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

Proceeding	91241109
Party	Plaintiff eBay Inc.
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Submission	Motion to Compel Discovery or Disclosure
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Signature	/Amanda Marston/
Date	08/15/2019
Attachments	Plaintiff Motion to Compel Discovery _ PUBLIC.pdf(1366082 bytes)

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

EBAY, INC., Opposer, v. EDUTECH LIMITED, Applicant.	Opposition No.: 91241109 Trademark:  (STUDYBAY & Design) Serial No.: 79217130
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EBAY INC.'S MOTION TO COMPEL DISCOVERY

Pursuant to 37 C.F.R. § 2.120(f) and TBMP § 523.01, eBay, Inc. (“eBay”) moves to compel Applicant to comply with its discovery obligations. Specifically, eBay moves to compel Applicant to (1) serve full and verified responses to eBay’s January 24, 2019 Requests for Production of Documents and Interrogatories (“Requests”) and (2) to produce documents within 30 days from the date of the Order.

STATEMENT OF GOOD FAITH EFFORT

As set forth in the Factual Background section below, counsel for eBay has made several good faith attempts to resolve the issues presented in this motion as required by 37 C.F.R. § 2.120(f)(1).

eBay initially sought to resolve these issues by sending a deficiency letter and meeting and conferring with Applicant’s former counsel. After Applicant’s counsel withdrew, eBay sent the deficiency letter to Applicant. After substantial delay by Applicant, Applicant supplemented its responses, but the responses remained grossly deficient. eBay met and conferred with Applicant and sent another deficiency letter to which eBay has received no response. eBay contacted Applicant again, but Applicant has been unresponsive.

FACTUAL BACKGROUND

Applicant has a history of non-responsiveness and delay in handling these proceedings. A summary of pertinent facts follows:

- Over a year ago, on May 9, 2018, eBay filed its Notice of Opposition against the STUDYBAY & Design application. Applicant did not respond, and a Notice of Default issued on June 30, 2018. 4 TTABVUE. Over a month after default was entered, Applicant petitioned to set aside default, which the Trademark Trial and Appeal Board (the “Board”) granted. 6-7 TTABVUE.
- Applicant also failed to timely serve its initial disclosures (serving them a month late) and only after numerous requests by eBay and a warning that eBay would be forced to move to compel. Declaration of Hope Hamilton, ¶ 3 (“Hamilton Decl.”).
- On January 24, 2019, eBay served Applicant with its First Requests for Production of Documents and Interrogatories. *Id.*, ¶ 4 & Exhibit 1.
- On February 22, Applicant’s former counsel requested a two-week extension to answer eBay’s discovery requests, to which eBay agreed. *Id.* ¶ 5.
- On March 11, Applicant’s former counsel then served incomplete written objections and responses (“Responses”). *Id.* ¶ 6, **Exhibit 2**. eBay reviewed the deficient Responses and sent a discovery deficiency letter to Applicant on March 28. *Id.* ¶ 7, **Exhibit 3**. Counsel for the parties held a call on that letter on the same day, during which, by way of explaining certain objections, deficiencies, and omissions, Applicant’s counsel indicated they had been having trouble contacting their client, including to verify the interrogatory responses. *Id.* ¶ 9. The parties then agreed to a 90-day extension of all discovery

deadlines to allow counsel time to confer with Applicant, supplement the discovery responses, and produce documents. *Id.* ¶ 10; 10-11 TTABVUE.

- On April 9, Applicant’s counsel withdrew, stating they had “received no response from Applicant for many weeks to multiple communications regarding both the substance of the opposition, Fross Zelnick’s intention to withdraw as counsel, and Applicant’s unfulfilled obligations to Fross Zelnick.” 12 TTABVUE at 2. The Board granted that request on April 15. 13 TTABVUE.
- On May 14, Applicant submitted a statement that it would defend itself in this proceeding. 14 TTABVUE. On the same day, eBay contacted Applicant’s representative, Mariia Feygina, with a copy of its March 28 deficiency letter and requested she make herself available to meet and confer. Hamilton Decl. ¶ 11. Applicant did not agree to meet and confer, and instead requested until May 21 to supplement its discovery responses, to which eBay agreed. *Id.* ¶ 12.
- On May 24, after Applicant yet again did not meet its obligations, eBay contacted Ms. Feygina asking that she “urgently advise when you expect to provide complete discovery responses.” Hamilton Decl. ¶ 13.
- On June 11, the day eBay was set to file a Motion to Compel Discovery Responses, Applicant provided supplemented responses in the form of a letter (the “Supplemental Responses”). Unfortunately, Applicant’s Supplemental Responses still remain deficient, contain insufficient and illegible documents, do not withdraw baseless objections (although it appears Applicant has supplemented responses despite these objections), fail to verify its interrogatory responses, and do not provide sufficient additional information and/or documents as explained in further detail below. *Id.* ¶ 14, **Exhibit 5**.

- On June 27, eBay contacted Applicant about the continued deficiencies and to seek to meet and confer. *Id.* ¶ 15, **Exhibit 6**. Due to Ms. Feygina’s vacation schedule, eBay again agreed to postpone the meeting. *Id.*
- On July 12, the parties met and conferred by phone, during which Ms. Feygina represented that she would provide additional materials and responses within a week. *Id.* ¶ 16. eBay also followed this meeting with a July 16 letter, outlining all deficiencies, including those discussed in the July 12 phone call, and giving Applicant until July 31 to provide its responses, despite Applicant’s prior agreement to supplement its responses by July 19. *Id.*, **Exhibit 7**.
- On August 5, eBay contacted Applicant because eBay still had not received the requested supplementation nor had Applicant verified its interrogatory responses. *Id.* ¶ 18. Applicant still has not responded. *Id.* ¶ 18.

To date, and notwithstanding eBay’s leniency in providing extensions and trying to resolve the deficiencies short of a motion for nearly eight months, Applicant’s written discovery responses remain deficient, it has not produced a privilege log or verified its interrogatory responses, nor has it withdrawn its baseless objections. *Id.* ¶¶ 16-17. Applicant has also only produced 19 documents in response to 37 requests for production, many of which are non-responsive and/or illegible. *Id.* ¶ 18.

ARGUMENT

As set forth in eBay’s March 28 and July 12 deficiency letters and below, a large number of Applicant’s responses are deficient. Even Applicant’s Supplemental Responses are non-responsive, incomplete, evasive, or otherwise defective. Moreover, Applicant’s continued failure to meet its discovery obligations is merely another example of Applicant’s disinterest in

the proceedings and Applicant's failure to meet deadlines and comply with Board rules. eBay has sought to cooperate in good faith to no avail, and eBay cannot effectively prosecute this matter as a result of Applicant's failure to comply with its discovery obligation. Without a Board order, eBay will continue to be prejudiced and be caused to expend significantly more resources seeking Applicant's cooperation.

Accordingly, eBay requests that the Board compel Applicant to provide complete responses to eBay's discovery requests and, if Applicant fails to comply, grant judgment in eBay's favor pursuant to TBMP § 408.01.

A. APPLICANT HAS FAILED TO PROVIDE RESPONSIVE DOCUMENTS

In response to eBay's several requests to cure Applicant's discovery deficiencies, Applicant provided eBay with 19 documents totaling 49 pages, which Applicant represented were responsive to eBay's 37 Requests for Production of Documents. Of the 19 documents, two documents contained information that was not otherwise publicly available. *See* Hamilton Decl. ¶ 20, Exhibit 5. Applicant has not produced responsive documents for many requests, including:

- **RFP No. 5:** Documents sufficient to identify each product or service with which Applicant's Mark has been used, will be used, or is intended to be used, from the earliest date of Applicant's use of Applicant's Mark to present;
- **RFP No. 6:** Documents sufficient to show Applicant's plans to market or promote Applicant's Services under Applicant's Mark, including but not limited to any marketing plans, advertising plans, strategic business plans, and market research;
- **RFP No. 9:** Documents sufficient to identify each channel of trade through which Applicant has marketed, offered, or sold, currently markets, offers, or sells, or intends to market, offer, or sell Applicant's Services;

- **RFP No. 10:** Documents sufficient to identify the nature, demographics, identity, and characteristics of each class or type of consumer or entity to whom the Applicant has marketed, offered, or sold, currently markets, offers, or sells, or intends to market, offer, or sell Applicant's Services;
- **RFP No. 13:** Documents sufficient to identify Applicant's annual advertising and promotional expenditures for goods and services under Applicant's Mark from the earliest date of Applicant's use of Applicant's Mark to present;
- **RFP No. 16:** Documents sufficient to show continuous use of Applicant's Mark from inception to present, for each and every good and/or service set forth in the Application;
- **RFP No. 21:** Documents sufficient to identify all trademarks, service marks, trade names, Internet domain names, and other U.S. applications/registrations owned by or on behalf of Applicant through assignment or otherwise, that contain the word "bay."
- **RFP No. 28:** All Documents relating to any opinions, research, reports, surveys, investigations, and/or studies concerning the lawfulness of Applicant's Services, including offerings of writing services to students enrolled in accredited colleges, universities, and graduate schools.
- **RFP No. 31:** All Documents relating to any opinions, research, reports, surveys, investigations, and/or studies concerning the presence or absence of consumer confusion or the likelihood of confusion between, on the one hand, Applicant, Applicant's Mark, or Applicant's Services and, on the other hand, Opposer, Opposer's Mark, or Opposer's Services, including the memorandum to You on

April 12, 2018 by Fross Zelnick Lehrman & Zissu, P.C. and all related documents, as well as the opinions of Whiteford, Taylor, Preston and Kilpatrick Townsend & Stockton LLP referenced in your communication of May 31, 2018 and all related documents.¹

- **RFP No. 32:** All Documents identified in, or reviewed or relied upon in preparing, Applicant's responses to Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Production of Documents, or any other Interrogatories, Requests for Admission, or Requests for Production served by Opposer on Applicant during the course of these proceedings;
- **RFP No. 36:** Documents sufficient to show the number of users of your services and, specifically, the number of users of your services that reside in the United States.

Further details of the deficiencies are set forth in eBay's July 16 letter, attached as Exhibit 7 to the Hamilton Declaration. These requests go directly to the issues of dilution and likelihood of confusion. They do not request information or documents outside of Applicant's normal course of business. They are highly relevant to eBay's claims and Applicant's defenses, and eBay can only get this information through Applicant's production. Therefore, eBay requests the Board compel Applicant to respond fully to, and produce all responsive, non-privileged documents for, those Requests that Applicant did not adequately respond to or supplement.

¹ Applicant has not provided at least one opinion for which it waived privilege through Applicant's intentional disclosure of the contents, namely the Kilpatrick Townsend & Stockton opinion discussed in detail in Applicant's May 31, 2018 letter to eBay. *See* Hamilton Decl., Exhibit 4.

B. APPLICANT HAS FAILED TO SUPPLEMENT INTERROGATORY RESPONSES

During the July 12 conference, Applicant indicated they would gather additional information and respond fully to several interrogatories identified as deficient. To date, Applicant has not provided any information or supplemented its responses for, among other requests:

- **Rog. No. 6:** State whether You have received, and describe in detail, any advice from counsel regarding the lawfulness of Applicant's Services, including whether You have received advice about services in which You offer paper-writing services to students enrolled in accredited colleges, universities, and graduate schools.
- **Rog. No. 16:** Identify each method or medium in which Applicant, Applicant's Mark, or Applicant's Services have been or will be advertised, including but not limited to Internet, social media, leaflets, billboards, magazines, newspapers, brochures, telephone directories, television, radio broadcasts, and any other publications, and identify the geographic reach of medium or method.
- **Rog. No. 17:** State the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) relating to Applicant's advertising and promotion of Applicant's Services under Applicant's Mark from date of first use of Applicant's Mark to the present.

The information requested is highly relevant to eBay's claims of dilution and likelihood of confusion, and the information is only accessible through Applicant. Applicant's dilatory and evasive behavior has cost eBay significant resources and will continue to impede eBay's ability to fully prosecute this matter. Therefore, eBay requests the Board compel Applicant to respond fully to those Interrogatories to which Applicant did not adequately respond.

C. APPLICANT HAS MADE FALSE REPRESENTATIONS PERTAINING TO THE ABSENCE OF INFORMATION AND DOCUMENTS, ABOUT WHICH IT SHOULD BE COMPELLED TO CORRECT

In addition to the numerous deficiencies noted above, Applicant's representative, Ms. Feygina, has made false statements about the absence of documents and information.

For example, RFP No. 17 seeks information about the selection, adoption, development and registration of any domain names using STUDYBAY. Although Applicant has disclosed several domains, it did not disclose THESTUDYBAY.COM, which is redirecting to the website www.studybay.com. When we asked Ms. Feygina about this during our July 12 telephone conference, Ms. Feygina represented that Applicant neither owned the THESTUDYBAY.COM domain name, nor was she personally familiar with the listed registrant of that domain name, Mattias Industry LP. Following our call, we conducted a quick online search, which revealed that Ms. Feygina is, in fact, the personal representative of Mattias Industries LP, which is the owner of another BAY-formative application that eBay has opposed in the EU and UK. *See* Hamilton Decl. ¶ 17, Exhibit 7, pages 2-3.

Ms. Feygina's false representation regarding the THESTUDYBAY.COM domain name and her lack of knowledge of Mattias Industry LLP are intentional and designed to mislead Opposer and the Board. Applicant should be compelled to immediately correct these false statements under oath and produce all documents related to the registration and use of the THESTUDYBAY.COM domain name.

Ms. Feygina's false representations regarding THESTUDYBAY.COM also call into question the veracity of her representations regarding Interrogatory No. 21 and RFP No. 27. These requests seek information about consumer complaints pertaining to Applicant's services. In responding to these requests, Applicant stated: "[W]e have never received any complaints

about our Services except for the complaints of users who were not satisfied with individual assignments on the platform.”

Contrary to Applicant’s unverified interrogatory responses, eBay found numerous consumer complaints, to which a “StudyBay Rep” responded involving, among other things, the ethics of Applicant’s services. eBay presented these to Ms. Feygina (*see* Hamilton Decl. ¶ 15, Exhibit 6), and Ms. Feygina represented that Applicant does not have a relationship with individuals who have represented that they are acting on behalf of Applicant in responding to complaints on third-party sites. Moreover, and contrary to the prior representation that Applicant was unaware of any consumer complaints beyond those involving individual assignments, Ms. Feygina admitted that Applicant is aware of these other complaints on third-party websites, and that Applicant has intentionally chosen not to respond to these complaints or to demand that the third parties allegedly misrepresenting their affiliation with Applicant cease such conduct. *See id.*, Exhibit 7, page 2.

