

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

**OSVALDO A. IZQUIERDO COLON,**  
an Individual, and d/b/a **BEST DEAL**  
**PERFORMANCE,**

Plaintiff,

vs.

**INNOVATE! TECHNOLOGY, INC.,**  
a/k/a **INNOVATE MOTORSPORTS,** a  
California Corporation,

Defendant.

Case No.: 07-21349 CIV-KING-  
GARBER

**DEFENDANT'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(7)**  
**AND FED. R. CIV. P. 19(A) OR IN THE ALTERNATIVE,**  
**TRANSFER VENUE PURSUANT TO 28 U.S.C. SECTION 1404(A)**

**ORAL ARGUMENT REQUESTED**

Defendant Innovate! Technology, Inc. ("ITI") moves that this Court dismiss Plaintiff Osvaldo A. Izquierdo Colon's ("Colon") Complaint under Fed. R. Civ. P. 12(b)(7) and 19(a). Alternatively, ITI requests that the Court transfer the case to the U.S. District Court for the Northern District of California under the doctrine of *forum non conveniens* [28 U.S.C. § 1404(a)].

According to Colon's Complaint, he seeks: (1) monetary damages for ITI's allegedly wrongful acts; (2) a declaratory judgment that Colon's sale of ITI's products are lawful, protected by the First Amendment, and does not infringe ITI's intellectual property rights; and (3) an injunction prohibiting ITI from further interfering with the sale of Colon's products and requiring ITI to rescind its notices of claimed infringement with eBay, Inc. of San Jose, California ("Ebay"), and to authorize eBay to reinstate Colon's account. Since (1) ITI will likely have to join Ebay as a

necessary and indispensable party under Rule 19(a) so that it can properly defend against Colon's claims; (2) only Ebay can reinstate Colon's Ebay account; and (3) both ITI and Colon are precluded from suing Ebay outside of California, the instant case must be dismissed under Fed. R. Civ. P. 12(b)(7) and 19(a). Otherwise, duplicitous, simultaneous litigations may reside in Federal District Courts on each side of the country, wasting the parties' resources, as well as those of the respective Courts, and taxing the economies of the witnesses.

Alternatively, regardless whether ITI can join Ebay as a party in this judicial district, the Northern District of California is a more convenient forum to litigate this matter than the Southern District of Florida. The convenience of the parties and potential witnesses, ITI's difficulty and cost in obtaining witnesses, the relative ease of access to sources of proof, the location of where the underlying events occurred, and the availability of the alternative forum all weigh heavily in favor of transferring the case out of this judicial district.

This motion is fully supported by the Memorandum of Points and Authorities below, and the accompanying Statement of Facts.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. BACKGROUND**

#### **A. ITI's Business**

ITI develops, markets, manufactures, and supports universal digital tuning tools for internal combustion engines and is based out of Southern California.<sup>1</sup> ITI's core technologies include both patented and patent-pending digital circuits, as well as copyrighted software that give it a superior advantage over analog designs used mostly by its competitors.<sup>2</sup> ITI's product lines include wideband air/fuel ratio meters, sensors, gauges, data acquisition systems, and software.<sup>3</sup>

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<sup>1</sup> Statement of Facts at 1.

<sup>2</sup> *Id* at 2.

<sup>3</sup> *Id* at 3.

ITI sells its products exclusively through authorized distributors and retailers.<sup>4</sup> ITI's Warehouse Distributor and Dealer Agreements govern the relationship between ITI and its distributors and retailers.<sup>5</sup> There are three main elements to the Agreements. First, ITI sells its products only via authorized distributors and retailers.<sup>6</sup> These distributors and retailers comply with ITI's policy of Minimum Advertised Pricing ("MAP").<sup>7</sup> Second, all retailers must respect ITI's patent, trademark and copyright ownership regarding ITI's products.<sup>8</sup> In particular, ITI licenses its software used with and within, its equipment only to end users that purchase the product from authorized distributors and retailers.<sup>9</sup> Third, ITI tracks the sales of its products using serial number stickers that are attached to each product sold.<sup>10</sup> The removal of any serial numbers violates the terms of the Agreements and precludes ITI from tracking which distributor sold the product to a retailer, who in turn, sold it to an end user.

