

ESTTA Tracking number: **ESTTA196551**

Filing date: **03/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	eBay Inc.
Granted to Date of previous extension	03/05/2008
Address	2145 Hamilton Avenue San Jose, CA 95125 UNITED STATES

Attorney information	Frank B. Goldberg Cooley Godward Kronish LLP 101 California Street, 5th Floor San Francisco, CA 95125 UNITED STATES trademarks@cooley.com, youngml@cooley.com, fgoldberg@cooley.com, kmanley@cooley.com
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Applicant Information

Application No	78508389	Publication date	11/06/2007
Opposition Filing Date	03/05/2008	Opposition Period Ends	03/05/2008
Applicant	Weebay, Inc. 16897 E. Fair Place Aurora, CO 80016 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2004/06/01 First Use In Commerce: 2004/06/01 All goods and services in the class are opposed, namely: auction intermediary services, namely, selling items on internet auctions on behalf of others
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2218732	Application Date	11/17/1997
Registration Date	01/19/1999	Foreign Priority Date	NONE
Word Mark	EBAY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1995/09/04 First Use In Commerce: 1995/09/04 on-line trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith

U.S. Registration No.	2367932	Application Date	01/13/1999
Registration Date	07/18/2000	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1998/12/15 First Use In Commerce: 1998/12/15 Christmas tree ornaments and soft sculpture toys		

U.S. Registration No.	2367895	Application Date	12/30/1998
Registration Date	07/18/2000	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1998/12/15 First Use In Commerce: 1998/12/15 Christmas tree ornaments and soft sculpture toys		

U.S. Registration No.	2410023	Application Date	03/29/1999
Registration Date	12/05/2000	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1998/01/15 First Use In Commerce: 1998/01/15 On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith		

U.S. Registration No.	2420512	Application Date	11/12/1998
Registration Date	01/16/2001	Foreign Priority Date	NONE
Word Mark	EBAY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1998/01/15 First Use In Commerce: 1998/01/15 On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith

U.S. Registration No.	2468781	Application Date	12/23/1998
Registration Date	07/17/2001	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1995/09/00 First Use In Commerce: 1995/09/00 Computer e-commerce software to allow users to perform electronic business transactions conducted in the form of an auction via a global computer network and computer database software featuring information in the field of hobbies, collectibles and a wide variety of products		

U.S. Registration No.	2501043	Application Date	01/13/1999
Registration Date	10/23/2001	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1998/05/13 First Use In Commerce: 1998/05/13 clocks and watches		

U.S. Registration No.	2518652	Application Date	01/20/1999
Registration Date	12/11/2001	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/05/13 First Use In Commerce: 1998/12/00 Clothing, namely, t-shirts, caps and sweatshirts		

U.S. Registration No.	2522632	Application Date	06/06/2001
Registration Date	12/25/2001	Foreign Priority Date	NONE
Word Mark	EBAY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2000/07/00 First Use In Commerce: 2000/07/00 plastic key chain tags and plastic novelty license plate frames

U.S. Registration No.	2522630	Application Date	06/06/2001
Registration Date	12/25/2001	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2000/07/00 First Use In Commerce: 2000/07/00 plastic key chain tags and plastic novelty license plate frames		

U.S. Registration No.	2526027	Application Date	01/20/1999
Registration Date	01/01/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/05/13 First Use In Commerce: 1998/12/00 Clothing, namely, t-shirts, sweatshirts and caps		

U.S. Registration No.	2553773	Application Date	12/23/1998
Registration Date	03/26/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1999/10/07 First Use In Commerce: 1999/10/07 clocks, watches		

U.S. Registration No.	2578260	Application Date	06/12/2001
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1999/04/00 First Use In Commerce: 1999/04/00 duffel bags, tote bags, backpacks and briefcases		

U.S. Registration No.	2578259	Application Date	06/12/2001
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1999/04/00 First Use In Commerce: 1999/04/00 duffel bags, tote bags, backpacks and briefcases		

U.S. Registration No.	2583312	Application Date	04/10/2000
Registration Date	06/18/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Toy miniature cars and bean bag toys		

U.S. Registration No.	2592515	Application Date	04/10/2000
Registration Date	07/09/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 1999/05/15 First Use In Commerce: 1999/05/15 Telecommunications services, namely, the electronic transmission of data and information; paging services		

U.S. Registration No.	2592514	Application Date	04/10/2000
Registration Date	07/09/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 1999/05/15 First Use In Commerce: 1999/05/15 Telecommunications services, namely the electronic transmission of data and information; paging services		

U.S. Registration No.	2604375	Application Date	06/12/2001
Registration Date	08/06/2002	Foreign Priority	NONE

		Date	
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1999/04/00 First Use In Commerce: 1999/04/00 Mugs, tumblers, and water bottles sold empty; containers for food or beverages, namely, lunch containers made of vinyl or nylon		

U.S. Registration No.	2604374	Application Date	06/12/2001
Registration Date	08/06/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1999/04/00 First Use In Commerce: 1999/04/00 mugs, tumblers, and water bottles sold empty; containers for food or beverages, namely, lunch containers made of vinyl or nylon		

U.S. Registration No.	2662118	Application Date	06/19/2001
Registration Date	12/17/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 board games		

U.S. Registration No.	2662130	Application Date	06/19/2001
Registration Date	12/17/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 board games		

U.S. Registration No.	2666767	Application Date	01/20/1999
Registration Date	12/24/2002	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2000/11/28 First Use In Commerce: 2000/11/28 Clothing, namely, jackets

