

**In the UNITED STATES DISTRICT COURT for the
SOUTHERN DISTRICT of INDIANA
INDIANAPOLIS DIVISION**

STUART SHOWALTER,)	
Plaintiff)	
)	
vs.)	DRAFT
)	
EBAY, INC.,)	
Defendant.)	
)	

**VERIFIED COMPLAINT FOR FRAUDULENT SOLICITATION AND TRANSFER
OF MONIES, FOR INJUNCTION, AND CLASS-ACTION DESIGNATION**

Comes now the Plaintiff, pro se, and tenders to the Court his Verified Complaint for Fraudulent Solicitation and Transfer of Monies, for Injunction, and Class Action Designation as follows.

PLAINTIFF

The Plaintiff is an individual residing in the State of Indiana. Plaintiff has been a “member” of eBay, the defendant, since 19 August 2010. Plaintiff is both a buyer and seller on eBay and has a positive feedback rating of 99.8%. His feedback score is 1827 at the time of this complaint. The feedback rating is computed by dividing the positive number of feedbacks by the total feedback. The feedback rating represents the total number of transactions between Plaintiff and other unique accounts. That is, Plaintiff has had transactions with 1827 different accounts on Defendant’s website. Plaintiff’s account has never been suspended by Defendant.

DEFENDANT

The Defendant is a United States corporation located and incorporated in the State of California. Defendant eBay provides an Internet based venue for individuals and business to engage in the exchange of goods through auction or set price, “Buy-It-Now”, listings. Defendant does not physically handle the goods. Defendant charges various fees for the listing of items onto its network and also fees for the completed sale of items. Some sellers have “stores” on the Defendant’s website for which they provide payment to Defendant at a set price based upon a menu of services to which they subscribe. Defendant occasionally promotes its services to members at a discounted rate.

JURISDICTION

Interstate commerce

COMPLAINT

1] Plaintiff has received various “special offers” from Defendant since becoming a member of Defendant’s online community in 2010. On 26 May 2015 Plaintiff received from Defendant, via email, a solicitation, herein the “Offer”, inviting him to open an “eBay Store.” The Offer, hereto attached as “Exhibit A”, was valid from 25 May 2015 through 31 May 2015. Plaintiff clicked through the link provided in the Offer and agreed to the Offer under the terms for a month-to-month subscription. Those terms included that Plaintiff would receive a discount of \$10.00 from the regular price of \$19.95 per month. The first partial month would be pro-rated from the time the Offer was accepted and subsequent months would be charged to the seller’s account for the upcoming month.

2] Also included in the Offer was that seller would be able to list for free. At other times displayed on Defendant's website and listing page, hereto attached as "Exhibit B", is the claim that Plaintiff may list up to 150 Buy-It-Now listings per month at no charge. Selling fees still apply but at a reduced rate from what Plaintiff paid before having an "eBay store".

3] On 27 May 2015 at 10:20:50 PDT Plaintiff received a confirmation from Defendant via email that his acceptance of the Offer had been received and the Store feature had been added to his account.

4] On 31 May 2015 Defendant generated an invoice for his account fees for the month of May 2015. Included in that invoice were entries for the store feature which were billed at \$3.22 and \$19.95 for the pro-rated month of May and the full month of June respectively. The invoice was delivered to Plaintiff via email on 03 June 2015.

5] On 10 June 2015 while listing items in his store the Plaintiff received a message from Defendant that his account had been restricted from listing additional items. A copy of that message is hereto attached as "Exhibit C". At that time Plaintiff had 41 active listings and no outstanding issues with buyers. Plaintiff was not charged for listing the items which was consistent with the terms of the Offer. Defendant indicated that it would contact Plaintiff via email with details about removing the restriction. As of the date of

this filing Defendant has yet to contact Plaintiff and provide further information about this issue or offer a resolution.

6] On 17 June 2015 after listing eight [8] items in his store Plaintiff again received a message from Defendant that his account had been restricted from listing additional items. A copy of that message is hereto attached as "Exhibit D". At that time Plaintiff had 42 active listings and no outstanding issues with buyers. Plaintiff was not charged for listing the items which was consistent with the terms of the Offer.

