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 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

7 Attorneys for Plaintiff eBay Inc.

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 EBAY INC.,

Case No. C 08-4052

12 Plaintiff,

FIRST AMENDED COMPLAINT FOR

13 v.

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

- (1) **Violations of 18 U.S.C. § 1030**
- (2) **Violations of 18 U.S.C. § 1962(c)**
- (3) **Fraud**
- (4) **Violations of California Pen. Code § 502**
- (5) **Restitution and Unjust Enrichment**
- (6) **California B&P Code § 17200;**

18 Defendants.

DEMAND FOR JURY TRIAL

22 For its First Amended Complaint, Plaintiff eBay Inc. alleges as set forth below.
 23 The factual allegations set forth herein have evidentiary support or, to the extent they are
 24 contained in a paragraph made on information and belief, likely will have evidentiary
 25 support after a reasonable opportunity for further investigation or discovery.

26 **PARTIES**

27 1. At all times relevant herein, Plaintiff eBay Inc. ("eBay") was a corporation

1 organized and existing under the laws of the State of Delaware, with its principal place of
2 business in the State of California.

3 2. eBay is informed and believes and, on that basis, alleges that at all times
4 relevant herein Defendant Digital Point Solutions, Inc. was a California corporation, doing
5 business in the State of California.

6 3. eBay is informed and believes and, on that basis, alleges that at all times
7 relevant herein Defendant Shawn Hogan was an individual residing and doing business in
8 the State of California.

9 4. Defendants Digital Point Solutions, Inc. and Shawn Hogan will be
10 collectively referred to herein as "DPS."

11 5. eBay is informed and believes and, on that basis, alleges that at all times
12 relevant herein Defendant Kessler's Flying Circus was a California general partnership
13 doing business in the State of California.

14 6. eBay is informed and believes and, on that basis, alleges that at all times
15 relevant herein Defendant Thunderwood Holdings, Inc. was a California corporation and
16 was a general partner of Defendant Kessler's Flying Circus.

17 7. eBay is informed and believes and, on that basis, alleges that at all times
18 relevant herein Defendant Brian Dunning was an individual residing and doing business in
19 the State of California and was the sole owner of Defendant Thunderwood Holdings, Inc.

20 8. eBay is informed and believes and, on that basis, alleges that at times
21 relevant herein Dunning Enterprise, Inc. (a/k/a Dunning Enterprises, Inc.) was a
22 California corporation doing business in the State of California and was a general partner
23 of Defendant Kessler's Flying Circus.

24 9. eBay is informed and believes and, on that basis, alleges that at all times
25 relevant herein Defendant Todd Dunning was an individual residing and doing business in
26 the State of California and was either a general partner of Defendant Kessler's Flying
27 Circus or held a controlling interest in Dunning Enterprise, Inc., which was a general
28 partner of Defendant Kessler's Flying Circus.

1 headquarters are located in San Jose, Santa Clara County, California, and Defendants'
2 wrongful actions were specifically directed at and intended to affect eBay in San Jose,
3 Santa Clara County, California as discussed in detail below.

4 GENERAL ALLEGATIONS

5 eBay's Affiliate Marketing Program

6 18. eBay offers to the public an online marketplace that enables trade on a local,
7 national and international basis. Through eBay's website, sellers may list items for sale
8 and buyers may bid on and purchase items of interest. eBay earns revenue when a seller
9 places an item for sale and when the item is sold. eBay may also earn revenue depending
10 on various features selected by the seller, e.g., listing upgrades and photo displays.

11 19. eBay's Affiliate Marketing Program is designed to increase traffic to eBay's
12 website through the placement of advertisements for eBay on third-party websites. eBay
13 seeks to increase traffic to its site so that more people will be exposed to eBay's service
14 and begin using eBay to buy or sell goods, thereby generating revenue for eBay. The
15 persons and entities that advertise on behalf of eBay—whether on their own sites or on
16 sites of other third parties—are known as "affiliates." eBay's Affiliate Marketing
17 Program is intended to compensate affiliates only when the advertisement in question
18 causes a user to take some action at eBay's site that directly provides revenue to eBay or
19 indicates that the new user is likely to take such an action in the future. Accordingly,
20 affiliates earn commissions payable by eBay under the Affiliate Marketing Program when
21 the following sequence of events occurs: (1) the affiliate publishes an eBay advertisement,
22 (2) a user clicks on the eBay advertisement and is directed to eBay's website (the
23 "Referred Visit"), and (3) that user subsequently engages in a commission-generating
24 event (a "Revenue Action"). Revenue Actions, include, by way of example: (1) becoming
25 a new, registered user of eBay within 30 days of the Referred Visit, or (2) purchasing an
26 item from a third-party seller on eBay within seven days of the Referred Visit. Because
27 compensation to the affiliate is tied to actions by the user, it is essential that eBay be able
28 to determine whether a Revenue Action occurred by virtue of the fact that the user was