U.S. Registration No.	2672470	Application Date	01/20/1999
Registration Date	01/07/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/11/28 First Use In Commerce: 2000/11/28 Clothing, namely, jackets [and visors]		

U.S. Registration No.	2700675	Application Date	01/13/1999
Registration Date	03/25/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/03/01 First Use In Commerce: 2001/03/01 Computer e-commerce software to allow users to perform electronic business transactions conducted in the form of an auction via a global computer network and computer database software featuring information in the field of hobbies, collectibles and a wide variety of products		

U.S. Registration No.	2700836	Application Date	01/13/1999
Registration Date	03/25/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 PUBLICATIONS, NAMELY, A SERIES OF NONFICTION BOOKS, CONCERNING HOBBIES, COLLECTIBLES, AUCTIONS, AND A WIDE VARIETY OF PRODUCTS RELATING TO ANTIQUES, ART LITERATURE, CULTURE, TECHNOLOGY, TRAVEL, SPORTS, ENTERTAINMENT, HOME FURNISHINGS, GARDEN ITEMS, MUSICAL INSTRUMENTS, MOTOR VEHICLES, TOYS AND GAMES, FASHION, JEWELRY, ELECTRONICS, PHOTOGRAPHY, HOLIDAY RELATED ITEMS, FILM AND VIDEO; PAPER AND STATIONERY ITEMS, NAMELY, MEMO PADS, PAPER POSTCARDS, BUMPER STICKERS, CALENDARS, DECORATIVE STICKERS AND DECALS		

U.S. Registration No.	2729649	Application Date	12/23/1998
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Registration Date	06/24/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 PUBLICATIONS, NAMELY, A SERIES OF NONFICTION BOOKS, CONCERNING HOBBIES, COLLECTIBLES, AUCTIONS, AND A WIDE VARIETY OF PRODUCTS RELATING TO ANTIQUES, ART, LITERATURE, CULTURE, TECHNOLOGY, TRAVEL, SPORTS, ENTERTAINMENT, HOME FURNISHINGS, GARDEN ITEMS, MUSICAL INSTRUMENTS, MOTOR VEHICLES, TOYS AND GAMES, FASHION, JEWELRY, ELECTRONICS, PHOTOGRAPHY, HOLIDAY RELATED ITEMS, FILM AND VIDEO; PAPER AND STATIONERY ITEMS, NAMELY, MEMO PADS, PAPER POSTCARDS, BUMPER STICKERS, CALENDARS, DECORATIVE STICKERS AND DECALS		

U.S. Registration No.	2735542	Application Date	04/10/2000
Registration Date	07/08/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 1996/05/00 First Use In Commerce: 1996/05/00 Providing an online, interactive bulletin board for the transmission of messages among computer users concerning hobbies, collectibles, trading, and the sale of items via a global computer network		

U.S. Registration No.	2737342	Application Date	04/10/2000
Registration Date	07/15/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Toy miniature cars and bean bag toys		

U.S. Registration No.	2744717	Application Date	04/10/2000
Registration Date	07/29/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 1996/05/00 First Use In Commerce: 1996/05/00 Providing an online, interactive bulletin board for the transmission of messages		

	among computer users concerning hobbies, collectibles, trading, and the sale of items via a global computer network
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U.S. Registration No.	2759145	Application Date	12/23/1998
Registration Date	09/02/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2003/05/14 First Use In Commerce: 2003/05/14 jewelry		

U.S. Registration No.	2759146	Application Date	12/23/1998
Registration Date	09/02/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/02/20 First Use In Commerce: 2003/02/20 CD ROMS and compact discs, featuring information in the fields of hobbies, collecting and auctions		

U.S. Registration No.	2759150	Application Date	01/13/1999
Registration Date	09/02/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/02/20 First Use In Commerce: 2003/02/20 CD ROMS and compact discs featuring information in the fields of hobbies, collecting and auctions		

U.S. Registration No.	2791591	Application Date	01/13/1999
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2003/05/14 First Use In Commerce: 2003/05/14 jewelry		

U.S. Registration	2810863	Application Date	01/13/1999
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No.			
Registration Date	02/03/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2002/12/10 First Use In Commerce: 2002/12/10 PUBLICATIONS, NAMELY A SERIES OF NONFICTION BOOKS CONCERNING HOBBIES, COLLECTIBLES, AUCTIONS, AND A WIDE VARIETY OF PRODUCTS RELATING TO ANTIQUES, ART, LITERATURE, CULTURE, TECHNOLOGY, TRAVEL, SPORTS, ENTERTAINMENT, HOME FURNISHINGS, GARDEN ITEMS, MUSICAL INSTRUMENTS, MOTOR VEHICLES, TOYS AND GAMES, FASHION, JEWELRY, ELECTRONICS, PHOTOGRAPHY, HOLIDAY RELATED ITEMS, FILM AND VIDEO; PAPER AND STATIONERY ITEMS, NAMELY, GREETING CARDS, MEMORANDUM BOARDS, MEMO PADS, PAPER POSTCARDS, STATIONERY, PENS, BUMPER STICKERS, CALENDARS AND DECORATIVE STICKERS AND DECALS		

U.S. Registration No.	2840569	Application Date	04/10/2000
Registration Date	05/11/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2003/06/26 First Use In Commerce: 2003/06/26 Entertainment services, namely providing a radio program in the fields of hobbies, collectibles, trading and auctions		

