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Form TM - 5

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THE TRADE MARKS ACT, 1999

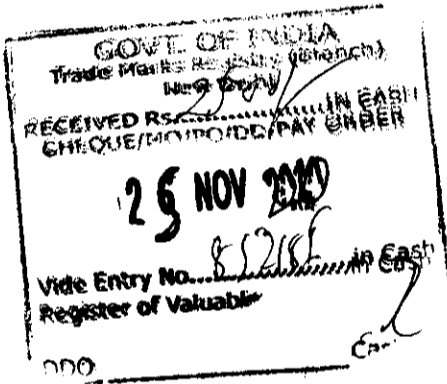
Notice of Opposition to Application for registration of
a Trade Mark or a Collective mark or a certification mark
[Sections 21(1), 64, 66, 73, Rule 47(1), 131(1) and 138(1)]

(To be filed in triplicate)

IN THE MATTER OF Application No.
1813053 in class 42 for the Mark
FOODIEBAY.COM in the name of Mr.
Deepinder Goyal trading as Mr. Deepinder
Goyal of the address 100/13, Silver Oaks, DLF
City Phase 1, Gurgaon, Harayana.

and

IN THE MATTER OF Opposition thereto by
eBay Inc.



We, eBay Inc., a Delaware Corporation of the address 2145 Hamilton Avenue, San Jose, California 95125, U.S.A hereby give notice of our intention to oppose the registration of Application No.1813053 in Class 42 for the mark FOODIEBAY.COM in the name of Mr. Deepinder Goyal trading as Mr. Deepinder Goyal of the address 100/13, Silver Oaks, DLF City Phase 1, Gurgaon, Harayana, advertised in Trade Marks Journal No. 1444 dated July 16, 2010 made available to the public on July 26, 2010 at page no. 9427.

The grounds of opposition are as follows:

1. The Opponent (the term herein which includes its successors, assignees and its predecessors in interest) operates the online market place located at www.ebay.com, which currently has over 233 million registered users and hosts an on-line service featuring over 100 million items offered for sale or bid on its website, in over 50,000 different categories of goods and services, including but not limited to clothing, computers, collectibles, DVD's, jewellery, automobiles, consumer electronics, antiques, art, books, music, musical instruments, real estate, sporting goods, toys and video games having its address for service in India at Lall & Sethi Advocates of the address D-17 South Extension Part II, New Delhi - 110049.

2. The Opponent is the registered proprietor of the earlier trademark EBAY and registrations for the same have been renewed from time to time and are valid and subsisting on the Register of Trade Marks. The details of the same are as follows:

Trade Mark	Registration Date	Registration No.	Class	Goods and Services
EBAY	April 13, 1999	851310	25	Clothing namely t-shirts, sweatshirts, jackets, caps and visors.
EBAY design & word	April 13, 1999	851306	25	Clothing namely t-shirts, sweatshirts, jackets, caps and visors.
EBAY	November 10, 2003	1248688	42	Computer programming and services that cannot be classified in other classes, namely providing an online, interactive bulletin board for the posting, promotion, sale and resale, of items via global computer network, and for the collection and dissemination of statistical, quantifiable and qualitative information regarding the sale and resale of items via a global computer network.
EBAY design and word	November 10, 2003	1248689	42	Computer programming and services that cannot be classified in other classes, namely providing an online, interactive bulletin board for the posting, promotion, sale and resale, of items via global computer network, and for the collection and dissemination of statistical, quantifiable and qualitative information regarding the sale and resale of items via

				a global computer network.
EBAY	November 10, 2003	1248690	35	Advertising business management, business administration and office functions, online trading service in which seller posts items to be sold at a set price or alternatively in an auction style format where bidding is done electronically and providing a venue for evaluating feedback and ratings of sellers goods and services, the value and price of seller goods, buyers and sellers performance, delivery and overall trading experience in connection therewith.
EBAY design and word	November 10, 2003	1248691	35	Advertising business management, business administration and office functions, online trading service in which seller posts items to be sold at a set price or alternatively in an auction style format where bidding is done electronically and providing a venue for evaluating feedback and ratings of sellers goods and services, the value and price of seller goods, buyers and sellers performance, delivery and overall trading experience in connection therewith.
EBAY	October 06, 2003	1241397	41	Entertainment services, namely providing a radio