Although Ms. Feygina’s representations regarding these complaints seemed untenable during our July 12 call, eBay accepted Ms. Feygina’s statement with the expectation that Applicant would substantiate them. However, the utter lack of Applicant response and failure to substantiate the representations via documents and sworn interrogatories further calls into question the truthfulness of these statements. At the very least, Applicant should be compelled to amend its interrogatory response to reflect its knowledge of these additional consumer complaints and produce documents substantiating its representations that it has intentionally

instructed its internal team not to respond to them. Absent verified responses and documents, Applicant should be prohibited from advancing these representations in this proceeding.²

D. APPLICANT HAS FAILED TO VERIFY ITS INTERROGATORY RESPONSES DESPITE SEVERAL REQUESTS TO DO SO

Under Federal Rule 33(b)(3), Applicant is required to sign and verify its Responses. eBay has made several requests that Applicant do so, but Applicant has yet to sign and verify its March 11 Responses or its June 11 Supplemental Responses. As these Responses remain incomplete, eBay requests that the Board compel Applicant to prepare full, substantiated responses to the Requests and to sign and verify said responses.

REQUEST FOR RELIEF

eBay moves this Board for an order compelling Applicant to: (1) within 30 days from the date of the order, fully and completely respond to all of eBay's first sets of Requests for Production of Documents and Interrogatories that were served on January 24, 2019, and (2) produce documents within 30 days from the date of the Board's Order.

eBay further moves the Board to enter judgment in eBay's favor if Applicant does not respond within the deadline set by the Board. eBay also requests that the Board reset the discovery deadlines to allow eBay an additional 30 days to consider Applicant's responses, to notice and take a Rule 30(b)(6) deposition of Applicant regarding those answers, and to subpoena third-party websites in which a "StubbyBay Rep" has responded to consumer complaints. eBay further requests the Board grant any other relief it deems appropriate.

² eBay reserves all rights to also explore the truthfulness of these statements via third-party subpoenas. And, if Applicant's representations are proven false, eBay has warned Applicant that it will seek sanctions in the form of judgment.

August 15, 2019

Respectfully submitted,

/s/ Amanda Marston

Hope Hamilton

Amanda N. Marston

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**Attorneys for Opposer
eBay, Inc.**

CERTIFICATE OF SERVICE


I hereby certify that on August 15, 2019, I caused the foregoing to be served to the Applicant by email at the following address:

Mariia Feygina
EDUTEC LIMITED
Angelica Court No. 4, Giuseppe Cali. Str.
Ta'Xbiex, XBX 1425
Malta
lawyer@studybay.com

/s/ Mark Moore _____
Mark Moore

Exhibit A

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

EBAY, INC., Opposer, v. EDUTEC LIMITED, Applicant.	Opposition No.: 91241109 Trademark:  (STUDYBAY & Design) Serial No.: 79217130
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**DECLARATION OF HOPE HAMILTON IN SUPPORT OF
MOTION TO COMPEL DISCOVERY**

I, Hope Hamilton, declare as follows:

1. I am an attorney for Holland & Hart LLP, and I am one of the attorneys of record for Opposer eBay, Inc. in this proceeding. I make this declaration based on personal knowledge.
2. eBay filed its Notice of Opposition on May 9, 2018, and, after Applicant failed to answer, a Notice of Default was issued on June 30, 2018, which Applicant moved to set aside over a month after the Notice of Default issued.
3. After Applicant overcame the default entered against it and the trial dates were reset, the initial disclosures deadline was reset to November 25, 2018. Applicant did not serve its initial disclosures by this deadline, and our firm followed up with Applicant's counsel on December 18, warning counsel that eBay would have to move to compel disclosures if the disclosures were not received by December 21, 2018. We prepared the motion to compel and, in the eleventh hour, received Applicant's initial disclosures on December 21, 2018.

4. On January 24, 2019, we served Applicant with its First Set of Interrogatories and First Set of Requests for Production of Documents (the “Requests”). Attached as **Exhibit 1** is a true and correct copy of the Requests.

5. Applicant’s deadline to respond to the Requests was February 23. On February 22, Applicant’s counsel requested a two-week extension of time to respond, to which eBay agreed.

6. On March 11, Applicant’s counsel served incomplete and wholly deficient interrogatory responses and produced no documents. A true and correct copy of Applicant’s March 11 responses are attached as **Exhibit 2**.

7. Our firm reviewed the March 11 responses and requested to meet and confer with Applicant’s counsel. We followed this request with a discovery deficiency letter dated March 28. Attached as **Exhibit 3** is a true and correct copy of the March 28 deficiency letter.

8. In the March 28 deficiency letter, eBay identified several opinions of counsel which Applicant intentionally disclosed in a May 31, 2018 letter and which Applicant had failed to produce. Attached as **Exhibit 4** is a true and correct copy of the May 31, 2018 letter.

9. The parties held a telephone conference on March 28 (shortly after delivery of the deficiency letter). Applicant’s counsel, Laura Popp-Rosenberg, indicated that she was having difficulty contacting her client, including to verify the interrogatory responses.

10. The parties agreed to extend all discovery deadlines by 90 days to allow Applicant’s counsel time to confer with Applicant, supplement its discovery responses, and produce documents.

11. On April 9, Applicant's counsel withdrew; and on May 14, after Applicant advised it would represent itself, our firm sent a copy of its March 28 deficiency letter to Applicant's representative, Mariia Feygina. eBay also requested that Ms. Feygina make herself available to discuss the ongoing discovery deficiencies.

12. Applicant did not agree to meet and confer and instead requested until May 21 to supplement its discovery responses, to which eBay agreed.

13. On May 24, after Applicant again failed to provide supplemental responses, we contacted Ms. Feygina to request that she "urgently advise when you expect to provide complete discovery responses." Receiving no response, eBay began drafting a motion to compel.

14. On June 11, Applicant served supplemental responses in the form of a letter (the "Supplemental Responses"). Attached hereto as **Exhibit 5** is a true and correct copy of Applicant's Supplemental Responses.

15. On June 27, we contacted Ms. Feygina about the continued deficiencies and to seek to meet and confer. A true and correct copy of that request is attached as **Exhibit 6** hereto. Due to Ms. Feygina's vacation schedule, eBay agreed to postpone the meeting until her return.

16. On July 12, the parties met and conferred by phone, during which Ms. Feygina represented that she would provide additional responses within a week (by July 19). We followed the July 12 call with a July 16 letter, outlining all the deficiencies, including those discussed in the July 12 phone call, and giving Applicant until July 31 to provide its responses, despite Applicant's prior agreement to supplement its responses by July 19. A true and correct copy of the July 16 deficiency letter is attached as **Exhibit 7**.

17. On the July 12 call, eBay addressed several deficiencies, including Applicant's failure to disclose the domain THESTUDYBAY.COM. Ms. Feygina said this domain was not owned by Applicant and that she had no personal knowledge of the domain owner, Mattias Industry LLP. A quick google search uncovered that Ms. Feygina is the personal representative for Mattias Industry LLP, which is the owner of a different BAY-formative mark that eBay opposed in the EU and UK.

18. On August 5, we contacted Applicant because eBay still had not received the requested supplementation nor had Applicant verified its interrogatory responses or produced a privilege log. We warned that if we did not receive a response by August 9, we would proceed with a motion to compel. A true and correct copy of our August 5 email is attached as **Exhibit 8**.

19. Applicant still has not responded.

20. Applicant has only produced 19 documents in response to 37 requests for production, many of which are non-responsive and/or illegible.

21. Of the 19 documents produced by Applicant, only two documents contained information that was not otherwise publicly available.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 15th day of August 2019.

/s/ Hope Hamilton
Hope Hamilton

Exhibit 1

Mark Moore

From: Barbara Adams
Sent: Thursday, January 24, 2019 4:32 PM
To: 'lpopp-rosenberg@fzlz.com'; 'mgoldstein@fzlz.com'; 'ttabfiling@fzlz.com'
Cc: Hope I. Hamilton (HIHamilton@hollandhart.com); Amanda N. Marston (ANMarston@hollandhart.com)
Subject: eBay, Inc. v. Edutec Limited / STUDYBAY / TTAB Opposition No. 91241109 / Opposer's First Discovery Requests / HH Ref. 78143.1682
Attachments: eBay_STUDYBAY_Opp 1st Rogs.pdf; eBay_STUDYBAY_Opp 1st RFP.pdf

Please find attached:
Opposer's First Set of Interrogatories
Opposer's First Set of Requests for Production

Barbara A. Adams

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

EBAY, INC., Opposer, v. EDUTECH LIMITED, Applicant.	Opposition No.: 91241109 Trademark: STUDYBAY Serial No.: 79217130
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OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, eBay Inc. (“Opposer”) hereby serves this First Set of Requests for Production on Edutec Limited (“Applicant”), and requests that Applicant respond by producing the requested documents at the offices of Opposer’s counsel, Holland & Hart LLP, One Boulder Plaza, 1800 Broadway, Suite 300, Boulder, Colorado 80302 within thirty (30) days.

These Requests are continuing in nature and any information or responsive documents that may be discovered after the service and filing of Applicant’s answers should be brought to Opposer’s attention through supplemental answers within a reasonable time following such discovery. Opposer requests that each request be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

A. Opposer incorporates by reference the Definitions and Instructions from Opposer’s First Set of Interrogatories.

B. “Document” and “Documents” are used in the broadest extent permitted by Fed. R. Civ. P. 34(a)(1), including material stored electronically on tape, disk, or other media and e-

mail. “Document” and “Documents” also include all non-identical copies, such as those bearing marginal comments or other marks, postscripts, changes, amendments, addenda, or other notations not present on the original document as initially written, typed, or otherwise prepared. Each such non-identical copy is to be considered and identified as a separate document. To the extent any “Communication” as defined below is reduced to a writing or other recordation, it is expressly included in the term “Document” or “Documents.”

C. “Communication” shall be construed in its broadest sense and means every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information, whether orally, face-to-face, by telephone, mail, personal delivery, document, electronic mail, posting on the Internet, text, or otherwise.

D. If any document or information is withheld on the basis of a claim of privilege or otherwise, provide a privilege log identifying the information withheld, the creation date, the creator(s), the recipient(s), the general subject matter of the information, and the specific grounds upon which it is being withheld.

Request for Production No. 1:

All Documents identified in Applicant’s Initial Disclosures.

Request for Production No. 2:

All Documents identified, described, or relied upon in responding to any Interrogatory or Request for Admission served on you by Opposer in connection with this Opposition.

Request for Production No. 3:

All Documents sent to or received by any person or entity relating to this Opposition.

Request for Production No. 4:

All Documents referring or relating to Applicant's selection, adoption, and clearance of Applicant's Mark, including but not limited to searches, investigations, reports, and opinions.

Request for Production No. 5:

Documents sufficient to identify each product or service with which Applicant's Mark has been used, will be used, or is intended to be used, from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 6:

Documents sufficient to show Applicant's plans to market or promote Applicant's Services under Applicant's Mark, including but not limited to any marketing plans, advertising plans, strategic business plans, and market research.

Request for Production No. 7:

Documents sufficient to identify all persons who participate or participated in or were or are responsible for the marketing and/or advertising of any goods and/or services offered for sale, sold, or intended to be offered for sale or sold by Applicant under or in connection with the Applicant's Mark.

Request for Production No. 8:

Documents sufficient to show advertising and promotional materials in each media utilized (including but not limited to Internet, social media, leaflets, billboards, magazines, newspapers, brochures, telephone directories, television, radio broadcasts, and any other publications) featuring, displaying, or containing Applicant's Mark, from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 9:

Documents sufficient to identify each channel of trade through which Applicant has marketed, offered, or sold, currently markets, offers, or sells, or intends to market, offer, or sell Applicant's Services.

Request for Production No. 10:

Documents sufficient to identify the nature, demographics, identity, and characteristics of each class or type of consumer or entity to whom Applicant has marketed, offered, or sold, currently markets, offers, or sells, or intends to market, offer, or sell Applicant's Services.

Request for Production No. 11:

Documents sufficient to show the geographic scope of Applicant's business, services, and promotional activities using Applicant's Mark.

Request for Production No. 12:

Documents sufficient to identify all trade shows, expositions and competitions where Applicant has promoted services or goods under Applicant's Mark from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 13:

Documents sufficient to identify Applicant's annual advertising and promotional expenditures for goods and services under Applicant's Mark from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 14:

Documents sufficient to show the amount (in units and dollars) of goods/services sold, month-by-month for each year from the first use of Applicant's Mark to the present for each state in which Applicant has sold goods or services.

Request for Production No. 15:

Documents sufficient to show all forms and all manners of appearance in which Applicant has depicted, displayed, or used, or intends to depict, display, or use Applicant's Mark, including but not limited to all designs and stylizations.

Request for Production No. 16:

Documents sufficient to show continuous use of Applicant's Mark from inception to present, for each and every good and/or service set forth in the Application.

Request for Production No. 17:

All Documents relating to the selection, adoption, registration, and development of any Internet domain names that use or have used Applicant's Mark.

Request for Production No. 18:

All Documents referring or relating to any instance of confusion, mistake, or deception involving, on the one hand, Applicant, Applicant's Mark, or Applicant's Services, and on the other hand, Opposer, Opposer's Marks, or Opposer's Services.

Request for Production No. 19:

All Documents referring or relating to any inquiries about whether Applicant, Applicant's Services, or Applicant's Mark are or were affiliated or associated with, connected to, sponsored by, or otherwise related to Opposer, Opposer's Services, or Opposer's Marks.

Request for Production No. 20:

All Documents referring or relating to any instance where Applicant has received any mail, email, deliveries, correspondence, or other communications, documents, and things intended for Opposer.

Request for Production No. 21:

Documents sufficient to identify all trademarks, service marks, trade names, Internet domain names, and other U.S. applications/registrations owned by or on behalf of Applicant, through assignment or otherwise, that contain the word “bay.”

