

Exhibit E

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Tiffany (NJ) Inc. and
Tiffany and Company

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TIFFANY (NJ) INC. and TIFFANY AND
COMPANY,

Plaintiffs,

v.

eBAY INC.,

Defendant.

04 Civ. 4607 (NRB)

**PLAINTIFFS' FIRST REQUEST FOR
THE PRODUCTION OF
DOCUMENTS AND THINGS TO
DEFENDANT eBAY INC.**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, plaintiffs Tiffany (NJ) Inc. and Tiffany and Company (collectively, "Tiffany") hereby request that defendant eBay Inc. ("Defendant") produce for inspection and copying, at the offices of Dorsey & Whitney LLP, 250 Park Avenue, 15th Floor, New York, New York 10177, within 30 days from the date of service hereof, the documents and things hereinafter requested. These requests are continuing in nature and impose upon Defendant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure. The Uniform Definitions in Discovery Requests set forth in Local Civil Rule 26.3 of the Rules of the United States District Courts for the Southern and Eastern Districts of New York are incorporated herein by reference.

Definitions and Instructions

1. As used herein, “Tiffany” shall refer to plaintiffs Tiffany (NJ) Inc. and Tiffany and Company and all of their predecessors and successors in interest, affiliates, parents, subsidiaries, agents, representatives, departments, divisions or subsidiaries of any of the foregoing, whether in the past or present, and all present and former directors, officers, representatives, employees, attorneys, agents and any other persons or entities acting on their behalf or under their control.

2. As used herein, “eBay” shall refer to defendant eBay Inc. and all of its predecessors and successors in interest, distributors, affiliates, parents, subsidiaries, agents, representatives, departments, divisions or subsidiaries of any of the foregoing, whether in the past or present, and all present and former directors, officers, representatives, employees, attorneys, agents and any other persons or entities acting on its behalf or under its control.

3. As used herein, “ebay.com” shall refer to eBay’s online auction website at www.ebay.com and all of its internal links, as well as all other websites owned or controlled by eBay, including www.half.com.

4. As used herein, the “Tiffany Marks” shall refer to the trademarks TIFFANY, TIFFANY & CO., and T & CO., individually or collectively, all variations thereof, the distinctive blue coloring often described as “robin’s egg blue” that is the subject of United States Patent and Trademark Office registration numbers 2,359,351; 2,416,794; 2,416,795; and 2,184,128, and any marks or colors that are confusingly similar to those trademarks.

5. Any word written herein in the singular shall be construed as plural or vice versa when necessary to fulfill a document request.

6. In the event that any document is to be withheld on the basis of a claim of privilege, that document is to be identified by providing a log listing the names of the addressor(s) and author(s) of the document and the company or other entity on whose behalf the document was prepared or signed; the recipient(s) of the document; any date that appears on the document; the type of document (e.g., letter, memorandum); a description of the subject matter of the document; and the nature of the applicable privilege.

7. The documents or things shall be produced as they are kept in the ordinary course of business.

8. Each document request herein should be construed independently. No request should be construed by reference to any other request for the purpose of limiting the scope of response to such request.

9. Unless otherwise specified below, each document request herein is limited to the time period after June 18, 1998.

Documents and Things Requested

1. Documents sufficient to identify, from 2001 to the present, all eBay personnel involved with the screening or review of potential listings and delisting or suspension of listings on ebay.com and the job responsibilities of those personnel.

2. Documents sufficient to identify, from 2001 to the present, all eBay personnel involved with the advertising and/or promotion by eBay of listings on ebay.com, including, but not limited to, greeting pages, sponsored links, and all other advertising, and the job responsibilities of those personnel.

3. All documents concerning any individual or entity retained by eBay for consultation regarding any of the following topics:

- (a) the screening or review of potential listings on ebay.com;
- (b) the advertising and/or promotion of listings on ebay.com;
- (c) the listing, rejection and/or delisting of prohibited, questionable or potentially infringing (as those terms are defined at http://pages.ebay.com/help/sell/item_allowed.html) goods or packaging on ebay.com and eBay's policies regarding such listings; and
- (d) eBay's communications with intellectual property rights owners concerning the sale of counterfeit goods.

