



September 3<sup>rd</sup>, 2015

John J. Donahoe, CEO  
**eBay Inc.**  
2065 Hamilton Ave  
San Jose, CA 95125

Re: Advertisements “herbal potpourri” products and for pre-branded incense bags

Dear Mr. Donahoe:

We are writing to you to urge your company to remove all advertisements on your website for so called “herbal potpourri,” products and for small pre-branded, Mylar incense bags. As you know, over the past several years several state governments and the federal government have been taking action against the threat posed by synthetic cannabinoids. These drugs, also known as synthetic marijuana, are artificial chemicals that mimic many of the effects of Tetrahydrocannabinol (THC), the main active ingredient in marijuana, on the human brain. While these drugs may induce feelings similar to those caused by marijuana, they also have extremely negative effects. Health officials have indicated that users are at an elevated risk of heart attacks or a seizures and that these drugs can cause extreme paranoia which can manifest itself into fits of violence, putting members of the public beyond the user in danger. We are working on legislation in New York State to criminalize the sale of these drugs and punish stores that sell them with heavy fines and the loss of a number of business licenses. This campaign to crack down on businesses that deal in these drugs can’t be successful without the support of responsible retailers.

The preferred method of selling these illegal substances is by claiming that the product is “herbal incense,” or “potpourri.” Dried plants and herbs are sprayed with these synthetic chemical and then sold in individual Mylar bags. These bags are brightly colored and bear a massive number of different brand names. Local law enforcement recently conducted a sting

operation on a number of local stores in the New York City area that were found to be selling this dangerous drug. These stores were using a variety of different brand names for these illegal products. One of the brand names being used was “Geeked Up,” a brightly yellow bag using a character face very similar to that of the children’s cartoon SpongeBob Squarepants. To our dismay, an online search of ads on eBay uncovered two advertisements for this product. One of these advertisements then linked a user to a wide range of similar products bearing names like Scooby Snax (which bears the image of Scooby Doo, a character trademarked by Hanna Barbera, a subsidiary of Universal Pictures), or Blue Giant, bearing a character identical to that pictured on the ‘Black Giant’ bag of synthetic marijuana uncovered by Senator Klein’s office undercover investigation, and one labeled ‘OMG’ bearing the Disney copyrighted Dopey the Dwarf on its cover.

All these products proclaim their legality and the packaging claims that the contents are free of any illegal substances. This is a difficult claim to substantiate when using a different search term, this time for “incense bags.” We found hundreds of advertisements for pre-branded small plastic bags on your site. One ad on your website offers to sell 1,000 ready to use bags labeled “Geeked Up.” We also found bags bearing the name of another drug packet our investigation found, “Tropical Punch Smacked,” among the multiplicity of brands being sold. Someone could use eBay to purchase these thousands of bags, fill them with whatever product they wanted, including illegal drugs, and then go right back and advertise them on eBay for sale in packages proclaiming their complete legality.

eBay’s own rules and guidelines prohibit the sale of drugs and drug paraphernalia. The rules additionally state that it’s okay to describe an herbal product by its common name, as long as the seller does not include any language that described the effects of the substances as mimicking an illegal substance like marijuana. These ads claim they are for herbal products, but provide absolutely no information, either using the scientific names or the common names, for what herbs are in fact included. Is it credible that someone would seek out an herbal potpourri and have no interest whatsoever in what herbs were included? There is no legal problems with selling actual herbs, so what validity is there in hiding the ingredients? Also questionable is the act of selling empty branded bags. Why would the owner of a brand allow strangers the ability to use their own packaging, thus losing all control of what may in fact be in these bags. This kind of sale makes no sense, other than as a form of drug paraphernalia which allows individual seeking to sell illicit substance the ability to brand their drugs with a well know symbol. In addition your rules and guidelines also ban advertisements that violate the trademark or copyright rights of other companies. As we noted, several of these bags include images that infringe on the copyrights of a number of corporations. Our offices strongly contend that these advertisements clearly violate eBay’s rules and guidelines.

In conclusion, we urge you to take immediate steps to remove these questionable and dangerous postings from your website and to take all steps necessary to prevent such advertisements from being posted on eBay in the future. We appreciate your response to this inquiry at your earliest convenience and we thank you for your consideration.



Senator Jeffrey D. Klein  
Independent Democratic Conference Leader  
Senate Coalition Leader



Assemblyman Mark Gjonaj  
NY S Assembly District 80



Councilman Ruben Wills  
New York City Council District 28



Melissa Mark-Viverito  
Speaker  
New York City Council



Councilman Ritchie Torres  
New York City Council District 15



Councilman Daniel Garodnick  
New York City Council District 4