U.S. Registration No.	2840738	Application Date	03/30/2001
Registration Date	05/11/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/12/01 First Use In Commerce: 2003/12/01 candy and dispensers for candy, sold as a unit		

U.S. Registration No.	2847996	Application Date	03/30/2001
Registration Date	06/01/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 2003/12/01 First Use In Commerce: 2003/12/01 candy and dispensers for candy, sold as a unit		
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U.S. Registration No.	2913352	Application Date	12/31/2003
Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 006. First use: First Use: 2003/06/23 First Use In Commerce: 2003/06/23 boxes of metal		

U.S. Registration No.	2913401	Application Date	03/15/2004
Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1999/01/00 First Use In Commerce: 1999/01/00 Providing sweepstakes, games of chance and contests via the internet		

U.S. Registration No.	2913355	Application Date	12/31/2003
Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	The mark consists of stylized lowercase letters spelling the word ebay. Letters are white with black outline.		
Goods/Services	Class 006. First use: First Use: 2003/06/23 First Use In Commerce: 2003/06/23 boxes of metal		

U.S. Registration No.	2926481	Application Date	04/10/2000
Registration Date	02/15/2005	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2003/06/26 First Use In Commerce: 2003/06/26 Entertainment services, namely providing a radio program in the fields of hobbies, collectibles, trading and auctions		

U.S. Registration No.	3380423	Application Date	02/09/2007
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Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	EBAY		
Design Mark			
Description of Mark	The mark consists of the word "ebaY" with a red "e", a blue "b", a yellow "a", and a green "Y".		
Goods/Services	<p>Class 009. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 mouse pads</p> <p>Class 016. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 publications, namely, a series of nonfiction books, concerning online commerce, consignment selling, home based business, hobbies, collectibles, auctions, and a wide variety of products relating to antiques, art literature, culture, technology, travel, sports, entertainment, home furnishings, real estate, garden items, musical instruments, motor vehicles, toys and games, fashion, jewelry, electronics, video games, clothing, computers, music, photography, holiday related items, film and video; printed matter, namely, children's activity books, autograph books, pamphlets regarding online trading; paper and stationery items, namely, paper postcards, memo pads, bumper stickers, calendars, decorative stickers; paper and stationery items, namely, greeting cards, memorandum boards, stationery and pens</p>		

U.S. Application No.	78869309	Application Date	04/25/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY ADCONTEXT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use:</p> <p>advertising and promotion services and related consulting; preparation of custom or non-custom advertising for businesses for dissemination via the web; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet web sites; online trading services to facilitate the sale of goods and services by others via a global communications network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith</p>		

U.S. Application No.	78869318	Application Date	04/25/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY ADCONTEXT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use:</p> <p>telecommunications services, namely, the electronic transmission of data and information; providing online communications links which transfer web site users to other local and global web pages</p>		

U.S. Application No.	78869323	Application Date	04/25/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY ADCONTEXT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: providing customized online web pages featuring user-defined information, which includes search engines and online web links to other web sites; designing online web pages for advertising purposes		

U.S. Registration No.	3379500	Application Date	01/19/2006
Registration Date	02/05/2008	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/04/24 First Use In Commerce: 2006/04/24 operating online marketplaces for sellers of goods and/or services; providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall experience in connection therewith		

U.S. Registration No.	3389998	Application Date	01/19/2006
Registration Date	02/26/2008	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2006/04/24 First Use In Commerce: 2006/04/24 electronic commerce payment services, namely, processing payments for the purchase of goods and services via an electronic communications network		

U.S. Application No.	78829199	Application Date	03/03/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/04/24 First Use In Commerce: 2006/04/24 providing a searchable online advertising guide featuring the goods and services of online vendors; providing a searchable online evaluation database for buyers and sellers; advertising and advertisement services; customer loyalty services		

	and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others
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U.S. Application No.	78829200	Application Date	03/03/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2006/04/24 First Use In Commerce: 2006/04/24 telecommunications services, namely, the electronic transmission of data and information; paging services; providing an online, interactive bulletin board for the transmission of messages among computer users concerning hobbies, collectibles, trading, and the sale of goods and services via a global communications network		

U.S. Application No.	78829203	Application Date	03/03/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: Arranging and conducting educational seminars in the field of online commerce		

U.S. Registration No.	3383125	Application Date	03/03/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	The mark consists of the stylized word EXPRESS in black, and the stylized word EBAY comprised of a red E, a blue B, a yellow A and a green Y.		
Goods/Services	Class 035. First use: First Use: 2006/04/24 First Use In Commerce: 2006/04/24 operating online marketplaces for sellers and buyers of goods and services; providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall experience in connection therewith; providing a searchable online advertising guide featuring the goods and services of online vendors; providing a searchable online evaluation database for buyers and sellers; advertising and advertisement services; customer loyalty services and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others		

U.S. Registration No.	3383126	Application Date	03/03/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE

Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	The mark consists of the stylized word EXPRESS in black, and the stylized word EBAY comprised of a red E, a blue B, a yellow A and a green Y.		
Goods/Services	Class 038. First use: First Use: 2006/04/24 First Use In Commerce: 2006/04/24 telecommunications services, namely, the electronic transmission of data and information; paging services; providing an online, interactive bulletin board for the transmission of messages among computer users concerning hobbies, collectibles, trading, and the sale of goods and services via a global communications network		