1 referred to eBay by a particular affiliate's advertisement. eBay and/or Commission
2 Junction, Inc. ("CJ") tracks this information using information placed in the new user's
3 browser, as discussed below.

4 20. At all relevant times, eBay used the services of CJ, a subsidiary of
5 ValueClick, Inc., in administering the Affiliate Marketing Program. The relationship
6 between eBay and CJ was governed at all relevant times by various Advertiser Service
7 Agreements. Under those agreements, CJ was responsible for, among other things,
8 recruiting affiliates, tracking affiliate traffic, monitoring compliance by affiliates,
9 preventing and detecting fraudulent activity, and paying affiliates using funds remitted by
10 eBay.

11 21. eBay's obligation to pay commissions is tracked by matching a user's
12 Revenue Actions on eBay's site to the affiliate that directed the user to eBay. This
13 tracking is accomplished through the use of a digital tag called a "cookie" that is stored in
14 the user's web browser. Cookies are collections of data commonly used by websites to
15 store and associate useful information with a given user. Cookies typically store
16 information such as usernames, passwords, and user preferences for a particular user; that
17 information makes it more efficient for users to access web pages and provides a means
18 for websites to track and authenticate users. Cookies are placed or "dropped" in a user's
19 browser by a website when that user visits the website.

20 22. In the case of eBay's Affiliate Marketing Program, cookies are used to
21 confirm that a user was directed to eBay from a specific affiliate. Specifically, when a
22 user clicks on an affiliate advertisement and is directed to eBay's site, eBay's site drops a
23 cookie on the user's computer. That cookie identifies the site that referred the user to
24 eBay and/or the specific affiliate responsible for directing the traffic to eBay. If the user
25 later engages in a Revenue Action within the specified time period, eBay and/or CJ
26 determines—based on the data in the cookie—which affiliate, if any, should be credited
27 with the referral and receive the commission. If cookies from multiple affiliates are
28 present on the user's computer, the most recent cookie dropped is credited with the

1 Revenue Action. If there is no qualifying cookie on the computer, then no affiliate is
2 credited.

3 23. As part of the services it renders with respect to eBay's Affiliate Marketing
4 Program, CJ pays affiliates on a periodic basis (usually monthly), with funds remitted by
5 eBay, based on the number of Revenue Actions taken by users referred by those affiliates.

6 The Fraudulent "Cookie Stuffing" Schemes

7 24. "Cookie stuffing" is a term used to describe the forced placement of a
8 cookie on a computer, typically by causing a cookie from a particular website to be placed
9 on the user's computer without the user knowing that he or she visited the website that
10 placed the cookie. DPS and KFC engaged in cookie stuffing intended to defraud eBay.
11 The allegations set forth in paragraphs 24-30, 36-37, 42-43 and 50-51 below describing
12 Defendants' cookie stuffing schemes based on eBay's information and belief are based on
13 eBay's analysis of the Defendants' websites and/or technology and the way in which a
14 user's web browser interacts with Defendants' sites and/or technology, and on eBay's
15 analysis of historical data relating to traffic purportedly driven to eBay by Defendants.
16 Certain other details regarding Defendants' cookie stuffing schemes are exclusively
17 within Defendants' control.

18 25. eBay is informed and believes and, on that basis, alleges that DPS and KFC
19 each accomplished their cookie stuffing through software programs and/or code that,
20 unbeknownst to the user, redirected the user's computer to the eBay website without the
21 user actually clicking on an eBay advertisement link, or even becoming aware that they
22 had left the page they were previously viewing. As a result, the eBay site would be
23 prompted to drop an eBay cookie on the user's computer even though the user never
24 clicked on an eBay advertisement or even realized that their computer had ever visited the
25 eBay site.