Request for Production No. 22:

All Documents referring or relating to objections Applicant has made, based in whole or in part on Applicant’s Mark, to any third party’s use and/or registration of any marks or names.

Request for Production No. 23:

All Documents referring or relating to objections Applicant has received from any third party regarding the use and/or attempt to register Applicant’s Mark.

Request for Production No. 24:

All Documents referring or relating to agreements between Applicant and third parties concerning the use or registration of Applicant’s Mark, including but not limited to license agreements, settlement agreements, and coexistence agreements.

Request for Production No. 25:

All Documents referring or relating to communications with third parties pertaining to this dispute, including but not limited to communications with the media or news outlets.

Request for Production No. 26:

All Documents referring or relating to Opposer or Opposer's Marks, including but not limited to when Applicant first learned of Opposer or Opposer's Marks.

Request for Production No. 27:

All Documents referring or relating to any complaints received by Applicant regarding Applicant or Applicant's Services, including documents sufficient to show the date of the complaint, the nature of the complaint, and any attempts to resolve the complaint.

Request for Production No. 28:

All Documents relating to any opinions, research, reports, surveys, investigations, and/or studies concerning the lawfulness of Applicant's Services, including offerings of writing services to students enrolled in accredited colleges, universities, and graduate schools.

Request for Production No. 29:

All Documents relating to any investigations by a state or government agency in connection with Applicant's Services, including offerings of writing services to students enrolled in accredited colleges, universities, and graduate schools.

Request for Production No. 30:

All Documents relating to any instances in which a customer has been subject to honor code and/or ethical violations as a result of papers purchased using Applicant's Services.

Request for Production No. 31:

All Documents relating to any opinions, research, reports, surveys, investigations, and/or studies concerning the presence or absence of consumer confusion or the likelihood of confusion between, on the one hand, Applicant, Applicant's Mark, or Applicant's Services and, on the other hand, Opposer, Opposer's Mark, or Opposer's Services, including the memorandum

provided to You on April 12, 2018 by Fross Zelnick Lehrman & Zissu, P.C. and all related documents, as well as the opinions of Whiteford, Taylor, Preston and Kilpatrick Townsend & Stockton LLP referenced in your communication of May 31, 2018 and all related documents.¹

Request for Production No. 32:

All Documents identified in, or reviewed or relied upon in preparing, Applicant's responses to Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Production of Documents, or any other Interrogatories, Requests for Admission, or Requests for Production served by Opposer on Applicant during the course of these proceedings.

Request for Production No. 33:

All Documents reviewed or relied upon by Applicant in preparing Applicant's Answer to the Notice of Opposition, Initial Disclosures, and/or responses to Interrogatories or Requests for Admission served in this proceeding.

Request for Production No. 34:

All Documents that Applicant may use to support its claims and defenses in this Opposition, including but not limited to all documents and things you intend to introduce at trial or are identified in your Initial Disclosures.

Request for Production No. 35:

All Documents provided to or relied upon by any expert, advisor, or consultant in connection with these proceedings.

¹ Any claim to privilege related to these communications was waived based on (1) disclosure in Applicant's May 31, 2018 letter, in which the conclusions of the opinions were summarized, and (2) disclosure in the proceedings pending in Australia and the European Union.

Request for Production No. 36:

Documents sufficient to show the number of users of your services and, specifically, the number of users of your services that reside in the United States.

Request for Production No. 37:

Documents sufficient to show how Your customers interact with writers and vice versa, including, for example, how a customer chooses and pays for a writer, how the writer and customer communicate with each other, and how the products and services are delivered.

January 24, 2019

/s/Amanda Marston _____
Hope Hamilton
Amanda Marston
HOLLAND & HART LLP
1800 Broadway, Suite 300
Boulder, Colorado 80302
Phone: (303) 473-4822
Facsimile: (303) 416-8842
hihamilton@hollandhart.com
anmarston@hollandhart.com
docket@hollandhart.com
ebay@hollandhart.com
ATTORNEYS FOR OPPOSER
eBay Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I caused the foregoing to be served to the following by email at the address below:

Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
4 Times Square
17th Floor
New York, New York 10036
lpopp-rosenberg@fzlz.com, mgoldstein@fzlz.com, ttabfiling@fzlz.com

/s/ Barbara Adams
Barbara Adams

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

EBAY, INC., Opposer, v. EDUTECH LIMITED, Applicant.	Opposition No.: 91241109 Trademark: STUDYBAY Serial No.: 79217130
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OPPOSER’S FIRST SET OF INTERROGATORIES

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, eBay Inc. (“Opposer”) hereby serves this First Set of Interrogatories on Edutech Limited (“Applicant”), and requests that Applicant respond within thirty (30) days.

These Interrogatories are continuing in nature and any information or responsive documents that may be discovered after the service and filing of Applicant’s answers should be brought to Opposer’s attention through supplemental answers within a reasonable time following such discovery. Opposer requests that each request be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

The following definitions apply to all of Opposer’s discovery requests.

A. “Identify,” “identity,” or “identification,” when used with respect to a natural person, requires that you provide the following information with respect to the person:

1. Name;
2. Last known business address;
3. Last known residential address;

4. Last known telephone number; and
5. Last known name of employer or business with whom the person is or was associated and the person's title and position at the time relevant to the identification.

B. "Identify," "identity," or "identification," when used with respect to a non-natural person or business entity, means, to the extent applicable, provide the last known business address, last known telephone number, contact name and title, and the nature of the entity (e.g., partnership, corporation, limited liability company, etc.).

C. "Identify," "identity," or "identification," when used with respect to a communication, means to state the parties to the communication, the date or approximate date of the communication, the substance of the communication, and identify all documents containing or relating to the communication.

D. "Identify," when used with respect to a document, means to state the date, author or creator, the addressee, type of document (e.g., letter, memorandum, email, chart, tangible physical item, etc.), its present or last known location and custodian, its general subject matter(s) or content, and any other information necessary for Opposer to identify it. Alternatively, "Identify" means to provide a document identification number (e.g., a Bates number) by which Opposer can identify the document as produced.

E. "Refers" or "relates to" means that the request encompasses any document or thing that discusses, embodies, contains, evidences, reflects, identifies, states, refers to, or concerns that matter, or that is in any way pertinent to that matter.

F. “Applicant” means Edutec Limited and its past and present affiliates, subsidiaries, officers, agents, directors, employees, consultants, attorneys, representatives and any other person acting on its behalf.

G. “You” and “Your” means Applicant and Applicant’s predecessors-in-interest, past and present affiliates, subsidiaries, officers, agents, directors, employees, business partners, consultants, attorneys, representatives, and any other person acting on behalf of Applicant.

H. “Opposer” means eBay Inc. and its predecessors-in-interest, past and present affiliates, subsidiaries, officers, agents, directors, employees, consultants, attorneys, representatives, and any other person acting on behalf of eBay Inc.

I. The “Application” means U.S. Trademark Application Serial No. 79/217,130.

J. “Applicant’s Mark” or “STUDYBAY Mark” means the STUDYBAY mark shown in the Application.

K. “Opposer’s Marks” means the trademarks identified in Paragraphs 3, 4, and 5 of Opposer’s Notice of Opposition (No. 91241109).

L. “Applicant’s Services” means any products or services provided, created, sold, distributed, marketed, donated, offered, or offered for sale, or intended to be provided, created, sold, distributed, marketed, donated, offered, or offered for sale by Applicant under Applicant’s Mark, including but not limited to products and services identified in the Application.

M. “Notice of Opposition” or “Opposition” means the Notice of Opposition filed by Opposer, which instituted the present Opposition No. 91241109.

N. “Opposer’s Services” means any products or services provided, created, sold, distributed, marketed, donated, offered, or offered for sale, or intended to be provided, created,

sold, distributed, marketed, donated, offered, or offered for sale by Opposer under Opposer's Marks.

O. "Document(s)" means all materials, including electronically stored information and other things, within the scope of Fed. R. Civ. P. 34(a)(1)(A)-(B).

P. All references in these discovery requests to "use" signify use in commerce that may lawfully be regulated by Congress.

Q. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make these discovery requests inclusive rather than exclusive.

R. "Each," "any," and "all" mean each and every.

S. Pursuant to TTAB Rule 412 and the parties' agreement, the Board's standard protective order (the "Protective Order") is applicable in this proceeding. As a result, any objections based on "confidentiality" are generally inappropriate.

T. If any document or information is withheld based on a claim of privilege or otherwise, provide a privilege log identifying the information withheld, the creation date, the creator(s), the recipient(s), the general subject matter of the information, and the specific grounds upon which it is being withheld.

U. In Your responses to these discovery requests, restate the text of each request preceding Your response.

V. Each page of every document produced in response to these discovery requests shall be stamped with a unique Bates Number.

W. These discovery requests shall be deemed continuing so as to require timely supplementation if You obtain or become aware of any information, documents, or things subsequent to Your initial responses in accordance with the Federal Rules of Civil Procedure.

X. Within Your Interrogatory responses, identify each person that has knowledge of the information requested in each Interrogatory.

Y. Unless otherwise stated, all requests are for information and documents from the earliest date of Applicant's use to the present.

INTERROGATORIES

Interrogatory No. 1:

Describe in detail the circumstances surrounding Applicant's selection and clearance of Applicant's Mark, including but not limited to:

- (a) the meaning of the mark (if any);
- (b) the reasons that Applicant selected Applicant's Mark;
- (c) when Applicant selected and cleared Applicant's Mark;
- (d) any opinions regarding the availability of Applicant's Mark for use or registration;

and

- (e) all persons involved in the selection and clearance of Applicant's Mark.

Interrogatory No. 2:

Describe in detail the circumstances surrounding Applicant's use of Applicant's Mark, including but not limited to the date on which Applicant's Mark was first used, how Applicant's Mark has been used, and any periods in which use was interrupted or discontinued.

Interrogatory No. 3:

Identify each service or product with which Applicant intends to use or has used Applicant's Mark by stating for each such product or service:

- (a) The name of and a description of the product or service;
- (b) The date or intended date of first use of Applicant's Mark with each product or service;
- (c) The classes or types of consumers to whom you have marketed or intend to market each such product or service; and

- (d) The channels of distribution for each product or service, including a description of the markets and geographic areas in which said products or services are provided or sold, a description of the markets and geographic areas in which said products or services are advertised, and a description of the methods by which said products or services are provided or sold to consumers.

Interrogatory No. 4:

Describe in detail the manner in which consumers acquire writing services from Applicant, including how the consumers are introduced to the writers, the manner in which the consumer requests work, and how the work is delivered to the consumer.

Interrogatory No. 5:

Describe in detail the manner in which writers gain access to the consumers, including whether there are associated fees, and state the writers' relationship to Applicant.

Interrogatory No. 6:

State whether You have received, and describe in detail, any advice from counsel regarding the lawfulness of Applicant's Services, including whether You have received advice about services in which You offer paper writing services to students enrolled in accredited colleges, universities, and graduate schools.

Interrogatory No. 7:

State whether You have ever been investigated by a state or government agency in connection with Applicant's Services, and if yes:

1. Describe the nature of the investigation;
 2. Identify all persons, including investigators and third parties, related to the investigation;
- and

3. Describe the resolution and/or status of the investigation.

Interrogatory No. 8:

State whether You have any knowledge of customers who have used Applicant's Services and been subject to honor code and/or ethical violations as a result of papers purchased using Applicant's Services, and if yes:

1. Describe the details of the incident;
2. Identify all persons, including investigators and third parties, related to the incident.

Interrogatory No. 9:

Describe in detail the nature of any business plans, advertisements, promotional materials, and/or marketing materials, including by identifying the specific media in which Applicant is using, has used, or plans to use the STUDYBAY Mark.

Interrogatory No. 10:

Identify all persons who participated in or were or are responsible for any business plans, marketing, and/or advertising of any goods and/or services offered for sale, sold, or intended to be offered for sale or sold by or for Applicant under or in connection with the STUDYBAY Mark for all periods from the date of first use of the STUDYBAY Mark to the present.

Interrogatory No. 11:

Identify each advertising agency, market research firm, public relations firm, website development firm, or other similar entity that has rendered services to you in connection with the advertising, promotion, or publicizing of the STUDYBAY Mark, or any products or services promoted, sold, and/or offered by you under the STUDYBAY Mark, and for each such entity:

- a. Describe the services performed by it;
- b. State the period(s) of time during which it provided such services; and

- c. Identify the person(s) primarily responsible for your account and the period(s) of time during which they were responsible.

Interrogatory No. 12:

Set forth in detail the amount (in units and dollars) of Applicant's sales of Applicant's Services under Applicant's Mark, month-by-month for each year from the first use of Applicant's Mark to the present.

Interrogatory No. 13:

For each state in which Applicant has sold Applicant's Services under Applicant's Mark, list the state and the amount (in units and dollars) of goods/services sold, month-by-month for each year from the first use of Applicant's Mark to the present.

Interrogatory No. 14:

Identify and describe all instances in which a person has believed or inquired as to whether there is or was a relationship between, on the one hand, Applicant, Applicant's Services, or Applicant's Mark and, on the other hand, Opposer, Opposer's Services, or Opposer's Marks, or vice versa. For each such instance state:

- (a) The identity of the person who held such mistaken belief;
- (b) The date and place that the mistaken belief occurred;
- (c) The manner in which Applicant received notice of the mistaken belief; and
- (d) The identity of each person who has knowledge of the mistaken belief.

Interrogatory No. 15:

Describe in detail the circumstances under which Applicant first learned of Opposer and Opposer's Marks, including but not limited to the identity of all person(s) involved, how each

person learned of Opposer and Opposer's Marks, and the date each became aware of Opposer and Opposer's Marks.

Interrogatory No. 16:

Identify each method or medium in which Applicant, Applicant's Mark, or Applicant's Services have been or will be advertised, including but not limited to Internet, social media, leaflets, billboards, magazines, newspapers, brochures, telephone directories, television, radio broadcasts, and any other publications, and identify the geographic reach of medium or method.

Interrogatory No. 17:

State the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) relating to Applicant's advertising and promotion of Applicant's Services under Applicant's Mark from the date of first use of Applicant's Mark to the present.

Interrogatory No. 18:

Identify all assignees, licensees and authorized users of Applicant's Mark and all documents that constitute or relate to each assignment or license.

