as of FEB 29, 2008 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
EBAY INC.		
Number: C2110301	Date Filed: 6/3/1998	Status: active
Jurisdiction: DELAWARE		
Address		
2145 HAMILTON AVENUE		
SAN JOSE, CA 95125		
Agent for Service of Process		
NATIONAL REGISTERED AGENTS, INC.		
2030 MAIN STREET STE 1030		
IRVINE, CA 92614		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

**NATIONAL REGISTERED AGENTS, INC.**

**SERVICE OF PROCESS SUMMARY TRANSMITTAL FORM**

To: SYLVIA NARANJO  
EBAY INC.  
2145 HAMILTON AVE.  
SAN JOSE, CA 95125

SOP Transmittal # **CA56363**

(800) 767-1553 - Telephone  
(609) 716-0820 - Fax

Defendant: EBAY INC.  
(Entity Served)

Enclosed herewith are legal documents received on behalf of the above captioned entity by National Registered Agents, Inc. or its Affiliate in the State of **CALIFORNIA** on this **13** day of **March**, 2008. The following is a summary of the document(s) received:

1. **Title of Action:** Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.

2. **Document(s) served:**

<input type="checkbox"/> Summons	<input type="checkbox"/> Subpoena	<input type="checkbox"/> Injunction
<input type="checkbox"/> Complaint	<input type="checkbox"/> Third Party Complaint	<input type="checkbox"/> Notice of
<input type="checkbox"/> Petition	<input type="checkbox"/> Demand for Jury Trial	<input type="checkbox"/> Mechanics Lien
<input type="checkbox"/> Garnishment	<input type="checkbox"/> Default Judgement	<input checked="" type="checkbox"/> Other: Deposition Subpoena

3. **Court of Jurisdiction/** Orange County Superior Court, Central Justice Center  
**Case & Docket Number:** 00101025

4. **Amount Claimed, if any:** None Given

5. **Method of Service** (select one):

<input checked="" type="checkbox"/> Personally served by:	<input checked="" type="checkbox"/> Process Server	<input type="checkbox"/> Deputy Sheriff	<input type="checkbox"/> U. S Marshall
<input type="checkbox"/> Delivered Via:	<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Regular Mail	<input type="checkbox"/> Facsimile
	(Envelope enclosed)	(Envelope enclosed)	
<input type="checkbox"/> Other (Explain):			

6. **Date and Time of Service:** 3/13/2008 3:11:17 PM PST (GMT -8)

7. **Appearance/Answer Date:** April 15, 2008 @ 10:00 a.m.

8. **Plaintiff's Attorney:** Ronald Rus  
(Name, Address & Telephone Number) Attorney for Defendant  
2600 Michelson Drive  
Seventh Floor  
Irvine, CA 92612  
(949) 752-7100

9. **Federal Express Airbill #** 798396371931

10. **Call Made to:** Not required

11. **Special Comments:**

Please Note: \$15.00 check enclosed; #58836.

**NATIONAL REGISTERED AGENTS, INC.**

**Copies To:**

Transmitted by: Dena LaPorta

The information contained in this Summary Transmittal Form is provided by National Registered Agents, Inc. for informational purposes only and should not be considered a legal opinion. It is the responsibility of the parties receiving this form to review the legal documents forwarded and to take appropriate action.

ORIGINAL