26 26. eBay is informed and believes and, on that basis, alleges that the software
27 programs utilized by each of DPS and KFC caused the user's computer to access eBay's
28 computers in an unauthorized way and/or to exceed the authorized access to eBay's

1 computers because that access occurred solely to force the dropping of the eBay cookie
2 and thereby wrongfully associate future Revenue Actions, if any, by that user with DPS or
3 KFC.

4 27. eBay is informed and believes and, on that basis, alleges that once the
5 cookie was stuffed on the user's computer by one or more of the Defendants, any future
6 Revenue Actions initiated by that user when the user later visited eBay intentionally, and
7 not as a result of any advertisement placed by Defendants, appeared to be eligible for
8 commissions payable to one of the Defendants (provided those actions took place within
9 the prescribed periods of time). Hence DPS or KFC would receive payment for actions by
10 users who had not been referred to eBay by Defendants' advertisements, thereby injuring
11 eBay.

12 28. eBay is informed and believes and, on that basis, alleges that DPS and/or
13 KFC used certain technological measures to prevent eBay from discovering their
14 wrongdoing. At certain relevant times DPS and/or KFC used technology that would stuff
15 cookies on only those computers that had not been previously stuffed by that Defendant.
16 The purpose of this action was to avoid discovery by eBay and/or CJ of evidence of
17 stuffing—e.g., that a single user had multiple cookies pointing to the same affiliate or that
18 there was an abnormal ratio of cookies placed by DPS and KFC to the Revenue Actions
19 attributable to users referred by DPS and KFC—and thereby conceal the schemes from
20 eBay and CJ's monitoring activities. In addition, at certain relevant times DPS and/or
21 KFC used technology that would avoid stuffing cookies on computers that appeared to be
22 geographically located in San Jose, California (the location of eBay's headquarters) or
23 Santa Barbara, California (the location of CJ's headquarters). The purpose of this action
24 was to evade efforts by eBay and/or CJ to detect the cookie stuffing mechanism if they
25 attempted to observe the wrongdoing from their normal places of business.

26 29. eBay is informed and believes and, on that basis, alleges that DPS also used
27 at least one additional technological measure to conceal its wrongdoing: DPS used
28 images placed on web pages to effectuate its cookie stuffing scheme, and caused those

1 images to be so small that they were effectively invisible to the user and, accordingly,
2 difficult to detect.

3 30. eBay is informed and believes and, on that basis, alleges that KFC also used
4 at least one additional technological measure to conceal its wrongdoing: KFC used
5 JavaScript code contained in web pages to effectuate its cookie stuffing scheme, and
6 purposefully obscured the purpose and effect of that code so that, even when that code
7 was discovered, it was difficult to determine its actual effect. This caused KFC's cookie
8 stuffing to be difficult to detect, whether by human or machine efforts.

9 31. eBay is informed and believes and, on that basis, alleges that in addition to
10 these technological measures, DPS and KFC each actively sought to prevent detection by
11 eBay and CJ by explicitly denying to eBay and/or CJ that any wrongdoing had occurred.
12 For example, when Shawn Hogan was contacted by CJ in connection with suspicions of
13 cookie stuffing by DPS, he attributed the suspicious activity to "coding errors," which he
14 later purported to have "corrected."

15 32. As a result of the cookie stuffing schemes employed by DPS and KFC, eBay
16 paid commissions (via CJ) to each of DPS and KFC for a substantial number of Revenue
17 Actions that were in no way related to referral of any user by either DPS's or KFC's
18 advertisements and for which neither DPS nor KFC were due compensation.

19 **FIRST CAUSE OF ACTION**

20 **(Violations of 18 U.S.C. § 1030)**

21 33. eBay realleges each and every allegation set forth in Paragraphs 1 through
22 32, inclusive, and incorporates them by reference herein.

23 34. Through their cookie stuffing schemes as described above, DPS and KFC
24 each knowingly, intentionally and with intent to defraud accessed eBay's computers
25 without authorization and/or exceeded their authorized access to eBay's computers in
26 order to further their fraudulent schemes.

