

1 RALPH J. SWANSON, CA STATE BAR NO. 67751
2 H. ANN LIROFF, CA STATE BAR NO. 113180
3 SHANNON N. COGAN, CA STATE BAR NO. 214976
4 BERLINER COHEN
5 TEN ALMADEN BOULEVARD
6 ELEVENTH FLOOR
7 SAN JOSE, CALIFORNIA 95113-2222
8 TELEPHONE: (408) 286-5600
9 FACSIMILE: (408) 998-5688
10 ralph.swanson@berliner.com
11 ann.liroff@berliner.com
12 shannon.cogan@berliner.com

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ATTORNEYS FOR PLAINTIFFS
WINDSOR AUCTIONS, INC. AND
JEWELRY AUCTIONS CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PVT

C 07 06454 PVT

13 WINDSOR AUCTIONS, INC., a Florida
14 corporation, and JEWELRY AUCTIONS
15 CORPORATION, a New Jersey corporation,

COMPLAINT FOR:

16 Plaintiffs,

(1) Violation of Robinson-Patman Act
15 U.S.C. §§13 *et seq.*;

17 v.

(2) Violation of Unfair Practices Act
California Business and Professions
Code § 17045;

18 EBAY INC., a Delaware corporation,

(3) Common Law Unfair Competition

19 Defendant.

(4) Breach of the Implied Covenant of
Good Faith and Fair Dealing

20 DEMAND FOR JURY TRIAL

21
22
23 Plaintiffs Windsor Auctions, Inc. and Jewelry Auctions Corporation (together,
24 "Plaintiffs") allege as follows:

25 **PARTIES**

26 1. Plaintiff Windsor Auctions, Inc. ("Windsor Auctions") is a Florida corporation
27 having its principal place of business at 111 Flagship Drive, Lutz, Florida 33549.
28

1 Auctions would sell jewelry domestically and internationally through eBay Live Auctions.
2 Plaintiffs commenced selling jewelry through Live Auctioneers and eBay Live Auctions. From
3 mid-2005 through 2006, sales for Windsor Auctions through eBay's Live Auctions exceeded
4 \$1.4 million.

5 11. Commencing in mid-2007, Plaintiffs realized that instead of enjoying increased
6 sales to a projected \$2.8 million for 2007, Plaintiffs' sales and revenues were decreasing
7 markedly.

8 12. While Plaintiffs' sales and revenue were decreasing, those of a competitor
9 increased dramatically. George Molayem runs a variety of businesses, including but not limited
10 to Hillstreet Jewelers, Paramount Auctions, and Jewelry Overstock Auctions, all of which
11 conduct live auctions through eBay Live Auctions. Mr. Molayem does not use the intermediary
12 services of Live Auctioneers; rather, he is a direct client of eBay.

13 13. When Plaintiffs did not receive a satisfactory explanation from eBay and Live
14 Auctioneers as to how Mr. Molayem was able to keep his sales items so prominently listed in
15 eBay's "core listings," Plaintiffs asked Mr. Molayem directly. Plaintiffs discovered that Mr.
16 Molayem had access to an auction time-duration tool (the "Batch Uploading Tool") that, when
17 manipulated, allowed him to upload auction items in batches, placing his sales items at the front
18 of eBay's "core listings," which appear first in sales listings on the website. Mr. Molayem's
19 manipulation of the Batch Uploading Tool allowed his items to be consistently placed at the
20 front of the "core listings," regardless of the ending time for his auctions.

21 14. The Batch Uploading Tool was not available to Plaintiffs, so Plaintiffs' items
22 were listed at or near the end of the total listings until just a few hours before the ending time.
23 Accordingly, Plaintiffs' listings were so buried as to be virtually invisible through much of the
24 duration of an auction, and that lack of visibility has had a dramatic negative effect on Plaintiffs'
25 sales.

26 15. On information and belief, eBay is aware of Mr. Molayem's manipulation of the
27 Batch Uploading Tool, initially secretly allowed Mr. Molayem to use the Batch Uploading Tool,
28 and now openly condones such use. This reckless approach by eBay has resulted in a

1 competitive advantage for Mr. Molayem and his eBay Live Auctions businesses, and a
2 concomitant competitive disadvantage for all other sellers not provided access to the Batch
3 Uploading Tool, including Plaintiffs.

4 **FIRST CAUSE OF ACTION**

5 **Robinson-Patman Act – 15 U.S.C. § 13 *et seq.***

6 16. Plaintiffs incorporate by reference paragraphs 1 through 15 inclusive, as if fully
7 set forth here.

8 17. The auctions hosted by eBay Live Auctions attract buyers and sellers throughout
9 the world, and eBay conducts commercial activities in interstate commerce. On information and
10 belief, George Molayem and his eBay Live Auction businesses sell jewelry in interstate
11 commerce. Plaintiffs also conduct jewelry sales in interstate commerce.

12 18. eBay's actions as alleged herein, including encouraging and condoning its direct
13 client's use of the Batch Uploading Tool to force sales items into the primary "core listings,"
14 while not making the Batch Uploading Tool available to all sellers, constitutes discrimination
15 with the effect of lessening, injuring, destroying, or preventing competition.

16 19. eBay's actions have injured Plaintiffs in that their sales and revenues have
17 declined substantially as a result.

18 20. eBay's actions have lessened, injured, destroyed, or prevented competition in that
19 Plaintiffs are unable to compete with Mr. Molayem in the area of live auction jewelry sales. Mr.
20 Molayem's items enjoyed preferential listing status, making Plaintiffs' items difficult to find and
21 therefore less likely to attract buyers.

22 **SECOND CAUSE OF ACTION**

23 **Unfair Practices Act – California Business and Professions Code § 17045**

24 21. Plaintiffs incorporate by reference paragraphs 1 through 20 inclusive, as if fully
25 set forth here.

26 22. Plaintiffs use eBay's live auctions services on like terms and conditions as Mr.
27 Molayem. eBay extended to Mr. Molayem a special privilege, the use of the Batch Uploading
28 Tool, which was not extended to Plaintiffs.

1 33. eBay has engaged in unfair dealing in connection with the agreement, by
2 providing the Batch Uploading Tool to Mr. Molayem but not to Plaintiffs.

3 34. Windsor Auctions reasonably expected that entering into the agreement with eBay
4 would put Windsor Auctions on equal footing with all other sellers using eBay Live Auctions.
5 eBay's actions have disappointed those reasonable expectations and frustrated the common
6 purpose of the agreement.

7 35. Plaintiffs have not attached to this pleading a copy of the agreement between
8 Windsor and eBay, because it contains a confidentiality provision. However, the agreement is
9 available, and this pleading can be amended to include the agreement.

10 **PRAYER FOR RELIEF**

11 **Wherefore, Plaintiffs pray:**

- 12 1. That this Court award Plaintiffs damages in a sum according to proof.
- 13 2. That this Court award Plaintiffs treble damages in a sum according to proof.
- 14 3. That this Court award Plaintiffs the costs of this action.
- 15 4. That this Court award Plaintiffs reasonable attorneys' fees and expenses.
- 16 5. That this Court grant such other and further relief as it should deem just.

17
18 **JURY DEMAND**

19 Plaintiffs demand a trial by jury.

20
21 DATED: DECEMBER 21, 2007

BERLINER COHEN

22
23 BY: Shannon N. Cogan

24 RALPH J. SWANSON
25 H. ANN LIROFF
26 SHANNON N. COGAN
27 ATTORNEYS FOR PLAINTIFFS
28 WINDSOR AUCTIONS, INC. AND
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