Interrogatory No. 19:

Describe and identify all actions You have taken, whether by correspondence or any other form of communication, lawsuit, opposition proceeding, cancellation proceeding, or other formal or informal action, to protect or enforce your claimed rights in Applicant's Mark.

Interrogatory No. 20:

Describe and identify all actions that third parties have taken, whether by correspondence or any other form of communication, lawsuit, opposition proceeding, cancellation proceeding, or other formal or informal action, to dispute, object to, or question your use of or claimed rights in Applicant's Mark (other than the present Opposition Proceeding).

Interrogatory No. 21:

Identify and describe all instances in which a person or business has complained about Applicant or Applicant's Services. For each such instance state:

- a) The identity of the complainant;
- b) The date the complaint was lodged;
- c) The manner in which the complaint was received;
- d) The nature of the complaint; and
- e) Any steps taken by You to resolve the complaint.

Interrogatory No. 22:

Describe in detail (1) why you commissioned the various surveys and opinions from Whiteford, Taylor, Preston, Kilpatrick Townsend & Stockton LLP, and Fross Zelnick Lehrman & Zissu, P.C., including the memorandum provided to You on April 12, 2018 by Fross Zelnick Lehrman & Zissu, P.C. in which opinions were rendered on, among other things, the strength of your defense against the Opposition; and (2) any actions taken as a result of these opinions.¹

Interrogatory No. 23:

Describe your policy or policies on retention of documents, as well as the location of all such documents, including business records, email messages, and other correspondence, and identify any document in which any such policy is recorded.

¹ Any claim to privilege related to these communications was waived based on (1) disclosure in Applicant's May 31, 2018 letter, in which the conclusions of the opinions were summarized, and (2) disclosure in the proceedings pending in Australia and the European Union.

Interrogatory No. 24:

For each Interrogatory, Request for Production, or Request for Admission served in the course of this proceeding, identify each person who provided information in connection with Applicant's responses and identify all Documents consulted to answer each.

January 24, 2019

/s/Amanda Marston
Hope Hamilton
Amanda Marston
HOLLAND & HART LLP
1800 Broadway, Suite 300
Boulder, Colorado 80302
Phone: (303) 473-4822
Facsimile: (303) 416-8842
hihamilton@hollandhart.com
anmarston@hollandhart.com
docket@hollandhart.com
ebay@hollandhart.com
ATTORNEYS FOR OPPOSER
eBay Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I caused the foregoing to be served to the following by email at the address below:

Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
4 Times Square
17th Floor
New York, New York 10036
lpopp-rosenberg@fzlz.com, mgoldstein@fzlz.com, ttabfiling@fzlz.com

/s/ Barbara Adams
Barbara Adams

From: Barbara Adams
Sent: Thursday, January 24, 2019 4:32 PM
To: 'lpopp-rosenberg@fzlz.com'; 'mgoldstein@fzlz.com'; 'ttabfiling@fzlz.com'
Cc: Hope I. Hamilton (HIHamilton@hollandhart.com); Amanda N. Marston (ANMarston@hollandhart.com)
Subject: eBay, Inc. v. Edutec Limited / STUDYBAY / TTAB Opposition No. 91241109 / Opposer's First Discovery Requests / HH Ref. 78143.1682
Attachments: eBay_STUDYBAY_Opp 1st Rogs.pdf; eBay_STUDYBAY_Opp 1st RFP.pdf

Please find attached:
Opposer's First Set of Interrogatories
Opposer's First Set of Requests for Production

Barbara A. Adams
Legal Secretary
Holland & Hart LLP
One Boulder Plaza
1800 Broadway, Suite 300
Boulder, CO 80302
Phone (303) 295-0000; Direct (303) 473-4814
Fax (303) 473-2720
E-mail: BAAadams@hollandhart.com



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

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

EBAY, INC., Opposer, v. EDUTECH LIMITED, Applicant.	Opposition No.: 91241109 Trademark: STUDYBAY Serial No.: 79217130
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OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, eBay Inc. (“Opposer”) hereby serves this First Set of Requests for Production on Edutec Limited (“Applicant”), and requests that Applicant respond by producing the requested documents at the offices of Opposer’s counsel, Holland & Hart LLP, One Boulder Plaza, 1800 Broadway, Suite 300, Boulder, Colorado 80302 within thirty (30) days.

These Requests are continuing in nature and any information or responsive documents that may be discovered after the service and filing of Applicant’s answers should be brought to Opposer’s attention through supplemental answers within a reasonable time following such discovery. Opposer requests that each request be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

A. Opposer incorporates by reference the Definitions and Instructions from Opposer’s First Set of Interrogatories.

B. “Document” and “Documents” are used in the broadest extent permitted by Fed. R. Civ. P. 34(a)(1), including material stored electronically on tape, disk, or other media and e-

mail. "Document" and "Documents" also include all non-identical copies, such as those bearing marginal comments or other marks, postscripts, changes, amendments, addenda, or other notations not present on the original document as initially written, typed, or otherwise prepared. Each such non-identical copy is to be considered and identified as a separate document. To the extent any "Communication" as defined below is reduced to a writing or other recordation, it is expressly included in the term "Document" or "Documents."

C. "Communication" shall be construed in its broadest sense and means every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information, whether orally, face-to-face, by telephone, mail, personal delivery, document, electronic mail, posting on the Internet, text, or otherwise.

D. If any document or information is withheld on the basis of a claim of privilege or otherwise, provide a privilege log identifying the information withheld, the creation date, the creator(s), the recipient(s), the general subject matter of the information, and the specific grounds upon which it is being withheld.

Request for Production No. 1:

All Documents identified in Applicant's Initial Disclosures.

Request for Production No. 2:

All Documents identified, described, or relied upon in responding to any Interrogatory or Request for Admission served on you by Opposer in connection with this Opposition.

Request for Production No. 3:

All Documents sent to or received by any person or entity relating to this Opposition.

Request for Production No. 4:

All Documents referring or relating to Applicant's selection, adoption, and clearance of Applicant's Mark, including but not limited to searches, investigations, reports, and opinions.

Request for Production No. 5:

Documents sufficient to identify each product or service with which Applicant's Mark has been used, will be used, or is intended to be used, from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 6:

Documents sufficient to show Applicant's plans to market or promote Applicant's Services under Applicant's Mark, including but not limited to any marketing plans, advertising plans, strategic business plans, and market research.

Request for Production No. 7:

Documents sufficient to identify all persons who participate or participated in or were or are responsible for the marketing and/or advertising of any goods and/or services offered for sale, sold, or intended to be offered for sale or sold by Applicant under or in connection with the Applicant's Mark.

Request for Production No. 8:

Documents sufficient to show advertising and promotional materials in each media utilized (including but not limited to Internet, social media, leaflets, billboards, magazines, newspapers, brochures, telephone directories, television, radio broadcasts, and any other publications) featuring, displaying, or containing Applicant's Mark, from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 9:

Documents sufficient to identify each channel of trade through which Applicant has marketed, offered, or sold, currently markets, offers, or sells, or intends to market, offer, or sell Applicant's Services.

Request for Production No. 10:

Documents sufficient to identify the nature, demographics, identity, and characteristics of each class or type of consumer or entity to whom Applicant has marketed, offered, or sold, currently markets, offers, or sells, or intends to market, offer, or sell Applicant's Services.

Request for Production No. 11:

Documents sufficient to show the geographic scope of Applicant's business, services, and promotional activities using Applicant's Mark.

Request for Production No. 12:

Documents sufficient to identify all trade shows, expositions and competitions where Applicant has promoted services or goods under Applicant's Mark from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 13:

Documents sufficient to identify Applicant's annual advertising and promotional expenditures for goods and services under Applicant's Mark from the earliest date of Applicant's use of Applicant's Mark to the present.

Request for Production No. 14:

Documents sufficient to show the amount (in units and dollars) of goods/services sold, month-by-month for each year from the first use of Applicant's Mark to the present for each state in which Applicant has sold goods or services.

Request for Production No. 15:

Documents sufficient to show all forms and all manners of appearance in which Applicant has depicted, displayed, or used, or intends to depict, display, or use Applicant's Mark, including but not limited to all designs and stylizations.

Request for Production No. 16:

Documents sufficient to show continuous use of Applicant's Mark from inception to present, for each and every good and/or service set forth in the Application.

Request for Production No. 17:

All Documents relating to the selection, adoption, registration, and development of any Internet domain names that use or have used Applicant's Mark.

Request for Production No. 18:

All Documents referring or relating to any instance of confusion, mistake, or deception involving, on the one hand, Applicant, Applicant's Mark, or Applicant's Services, and on the other hand, Opposer, Opposer's Marks, or Opposer's Services.

Request for Production No. 19:

All Documents referring or relating to any inquiries about whether Applicant, Applicant's Services, or Applicant's Mark are or were affiliated or associated with, connected to, sponsored by, or otherwise related to Opposer, Opposer's Services, or Opposer's Marks.

Request for Production No. 20:

All Documents referring or relating to any instance where Applicant has received any mail, email, deliveries, correspondence, or other communications, documents, and things intended for Opposer.

Request for Production No. 21:

Documents sufficient to identify all trademarks, service marks, trade names, Internet domain names, and other U.S. applications/registrations owned by or on behalf of Applicant, through assignment or otherwise, that contain the word “bay.”

Request for Production No. 22:

All Documents referring or relating to objections Applicant has made, based in whole or in part on Applicant’s Mark, to any third party’s use and/or registration of any marks or names.

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All Documents referring or relating to objections Applicant has received from any third party regarding the use and/or attempt to register Applicant’s Mark.

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All Documents referring or relating to communications with third parties pertaining to this dispute, including but not limited to communications with the media or news outlets.

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All Documents referring or relating to Opposer or Opposer's Marks, including but not limited to when Applicant first learned of Opposer or Opposer's Marks.

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Request for Production No. 28:

All Documents relating to any opinions, research, reports, surveys, investigations, and/or studies concerning the lawfulness of Applicant's Services, including offerings of writing services to students enrolled in accredited colleges, universities, and graduate schools.

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All Documents relating to any instances in which a customer has been subject to honor code and/or ethical violations as a result of papers purchased using Applicant's Services.

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All Documents relating to any opinions, research, reports, surveys, investigations, and/or studies concerning the presence or absence of consumer confusion or the likelihood of confusion between, on the one hand, Applicant, Applicant's Mark, or Applicant's Services and, on the other hand, Opposer, Opposer's Mark, or Opposer's Services, including the memorandum

provided to You on April 12, 2018 by Fross Zelnick Lehrman & Zissu, P.C. and all related documents, as well as the opinions of Whiteford, Taylor, Preston and Kilpatrick Townsend & Stockton LLP referenced in your communication of May 31, 2018 and all related documents.¹

Request for Production No. 32:

All Documents identified in, or reviewed or relied upon in preparing, Applicant's responses to Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Production of Documents, or any other Interrogatories, Requests for Admission, or Requests for Production served by Opposer on Applicant during the course of these proceedings.

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All Documents reviewed or relied upon by Applicant in preparing Applicant's Answer to the Notice of Opposition, Initial Disclosures, and/or responses to Interrogatories or Requests for Admission served in this proceeding.

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All Documents that Applicant may use to support its claims and defenses in this Opposition, including but not limited to all documents and things you intend to introduce at trial or are identified in your Initial Disclosures.

Request for Production No. 35:

All Documents provided to or relied upon by any expert, advisor, or consultant in connection with these proceedings.

¹ Any claim to privilege related to these communications was waived based on (1) disclosure in Applicant's May 31, 2018 letter, in which the conclusions of the opinions were summarized, and (2) disclosure in the proceedings pending in Australia and the European Union.

Request for Production No. 36:

Documents sufficient to show the number of users of your services and, specifically, the number of users of your services that reside in the United States.

Request for Production No. 37:

Documents sufficient to show how Your customers interact with writers and vice versa, including, for example, how a customer chooses and pays for a writer, how the writer and customer communicate with each other, and how the products and services are delivered.

January 24, 2019

/s/Amanda Marston _____
Hope Hamilton
Amanda Marston
HOLLAND & HART LLP
1800 Broadway, Suite 300
Boulder, Colorado 80302
Phone: (303) 473-4822
Facsimile: (303) 416-8842
hihamilton@hollandhart.com
anmarston@hollandhart.com
docket@hollandhart.com
ebay@hollandhart.com
ATTORNEYS FOR OPPOSER
eBay Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I caused the foregoing to be served to the following by email at the address below:

Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
4 Times Square
17th Floor
New York, New York 10036
lpopp-rosenberg@fzlz.com, mgoldstein@fzlz.com, ttabfiling@fzlz.com

/s/ Barbara Adams
Barbara Adams

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

EBAY, INC., Opposer, v. EDUTECH LIMITED, Applicant.	Opposition No.: 91241109 Trademark: STUDYBAY Serial No.: 79217130
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OPPOSER’S FIRST SET OF INTERROGATORIES

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, eBay Inc. (“Opposer”) hereby serves this First Set of Interrogatories on Edutec Limited (“Applicant”), and requests that Applicant respond within thirty (30) days.

These Interrogatories are continuing in nature and any information or responsive documents that may be discovered after the service and filing of Applicant’s answers should be brought to Opposer’s attention through supplemental answers within a reasonable time following such discovery. Opposer requests that each request be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

The following definitions apply to all of Opposer’s discovery requests.

A. “Identify,” “identity,” or “identification,” when used with respect to a natural person, requires that you provide the following information with respect to the person:

1. Name;
2. Last known business address;
3. Last known residential address;

4. Last known telephone number; and
5. Last known name of employer or business with whom the person is or was associated and the person's title and position at the time relevant to the identification.

B. "Identify," "identity," or "identification," when used with respect to a non-natural person or business entity, means, to the extent applicable, provide the last known business address, last known telephone number, contact name and title, and the nature of the entity (e.g., partnership, corporation, limited liability company, etc.).

C. "Identify," "identity," or "identification," when used with respect to a communication, means to state the parties to the communication, the date or approximate date of the communication, the substance of the communication, and identify all documents containing or relating to the communication.

D. "Identify," when used with respect to a document, means to state the date, author or creator, the addressee, type of document (e.g., letter, memorandum, email, chart, tangible physical item, etc.), its present or last known location and custodian, its general subject matter(s) or content, and any other information necessary for Opposer to identify it. Alternatively, "Identify" means to provide a document identification number (e.g., a Bates number) by which Opposer can identify the document as produced.