U.S. Application No.	78829198	Application Date	03/03/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY EXPRESS		
Design Mark			
Description of Mark	The mark consists of the stylized word EXPRESS in black, and the stylized word EBAY comprised of a red E, a blue B, a yellow A, and a green Y.		
Goods/Services	Class 041. First use: arranging and conducting educational seminars in the field of online commerce		

U.S. Registration No.	2933021	Application Date	01/28/2004
Registration Date	03/15/2005	Foreign Priority Date	NONE
Word Mark	EBAY LIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2002/02/01 First Use In Commerce: 2002/06/01 printed matter, namely, children's activity books, autograph books, pamphlets regarding online trading, binders and stationery items, namely, paper postcards, memo pads, bumper stickers, calendars, decorative stickers, decals, greeting cards, memo boards, stationery paper and pens		

U.S. Registration No.	2913397	Application Date	01/12/2004
Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	EBAY LIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/04/01 First Use In Commerce: 2002/06/01 clothing, namely, tee-shirts, caps, hats, and sweatshirts		

U.S. Registration No.	2913227	Application Date	12/11/2003
Registration Date	12/21/2004	Foreign Priority Date	NONE

Word Mark	EBAY LIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/06/01 First Use In Commerce: 2002/06/01 arranging and conducting trade shows and exhibitions in the field of online trading services		

U.S. Registration No.	2913229	Application Date	12/11/2003
Registration Date	12/21/2004	Foreign Priority Date	NONE

Word Mark	EBAY LIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/06/01 First Use In Commerce: 2002/06/01 arranging and conducting educational seminars in the field of online trading services		

U.S. Registration No.	2514362	Application Date	03/17/2000
Registration Date	12/04/2001	Foreign Priority Date	NONE

Word Mark	EBAY POWER SELLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00 Providing customer support services concerning online account management and use of online services Class 042. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00 Providing dedicated technical assistance		

U.S. Registration No.	2555505	Application Date	12/21/2000
Registration Date	04/02/2002	Foreign Priority Date	NONE

Word Mark	EBAY PREMIER		
Design Mark			
Description of Mark	The mark features the following color "e" in red, overlapping "e" and "b" section in purple, "b" in blue, overlapping "b" and "a" section in orange, "a" in yellow, overlapping "a" and "y" section in brown, "y" in green, and two color dashes above the "i" in yellow and light blue.		
Goods/Services	Class 035. First use: First Use: 2001/01/04 First Use In Commerce: 2001/01/04 on-line trading services in which seller posts items to be sold at a set price, or alternatively to be offered in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience in connection therewith		

U.S. Registration No.	2700834	Application Date	05/07/1999
Registration Date	03/25/2003	Foreign Priority Date	NONE
Word Mark	EBAY.COM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 Publications, namely, a series of nonfiction books, concerning hobbies, collectibles, auctions, and a wide variety of products relating to antiques, art, literature, culture, technology, travel, sports, entertainment, home furnishings, garden items, musical instruments, motor vehicles, toys and games, fashion, jewelry, electronics, photography, holiday related items, film and video; paper and stationery items, namely, paper postcards, memo pads, bumper stickers, calendars and decorative stickers and decals		

U.S. Registration No.	3299409	Application Date	10/14/2005
Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	YOU CAN GET IT ON EBAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2005/10/17 First Use In Commerce: 2005/10/17 On-line trading services to facilitate the sale of goods and services by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and advertisement services		

U.S. Application No.	77139017	Application Date	03/23/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY TO GO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: advertising and advertisement services; promoting the goods and services of others; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet web sites; online trading services to facilitate the sale of goods and services by others via a global communications network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith		

U.S. Application No.	77139029	Application Date	03/23/2007
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY TO GO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: broadcasting services, namely uploading, posting, showing, displaying, and electronically transmitting information via a global communications network; providing online communications links which transfer web site users to other local and global web pages		

U.S. Application No.	77139040	Application Date	03/23/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY TO GO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: providing customized online web pages featuring user-defined information, which includes search engines and online web links to other web sites; design, creation, hosting and maintenance of internet sites for third parties		

U.S. Application No.	77292149	Application Date	09/28/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY GROUP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: conducting shareholder and investor relations; business management and consultation; providing an on-line searchable database; employment services; lobbying services		

U.S. Application No.	77292154	Application Date	09/28/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EBAY GROUP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: employee financial services; charitable fundraising and charitable services		