27 35. DPS's and KFC's access of eBay's computers was unauthorized because the
28 only purpose of that access was to defraud eBay. In addition, Defendants Shawn

1 Hogan's, Brian Dunning's and Todd Dunning's access of eBay's computers was
2 unauthorized and/or exceeded their authorized access, because each was a registered eBay
3 user and each had agreed to be bound by the eBay User Agreement in effect at the time.
4 The User Agreements accepted by each of Defendants Shawn Hogan, Brian Dunning and
5 Todd Dunning were substantially similar. The User Agreements (a) prohibited the use of
6 any "device, software or routine" to interfere with or attempt to interfere with the proper
7 working of the eBay site or any activities conducted on the eBay site, and (b) required
8 compliance with all applicable laws regarding the use of eBay's servers. Defendants
9 Shawn Hogan, Brian Dunning and Todd Dunning, through their cookie stuffing schemes,
10 violated those User Agreements and in so doing, accessed the eBay computers without
11 authorization and/or exceeded their authorized access.

12 36. eBay's computers are used in interstate and foreign commerce.

13 37. Through their unauthorized access, Defendants DPS and DOES 1-10
14 fraudulently obtained commissions for Revenue Actions that were in no way related to
15 those Defendants' advertisements and for which those Defendants were due no
16 compensation. Upon information and belief, through their unauthorized access,
17 Defendants DPS and DOES 1-10 also caused harm to eBay's computers and caused loss
18 to eBay in each year from at least December 2003 through June 2007, aggregating more
19 than \$5,000.

20 38. Through their unauthorized access, Defendants KFC and DOES 11-20
21 fraudulently obtained commissions for Revenue Actions that were in no way related to
22 those Defendants' advertisements and for which those Defendants were due no
23 compensation. Upon information and belief, through their unauthorized access,
24 Defendants KFC and DOES 11-20 also caused harm to eBay's computers and caused loss
25 to eBay in each year from at least December 2004 through June 2007, aggregating more
26 than \$5,000.

27 39. DPS's and KFC's actions constitute violations of the Computer Fraud and
28 Abuse Act, 18 U.S.C. § 1030.

1 through June 2007.

2 45. The members of the Hogan Group and Dunning Group each committed
3 multiple violations of the predicate act of mail and wire fraud, 18 U.S.C. § 1343, through
4 their cookie stuffing schemes. Specifically, schemes to defraud eBay existed by which
5 the members of the Hogan Group and Dunning Group each stuffed eBay cookies onto
6 computers for the purpose of defrauding eBay of commission fees due only for legitimate
7 Revenue Actions associated with a given affiliate. The members of the Hogan Group and
8 Dunning Group each participated in these schemes with the specific intent to defraud
9 eBay of commissions. Use of the Internet was essential to the schemes: the members of
10 the Hogan Group and Dunning Group stuffed a cookie onto a computer when a user was
11 browsing the Internet, and the stuffed cookie was later read and recognized when that
12 Internet user accessed eBay's website on the Internet and either registered with the site,
13 purchased an item or engaged in some other Revenue Action. The members of the Hogan
14 Group and Dunning Group each, by use of their technology, caused users' web browsers
15 to convey a representation by the Hogan Group and/or the Dunning Group to eBay that
16 the user had accessed the eBay website via an advertisement placed by either DPS or
17 KFC, when in fact, a substantial portion of those users never knowingly or intentionally
18 visited the eBay website based on an advertisement placed by either DPS or KFC. These
19 fraudulent acts and representations were repeated multiple times, and each act constitutes
20 a violation of 18 U.S.C. § 1343 through the use of interstate wires.

21 46. Each violation of 18 U.S.C. § 1343 constitutes a separate instance of
22 "racketeering activity" as defined in 18 U.S.C. § 1961(1) and was committed in
23 furtherance of the conspiracy to defraud eBay of commission fees not legitimately earned
24 by either DPS or KFC. Together, these violations constitute a pattern of racketeering
25 activity: the violations have the same or similar purposes, results, participants, victims
26 and/or methods of commission.

27 47. The racketeering activity committed by each of the members of the Hogan
28 Group and Dunning Group affected the interstate activity of Internet web browsing. In

1 addition, Internet marketing, including the marketing at issue here that utilizes
2 advertisements seen by Internet users in all 50 states and provides commissions for
3 actions taken by eBay users across all 50 states, is also an interstate activity that was
4 affected by the racketeering activity committed by each of the members of the Hogan
5 Group and Dunning Group.

6 48. The actions of each of the members of the Hogan Group and Dunning
7 Group were undertaken with fraud, malice or oppression, or with a conscious disregard of
8 the rights of eBay and, therefore, eBay is entitled to an award of exemplary and punitive
9 damages against each of the members of the Hogan Group and Dunning Group, in an
10 amount according to proof at trial.