E. "Refers" or "relates to" means that the request encompasses any document or thing that discusses, embodies, contains, evidences, reflects, identifies, states, refers to, or concerns that matter, or that is in any way pertinent to that matter.

F. “Applicant” means Edutec Limited and its past and present affiliates, subsidiaries, officers, agents, directors, employees, consultants, attorneys, representatives and any other person acting on its behalf.

G. “You” and “Your” means Applicant and Applicant’s predecessors-in-interest, past and present affiliates, subsidiaries, officers, agents, directors, employees, business partners, consultants, attorneys, representatives, and any other person acting on behalf of Applicant.

H. “Opposer” means eBay Inc. and its predecessors-in-interest, past and present affiliates, subsidiaries, officers, agents, directors, employees, consultants, attorneys, representatives, and any other person acting on behalf of eBay Inc.

I. The “Application” means U.S. Trademark Application Serial No. 79/217,130.

J. “Applicant’s Mark” or “STUDYBAY Mark” means the STUDYBAY mark shown in the Application.

K. “Opposer’s Marks” means the trademarks identified in Paragraphs 3, 4, and 5 of Opposer’s Notice of Opposition (No. 91241109).

L. “Applicant’s Services” means any products or services provided, created, sold, distributed, marketed, donated, offered, or offered for sale, or intended to be provided, created, sold, distributed, marketed, donated, offered, or offered for sale by Applicant under Applicant’s Mark, including but not limited to products and services identified in the Application.

M. “Notice of Opposition” or “Opposition” means the Notice of Opposition filed by Opposer, which instituted the present Opposition No. 91241109.

N. “Opposer’s Services” means any products or services provided, created, sold, distributed, marketed, donated, offered, or offered for sale, or intended to be provided, created,

sold, distributed, marketed, donated, offered, or offered for sale by Opposer under Opposer's Marks.

O. "Document(s)" means all materials, including electronically stored information and other things, within the scope of Fed. R. Civ. P. 34(a)(1)(A)-(B).

P. All references in these discovery requests to "use" signify use in commerce that may lawfully be regulated by Congress.

Q. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make these discovery requests inclusive rather than exclusive.

R. "Each," "any," and "all" mean each and every.

S. Pursuant to TTAB Rule 412 and the parties' agreement, the Board's standard protective order (the "Protective Order") is applicable in this proceeding. As a result, any objections based on "confidentiality" are generally inappropriate.

T. If any document or information is withheld based on a claim of privilege or otherwise, provide a privilege log identifying the information withheld, the creation date, the creator(s), the recipient(s), the general subject matter of the information, and the specific grounds upon which it is being withheld.

U. In Your responses to these discovery requests, restate the text of each request preceding Your response.

V. Each page of every document produced in response to these discovery requests shall be stamped with a unique Bates Number.

W. These discovery requests shall be deemed continuing so as to require timely supplementation if You obtain or become aware of any information, documents, or things subsequent to Your initial responses in accordance with the Federal Rules of Civil Procedure.

X. Within Your Interrogatory responses, identify each person that has knowledge of the information requested in each Interrogatory.

Y. Unless otherwise stated, all requests are for information and documents from the earliest date of Applicant's use to the present.

INTERROGATORIES

Interrogatory No. 1:

Describe in detail the circumstances surrounding Applicant's selection and clearance of Applicant's Mark, including but not limited to:

- (a) the meaning of the mark (if any);
- (b) the reasons that Applicant selected Applicant's Mark;
- (c) when Applicant selected and cleared Applicant's Mark;
- (d) any opinions regarding the availability of Applicant's Mark for use or registration;

and

- (e) all persons involved in the selection and clearance of Applicant's Mark.

Interrogatory No. 2:

Describe in detail the circumstances surrounding Applicant's use of Applicant's Mark, including but not limited to the date on which Applicant's Mark was first used, how Applicant's Mark has been used, and any periods in which use was interrupted or discontinued.

Interrogatory No. 3:

Identify each service or product with which Applicant intends to use or has used Applicant's Mark by stating for each such product or service:

- (a) The name of and a description of the product or service;
- (b) The date or intended date of first use of Applicant's Mark with each product or service;
- (c) The classes or types of consumers to whom you have marketed or intend to market each such product or service; and

- (d) The channels of distribution for each product or service, including a description of the markets and geographic areas in which said products or services are provided or sold, a description of the markets and geographic areas in which said products or services are advertised, and a description of the methods by which said products or services are provided or sold to consumers.

Interrogatory No. 4:

Describe in detail the manner in which consumers acquire writing services from Applicant, including how the consumers are introduced to the writers, the manner in which the consumer requests work, and how the work is delivered to the consumer.

Interrogatory No. 5:

Describe in detail the manner in which writers gain access to the consumers, including whether there are associated fees, and state the writers' relationship to Applicant.

Interrogatory No. 6:

State whether You have received, and describe in detail, any advice from counsel regarding the lawfulness of Applicant's Services, including whether You have received advice about services in which You offer paper writing services to students enrolled in accredited colleges, universities, and graduate schools.

Interrogatory No. 7:

State whether You have ever been investigated by a state or government agency in connection with Applicant's Services, and if yes:

1. Describe the nature of the investigation;
 2. Identify all persons, including investigators and third parties, related to the investigation;
- and

3. Describe the resolution and/or status of the investigation.

Interrogatory No. 8:

State whether You have any knowledge of customers who have used Applicant's Services and been subject to honor code and/or ethical violations as a result of papers purchased using Applicant's Services, and if yes:

1. Describe the details of the incident;
2. Identify all persons, including investigators and third parties, related to the incident.

Interrogatory No. 9:

Describe in detail the nature of any business plans, advertisements, promotional materials, and/or marketing materials, including by identifying the specific media in which Applicant is using, has used, or plans to use the STUDYBAY Mark.

Interrogatory No. 10:

Identify all persons who participated in or were or are responsible for any business plans, marketing, and/or advertising of any goods and/or services offered for sale, sold, or intended to be offered for sale or sold by or for Applicant under or in connection with the STUDYBAY Mark for all periods from the date of first use of the STUDYBAY Mark to the present.

Interrogatory No. 11:

Identify each advertising agency, market research firm, public relations firm, website development firm, or other similar entity that has rendered services to you in connection with the advertising, promotion, or publicizing of the STUDYBAY Mark, or any products or services promoted, sold, and/or offered by you under the STUDYBAY Mark, and for each such entity:

- a. Describe the services performed by it;
- b. State the period(s) of time during which it provided such services; and

- c. Identify the person(s) primarily responsible for your account and the period(s) of time during which they were responsible.

Interrogatory No. 12:

Set forth in detail the amount (in units and dollars) of Applicant's sales of Applicant's Services under Applicant's Mark, month-by-month for each year from the first use of Applicant's Mark to the present.

Interrogatory No. 13:

For each state in which Applicant has sold Applicant's Services under Applicant's Mark, list the state and the amount (in units and dollars) of goods/services sold, month-by-month for each year from the first use of Applicant's Mark to the present.

Interrogatory No. 14:

Identify and describe all instances in which a person has believed or inquired as to whether there is or was a relationship between, on the one hand, Applicant, Applicant's Services, or Applicant's Mark and, on the other hand, Opposer, Opposer's Services, or Opposer's Marks, or vice versa. For each such instance state:

- (a) The identity of the person who held such mistaken belief;
- (b) The date and place that the mistaken belief occurred;
- (c) The manner in which Applicant received notice of the mistaken belief; and
- (d) The identity of each person who has knowledge of the mistaken belief.

Interrogatory No. 15:

Describe in detail the circumstances under which Applicant first learned of Opposer and Opposer's Marks, including but not limited to the identity of all person(s) involved, how each

person learned of Opposer and Opposer's Marks, and the date each became aware of Opposer and Opposer's Marks.

Interrogatory No. 16:

Identify each method or medium in which Applicant, Applicant's Mark, or Applicant's Services have been or will be advertised, including but not limited to Internet, social media, leaflets, billboards, magazines, newspapers, brochures, telephone directories, television, radio broadcasts, and any other publications, and identify the geographic reach of medium or method.

Interrogatory No. 17:

State the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) relating to Applicant's advertising and promotion of Applicant's Services under Applicant's Mark from the date of first use of Applicant's Mark to the present.

Interrogatory No. 18:

Identify all assignees, licensees and authorized users of Applicant's Mark and all documents that constitute or relate to each assignment or license.

Interrogatory No. 19:

Describe and identify all actions You have taken, whether by correspondence or any other form of communication, lawsuit, opposition proceeding, cancellation proceeding, or other formal or informal action, to protect or enforce your claimed rights in Applicant's Mark.

Interrogatory No. 20:

Describe and identify all actions that third parties have taken, whether by correspondence or any other form of communication, lawsuit, opposition proceeding, cancellation proceeding, or other formal or informal action, to dispute, object to, or question your use of or claimed rights in Applicant's Mark (other than the present Opposition Proceeding).

Interrogatory No. 21:

Identify and describe all instances in which a person or business has complained about Applicant or Applicant's Services. For each such instance state:

- a) The identity of the complainant;
- b) The date the complaint was lodged;
- c) The manner in which the complaint was received;
- d) The nature of the complaint; and
- e) Any steps taken by You to resolve the complaint.

Interrogatory No. 22:

Describe in detail (1) why you commissioned the various surveys and opinions from Whiteford, Taylor, Preston, Kilpatrick Townsend & Stockton LLP, and Fross Zelnick Lehrman & Zissu, P.C., including the memorandum provided to You on April 12, 2018 by Fross Zelnick Lehrman & Zissu, P.C. in which opinions were rendered on, among other things, the strength of your defense against the Opposition; and (2) any actions taken as a result of these opinions.¹

Interrogatory No. 23:

Describe your policy or policies on retention of documents, as well as the location of all such documents, including business records, email messages, and other correspondence, and identify any document in which any such policy is recorded.

¹ Any claim to privilege related to these communications was waived based on (1) disclosure in Applicant's May 31, 2018 letter, in which the conclusions of the opinions were summarized, and (2) disclosure in the proceedings pending in Australia and the European Union.

Interrogatory No. 24:

For each Interrogatory, Request for Production, or Request for Admission served in the course of this proceeding, identify each person who provided information in connection with Applicant's responses and identify all Documents consulted to answer each.

January 24, 2019

/s/Amanda Marston
Hope Hamilton
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ATTORNEYS FOR OPPOSER
eBay Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I caused the foregoing to be served to the following by email at the address below:

Laura Popp-Rosenberg
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lpopp-rosenberg@fzlz.com, mgoldstein@fzlz.com, ttabfiling@fzlz.com

/s/ Barbara Adams
Barbara Adams

Exhibit 2

Confidential – For Attorneys' Eyes Only

Exhibit 3

March 28, 2019

VIA EMAIL (lpopp-rosenberg@frosszelnick.com; mgoldstein@frosszelnick.com)

Ms. Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
4 Times Square, 17th Floor
New York, New York 10036

Re: *eBay, Inc. v. Edutec Limited Discovery Deficiencies*

Dear Laura:

In advance of our call today, we write regarding numerous deficiencies in Applicant, Edutec Limited's ("Applicant"), Responses and Objections to eBay, Inc.'s ("eBay") First Set of Interrogatories and Requests for Production of Documents ("RFP").

We address eBay's specific concerns below; however, eBay reserves its right to follow up concerning additional matters as may be necessary. eBay also reserves its right to supplement this deficiency letter and further object to any insufficient responses once eBay has received and had an opportunity to review Applicant's document production.

Discovery Deadlines and Production

We request that Applicant agree to further extend all deadlines by 90 days.

eBay served its discovery requests on January 24, 2019. Applicant then requested, and eBay granted, an additional two weeks to respond; and Applicant served its written response on March 11, 2019. Applicant has therefore had over 60 days to begin producing documents, yet Applicant's responses indicate it will not *begin* producing documents until April 10, 2019. Applicant also fails to provide a date certain by when Applicant will conclude its document production.

As you know, the expert disclosure deadline is April 24, 2019, two weeks after Applicant indicated it will *begin* producing documents on a rolling basis. Additionally, discovery closes on May 24, 2019. Applicant's delay in producing documents (coupled with the numerous and unfounded objections addressed below), substantially prejudices eBay's right to timely conclude discovery under the current schedule. We also note that Ms. Feygina resides outside the U.S., so, unless Applicant is prepared to make her available for an in-person deposition (or via video conference), additional time will be required to undertake a deposition on written questions. 37 C.F.R. § 2.124.

We therefore request Applicant's consent to a further 90-day extension of all deadlines to allow sufficient time to conclude discovery. We also request that Applicant provide a date certain by when Applicant will conclude its document production. eBay also continues to reserve all rights to seek additional extensions should Applicant remain uncooperative and impede the conclusion of fact discovery.

Objections Based on Privilege

We demand that Applicant withdraw its privilege objections, amend its written responses accordingly, and produce all requested documents.

Applicant objects to several discovery requests based on privilege (Interrogatory Nos. 1, 19, 21, 22, 23, and 24 and RFP Nos. 3, 4, 17, 18, 19, 20, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 35). Applicant has no basis to assert privilege as a result of (1) the intentional disclosure of the opinions of counsel, and (2) Applicant's intent to rely on the opinions of counsel in connection with their defenses against eBay's claims.

Intentional Disclosure: Applicant intentionally disclosed and described in detail the information provided to it by several counsel regarding the strength of eBay's case and Applicant's defenses. For instance, in RFP No. 31, Applicant claimed privilege for opinions that Applicant disclosed both as public-record exhibits in extra-territorial oppositions and in its May 31, 2018 letter, sent to eBay's counsel from the Applicant's CEO.

eBay informed counsel of both instances of intentional disclosure when requesting documents, yet counsel still claimed privilege in connection with such documents, knowing privilege was unavailable to the Applicant. eBay considers this action purposefully evasive of the discovery process (if not sanctionable) and intended to compound eBay's costs in this proceeding. We therefore demand immediate withdraw of the objections and compliance with the discovery requests.