Attachments	75621219#TMSN.gif (1 page)(bytes) 75613531#TMSN.gif (1 page)(bytes) 75669553#TMSN.gif (1 page)(bytes) 75587191#TMSN.gif (1 page)(bytes) 75611780#TMSN.gif (1 page)(bytes) 76267830#TMSN.gif (1 page)(bytes) 76267752#TMSN.gif (1 page)(bytes) 75981102#TMSN.gif (1 page)(bytes) 75981770#TMSN.gif (1 page)(bytes) 76271424#TMSN.gif (1 page)(bytes) 76271420#TMSN.gif (1 page)(bytes) 76022872#TMSN.gif (1 page)(bytes) 76022871#TMSN.gif (1 page)(bytes) 76022862#TMSN.gif (1 page)(bytes) 76271577#TMSN.gif (1 page)(bytes) 76271411#TMSN.gif (1 page)(bytes) 76273329#TMSN.gif (1 page)(bytes) 76275682#TMSN.gif (1 page)(bytes) 75625389#TMSN.gif (1 page)(bytes) 75983172#TMSN.gif (1 page)(bytes) 76975311#TMSN.gif (1 page)(bytes) 76022873#TMSN.gif (1 page)(bytes) 76975318#TMSN.gif (1 page)(bytes) 75611249#TMSN.gif (1 page)(bytes) 75611252#TMSN.gif (1 page)(bytes) 76022899#TMSN.gif (1 page)(bytes) 76233209#TMSN.gif (1 page)(bytes) 76233282#TMSN.gif (1 page)(bytes) 78347030#TMSN.jpeg (1 page)(bytes) 78384624#TMSN.jpeg (1 page)(bytes) 78347078#TMSN.jpeg (1 page)(bytes) 76022893#TMSN.gif (1 page)(bytes) 77104284#TMSN.jpeg (1 page)(bytes) 78869309#TMSN.jpeg (1 page)(bytes) 78869318#TMSN.jpeg (1 page)(bytes) 78869323#TMSN.jpeg (1 page)(bytes) 78795222#TMSN.jpeg (1 page)(bytes) 78795231#TMSN.jpeg (1 page)(bytes) 78829199#TMSN.jpeg (1 page)(bytes) 78829200#TMSN.jpeg (1 page)(bytes) 78829203#TMSN.jpeg (1 page)(bytes) 78829163#TMSN.jpeg (1 page)(bytes) 78829195#TMSN.jpeg (1 page)(bytes) 78829198#TMSN.jpeg (1 page)(bytes) 78358677#TMSN.jpeg (1 page)(bytes) 78350421#TMSN.jpeg (1 page)(bytes) 78339332#TMSN.jpeg (1 page)(bytes) 78339379#TMSN.jpeg (1 page)(bytes) 76002885#TMSN.gif (1 page)(bytes) 76184915#TMSN.gif (1 page)(bytes) 78733648#TMSN.jpeg (1 page)(bytes) 77139017#TMSN.jpeg (1 page)(bytes) 77139029#TMSN.jpeg (1 page)(bytes) 77139040#TMSN.jpeg (1 page)(bytes) 77292149#TMSN.jpeg (1 page)(bytes) 77292154#TMSN.jpeg (1 page)(bytes) helpubaynoo.pdf (15 pages)(318915 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Frank Goldberg/
Name	Frank B. Goldberg
Date	03/05/2008

Certificate of Transmission	
I hereby certify that this correspondence is being electronically filed via ESTTA.	
	(Name)
March 5, 2008	(Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 78/508,389
 For the Trademark HELPUBAY
 Published in the Official Gazette
 on November 6, 2007

EBAY INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
WEEBAY, INC.)	
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer eBay Inc. (“eBay”), a Delaware corporation having its principal place of business at 2145 Hamilton Avenue, San Jose, California 95125, believes that it will be damaged by the issuance of a registration for the mark HELPUBAY, in Application Serial No. 78/508,389, filed October 29, 2004 by Applicant Weebay, Inc. (“Applicant”). eBay hereby

opposes Applicant's application, pursuant to Section 13 of the United States Trademark Act, as amended, 15 U.S.C. §1063.

As grounds for opposition, eBay alleges that:

EBAY'S BUSINESS

1. eBay is the world's leading on-line marketplace. eBay currently has over 220 million registered users and hosts an on-line service featuring over 105 million items offered for sale or bid on its Web site at www.ebay.com at any given time. Each day, approximately 6 million new items are listed for sale in over 50,000 different categories of general consumer goods and services, ranging from telecommunications equipment to computers to collectibles to cars to jewelry.

EBAY'S MARKS

2. Since its on-line marketplace was launched in September 1995, eBay has continuously used the mark EBAY in interstate commerce in the United States in connection with its goods and services.

3. eBay is the owner of numerous U.S. registrations for the mark EBAY on the Principal Register (in word form and in design form), the earliest of which was issued on January 19, 1999, and which has obtained incontestable status under 15 U.S.C. § 1065. These registrations cover various goods and services. Each of these registrations is valid and subsisting. These registrations include the following:

- EBAY word mark (Registration No. 2,218,732) registered January 19, 1999 in International Class 35.
- EBAY word mark (Registration No. 2,367,932) registered July 18, 2000 in International Class 28.
- EBAY and Design (Registration No. 2,367,895) registered July 18, 2000 in International Class 28.

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Notice of Opposition
Serial No. 78/508,389
Opposition No. _____

- EBAY word mark (Registration No. 2,662,130) registered December 17, 2002 in International Class 28.
- EBAY word mark (Registration No. 2,666,767) registered December 24, 2002 in International Class 25.
- EBAY and Design (Registration No. 2,672,470) registered January 7, 2003 in International Class 25.
- EBAY word mark (Registration No. 2,700,675) registered March 25, 2003 in International Class 9.
- EBAY word mark (Registration No. 2,700,836) registered, March 25, 2003 in International Class 16.
- EBAY and Design (Registration No. 2,729,649) registered June 24, 2003 in International Class 16.
- EBAY and Design (Registration No. 2,735,542) registered July 8, 2003 in International Class 38.
- EBAY word mark (Registration No. 2,737,342) registered July 15, 2003 in International Class 28.
- EBAY word mark (Registration No. 2,744,717) registered July 29, 2003 in International Class 38.
- EBAY and Design (Registration No. 2,759,145) registered September 2, 2003 in International Class 14 (jewelry).
- EBAY and Design (Registration No. 2,759,146) registered September 2, 2003 in International Class 9.
- EBAY word mark (Registration No. 2,759,150) registered September 2, 2003 in International Class 9.
- EBAY word mark (Registration No. 2,791,591) registered December 9, 2003 in International Class 14.
- EBAY word mark (Registration No. 2,810,863) registered February 3, 2004 in International Class 16.
- EBAY and Design (Registration No. 2,840,471) registered May 11, 2004 in International Class 16.
- EBAY and Design (Registration No. 2,840,569) registered May 11, 2004 in International Class 41.
- EBAY and Design (Registration No. 2,840,738) registered May 11, 2004 in International Class 30.

