

# EXHIBIT 9

# McKool Smith

A PROFESSIONAL CORPORATION • ATTORNEYS

300 West 6<sup>th</sup> Street

Suite 1700

Austin, Texas 78701

Matt Rappaport  
Direct Dial: (512) 692-8754  
mrappaport@mckoolsmith.com

Telephone: (512) 692-8700  
Telecopier: (512) 692-8744

April 26, 2011

## VIA EMAIL

Andrew Perito  
Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065

RE: *Eolas Technologies Incorporated v. Adobe Systems, Inc., et al.*; Civil Action No. 6:09-CV-446-LED; United States District Court of Texas; Eastern District. eBay Source Code Production

Dear Andrew,

I write in furtherance of the discussions Eolas' technical team had with you onsite during last week's April 18-21 review of eBay's source code. Particularly, I write because our technical team was unable to locate relevant source code for seventeen accused eBay websites.

Upon their inquiries, I understand that you were unable to point our technical team to code for these accused websites and could not verify that the code that was produced corresponded to these accused websites. This was after Eolas' technical team walked you through the directory structure of eBay's production, a screen-capture of which is displayed at EBAY-SC0000077. I understand that thereafter, upon our technical team's renewed request, you were also unable to produce source code for these seventeen accused websites. This is so even though this code was requested in detail by my March 30 correspondence. Because of eBay's deficient code production, Eolas' technical team cut their review of eBay's code short.

In sum, for the seventeen accused websites listed below eBay has not produced source code that embeds Flash objects, as requested in detail through my March 30 correspondence:

1. <http://success.ebay.com>
2. <http://www.motors.ebay.com>

3. <http://givingworks.ebay.com>
4. [www.ebay.com](http://www.ebay.com)
5. <http://antiques.shop.ebay.com>
6. <http://services.ebay.com>
7. <http://coins.ebay.com>
8. <http://www.ebaygreenteam.com>
9. <http://baby.shop.ebay.com>
10. <http://business.shop.ebay.com>
11. <http://dolls.shop.ebay.com>
12. <http://art.shop.ebay.com>
13. <http://photography.shop.ebay.com>
14. <http://cell-phones.ebay.com>
15. <http://computers.ebay.com>
16. <http://video-games.ebay.com>
17. <http://electronics.ebay.com>

In contrast, eBay did provide the source code that embeds Flash objects for the accused website <http://neighborhoods.ebay.com>, as requested. This is the only accused website for which eBay's production was sufficient.

Thus, Eolas cannot reconcile what it encounters upon review of eBay's source code with eBay's representations regarding the sufficiency of its production. For example, Joe Lee's December 9, 2010 email states that eBay has "made available for inspection all versions of the source code that implement the functionality [eBay understood] were accused of infringement." Also, your April 16, 2011 email states that eBay does "not understand that source code implementing the accused functionalities is missing from the source code already produced and/or made available." The fact that source code for embedding Flash objects is absent for seventeen accused websites is at odds with these representations.

This situation is particularly troublesome because Eolas sought to avoid this very issue by detailing the source code Eolas expected eBay to produce ahead of time, in my March 30 correspondence. In the weeks prior to the April 18 source code review I repeatedly brought this matter to your attention (see my correspondence of March 30, April 7, April 13, and April 15).

These efforts to engage eBay went unacknowledged until your aforementioned email of April 16, 2010 — sent the Saturday before the Monday review of eBay source code began.

Eolas has now reviewed eBay's source code on three separate occasions. Despite detailing the source code it requires, Eolas is still left without a complete source code production to review. As such, please write back to confirm that eBay will not point to the absence of non-produced source code to argue that Eolas has failed to meet its burden of proof on infringement. This will be sufficient for Eolas, settling this issue.

Failing this, Eolas must receive prompt confirmation that either:

- (i) the embedding of Flash objects for the seventeen accused sites for which code is missing occurs in the same manner that such embedding occurs on the website <http://neighborhoods.ebay.com>, for which code was produced; OR
- (ii) eBay will produce the requested code for the seventeen accused sites for which code is missing, sending printouts directly to Eolas; OR
- (iii) eBay will produce the code for the seventeen accused sites for which code is missing and bear the expenses associated with sending Eolas' technical team to perform a fourth review of eBay's source code production; OR
- (iv) you will make your lead/local counsel available to meet and confer on this issue without delay.

Your prompt response is required. The date for expert reports is fast approaching and this matter implicates materials necessary for Eolas' preparation of its expert report. Please respond to indicate your position no later than Thursday, April 28.

Sincerely,

A handwritten signature in black ink that reads "Matt Rappaport". The signature is written in a cursive, slightly slanted style.

Matt Rappaport

cc: Edward R. Reines      [edward.reines@weil.com](mailto:edward.reines@weil.com)  
Matthew Douglas      [eBay-Eolas@weil.com](mailto:eBay-Eolas@weil.com)  
Powers  
Christian J. Hurt

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Aaron Y. Huang  
Sonal N. Mehta