Reliance on Advice of Counsel: Applicant has made clear its intent to rely on advice of counsel, both in its responses to discovery requests, namely Interrogatory No. 4 (where Applicant indicates that it has received advice regarding the legality of its services) and in its May 31, 2018 letter to eBay, where it specifically identified advice of counsel on which it relied in forming its basis for defending against this Opposition.

Applicant cannot shield against discovery of the underlying legal opinions and advice of counsel if Applicant intends to rely on the advice of counsel defense. Applicant must either affirmatively state that it will not rely on the advice of counsel defense, or produce all opinions and communications related to that advice.

No Response Provided for Several Requests

Applicant objected to several requests in their entirety: Interrogatory Nos. 7, 8, 15, 21, and 22 and RFP Nos. 3, 7, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, and 37. Under FRCP 34(b)(2)(C), an objection “must state whether any responsive documents are being withheld on the basis of that objection.”

For each request in which Applicant did not respond, provide a response or state expressly whether documents or interrogatory answers are being withheld.

Applicant’s Objection B: Cumulative, Duplicative, and Burdensome

Applicant has objected to a large number of Interrogatories and RFPs on the basis of a compound objection, namely Specific Objection B: “The [Request, Interrogatory] is unreasonably cumulative or duplicative, or the requested information can be obtained from some other source or through some other discovery procedure that is more convenient, less burdensome, or less expensive.”

As an initial matter, the compound nature of this objection is, itself, objectionable. To the extent that Applicant has cited allegedly cumulative or duplicative requests, we disagree, and we must demand that Applicant reexamine and withdraw those objections and fully respond. Further, if Applicant intends to stand by its objection that information can be obtained from other sources or through some other discovery procedure that is more convenient, less burdensome, or less expensive (particularly with respect to RFP objections), we expect applicant to propose alternative means for obtaining this information.

Applicant must withdraw Specific Objection B and/or provide more specific information as to the basis of the objection and its proposal for providing information which Applicant states may be “obtained from some other source or through some other discovery procedure that is more convenient, less burdensome, or less expensive.”

Applicant’s Objection E: Overly Broad

Applicant objects to a large number of Interrogatories and RFPs on the basis that they are “overbroad, in that it is not reasonably particular, or seeks information merely tangential to the matters at issue in the case, or is not limited to a particular time period.”

eBay’s requests are narrowly tailored to lead to information which (1) is important to eBay’s claims and Applicant’s position, (2) eBay does not have access to, (3) will assist greatly in resolving the issues set forth in eBay’s claims and Applicant’s defenses, and (4) has a benefit that far outweighs any perceived burden on the Applicant if produced.

For instance, Applicant objected to RFP No. 5, which requests “**Documents sufficient to identify** each product or service with which the Applicant’s Mark has been used, will be used, or

is intended to be used, **from the earliest date of Applicant’s use of Applicant’s Mark to the present.**” This limits the request to (1) sufficient documents to show use; (2) use specifically of the mark at issue (STUDYBAY); and (3) from date of first use (which is claimed at least as early as January 2014 and as late as July 16, 2015).

eBay demands that Applicant withdraw its Specific Objection E and respond fully to requests in which information was withheld on this basis, or for which Applicant has not specifically articulated its proposal for narrowing the scope of its response.

Objections Claiming “Fishing Expedition”

Applicant objected to several of eBay’s requests on the basis that they were “fishing expeditions,” namely RFPs Nos. 3, 25, 26, 32, and 33. That objection is baseless, as these requests narrowly focus on production of documents sent or received relating to this Opposition, communications with third-parties in connection with this Opposition, Applicant’s knowledge of eBay and the EBAY marks, and documents relied on by Applicant to respond to discovery and the Opposition. Indeed, these requests go to the heart of this Opposition and Applicant’s defenses. They address pertinent facts and do not seek information beyond that to which eBay is entitled.

We therefore demand that Applicant withdraw this objection and fully respond to these requests.

Objections to Definitions

Applicant makes numerous unfounded objections to several of the definitions, the most egregious of which are the objections to eBay’s definition of “Identify” as it relates to (1) a natural person, (2) a non-natural person or business entity, and (3) documents. Applicant states these definitions are overly broad, unduly burdensome, require Applicant to provide information outside its control, and/or are an unwarranted invasion of privacy.

With regard to the privacy objection, the parties have agreed to be bound by the Standard Protective Order, which permits Applicant to designate certain information as confidential. The privacy objection must be withdrawn on this basis alone.

Moreover, contrary to Applicant’s objection, the ability to identify with reasonable certainty those persons or businesses who may have relevant knowledge in connection with these proceedings is highly relevant, narrowly-tailored information, which should generally be in Applicant’s possession, and which is typically not obtainable through other means. Without information such as a person’s residential address, eBay is unable to subpoena identified persons. Applicant must therefore provide the requested information, including residential addresses, unless it can provide sufficient case law to show why it is not required to produce such information.

Applicant’s refusal to adhere to the definition of Identify in connection with documents is also in direct conflict with its objections, including its presumed (but unstated) refusal to produce Documents in response to RFP No. 33 (which seeks documents reviewed or relied upon by Applicant in preparing, among other things, its responses to the discovery requests). On the one hand, Applicant has stated it would provide “sufficient detail to enable Applicant to request the identified or specified document or thing through an appropriate discovery method,” but on the other hand, it has refused to produce documents relied upon in responding to discovery. To what, then, should eBay refer in connection with identifying the documents on which Applicant has relied in responding to discovery?

We expect Applicant will withdraw its objections to the definitions of “Identify.” If Applicant stands by these objections, we expect to receive case law establishing the validity of Applicant’s position.

Applicant’s Interrogatory Responses are Unverified

FRCP 33(b)(3) requires that interrogatory responses must be verified under oath.

Applicant’s interrogatory responses served on March 11, 2019 do not contain the requisite verification, which must be provided.

Reservation of Rights Regarding Subparts Objection

Applicant objected to Interrogatory Nos. 1, 2, 3, 4, 5, and 15 as attempting to “circumvent rules limiting the number of Interrogatories” eBay strongly disagrees and notes that Applicant’s position is inconsistent with TTAB authorities. eBay therefore explicitly reserves its right to contest this objection should Applicant refuse to answer further requests on the basis that eBay has exceeded the 75 interrogatory limit.

Specific Objections

Applicant has listed multiple “Specific Objections” to each and every RFP and Interrogatory served, save the single RFP No. 1 (which calls for all documents identified in Applicant’s initial disclosures). Applicant’s objections are without merit and appear to be designed to delay and prejudice eBay. The most egregious objections are addressed below, **and we must insist that Applicant withdraw its Specific Objections and respond fully to eBay’s discovery requests.** eBay also reserves its rights to challenge Applicant’s Specific Objections not expressly addressed herein.

1. Dilution of the EBAY Brand

eBay has sought information in Interrogatory Nos. 7, 8, and 21, and Requests for Production Nos. 27, 28, 29, and 30 relating to dilution through blurring and tarnishment of

EBAY by Applicant. Applicant's Specific Objections should be withdrawn for at least the following reasons:

The requests are proportional to the needs of the case: The benefit of discovering information related to eBay's claims of blurring and tarnishment far outweighs any perceived burden. Dilution of the EBAY brand goes directly to the heart of the claims, and Applicant is unlikely to incur significant costs to review and produce documents businesses would typically keep in the normal course of business. Further, eBay does not and cannot have access to this information.

The requests are not vague or ambiguous: The requests are clear and seek exactly the information outlined. For example, in Interrogatory No. 8, Applicant is asked to state if it had any knowledge of customers of Applicant's Services who have been subject to honor code and/or ethical violations as a result of papers purchased using Applicant's Services.

The requests are not overly broad: Each of the requests noted above is narrowly tailored to lead to information related to the claims of tarnishment and blurring. The requests are limited to investigations, complaints, and other instances that may dilute EBAY as a result of Applicant's use of STUDYBAY for paper-writing services. For instance, Interrogatory No. 7 asks Applicant to state whether it has ever been investigated by a state or government agency in connection with Applicant's Services and if so to describe the investigation. It specifically asks for information regarding investigations related to the provision of Applicant's Services. If the Applicant's Services are under constant investigation, we are open to suggestions on ways to reasonably narrow these requests.

This information is highly relevant to eBay's dilution claims: These requests seek highly relevant information regarding the dilution of EBAY.

2. Opinions Provided to Applicant

eBay has sought information in Interrogatory No. 22 and RFP Nos. 4 and 31 relating to the opinions and surveys disclosed or relied upon by Applicant. Applicant's Specific Objections should be withdrawn for at least the following reasons:

The requests are proportional to the needs of the case: There is great benefit in discovering information related to eBay's claims and Applicant's defenses, and there is minimal burden experienced by Applicant in producing the documents. The information and documents are clearly in Applicant's possession as they have referenced and described in detail within the requested documents, and Applicant has submitted at least one opinion as an exhibit in oppositions in other jurisdictions.

The requests are not vague or ambiguous: The requests are clear in seeking those documents, including by stating with specificity certain opinion documents that Applicant has already disclosed in whole or in part as a result of its privilege waiver. Moreover, requests for

searches, investigations, reports, and opinions are routine requests, which we are confident we could show that Fross Zelnick has drafted and served on behalf of its own clients.

The requests are not overly broad: The scope of these requests is specific to this Opposition and Applicant's STUDYBAY mark and are not overbroad. Moreover, many of the requests describe with specificity which documents were disclosed and only requests the documents to which eBay is entitled as a result of Applicant's waiver (see, e.g., RFP No. 31).

This information is highly relevant to eBay's claims and Applicant's defenses: The requested information is highly relevant to eBay's Lanham Act claims, including because the information deals directly with the presence or absence of a likelihood of confusion and whether STUDYBAY is likely to tarnish or blur the EBAY brand.

3. Applicant's Knowledge of eBay

eBay has sought information in Interrogatory No. 15 and RFP No. 26 relating to Applicant's knowledge of eBay and the EBAY marks. Applicant's Specific Objection should be withdrawn for at least the following reasons:

The requests are proportional to the needs of the case: When and under what conditions Applicant learned of eBay is an important factor in establishing intent, and the requests are not only proportional but imperative to establishing intent. Any perceived burden is minimal as Applicant has direct and exclusive knowledge about when it first learned of eBay.

The requests are not vague or ambiguous: The requests specifically ask for information concerning Applicant's knowledge of eBay and its EBAY marks.

The requests are not overly broad: Each of the requests noted above is narrowly tailored to lead to information related to Applicant's knowledge of eBay and the EBAY marks.

This information is highly relevant to eBay's claims and the intent of Applicant: This information is highly relevant to eBay's assertions that the adoption and use of STUDYBAY was done so with the intent to trade on eBay's goodwill and reputation.

4. Documents Related to the Opposition

eBay has sought information in RFP Nos. 3, 25, 32, and 33 relating to those documents on which Applicant has used or intends to use in connection with the Opposition. Applicant's Specific Objection should be withdrawn for at least the following reasons:

The requests are proportional to the needs of the case: Documents relating to the Opposition are important for establishing various factors in the Opposition, including intent, dilution, and the presence or absence of a likelihood of confusion. There is minimal burden to Applicant in producing documents it should have in its possession as a result of this proceeding.

The requests are not vague or ambiguous: The requests specifically ask for documents relating to this Opposition. The language is clear and specific.

The requests are not overly broad: Each of the requests noted above is narrowly tailored to lead to documents referring or relating to the instant action.

This information is highly relevant to eBay's claims and the intent of Applicant: This information is highly relevant to eBay's claims and Applicant's likely defenses.

5. Applicant's Services and Users

eBay has sought information in Interrogatory No. 5 and RFP Nos. 36 and 37 relating to Applicant's knowledge of eBay and the EBAY marks.

Although applicant provided a response to Interrogatory No. 5, the answer is incomplete and unclear. eBay requested information regarding the writers on the STUDYBAY platform, including how the writers connect with consumers and the writers' relationship with Applicant. It is unclear if Applicant's response is discussing the writers or customers. For instance, Applicant says, "writers connect with users through the STUDYBAY platform, are customers of Applicant, and are invoiced for services." We cannot determine if "writers" is modifying "connect with users...", "are customers of Applicant...", and "are invoiced for services," nor does that make sense. The response is also incomplete in so far as it fails to provide any detail about how the writers gain access to the customers (beyond "through" the platform). Applicant must provide an amended, clarified, and complete response.

Also, Applicant objects completely to Requests Nos. 36 and 37, stating among other things, the information is not within Applicant's control and the requests are vague, ambiguous, and/or overly broad. Applicant's Specific Objections should be withdrawn for at least the following reasons:

The information is squarely within Applicant's control: It is difficult to imagine the following information it is not within Applicant's custody or control: how many customers use Applicant's Services, how the customers use the Applicant's Services, how the customers interact with the writers, and/or how customers pay for and receive their papers. Presumably, Applicant has knowledge of how its business operates; and eBay demands that Applicant produce all responsive documents.

The requests are not vague or ambiguous: The requests specifically ask for documents and information relating to Applicant's customers and how those customers use Applicant's Services.

The requests are not overly broad: The requests are narrowly tailored to learn more about how the Applicant's Services are used and how widespread such use is in the United

States. Both are important factors in a likelihood of confusion analysis, and it is not clear in what way Applicant would have us narrow such a request.

6. Applicant's Advertising and Marketing

eBay has sought information in Interrogatory No. 16 and RFP Nos. 7 and 8 relating to Applicant's advertising and marketing of STUDYBAY.

RFP No. 8: Although Applicant indicated it would produce documents, it stated it would only do so for the last three years. Continuous use of a mark since its first claimed use is an important factor when assessing a likelihood of confusion and the strength of the mark. Therefore, we must insist Applicant produce documents showing continuous use of the mark for all periods from at least July 16, 2015 (Applicant's claimed first use date in the United States).

Interrogatory No. 16: Applicant indicate that Applicant's Services have been advertised under Applicant's Mark on the Internet throughout the United States. This answer is vague. We expect a more thorough response, including whether Applicant does not and has never advertised through *any other* medium or method, including, e.g., radio, magazines, newspapers, brochures, television, and/or billboards. Moreover, we expect Applicant will explain in more detail the methods of advertising via the Internet (e.g., website (with specific URLs), social media (with specific account details), downloadable applications, etc.). Applicant must fully respond to Interrogatory No. 16.