- EBAY word mark (Registration No. 2,847,996) registered June 1, 2004 in International Class 30.
- EBAY word mark (Registration No. 2,913,352) registered December 21, 2004 in International Class 6.
- EBAY word mark (Registration No. 2,913,401) registered December 21, 2004 in International Class 41.
- EBAY and Design (Registration No. 2,913,355) registered December 21, 2004 in International Class 6.
- EBAY word mark (Registration No. 2,926,481) registered February 15, 2005 in International Class 41.
- EBAY and Design (claiming color) (Registration No. 3,380,423) registered February 12, 2008 in International Classes 9 and 16.

4. eBay also has common law rights in its EBAY and EBAY and Design marks, and uses these marks in connection with a wide variety of goods and services.

5. In addition, eBay owns a number of U.S. registrations and pending U.S. applications to register marks that incorporate the EBAY or EBAY and Design marks, including the marks EBAY ADCONTEXT (Application Nos. 78/869,309, 78/869,318 and 78/869,323); EBAY EXPRESS (Registration Nos. 3,379,500 and 3,389,998; Application Nos. 78/829,199; 78/829,200 and 78/829,203); EBAY EXPRESS & Design (Registration Nos. 3,383,125 and 3,383,126; Application No. 78/829,198); EBAY LIVE! (Registration Nos. 2,933,021, 2,913,397, 2,913,227, and 2,913,229); EBAY POWER SELLERS & Design (Registration No. 2,514,362); EBAY PREMIER & Design (Registration No. 2,555,505); EBAY.COM (Registration No. 2,700,834); YOU CAN GET IT ON EBAY (Registration No. 3,299,409); EBAY GROUP (Application Nos. 77/292,149 and 77/292,154), and EBAY TO GO (Application Nos. 77/139,017, 77/139,029 and 77/139,040). All of eBay's marks that consist of or incorporate the term EBAY will hereafter be referred to as the "EBAY Marks."

6. EBAY is a fanciful mark, and thus highly distinctive. The term EBAY has no descriptive meaning as applied to a marketplace or any of the other goods and services covered by eBay's registrations or in connection with which it uses the EBAY Marks.

7. eBay has expended considerable effort and expense in promoting the EBAY Marks, and goods and services offered in connection with these marks, both in the United States and internationally, typically spending hundreds of millions of dollars in advertising per year.

8. In addition to its own advertising efforts, eBay has been the subject of thousands of unsolicited stories in television, radio, and print media, highlighting eBay's innovative and successful efforts in online person-to-person trading. eBay has also received numerous awards and recognitions, including a listing in *BusinessWeek's* "The Global Brand Scoreboard's The Top 100 Brands" – ranking eBay's brand as 60th, 55th and 47th strongest brand in the world – in August 2004, August 2005, and August 2006 respectively; *Fortune* magazine's "Top 100 Fastest Growing Companies" (ranking eBay as 8th) in August 2003; *BusinessWeek Online*, "The eBay Economy" in August 2003; *Red Herring* magazine's "The Top 100 Companies Most Likely to Change the World" in May 2001; Harvard Business School's "Entrepreneurial Company of the Year" in May 2000; *Forbes* magazine's "Favorite Auction Site" in December 1999; *Business Week* magazine's "Info Tech 100" in July 1999; *Ad Week* magazine's "Top Marketers of the Year" in May 1999; and The Webby Award's "Top E-Commerce Site" in March 1999.

9. The enthusiasm for eBay's services abroad has been so overwhelming that eBay maintains separate, country-specific Web sites for Australia, Austria, Belgium, Canada, China, France, Germany, Hong Kong, India, Ireland, Italy, Malaysia, the Netherlands, New Zealand, Singapore, Spain, Sweden, Switzerland, and the U.K., and it has related Web sites in Argentina, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Korea, Mexico, Panama, Peru, Taiwan,

Uruguay, and Venezuela. eBay's services are not limited to these foreign countries, however, as eBay serves customers and has registered users from many other countries as well.

10. As a result of eBay's widespread use of the EBAY Marks worldwide, extensive Internet, television, and print advertising and promotion, continuous and unsolicited media coverage, the high degree of consumer recognition of the EBAY Marks, the strong and loyal base of customers that eBay enjoys for its services, numerous trademark registrations, and the absence of any material use of any highly similar mark by others, among other factors, the EBAY Marks are famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c).

DISTINCTIVENESS OF THE TERM "BAY"

11. The dominant component of the famous EBAY Marks is the term BAY, which is arbitrary and highly distinctive of the goods and services covered by eBay's registrations or in connection with which it uses the EBAY Marks.