11 49. WHEREFORE, eBay prays for judgment against each of the members of the
12 Hogan Group and Dunning Group, as more fully set forth below.

13 THIRD CAUSE OF ACTION

14 (Fraud)

15 50. eBay realleges each and every allegation set forth in Paragraphs 1 through
16 49, inclusive, and incorporates them by reference herein.

17 51. DPS and DOES 1-10, by use of their cookie stuffing computer programs
18 and/or code, caused users' web browsers to convey a representation by those defendants
19 to eBay that the user had accessed the eBay website via an advertisement placed by DPS.
20 eBay is informed and believed and, on that basis, alleges that this conduct began in or
21 around December 2003 and continued through at least June 2007.

22 52. KFC and DOES 11-20, by use of their cookie stuffing computer programs
23 and/or code, caused users' web browsers to convey a representation by those defendants
24 to eBay that the user had accessed the eBay website via an advertisement placed by KFC.
25 eBay is informed and believed and, on that basis, alleges that this conduct began in or
26 around December 2004 and continued through at least June 2007.

27 53. The representations made and/or caused to be made by each of DPS, KFC
28 and DOES 1-20 were in fact false. The true facts were that a substantial portion of the

1 users ostensibly referred by each of DPS, KFC and DOES 1-20 to the eBay site had not
2 been referred by those Defendants, that those users had never knowingly or intentionally
3 visited the eBay site based on any advertisement or referral from any of those Defendants,
4 and that the information contained in cookies in those users' web browsers was actually
5 the product of the false and misleading cookie stuffing schemes employed by each of
6 DPS, KFC and DOES 1-20.

7 54. When DPS, KFC and DOES 1-20 made these representations (or caused
8 them to be made), they knew them to be false and made these representations (or caused
9 them to be made) with the intention to deceive and defraud eBay and induce eBay to act
10 in reliance on these representations.

11 55. eBay, at the time these representations were made (or caused to be made) by
12 DPS, KFC and DOES 1-20, was ignorant of the falsity of the representations and believed
13 them to be true. In reliance on these representations, eBay was induced to, and did, make
14 commission payments to each of DPS and KFC (via CJ) in consideration for referrals that
15 eBay believed to be legitimate and bona fide. Had eBay known the true facts, it would
16 not have made such commission payments. eBay's reliance on the representations of
17 DPS, KFC and DOES 1-20 was justified.

18 56. As a proximate result of the fraudulent conduct of each of DPS, KFC and
19 DOES 1-20, eBay paid commissions and fees to DPS and KFC (via CJ) for referrals that
20 had never occurred, for which eBay received no value, and for which eBay owed nothing
21 to DPS or KFC.

22 57. As a proximate result thereof, eBay has been damaged in an amount to be
23 proven at trial.

24 58. Defendants' actions were undertaken with fraud, malice or oppression, or
25 with a conscious disregard of the rights of eBay and, therefore, eBay is entitled to an
26 award of exemplary and punitive damages against each of DPS, KFC and DOES 1-20, in
27 an amount according to proof at trial.

28 59. WHEREFORE, eBay prays for judgment against each of DPS, KFC and

1 DOES 1-20, as more fully set forth below.

2 **FOURTH CAUSE OF ACTION**

3 **(Violations of California Penal Code § 502)**

4 60. eBay realleges each and every allegation set forth in Paragraphs 1 through
5 59, inclusive, and incorporates them by reference herein.

6 61. Each of DPS and KFC have knowingly and without permission: altered,
7 damaged, deleted, destroyed, or otherwise used eBay's computer, computer system, or
8 computer network in order to devise and execute a cookie stuffing scheme or artifice in
9 order to defraud and deceive; and/or altered, damaged, deleted, destroyed, or otherwise
10 used eBay's computer, computer system, or computer network in order to wrongfully
11 control or obtain money and property; and/or accessed or caused to be accessed eBay's
12 computer, computer system, or computer network.

13 62. DPS's and KFC's unauthorized access and use of eBay's computers has
14 damaged and caused loss to eBay.

15 63. DPS's and KFC's actions constitute violations of California Penal Code §
16 502(c).

17 64. DPS's and KFC's actions were undertaken with fraud, malice or oppression,
18 or with a conscious disregard of the rights of eBay and, therefore, eBay is entitled to an
19 award of exemplary and punitive damages against each of DPS and KFC, in an amount
20 according to proof at trial.