RFP No. 7: Applicant objected in its entirety. Applicant's Specific Objections should be withdrawn for at least the following reasons:

The requests are proportional to the needs of the case: Information regarding *who* was responsible for the advertising and marketing of the STUDYBAY mark is important for developing eBay's case, including intent and the nature and extent of the marketing and advertising of STUDYBAY. Any perceived burden is likely minimal as records of this type are often kept in the regular course of business.

The information is squarely within Applicant's control: It is unlikely that documents and information regarding persons involved in or responsible for advertising and marketing of Applicant's own goods and/or services is not within Applicant's control. Likewise, it is improbable that the Applicant is unsure of who it has retained or employed to participate in or be responsible for advertising and marketing. If the number of people involved is so great and/or widespread that identifying them causes undue burden to Applicant, we expect Applicant will state this and suggest a reasonable limitation to the request.

The request is not vague or ambiguous: The request clearly asks for documents sufficient to identify persons involved in or responsible for marketing and advertising any goods and/or services under Applicant's Mark.

The requests are not overly broad: The request is narrowly tailored to obtain documents *sufficient to identify* all persons involved in or responsible for advertising and marketing goods and/or services under Applicant’s Mark. This request precisely seeks information important to a likelihood of confusion analysis.

7. Applicant’s Sales

eBay has sought information in Interrogatory No. 13 and RFP No. 14 relating to Applicant’s sales of goods and/or services under the STUDYBAY mark.

Although Applicant provided round annual sales figures under Interrogatory No. 12, it did not provide state-by-state information, which is relevant both to Applicant’s geographic reach and to the strength of the mark—both of which are factors in a likelihood of confusion analysis. It is also unclear whether the annual figures in Interrogatory No. 12 represent worldwide sales or are limited to the United States. Therefore, Applicant’s responses to both Interrogatory No. 13 and RFP No. 14, which refer eBay to Interrogatory No. 12, are incomplete. eBay is willing to withdraw its request for month-to-month numbers, but we require the state-by-state numbers and therefore insist Applicant withdraw its Specific Objections and fully respond.

* * * * *

We look forward to conferring with you on these matters later today and to receiving Applicant’s complete responses to eBay’s First Sets of Request for Production of Documents and Interrogatories.

Sincerely,



Hope Hamilton
Holland & Hart LLP

cc: All counsel of record

Exhibit 4

EduTec Limited
Angelica Court No 4
Giuseppe Cali Street
Ta'Xbiex, XBX 1425
Malta

May 31, 2018

BY EMAIL (anmarston@hollandhart.com)

Amanda Martson
Holland and Hart LLP
One Boulder Plaza
1800 Broadway
Suite 300
Boulder, CO 80302

RE: Studybay position on the letter dated January 16, 2018, re: Infringement and Dilution of eBay's Trademarks

Dear Ms. Marston:

EduTec Limited is a company incorporated in Malta, the applicant of the trade mark «Studybay» with its registration number 1876271 providing education-related services. We are writing in relation to your Letter dated on January 16, 2018.

Our pause was driven by the necessity of analyzing your statements regarding the likelihood of confusion, the infringement of eBay's trademark and the dilution of the distinctiveness between the trademarks eBay and Studybay. Consequently, we came to a point that we can not meet your requirements.

It is stated in your demand letter that EduTec Limited has selected the trademark Studybay to denote the client's online sale in an attempt to imitate the eBay mark and free-ride on the success and consumer goodwill of eBay's brand by combining the descriptive term "Study" with the arbitrary term "Bay". Moreover, eBay asserts that the registration of Studybay will dilute the distinctiveness and cause consumers to mistakenly believe that Studybay is affiliated with eBay. Meanwhile, we are definitely sure there is entirely no dilution and "study bay" has a suggestive meaning in connection with EduTec's services.

Also eBay contends that the type of services chosen by EduTec Limited threatened to tarnish eBay's reputation if consumers mistakenly believe Studybay is affiliated with or sponsored by eBay. We consider such assertion to be extremely presumptuous and groundless. Moreover, we deem this statement as inadmissible within the scope of bona fide competition. EduTec Limited has carried out an internal survey among Studybay's Users with a view to consumers' confusion with eBay's services. We suppose the services provided by Studybay platform can not provoke even a little bit of confusion with eBay's services: the basic and core EduTec's indicated class is the class 41 concerning education-related services. So, educational services are fairly far afield from what eBay does or is likely to do, and we believe this factor would favor EduTec Limited.

Edutec Limited asked the US law firm “Whiteford, Taylor, Preston” to carry out a legal survey regarding the question if the trademark Studybay dilutes or infringes the trademark Ebay. According to the legal position of Mr. Steven E. Tiller Edutec Limited has solid arguments that its STUDYBAY mark is distinct in appearance and sound from the eBay mark, and that the goods and services it provides are distinct from those provided by eBay. The United States trademark law prohibits a company using a word, name, symbol, or device (i.e., a trademark) that is likely to cause confusion among the consuming public with another’s trademark already in use. In order to determine whether one trademark is likely to cause confusion with another, Mr. Tiller conducted a comprehensive analysis of U.S. courts’ practice and revealed thirteen factors on a case-by-case basis as set out in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973). Those factors are:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
2. The similarity or dissimilarity of the goods and/or services promoted in connection with each mark.
3. The similarity or dissimilarity of established, likely to continue trade channels for those goods and services.
4. The conditions under which, and buyers to whom, sales are made, i.e., “impulse” versus careful sophisticated purchasing.
5. The “fame” of the senior mark.
6. The number and nature of similar marks in use on similar goods.
7. The nature and extent of any actual confusion.
8. The length of time during, and the conditions under which, there has been concurrent use without evidence of actual confusion.
9. The variety of goods on which each mark is or is not used.
10. The market interface between the applicant and the owner of the senior mark.
11. The extent to which the senior user has a right to exclude others from use of its mark on its goods.
12. The nature and extent of potential confusion.
13. Any other established facts probative of the effect of use.

The practice definitely showed that often times, however, the most important factors are nos. 1, 2 and 7. In relation to all of the factors except the factor 5 – we agree that eBay has a significant reputation – no confusion and similarity have been detected. Therefore, despite admitting the strong reputation of eBay, we kindly ask eBay to be more gentle in its comments regarding Edutec’s type of business.

Furthermore, Edutec Limited held a consultation with Mr. Bill Bryner, Kilpatrick Townsend & Stockton LLP, concerning this case. In accordance with the opinion of Mr. Bryner, the STUDYBAY mark, particularly in its stylized form, reflects a number of differences in sight, sound and commercial impression. The “STUDY” element comes first, and is fairly different from “E.” The stylization of the STUDYBAY mark is rather different from the EBAY stylization, and blue and white are claimed as features of the mark (whilst the EBAY mark does not claim those colors, and typically is displayed in red, blue, yellow and green). The STUDYBAY mark is pronounced with three syllables, rather than two, although the last two syllables are pronounced similarly in the respective marks. The commercial impressions are somewhat distinct, with an emphasis on academics and schooling in the STUDYBAY mark, and on something “electronic” in the EBAY mark. With all of that said, Mr. Bryner thinks this case would be a very fact intensive one, with the likelihood of success for Edutec.

We kindly ask you to note that additionally Fross Zelnick Lehrman & Zissu, P.C. carried out a deep and detailed legal research and provided us the Memorandum concerning the claim by eBay. All the 12 factors mentioned above and set forth in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973) to be assessed by TTAB were examined in the afforded Memorandum. With regard to the similarity of the trademarks Ms. Laura Popp-Rosenberg affirms

that the marks share the –BAY portion, but otherwise are not similar. Contrary to the eBay’s assertion, the –BAY portion of the STUDYBAY mark is not “arbitrary” in the context of Edutec’s services. In fact, “study bay” is a phrase that is used to designate areas for study, including, for example, by two prestigious Ivy League colleges, Harvard University and Cornell University (for your convenience we provide you a link where you can check it: <https://cabot.library.harvard.edu/study-spaces>; <http://www.cs.cornell.edu/courses/BayReservation/>). It is also confirmed in the research that the core Edutec’s services – educational-related services – are not identical to the services offered by eBay. Regarding the similarity of trade channels according to the Memorandum, our trade channels are different. Although both Edutec Limited and eBay operate on the Internet, each operates only on its own website: ebay.com and studybay.com. In the opinion of Ms. Laura Popp-Rosenberg it is not obvious that the typical trade channels for the parties’ respective goods and services would be similar. Therefore, she assumes this factor would not favor eBay.

As for the sophistication of purchasers, our U.S. lawyers assert that this factor is more likely to favor Edutec because people who are purchasing Edutec’s STUDYBAY services would be somewhat careful in their purchases given the nature of the services. We would like to pay your attention to the fact that the actual confusion was not found. What is more, Edutec did not have an intent to trade on eBay’s mark and there are no evidence for that. We position ourselves to be unique online educational Platform.

We also would like to call into question the statements regarding the pursuance of the marks with the BAY suffix. Edutec Limited undertook a comprehensive research with regard to opposition proceedings initiated by eBay. To be so bold as to note the fact that all the listed applicants except PerfumeBay expressly abandoned the applications or the applications was withdrawn by applicants after eBay made its objection, we announce we will certainly stand up for the registration of our trademark and do not intend to cease the use of Studybay, to abandon our applications and, for sure, to transfer the registration of our Domain Name to eBay. Our position can be confirmed by all the U.S. lawyers involved in the consideration of this case. We quote the position of Mr. Bryner: “In addition, although eBay’s letter recites its enforcement efforts against third party marks that incorporate –BAY, none of those matters was litigated to a decision on the merits. Instead, the applicant in those cases either defaulted or voluntarily abandoned its application. It does not appear that eBay has fought this particular battle and emerged victorious”. We also noted that there are some registered trademarks with Bay-portion: UBAY (!) (classes 36, 37, 42) SPIRITS BAY (class 35) and MEGABAY (9, 11, 35). For example, we suppose that UBAY is much more similar to eBay than our trademark. Despite the fact that the difference between UBAY and eBay is only in one letter, the trademark was successfully registered. On top of that, in accordance with the analysis of Ms. Popp-Rosenberg, Edutec should be able to prevail on the dilution claim based on the lack of sufficient similarity between the EBAY and STUDYBAY marks.

In addition, you have designated that eBay does not wish to interfere with our business and is not asking to cease doing this business. Please note that all your requirements lead to disruption of the business and can be considered as aggressive enforcement.

Finally, although we acknowledge that eBay mark itself is famous and therefore quite strong, it is the only –BAY inclusive mark that we know eBay to use. That is, eBay does not own a family of –BAY inclusive marks that would make a claim against other –BAY inclusive mark Studybay stronger. We noticed that the new opposition was filed to USPTO. We would like to declare that we will maintain all the opposition procedures in all the markets and the trademark Studybay will be defending.

Given the above and taking into account all the mentioned facts, Edutec Limited suggest to eBay that to avoid costly opposition proceedings and to resolve this dispute amicably we should negotiate a settlement. We kindly ask you to withdraw your opposition or if you insist on the similarity of the trademarks, we will consider all the constructive offers. From Edutec’s side, we are willing to accommodate your business interests and expect the same from eBay.

Sincerely,
Mr. Alan Attard

A handwritten signature in blue ink that reads "Alan". The signature is stylized, with a large, sweeping initial 'A' that loops around the first part of the name.

Exhibit 5

Confidential – For Attorneys' Eyes Only

Exhibit 6

From: Amanda N. Marston <ANMarston@hollandhart.com> on behalf of Holland & Hart - eBay <eBay@hollandhart.com>
Sent: Thursday, June 27, 2019 4:24 PM
To: 'lawyer'
Cc: Анастасия Лимонова; Amanda N. Marston; Hope Hamilton; Holland & Hart - eBay
Subject: Discovery Deficiency Notice & Request to Meet & Confer / STUDYBAY / Opp. No. 91241109 / ANM, 78143.1682
Attachments: Response of Edutec Limited on 11.06.2019, Trademark Application Number: ... (12.1 MB)
Categories: Amanda

Dear Ms. Feygina,

We have reviewed Edutec’s revised and supplemented responses to eBay’s January 24, 2019 discovery requests. **Based on the numerous issues, we request a phone conference on Monday, July 1, 2019 to discuss some of the most pressing concerns, some of which are outlined below.**

It appears Edutec’s responses include inaccurate statements, including, for instance:

- Interrogatory 1: You state that “the services offered by Applicant are not similar to the services offered by eBay.” Yet, we have found an instance where your representative [described StudyBay](#) as a “freelance



marketplace,” which is identical to eBay’s services:

- Interrogatory 21: You state that you have never received complaints about your services other than those not satisfied with individual assignments. First, we did not limit the request to exclude such complaints, yet no information/documents for those complaints was provided. Second, in our brief research, we found numerous complaints (see, e.g., [here](#) and [here](#)), many to which Edutec responded, addressing the ethics of your services:



"This is ethically wrong - Someone shut this down."

☆☆☆☆☆ 4/14/17

Students - you should be ashamed of yourself for cheating on your papers. And, writers, you should be ashamed for helping students to cheat! This is ethically wrong. Please stop.

Helpful? 5 | Comment | Send thank you

Response from Ashley B., StudyBay Representative

Responded on 5/3/17

Dear Concerned T. Thank you for your feedback regarding our company and business as well.

We are sure that for someone your feedback will be useful. Have a great day!



"Wrong - students need to do their own work"

☆☆☆☆☆ 5/16/17

I initially signed up to write for students since I am an accomplished writer/author, but I realized writing FOR students does not do them any good, they need to do the research and do their own writing, with help, but NOT done for them. I believe it's called cheating. Having papers written for them won't help them on the job, if they can't write a decent paper for their school paper how in the world will they succeed in a job setting where writing is part of it, unless they choose a job that does not require writing! I feel sorry for students who want/need a writer to do their hard work for them. I am happy to help any student with their paper as a freelance writer but I won't do it for them. Teachers should give a failing grade on papers to students who have a writer do their papers. Of course, how are the teachers going to know? I wonder if parents know their student is doing this?

Helpful? 3 | Comment | Send thank you

Response from Ashley B., StudyBay Representative

Responded on 7/7/17

Hello, dear Susan! Thank you for the interesting and resourceful post. Although it might not be related to a quality of the services provided by Studybay, we are sure that it will be useful for many people.