7] On 17 June 2015 Plaintiff sent a reply to the email received from Defendant in which Defendant solicited Plaintiff to purchase an "ebay store" subscription. Defendant responded with an automatic message indicating that it does not accept email replies from its solicitation. Plaintiff then contacted Defendant about the substantive issues of this complaint by using another contact method on Defendant's website. Defendant generated a response to that message which was received by Plaintiff's email account at 11:07:57 on the same day. The response indicated that Plaintiff had received Defendant's message. As of the date of filing Defendant has not contacted Plaintiff further about this issue.

8] On 18 June 2015 Plaintiff was able to pay for and list one item. Plaintiff then tested whether he would be able to list items for free using the Buy-It-Now option. Upon attempting to list one [1] item in his store Plaintiff received a message from Defendant

that his account had been restricted from listing additional items. A copy of that message is hereto attached as “Exhibit E”. At that time Plaintiff had 39 active listings and no outstanding issues with buyers. Plaintiff has established that Defendant has engaged in a deliberate and wilful deceptive business practice of soliciting a membership type fee with the promise of free services but then only making pay-per-use services available.

9] On 16 June 2015 Defendant withdrew from Plaintiff's Paypal account the sum of \$172.49 which included the \$3.22 and \$19.95 entries for the store feature. Although paypal does have a “dispute resolution” process, Paypal is a wholly owned subsidiary of Defendant and does not appear to be a neutral third-party arbiter of these disputes.

10] On 22 June 2015 Plaintiff tried to list an item and although he was told that he “qualified for a free insertion fee” he again received a message from Defendant that his account had been restricted from listing items. A copy of that message is hereto attached as “Exhibit F”.

11] As shown in Exhibit C, by its own admission Defendant has a policy of “occasionally plac[ing] limits on accounts in order to help keep our community safe. This limit isn't a reflection on you -- the same **limits apply to many sellers.**” [emphasis added]

12] Plaintiff claims and alleges the Defendant knowingly or should have known and had a fiduciary responsibility to ensure that its network accurately billed the Plaintiff and was capable of providing and did actually provide the services to Plaintiff as described in the Offer and for which Defendant was financially compensated through a direct withdrawal of monies from Plaintiff's Paypal account.

RELIEF

13] Plaintiff seeks as relief reimbursement of any and all monies paid to or those received by Defendant in the future from Plaintiff for the services contained in the Offer for which Plaintiff was or may be subscribed to at this time pursuant to the Offer.

14] Plaintiff further seeks to enjoin the Defendant from sending additional solicitations or offers to its members without prior approval of the Court with the Court's satisfaction that the Defendant is capable of and will deliver the services at the price promised.

15] Plaintiff additionally seeks that before the Court authorizes transmittal of any offer by Defendant that Defendant intends to send to its members that Defendant be required to post a bond with the Court in an amount equal to the average cost to each member for the services offered in any solicitation multiplied by the total number of members to which the solicitation is to be sent.

16] Finally, Plaintiff seeks as relief that any payment processing service that Defendant uses to collect fees from its users which Defendant maintains a financial

interest in be required to employ a neutral third-party to resolve disputes between Defendant and its users.

CLASS ACTION STATUS

17] As noted in ¶11 Defendant applies this fraudulent practice “to many sellers.” Plaintiff believes that he is unlikely to be a party of one and that other members of Defendant have also been defrauded by the Defendant. Plaintiff intends to make a discovery request to Defendant for billing and listing data on all accounts to which the Offer was accepted. Plaintiff seeks that this Complaint be granted class-action status upon the showing that one or more members who have accepted Defendant’s Offer were billed at a rate higher than that stated in the offer or whose account was restricted from placing free listings in aggregate at less than the total stated in the Offer.

VERIFICATION

I affirm under the penalties of perjury that the foregoing representations are true to the best of my belief

and knowledge.

So submitted this _____ day of June 2015.

Stuart Showalter, Plaintiff