4. All documents and things concerning listings submitted for posting on, and/or actually posted on, the "Jewelry and Watches" category, or any other "Jewelry" category, of ebay.com for goods or packaging bearing one or more of the Tiffany Marks, including, but not limited to, all documents:

- (a) concerning the sellers of such goods or packaging, including, but not limited to, documents sufficient to identify their names, addresses, telephone numbers, and user identification names;
- (b) concerning the purchasers of such goods or packaging and/or high-bidders for the auctions for such goods or packaging, including, but not limited to, documents sufficient to identify their names, addresses, telephone numbers, and user identification names;
- (c) concerning any contracts or agreements between eBay and the sellers and/or purchasers of such goods or packaging;
- (d) concerning the bidding for such goods or packaging, including, but not limited to, documents sufficient to identify their original price requests and ultimate purchase prices;
- (e) concerning Internet pages posted on ebay.com in connection with such goods or packaging, including, but not limited to, documents sufficient to identify all photographic depictions and product descriptions submitted and/or posted for such goods or packaging;
- (f) reflecting all communications concerning such listings and/or goods or packaging, including, but not limited to, all correspondence with eBay or among eBay users and all

internal correspondence or memoranda among eBay employees;

- (g) sufficient to identify the relevant dates for all activities concerning the sales for such goods or merchandise;
- (h) sufficient to identify the types of listings or auctions used for the sale of such goods or merchandise;
- (i) sufficient to identify the revenue generated by eBay in connection with such listings, including, but not limited to, all fees charged and/or collected by eBay;
- (j) concerning eBay's screening, review and/or investigation of the listing and/or the goods proposed to be offered or offered for sale thereunder.

5. All documents and things concerning listings submitted for posting on, and/or actually posted on, the "Jewelry and Watches" category, or any other "Jewelry" category, of ebay.com for goods or packaging where the auction title or description utilized one of more of the Tiffany Marks, including, but not limited to, all documents:

- (a) concerning the sellers of such goods or packaging, including, but not limited to, documents sufficient to identify their names, addresses, telephone numbers, and user identification names;
- (b) concerning the purchasers of such goods or packaging and/or high-bidders for the auctions for such goods or packaging, including, but not limited to, documents sufficient to identify their names, addresses, telephone numbers, and user identification names;
- (c) concerning any contracts or agreements between eBay and the sellers and/or purchasers of such goods or packaging;
- (d) concerning the bidding for such goods or packaging, including, but not limited to, documents sufficient to identify their original price requests and ultimate purchase prices;
- (e) concerning Internet pages posted on ebay.com in connection with such goods or packaging, including, but not limited to, documents sufficient to identify all photographic depictions and product descriptions submitted and/or posted for such goods or packaging;

- (f) reflecting all communications concerning such listings and/or goods or packaging, including, but not limited to, all correspondence with eBay or among eBay users and all internal correspondence or memoranda among eBay employees;
- (g) sufficient to identify the relevant dates for all activities concerning the sales for such goods or merchandise;
- (h) sufficient to identify the types of listings or auctions used for the sale of such goods or merchandise;
- (i) sufficient to identify the revenue generated by eBay in connection with such listings, including, but not limited to, all fees charged and/or collected by eBay.
- (j) concerning eBay's screening, review and/or investigation of the listing and/or the goods proposed to be offered or offered for sale thereunder.

6. All documents including, but not limited to, correspondence with purchasers of goods or packaging through listings on ebay.com, concerning eBay's knowledge and/or investigation of whether goods or packaging sold, offered for sale, advertised, or promoted on ebay.com bearing the Tiffany Marks or otherwise sold or promoted using the Tiffany Marks are genuine goods or packaging.

7. All documents concerning eBay's advertising and/or promotion of goods or packaging bearing one or more of the Tiffany Marks, or otherwise sold or promoted using the Tiffany Marks, or the advertising and/or promotion of listings for such goods or packaging, through the utilization of greeting pages on ebay.com that reference one or more of the Tiffany Marks, including, but not limited to, specimens of all such greeting pages and draft greeting pages, all documents concerning or evidencing ebay.com visitors that clicked on the advertisement containing one or more of the Tiffany Marks, and all documents concerning revenue generated by such advertising and/or promotion.

8. All documents concerning eBay's advertising and/or promotion of goods or packaging bearing one or more of the Tiffany Marks, or otherwise sold or promoted using the Tiffany Marks, or the advertising and/or promotion of listings for such goods or packaging, through the utilization of sponsored links, or other advertisements, placed, caused to be placed, or otherwise supported financially by eBay, on websites, including search engines, other than ebay.com, that reference one or more of the Tiffany Marks, including, but not limited to, specimens of all such advertisements and draft advertisements, all documents concerning third-parties who assisted eBay or otherwise took action in placing such advertisements and/or promotion, all documents concerning or evidencing ebay.com visitors that clicked on the advertisement containing one or more of the Tiffany Marks, all documents concerning expenditures for such advertising and/or promotion, and all documents concerning revenue generated by such advertising and/or promotion.