				program in the field of trading and auction style trading and a television program in the field of trading and auction style trading, training and informational services featuring information about auction style trading and online retail sales.
EBAY	November 10, 2003	1248686	38	Telecommunications, in particular, telecommunications services, namely the electric, transmission of data and information, paging services, providing an online, interactive bulletin board for the transmission of messages among computer users concerning trading, and the purchase and sale of items via a global computer network.
EBAY	April, 13, 1999	851307	9	Pre-recorded audio tapes, CD-ROM, discs and video tapes featuring information in the field of hobbies collecting and auction, computer software, for use in the search and retrieval of computerized information on hobbies, collectibles auctions and a wide variety of products accessed from global information network and other network systems.
EBAY design and	November 10, 2003	1248687	38	Telecommunications, in particular,

word				telecommunications services, namely the electric, transmission of data and information, paging services, providing an online, interactive bulletin board for the transmission of messages among computer users concerning trading, and the purchase and sale of items via a global computer network.
EBAY	April 13, 1999	851308	14	Clocks, watches and jewelry
EBAY	April 13, 1999	851309	16	publications, namely, books and magazines concerning hobbies, collectibles, auctions and a wide variety of products, paper and stationery items, namely wrapping paper, greeting cards, write on /wipe off memo boards, memo pads, paper table cloths, paper napkins, paper placements, paper party decorations, paper postcards, stationery, playing cards, address books, personal diaries, pens, pencils, erasers, desk top organizers, desk basket for desk accessories, desk file trays, desk top stationery cabinets, desk sets, posters, bumper stickers, calendars and decorative stickers and decals.
EBAY	April 13,	851303	9	Pre-recorded audio tapes,

	1999			cd-rom, Discs and Video tapes featuring information in the field of Hobbies, collecting and auctions, computer software for use in the search and retrieval of computerized information on Hobbies, Collectibles, Auctions and wide variety of products accessed from Global Information Networks and other Network Systems.
EBAY & design	April 13, 1999	851304	14	Clocks, watches and jewellery
EBAY & design	August 07, 2000	945693	28	Games, toys and playthings; ornaments and toy figurines; soft sculpture toys; plush toys; toy miniature cars
EBAY & design	October 06, 2003	1241399	41	Telecommunications, in particular, telecommunications services, namely the electric transmission of data and information; paging services, providing an online, interactive bulletin board for the transmission of messages among computer users concerning trading, and the purchase and sale of items via a global computer network
EBAY ADCONTEXT	April 26, 2006	1448358	35, 38 and	[CLASS : 35] Advertising and promotion services and

			42	<p>related consulting; preparation of custom or non-custom advertising for businesses for dissemination via the web; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet web sites; online trading services to facilitate the sale of goods and services by others via a global communications network and providing evaluative feedback and ratings of sellers goods and services, the value and prices of sellers goods and services, buyers and sellers performance, delivery, and overall trading experience connection therewith.</p> <p>[CLASS : 38] Telecommunications services, namely, the electronic transmission of data and information; providing online communications links which transfer web site users to other local and global web pages.</p> <p>[CLASS : 42] Providing customized online web pages featuring</p>
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				<p>user-defined information, which includes search engines and online web links to other web sites; designing online web pages for advertising purposes.</p>
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The aforementioned registrations have been renewed from time to time and are valid and subsisting.

3. By virtue of the registration and by virtue of the provisions of Trade Marks Act 1999, the Opponent has the exclusive rights to use the Earlier Trade Mark *inter-alia* in respect of the goods / services for which they are registered. Additionally, by virtue of the registration and by virtue of the provisions of Section 31 of the Act, the registrations are prima facie evidence of their validity.
4. The Opponent is the prior adopter and user of the well known earlier trade mark EBAY in respect of all the aforementioned goods and services. The Opponent has been using the said earlier trade mark at least since 1995 in the United States of America and since the year 1997 in India, besides many other countries of the world.
5. Furthermore, by virtue of extensive sales and sales promotion activities carried out by the Opponent world-wide, including in India on its website ebay.in operated by its subsidiary eBay International AG, the earlier trade marks mentioned is exclusively associated with the Opponent and the Opponent alone and has acquired an enviable reputation and goodwill. The said earlier trade marks is a well-known trade marks in India and was a well-known trade marks on the date of the impugned application.
6. In addition to the above, in order to secure statutory rights in and to the earlier trade marks the Opponent has also procured registration/ applied for registration of the same in several countries of the world, including but not limited to Australia, Argentina, Brazil, Bulgaria, Chile, Canada, China, Colombia, Costa Rica, Czech Republic, European Union, Egypt, Germany, Hong Kong, Hungary, Iceland, Indonesia, Iraq, Israel, India, Japan, Kuwait, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Philippines, Pakistan, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Venezuela and Vietnam to name only a few.