12. Following on the fame and success of eBay, a number of entities have attempted to adopt names and marks that combine the generic term for what the particular service or Web site offers or provides with the distinctive BAY suffix of the EBAY Marks, to create a "generic plus BAY" mark. Examples of such marks, the use of which eBay has successfully stopped, include: ALTERNABAY (site offering goods related to alternative lifestyles), AUTOBAY (site advertising automobiles for sale), BOATBAY (site offering a "nautical search portal"), BRICKBAY (site offering Lego® bricks), CARBAY (site advertising automobiles for sale), COINBAY (online coin marketplace), EGGBAY (site offering items for egg farmers), EMERGENCYBAY (site offering emergency rescue goods), FOTOBAY (site offering photography related goods and services), JEWELRYBAY (site offering diamonds and fine

jewelry), MEXBAY (Mexican-themed site), MILITARYBAY (site offering military goods), NAZIBAY (site offering Nazi memorabilia), PERFUMBAY (site offering perfume), RENTBAY (site listing information related to property rentals) SELLINGBAY (site listing auctions, classifieds, and want ads), and SWAYBAY (site offering surfing related products), among others.

13. The United States Patent and Trademark Office (“PTO”) has recognized that the dominant component of the EBAY Marks is the term BAY, refusing third-party registrations on the ground that the use of BAY combined with a generic or descriptive term is likely to cause confusion with the EBAY Marks.

14. For example, in an Office Action dated June 21, 2005, in Application Serial No. 78/516,920 for the mark FLEABAY for “flea markets,” the PTO refused registration because “applicant’s mark, when used on or in connection with the identified goods or services, so resembles the marks in U.S. Registration Nos. 2218732, 2420512, 2218732, 2514362, 2555505 and 2913227 (all owned by [eBay]) as to be likely to cause confusion, to cause mistake, or to deceive.”

15. Similarly, in an Office Action dated August 24, 2005, in Application Serial No. 78/552,094 for the mark BAY BAZAAR for “[b]usiness management assistance and particularly carrying out tasks necessary for the smooth conduct of sales by auction,” the PTO refused registration “because of a likelihood of confusion with the marks in U.S. Registration Nos. 2555505, 2218732, 2410023 and 2420512,” all of which similarly are owned by eBay.

16. The PTO has also recognized the distinctiveness of the BAY component in refusing registration to the following marks in light of the EBAY mark: IBAY (Serial No. 76/195,016) and TBAY AUCTION (Serial No. 78/059,732).

17. Likewise, the Ninth Circuit in *Perfumebay.com Inc. v. eBay Inc.*, No. 05-56794 (9th Cir., Nov. 5, 2007), recognized the distinctiveness of the BAY component of the EBAY Marks, holding that the term “BAY” was the dominant aspect of the EBAY marks, and that with the use of the mark PERFUMEBAY in connection with an online marketplace specializing in perfume, “consumers may no longer associate the usage of the “Bay” suffix with eBay’s unique services, specifically the sale of products on an internet-based marketplace. The uniqueness of eBay’s mark is diluted in direct proportion to the extent consumers, particularly internet users, disassociate the eBay mark with eBay’s services.” *Perfumebay.com*, No. 05-56794 at 14528-29.

18. If others could freely use “generic plus BAY” marks for entities that offer or advertise their goods or services, the suffix BAY could become a generic term for “marketplace” or “location providing items for sale.” That would dilute the distinctiveness of the famous EBAY Marks to the point that they cease to function as unique and distinctive identifiers of eBay’s goods or services, to eBay’s severe detriment.

APPLICANT AND ITS PENDING APPLICATION

19. Applicant seeks to register the word mark HELPUBAY in connection with “auction intermediary services, namely, selling items on internet auctions on behalf of others” in International Class 35. This application was published in the Official Gazette of the PTO on November 6, 2007.

20. The HELPUBAY Mark is substantially similar to the EBAY Marks. Applicant’s Mark follows the same pattern as the many “generic plus BAY” marks that surfaced following the success of eBay; the term HELPU is generic or descriptive of Applicant’s services (providing help to others), while the term BAY is completely arbitrary as applied to eBay’s various services. Thus, by combining the generic term HELPU with the dominant, arbitrary, and distinctive term

BAY, Applicant has created a “generic plus BAY” mark that calls to mind eBay. In fact, Applicant’s HELPUBAY mark suggests that Applicant provides services that “help you” use the eBay service.

21. The services offered under the HELPUBAY Mark are similar and/or complimentary to those provided by eBay. Specifically, eBay provides various online marketplace services (including auction services) under the EBAY Marks, and, upon information and belief, Applicant’s services purportedly assist others with selling items on the eBay Web site.

22. Upon information and belief, Applicant selected the HELPUBAY Mark with knowledge of and intent to cause confusion with the EBAY Marks.

23. eBay is not affiliated or connected with Applicant or its services; nor has eBay endorsed or sponsored Applicant or its services.

24. There is no issue as to priority of use. eBay began using its EBAY mark, and enjoys priority as a result of the filing dates of its trademark registrations, well prior to the filing date of the application for the HELPUBAY Mark (October 29, 2004).

**FIRST GROUND FOR OPPOSITION:
LIKELIHOOD OF CONFUSION**

25. eBay incorporates by reference paragraphs 1 through 24, inclusive, as if fully set forth here.

26. The mark Applicant proposes to register, HELPUBAY, is highly similar to the EBAY Marks in appearance, sound, meaning, and commercial impression, because it incorporates the most distinctive part of the EBAY Marks, “bay,” and also suggests that Applicant provides services that “help you” use the eBay service.