Other complaints address the high service fees, writer complaints, and excessive SPAM-style messaging from writers, none of which are limited to one assignment. Based on Edutec's responses to many of these complaints, it is clear Edutec has knowledge of complaints that is has not disclosed.

- RFP 17: You stated your services are provided on three websites: <http://studybayhelp.co.uk>; <http://studybay.com>; and <http://studybay.com.br>. We found at least one additional website: <https://thestudybay.com/>. Therefore, it is unclear what other websites, social media pages, etc. have been withheld despite eBay's requests.

Please let us know when you are available to discuss these matters and others on Monday, or suggest additional dates and times when you are available.

Best,
Amanda

Amanda Marston

Associate

Phone: 303-473-2712

Email: anmarston@hollandhart.com



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-----Original Message-----

From: Анастасия Лимонова <a.limonova@author24.ru>

Sent: Tuesday, June 11, 2019 12:51 PM

To: Amanda N. Marston <ANMarston@hollandhart.com>; Hope Hamilton <HHHamilton@hollandhart.com>; 'lawyer' <lawyer@studybay.com>

Subject: Response of Edutec Limited on 11.06.2019, Trademark Application Number: 91241109, part 2 (Attachments)

Dear Mr. Hamilton,

We kindly send you the Attachments No. 1-19 to the response of Edutec Limited to your request dated on March 28,2019.

Best regards,

Limonova Anastasia
Edutec law team

Exhibit 7

From: Barbara Adams
Sent: Tuesday, July 16, 2019 4:31 PM
To: 'lawyer@studybay.com'
Cc: Amanda N. Marston (ANMarston@hollandhart.com); Hope I. Hamilton (HIHamilton@hollandhart.com)
Subject: eBay, Inc. v. Edutect Limited Discovery Deficiencies / STUDYBAY / Opp. No. 91241109 / 78143.1682 ANM
Attachments: Letter_MFeygina re Disc Deficiencies 7-16-19.pdf

Tracking:	Recipient	Delivery
	'lawyer@studybay.com'	
	Amanda N. Marston (ANMarston@hollandhart.com)	Delivered: 7/16/2019 4:31 PM
	Hope I. Hamilton (HIHamilton@hollandhart.com)	Delivered: 7/16/2019 4:31 PM

Mariia Feignia:

Please see attached letter from Hope Hamilton regarding the above-referenced matter. If you have any questions or comments, please contact Ms. Hamilton (hihamilton@hollandhart.com) and/or Amanda Marston (anmarston@hollandhart.com). Thank you.

Barbara A. Adams

Legal Secretary, Holland & Hart LLP
1800 Broadway, Suite 300, Boulder, CO 80302
T 303-473-4814 F 303-473-2720



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail.

July 16, 2019

VIA EMAIL (lawyer@studybay.com)

Ms. Mariia Feygina
Angelica Court No. 4
Giuseppe Cali Street,
Ta Xbiex, XBX 1425, Malta

Re: *eBay, Inc. v. Edutec Limited Discovery Deficiencies*

Dear Ms. Feygina:

Thank you again for participating in the July 12, 2019 call. As discussed on our call, we found several deficiencies in Edutec Limited's ("Applicant"), Supplemented Responses and Objections to eBay, Inc.'s First Set of Interrogatories ("Rog") and Requests for Production of Documents ("RFP") (together with Rog, "Requests").

We address eBay's specific concerns below that were raised on the call; however, eBay reserves its right to follow up concerning additional matters as may be necessary. eBay also reserves its right to supplement this deficiency letter and further object to any insufficient responses once eBay has received and had an opportunity to review Applicant's document production.

Verified Responses Required

As we discussed, the supplemental interrogatory responses provided by Applicant remain unverified. As a reminder, under Rule 33 of the Federal Rules of Civil Procedure, the person responding to the interrogatories must attest under oath and penalty of perjury that the answers provided are true and correct. They must then sign and date under this statement: I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

New U.S. Counsel Requirement

As a reminder, beginning August 3, 2019, all foreign-domiciled trademark applicants and parties before the Trademark Trial and Appeal Board must have a U.S.-licensed attorney represent them at the USPTO. Our understanding is that the Board will suspend proceedings until Applicant retains a U.S.-licensed attorney, but it is unclear when and how that will take place. For more information on this rule change, please see <https://www.uspto.gov/trademark/laws-regulations/trademark-rule-requires-foreign-applicants-and-registrants-have-us>.

Illegible Documents

As mentioned on our call, several pages of the produced documents are illegible. You stated Applicant would provide more readable versions. The most difficult pages to read are Bates Nos. STUDYBAY000020-000022 STUDYBAY000024, STUDYBAY000049. As a reminder, you also indicated you would provide date stamps and URLs for each document.

No Affiliation with Third-Party Review Sites

As discussed, eBay requested information regarding consumer complaints in Rog No. 21 and the selection and clearance of STUDYBAY in Rog No. 1. You stated that Applicant does not have a relationship with the third-party sites and cannot confirm that the persons acting as representatives for Applicant were/are affiliated with Applicant.

You indicated that you have chosen not to ask the third-party sites to cease use of representatives claiming to be from Applicant and offered to provide documents and information from your internal support team regarding complaints by consumers, whether about individual assignments or the platform overall. We will be subpoenaing these third-party websites for all information pertaining to the Studybay representatives. If we learn that the persons claiming to be representatives are in fact affiliated with Applicant, we will require additional information and/or documents, and we will seek sanctions.


Supplemental Responses Requested

For each request below, please provide additional documents or responses.

Although Applicant has supplemented its responses, many remain incomplete, evasive, or provide illegible documents. A representative sample of such incomplete responses are detailed below.

- **RFP No. 17:** eBay requested information about the selection, adoption, development, and registration of **any** domain names using STUDYBAY. Applicant indicated they own and use STUDYBAY.COM, STUDYBAY.COM.BR, and STUDYBAYHELP.CO.UK. We found at least one additional domain name that was not disclosed to eBay, namely THESTUDYBAY.COM.

You stated on our call that Applicant does not own THESTUDYBAY.COM and is not affiliated with the owner, Mattias Industry LP, and you indicated you intend to enforce your rights against the owner of the domain. A quick online search indicates that not only are you aware of Mattias Industry LP, but that **you personally** are, in fact, the representative for Mattias Industry in connection with the GAMERSBAY application, which eBay has opposed in the EU and UK. See [here](#):

017967936 - Gamersbay [+ info](#) 

Gamersbay
Q

Trade mark information

Trade mark number **017967936**

Type **Figurative**

Filing date **11/10/2018**

Registration date

Nice Classification **36, 38, 42**

Trade mark status **Application opposed**

Basis **EUTM**

Reference **RSK97191T.EM**

Owner information

Owner ID number **957117**

Owner name **Mattias Industry LP**

Representative information

Representative ID num... **91607**

Representative name **Mariia Feigina**

Last publication

03/12/2018 **A.1**

Further, you have represented in the USPTO files that you are a director of Applicant. Based on this, it is clear that Applicant not only is aware of Mattias Industry LP but is likely an affiliate. We must insist you provide information on the use and ownership of THESTUDYBAY.COM.

- **RFP No. 28 and Rog No. 6:** eBay requested documents and information regarding whether the Applicant has received advice from counsel on the legality of providing services in which a student pays writers to write papers which students then turn in as their own work. You stated that Applicant only provides the marketplace on which the writers offer their services and the students purchase said services. You also said Applicant spoke with a U.S. attorney regarding whether the provision of this type of online marketplace was legal. Because you are relying on advice of counsel regarding the legality of such services, these opinions must be produced.

As defined in eBay's Requests for Production, Definition B, Communications are encompassed in the definition of Documents, and if the Communication is not reduced to writing, it should be Identified (as defined in First Set of Interrogatories, Definition C) by stating the parties to, the date of, and the substance of the Communication. Please produce all documents and information related to the referenced conversation or Identify the Communication.

- **Rog No. 16:** eBay requested information on the methods or mediums used to advertise the STUDYBAY mark. You indicated you would work with your marketing team to produce documents showing the various mediums on which you advertise STUDYBAY. Please provide internal, company documents showing all methods and mediums through which Applicant advertises STUDYBAY with clear date stamps and URLs.

- **Rog No. 17 and RFP No. 13:** eBay requested information on annual advertising and promotional expenditures. Although Applicant provided a response, the responses do not indicate if the numbers provided were global numbers or limited to the United States. Further, as discussed, eBay is entitled to the Documents and information underlying these numbers. Please indicate if these numbers are global or limited to the United States and provide all Documents on which Applicant relied to arrive at these numbers.
- **RFP Nos. 5, 6, and 16:** eBay requested Documents sufficient to identify each product or service that is, will be, or has been provided under the STUDYBAY mark, sufficient to show Applicant's marketing and promotion plans, and sufficient to show Applicant's continuous use since Applicant's inception to present. Applicant indicated it would provide Documents sufficient to show continuous use from inception to present and include marketing and advertising documents, internal documents, and corporate plans and discussions. Also, as discussed, this should include prior versions of the website and marketing materials that are no longer accessible by perusal of the current website.
- **RFP No. 20:** eBay requested information on any trademarks, service marks, trade names, Internet domain names, and U.S. applications or registrations that include the word "bay" and are owned by Applicant. Although Applicant provided one WHOIS document for STUDYBAY.COM, we have not received any documents for the other domain names or any other trademarks, service marks, and/or U.S. applications/registrations. Please provide Documents sufficient to show all trademarks, service marks, domain names, trade names, and U.S. applications/registrations that include the word "bay" and that are owned by Applicant.
- **RFP No. 31:** eBay requested all Documents related to previously disclosed opinions, memorandums, etc. Although Applicant provided eBay with some opinions, it did not disclose the opinion provided by Kilpatrick Townsend Stockton LLP, and stated this opinion is "private information and cannot be disclosed." You indicated on our call that the opinion of Kilpatrick Townsend Stockton LLP was written and that it was likely excluded on accident.

As defined in eBay's Requests for Production, Definition B, Communications are encompassed in the definition of Documents, and if the Communication is not reduced to writing, it should be Identified by stating the parties to, the date of, and the substance of the Communication. Therefore, please provide the Document or Identify the Communication.

- **RFP No. 32:** eBay requested Applicant provide all Documents identified, reviewed, or relied upon in preparing Applicant's discovery responses in this matter. Applicant produced a limited number of Documents, most of which do

not appear to be internal company documents. You agreed to review and to supplement Applicant's production.

- **RFP No. 9:** eBay requested information in connection with the channels of trade through which Applicant markets, offers, or sells Applicant's Services or in which Applicant intends to market, offer, or sell Applicant's Services. Applicant stated it would discuss this matter with the marketing team and provide Documents.
- **RFP No. 10:** eBay requested Documents sufficient to identify Applicant's consumers, and Applicant referred eBay to its Privacy Policy on its website, stating it did not analyze or systemize its consumers' information. As discussed, Applicant collects the country, region, city, IP address, and email address for all customers. You indicated that consumer information is housed in a database and that you will work with the marketing team to determine if a spreadsheet can be created that includes this information. If information cannot be made available from this database, we will need to revisit how Applicant can make this database available to eBay for inspection.
- **RFP No. 36:** eBay requested information on the number of users of Applicant's Services, specifically, the number of users in the United States. Applicant objected to this request stating it is irrelevant; however, as we discussed, this information is highly relevant to the likelihood of confusion and dilution analyses. You indicated that you would review the matter; and we reiterate our request that Applicant produce Documents showing the number of users of Applicant's Services.
- **RFP No. 1:** As a reminder, pursuant to Rule 26 and in response to RFP No. 1, Applicant is obligated to produce all documents identified in its Initial Disclosures and upon which it intends to rely in this proceeding. Applicant's current production is deficient; and we trust that addressing the numerous deficiencies outlined above will rectify certain gaps. However, to the extent that Applicant intends to rely on any other documents or information in defense of this Opposition, it must be produced.

We look forward to resolving these matters and to receiving Applicant's complete responses to eBay's First Sets of Request for Production of Documents and Interrogatories. For the purposes of keeping matters moving, we kindly request supplemental responses and documents be produced by no later than **July 31, 2019**. If this date is not workable, we ask that you provide a date certain by which Applicant will supplement its written responses and complete its document production.

Sincerely,



Hope Hamilton
Holland & Hart LLP

Exhibit 8

From: Hope Hamilton <HIHamilton@hollandhart.com> on behalf of Holland & Hart - eBay <eBay@hollandhart.com>
Sent: Monday, August 5, 2019 2:32 PM
To: lawyer@studybay.com
Cc: Amanda N. Marston; Hope Hamilton
Subject: RE: eBay, Inc. v. Edutect Limited Discovery Deficiencies / STUDYBAY / Opp. No. 91241109 / 78143.1682 ANM
Attachments: Letter_MFeygina re Disc Deficiencies 7-16-19.pdf

Dear Mariia,

We write to follow up on our discovery deficiency letter of July 16 (attached), to which we have not received a response. If we do not receive a substantive response by August 9, we will proceed with filing a motion to compel.

Regards,
-Hope

Hope Hamilton
Holland & Hart LLP
One Boulder Plaza
1800 Broadway, Suite 300
Boulder, Colorado 80302
Phone (303) 473-4822
Fax (303) 416-8842
E-mail: hihamilton@hollandhart.com



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From: Barbara Adams
Sent: Tuesday, July 16, 2019 4:31 PM
To: 'lawyer@studybay.com' <lawyer@studybay.com>
Cc: Amanda N. Marston (ANMarston@hollandhart.com) <ANMarston@hollandhart.com>; Hope I. Hamilton (HIHamilton@hollandhart.com) <HIHamilton@hollandhart.com>
Subject: eBay, Inc. v. Edutect Limited Discovery Deficiencies / STUDYBAY / Opp. No. 91241109 / 78143.1682 ANM

Mariia Feignia:

Please see attached letter from Hope Hamilton regarding the above-referenced matter. If you have any questions or comments, please contact Ms. Hamilton (hihamilton@hollandhart.com) and/or Amanda Marston (anmarston@hollandhart.com). Thank you.

Barbara A. Adams
Legal Secretary, Holland & Hart LLP
1800 Broadway, Suite 300, Boulder, CO 80302

T 303-473-4814 F 303-473-2720



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