7. In addition, the earlier trade marks of the Opponent mentioned herein above are known and recognized in the relevant section of the public *inter alia* by virtue of the promotion of the earlier trade marks by way of advertising and publicity.
8. Furthermore, by virtue of extensive sales and sales promotion activities carried out by the Opponent world-wide, including in India on its website ebay.in operated by its subsidiary eBay International AG, the earlier trade marks mentioned is exclusively associated with the Opponent and the Opponent alone and has acquired an enviable reputation and goodwill. The said earlier trade marks is a well-known trade marks in India and was a well-known trade marks on the date of the impugned application.
9. The Opponent wishes to oppose the trade mark forming subject matter Application No. 1813053 (hereinafter "impugned mark") *inter alia* in respect of the all services for which the Applicant is seeking registration.
10. The impugned mark is neither capable of distinguishing nor adapted to distinguish the Applicant's services from the good and / or services of any other person including the Opponent herein. The impugned mark does not satisfy any of the conditions of Section 9(1)(a) of the Trade Marks Act, 1999.
11. The Applicant is attempting to register a trade mark which is of such nature as to deceive the public and cause confusion. The registration of the impugned mark is therefore liable to be refused registration under the provisions of Section 9(2)(a) of the Trade Marks Act, 1999.
12. The Application of the impugned mark is deceptively and confusingly similar with the earlier trade marks of the Opponent mentioned above and the use of the impugned mark would without due cause take unfair advantage of and be detrimental to the distinctive character and repute of the earlier trade marks and is liable to be refused registration under Section 11(2) of the Trade Marks Act, 1999.
13. The use of the impugned mark for which the Applicant is seeking registration is liable to be prevented by virtue of the law of passing off and is liable to be refused registration under Section 11(3) of the Trade Marks Act, 1999.
14. The Opponent, in its capacity as the owner of the earlier trade mark does not wish to consent to the registration of the impugned trade mark and the Applicant is therefore not entitled to rely upon Section 11(4) of the Trade Marks Act, 1999.
15. The user as claimed in the impugned application is denied and the Applicant is put to strict proof of its claimed use since July 15, 2008. Further, since the application for the Impugned mark has indeed been filed with dishonest intentions and for the sole

purpose of riding upon the goodwill and fame of the Opponent, the Impugned Mark is liable to be refused registration, despite use, if any. The Applicant cannot, therefore, claim registration under Section 12.

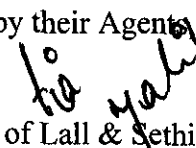
16. The adoption of the impugned mark by the Applicant is not honest and the Applicant cannot therefore claim to be the proprietor of the impugned mark and registration is therefore liable to be refused under Section 18(1) of the Trade Marks Act, 1999. The Applicant is not entitled to claim registration under Section 12 either.
17. The adoption and use, if any, of the impugned mark by the Applicant being neither honest nor bona fide and the Applicant is therefore not entitled to claim registration under Section 11(10) of the Trade Marks Act, 1999.
18. The Applicant is not the proprietor of the impugned mark and the application is therefore contrary to the provisions of Section 18(1) of the Trade Marks Act, 1999.
19. The registration of the impugned mark in the name of the Applicant will be contrary to the provisions of Sections 9, 11 and 18 of the Trade Marks Act, 1999.
20. In view of the grounds set above, the Opponent prays that the Application under opposition be refused registration.
21. The Opponent also prays that the costs of the proceedings be awarded to the Opponent.

All communications in relation to these proceedings may be sent to the following address:

LALL & SETHI
D-17, South Extension – II
New Delhi – 110049

Dated this the 25th day of November, 2010.

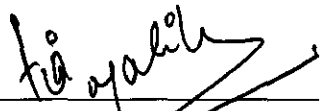
eBay, Inc.

by their Agents

of Lall & Sethi

VERIFICATION

I, Tia Malik, being the legal counsel for the Opponent state that the averments made herein are based upon the instructions received from the opponent.

Verified at Delhi on this the 25th day of November, 2010.



(signature of the verifier)

To

The Registrar of Trade Marks
Office of the Trade Marks Registry
At : **Delhi**