27. The services offered by each party are closely related. According to the identification of services in the application, Applicant intends to use the HELPUBAY mark in connection with “auction intermediary services” that assist users with “selling items on internet auctions.” These services are similar and/or complimentary to eBay’s online auction services, and, upon information and belief, are specifically intended to assist others with selling items on the eBay Web site. However, eBay is not affiliated or connected with Applicant or its services; nor has eBay endorsed or sponsored Applicant or its services.

28. Upon information and belief, Applicant chose the HELPUBAY Mark with knowledge of, and the intent to call to mind or create a likelihood of confusion with regard to, the eBay Web site and the EBAY Marks.

29. Registration of Applicant’s Mark will injure eBay by causing the public to be confused or mistaken into believing that the services provided by Applicant are endorsed or sponsored by eBay. eBay has no control over the nature and quality of the services offered by Applicant under the HELPUBAY Mark, and eBay’s reputation and goodwill will be damaged and the value of the EBAY Marks jeopardized, all to eBay’s detriment. Further, any defect, objection or fault found with Applicant’s services marketed under the HELPUBAY name would necessarily reflect upon and seriously injure the reputation that eBay has established for the goods and services it offers in connection with the EBAY Marks.

30. Accordingly, registration of the mark herein opposed will damage eBay because Applicant’s Mark is likely, when used on or in connection with the services described in the opposed application, to cause confusion, or to cause mistake or to deceive. Thus Applicant’s Mark is unregistrable under Sections 2(d) and 3 of the United States Trademark Act, as amended, 15 U.S.C. §§1052 and 1053, and should be refused registration.

**SECOND GROUND FOR OPPOSITION:
DILUTION OF A FAMOUS MARK**

31. eBay incorporates by reference paragraphs 1 through 30, inclusive, as if fully set forth here.

32. Applicant purportedly uses the HELPUKAY Mark in commerce, as stated in the application herein opposed.

33. EBAY is a fanciful mark and is thus highly distinctive of eBay's goods and services.

34. eBay has used the EBAY Marks since at least September 1995 for on-line trading services, and has expanded use of the EBAY Marks to many other goods and services, as alleged.

35. eBay has advertised and promoted the EBAY Marks through extensive Internet, radio, television, and print advertising and promotion. eBay and the EBAY Marks have enjoyed extensive media attention.

36. eBay has used the EBAY Marks throughout the United States and many places around the world, via the Internet.

37. As a result of the considerable publicity afforded the EBAY Marks, and the strong and loyal base of customers that eBay enjoys for its goods and services, the EBAY Marks have a high degree of consumer recognition.

38. eBay is the owner of numerous U.S. registrations for the EBAY Marks.

39. Apart from unauthorized infringing uses of such marks, which eBay actively and diligently polices through its enforcement program, there is no material use of any highly similar mark by others.

40. Accordingly, when the public encounters the term EBAY, it immediately associates the term with eBay, and thus the EBAY Marks are famous.

41. The EBAY Marks became famous before Applicant filed its application for the HELPUBAY Mark on October 29, 2004.

42. The HELPUBAY Mark incorporates the most distinctive part of the EBAY Marks, “bay,” and its use is likely to cause dilution of the famous EBAY Marks. If Applicant and others are permitted to register marks similar to the EBAY Marks, the proliferation of such marks will blur and weaken the connection in consumers’ minds between the EBAY Marks and eBay’s goods and services.

43. Accordingly, registration of the mark herein opposed is likely to dilute the distinctive quality of eBay’s famous EBAY Marks. Thus Applicant’s Mark is unregistrable pursuant to Sections 2(a)(d), 3, 13, and 43(c) of the United States Trademark Act, as amended, 15 U.S.C. §§1052(a)(d), 1053, 1063, 1125, and should be refused registration.

44. Wherefore, eBay prays that this Opposition be sustained, and that Application Serial No. 78/508,389 be refused.

Please recognize the following as attorneys for eBay in this proceeding: Keith J. Berets, Susan D. Berney-Key, Todd S. Bontemps, John W. Crittenden, Janet L. Cullum, Frank B. Goldberg, Andrew Hartman, Lisa K. Koenig, Kristin K. Manley, Anne H. Peck, Gretchen R. Stroud, and Peter J. Willsey (members of the Bar of the States of California, Colorado, Illinois or Virginia), and the firm of Cooley Godward Kronish LLP, 101 California Street, 5th Floor, San Francisco, California 94111.

Please address all communications to Frank B. Goldberg at the address below.

In accordance with 37 C.F.R. §§ 2.101 and 2.104, a duplicate copy of this Notice of Opposition and the fee of \$300.00 for one International Class are submitted herewith.

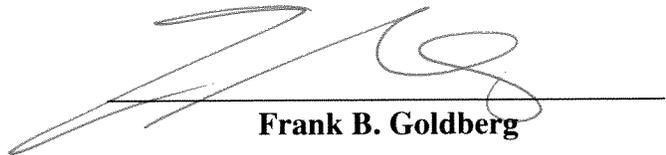
Respectfully submitted,
COOLEY GODWARD KRONISH LLP
Frank B. Goldberg

Date: March 5, 2008

By: 
Frank B. Goldberg
Attorneys for Opposer
101 California Street, 5th Floor
San Francisco, California 94111
(415) 693-2072

CERTIFICATE OF SERVICE

I hereby certify that on **March 5, 2008**, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served by mailing said copy on March 5, 2008, via overnight courier (FedEx), postage prepaid, addressed to attorney of record for Applicant Weebay, Inc.: Randy B. Corporon, Randy B. Corporon, P.C., 1724 Gilpin Street, Denver, CO 80218.


Frank B. Goldberg