9. All documents concerning eBay's advertising and/or promotion of goods or packaging bearing one or more of the Tiffany Marks, or otherwise sold or promoted using the Tiffany Marks, or the advertising and/or promotion of listings for such goods or packaging, placed, caused to be placed, or otherwise supported financially by eBay, in or through any media, including radio, television, or print, that reference one or more of the Tiffany Marks, including, but not limited to, specimens of all such advertisements and draft advertisements, all documents concerning the media schedules for such advertising and/or promotion, all documents concerning expenditures for such advertising and/or promotion, and all documents concerning revenue generated by such advertising and/or promotion.

10. All documents concerning protests, complaints or other correspondence by parties other than Tiffany regarding prohibited, questionable or potentially infringing (as those

terms are defined at http://pages.ebay.com/help/sell/item_allowed.html) goods or packaging listed on ebay.com, including, but not limited to, correspondence between eBay and intellectual-property rights owners, correspondence between eBay and eBay users and/or members of the public, correspondence among eBay users, internal correspondence or memoranda among eBay employees, and all documents concerning any legal action brought against eBay concerning prohibited, questionable or potentially infringing goods or packaging listed on ebay.com.

11. All documents concerning eBay's policies and/or practices, if any, regarding the listing of prohibited, questionable or potentially infringing (as those terms are defined at http://pages.ebay.com/help/sell/item_allowed.html) goods or packaging on or through ebay.com.

12. All documents concerning eBay's screening process for new postings listed on ebay.com and its ability to review and/or suspend or cancel auctions and/or other listings before or after they are posted on ebay.com.

13. All documents concerning eBay's enforcement, if any, of any policies regarding the listing of prohibited, questionable or potentially infringing (as those terms are defined at http://pages.ebay.com/help/sell/item_allowed.html) goods or packaging on or through ebay.com.

14. All documents concerning eBay's policies and/or efforts designed to prevent suspended users of ebay.com from using ebay.com under different names or proffered identities.

15. All documents concerning the eBay PowerSeller program, including, but not limited to, all documents concerning criteria for membership, invitations for membership, benefits of membership, and correspondence with or among eBay concerning the PowerSeller

program or individual members of the PowerSeller program, including any allegations that an individual member of the PowerSeller program listed prohibited, questionable or potentially infringing goods or packaging and the disposition of such allegations.

16. All documents relating to or concerning its Second Affirmative Defense that “Plaintiffs’ claims are barred by the doctrine of equitable estoppel.”

17. All documents relating to or concerning its Third Affirmative Defense that “Plaintiffs’ claims are barred by the doctrine of waiver.”

18. All documents relating to or concerning its Fourth Affirmative Defense that “Plaintiffs’ claims are barred by the doctrine of nominative use.”

19. All documents relating to or concerning its Fifth Affirmative Defense that “Plaintiffs’ claims are barred by the doctrine of exhaustion.”

20. All documents relating to or concerning its Seventh Affirmative Defense that “Plaintiffs have failed to mitigate their damages, if any.”

21. All documents concerning Tiffany’s use of eBay’s Verified Rights Owners (“VeRO”) program, including, but not limited to, all documents concerning listings delisted as a consequence of Tiffany’s complaints under that program, complaints received from sellers of delisted goods or packaging, and documents sufficient to identify the frequency with which Tiffany uses the VeRo program as compared to other intellectual property owners.

Dated: New York, New York
October 22, 2004

DORSEY & WHITNEY LLP

By: 

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Tiffany (NJ) Inc. and
Tiffany and Company

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ANTOINETTE TAYLOR, being duly sworn, deposes and says: I am not a party to the action, am over 18 years of age and am an employee at Dorsey & Whitney LLP, 250 Park Avenue, New York, New York 10177. On October 22, 2004, I caused to be served By Hand a true copy of Plaintiffs' First Request for the Production of Documents and Things to Defendant eBay Inc. by enclosing the same in a sealed envelope addressed to the last known address of the addressee(s) as indicated below:

R. Bruce Rich, Esq.
Weil, Gotschal & Manges LLP
767 Fifth Avenue
New York, New York 10153

Antoinette Taylor
ANTOINETTE TAYLOR

Sworn to before me this
22nd day of October, 2004

Desiree Lewis DeSilva
Notary Public

DESIREE LEWIS DeSILVA
Notary Public, State of New York
No. 01LE5032252
Qualified in Kings County
Certificate Filed in New York County
Commission Expires Aug. 22, *2006*