21 65. WHEREFORE, eBay prays for judgment against each of DPS and KFC, as
22 more fully set forth below.

23 **FIFTH CAUSE OF ACTION**

24 **(Restitution and Unjust Enrichment)**

25 66. eBay realleges each and every allegation set forth in Paragraphs 1 through
26 65, inclusive, and incorporates them by reference herein.

27 67. Through their cookie stuffing schemes, as described above, each of DPS and
28 KFC received a benefit from eBay, in the form of artificially and fraudulently inflated

1 commissions paid to DPS and KFC (via CJ) for Revenue Actions that were not associated
2 with any referral from those Defendants.

3 68. In light of DPS's and KFC's conduct, it would be unjust for DPS and KFC
4 to retain the benefits they obtained from eBay.

5 69. DPS and KFC have been unjustly enriched by eBay's payments and should
6 be required in equity to make restitution of these payments to eBay.

7 70. WHEREFORE, eBay prays for judgment against each of DPS and KFC, as
8 more fully set forth below.

9 **SIXTH CAUSE OF ACTION**

10 **(California Business and Professions Code § 17200)**

11 71. eBay realleges each and every allegation set forth in Paragraphs 1 through
12 70, inclusive, and incorporates them by reference herein.

13 72. Through their cookie stuffing schemes, as described above, each of DPS and
14 KFC engaged in unlawful, unfair and/or fraudulent business practices. Such conduct by
15 each of DPS and KFC violates California Business and Professions Code § 17200 et. seq.

16 73. As discussed herein, DPS's and KFC's business practices of engaging in
17 cookie stuffing were unlawful under state and federal laws, including but not limited to
18 the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the civil RICO statute, 18 U.S.C. §
19 1962(c), California Penal Code § 502, and constituted common law fraud.

20 74. DPS's and KFC's conduct was also fraudulent and deceptive, and was
21 unfair to eBay, in that it offended established public policy, and/or was immoral,
22 unethical, oppressive, unscrupulous and substantially injurious to eBay.

23 75. As a direct result of DPS's and KFC's conduct, eBay has suffered an injury
24 in fact and has lost money and/or property that has been wrongfully retained by each of
25 DPS and KFC.

26 76. WHEREFORE, eBay prays for judgment against each of DPS and KFC, as
27 more fully set forth below.

28

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, eBay prays for judgment against Defendants, and each of them, for:

- i. Judgment in favor of eBay and against all Defendants on all causes of action;
- ii. An award of compensatory damages according to proof at trial;
- iii. An award of punitive damages according to proof at trial;
- iv. An award of treble damages against Defendants Shawn Hogan, Brian Dunning and Todd Dunning, pursuant to 18 U.S.C. § 1964 according to proof at trial;
- v. An award requiring Defendants to disgorge all ill-gotten gains and to return the eBay funds by which Defendants have been unjustly enriched;
- vi. An award of restitution, according to proof at trial;
- vii. An injunction prohibiting Defendants from (a) disseminating, sharing or otherwise making available any cookie stuffing technology to others; (b) possessing, disseminating, sharing, or otherwise making available any technology intended or capable of being used to defraud eBay; and (c) having any further involvement with any person or entity participating in the eBay Affiliate Marketing Program;
- viii. An award of pre-judgment and post-judgment interest;
- ix. An award of attorney's fees and costs of suit incurred herein; and
- x. Such other further relief as the Court may deem just and proper.

Dated: October 7, 2008

O'MELVENY & MYERS LLP

By: 

David R. Eberhart, Esq.
Sharon M. Bunzel, Esq.
Colleen M. Kennedy, Esq.
Attorneys for Plaintiff eBay INC.

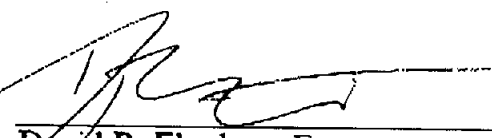
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DEMAND FOR JURY TRIAL

eBay hereby demands a trial by jury of all claims in this action.

Dated: October 7, 2008

O'MELVENY & MYERS LLP

By: 

David R. Eberhart, Esq.
Sharon M. Bunzel, Esq.
Colleen M. Kennedy, Esq.
Attorneys for Plaintiff eBAY INC.