In sum, ITI requires these policies to allow its authorized retailers to profit from the sale of ITI's products.<sup>11</sup> Absent ITI's policies, if unauthorized dealers sold ITI's products at prices below the MSRP or in violation of ITI's Intellectual Property rights, ITI's authorized retailers could not compete with those unauthorized dealers selling well below MSRP and ITI would go out of business.<sup>12</sup>

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<sup>4</sup> *Id* at 4.

<sup>5</sup> *Id* at 5.

<sup>6</sup> *Id* at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id* at 7.

### B. Ebay's Verified Rights Owner Policy ("VERO")

ITI agrees with most of how Colon described Ebay's VERO program. Ebay established a policy to help resolve disputes between product manufacturers such as ITI, and internet dealers to qualify for the safe harbor provision of the Digital Millennium Copyright Act ("DMCA").<sup>13</sup> When Ebay receives a Notice of Claimed Infringement of copyright from the copyright owner, Ebay immediately removes the allegedly infringing material under the presumption that the owner made the request in good faith.<sup>14</sup> Ebay's policy, however, dictates that upon receiving a Counter-Notice from the alleged infringer, Ebay explicitly states that it will immediately reinstate the alleged infringer's auction.<sup>15</sup> And Ebay will not remove the auction unless within ten (10) days the copyright owner can provide notice to Ebay that there is a pending legal action to restrain the alleged infringer from continuing to post the allegedly infringing material, or the copyright owner consents to its removal.<sup>16</sup>

Ebay extends its policy for other alleged Intellectual Property rights as well, such as patents and trademarks. It is important to know that once the alleged infringer files a counter-notice to reinstate its auction on Ebay, the rights owner has no authority to remove or suspend an alleged infringer's Ebay account. Only Ebay can decide to remove or suspend an Ebay account and only Ebay can ultimately decide to reinstate it, all of which underscores Ebay as a necessary and indispensable party under Rule 19(a).

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<sup>12</sup> On June 28, 2007, the US Supreme Court ruled that manufacturers have the right to sell its products at the retail level at a minimum price. *See generally, Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 2007 WL 1835892.

<sup>13</sup> SOF at 8.

<sup>14</sup> *Id* at 9.

<sup>15</sup> *Id* at 10.

<sup>16</sup> *Id* at 11.

### C. ITI and Colon's Conduct

ITI makes every effort to protect its Intellectual Property Rights as well as the integrity of its MAP program. On April 12, 2007, ITI filed a Notice of Claimed Infringement with Ebay against Colon.<sup>17</sup> The Notice claimed that ITI believed in good faith that by selling its products through Ebay auctions, Colon was infringing its Intellectual Property rights.<sup>18</sup> When Ebay received the Notice, it removed Colon's auction and sent Colon emails notifying him that it cancelled his auctions due to ITI's Notice.<sup>19</sup>

On April 12, 2007, Colon contacted ITI apparently in an attempt to learn why ITI sent its notice of claimed infringement to Ebay.<sup>20</sup> Mr. Scott Breckenridge of ITI informed Colon that ITI sent the notice because Colon was not an authorized dealer and by selling ITI's product, Colon infringed upon ITI's Intellectual Property rights and violated its policy of selling its products retail below a minimum price.<sup>21</sup> Mr. Breckenridge then referred Colon to ITI's "About Me" page on Ebay that provides a more detailed explanation of possible reasons why ITI may request that Ebay terminate an auction.<sup>22</sup>

On or about April 17, 2007, Colon sent Ebay a Counter-Notice Regarding Removed Listing.<sup>23</sup> The Counter-Notice alleged that Colon did not infringe any Intellectual Property rights in the disputed auctions.<sup>24</sup> Under Ebay's policy as described above, Ebay notified ITI that it had 14 days to inform Ebay that it had initiated a legal action against Colon or Ebay would reinstate the disputed auctions.<sup>25</sup>

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<sup>17</sup> *Id* at 12.

<sup>18</sup> *Id* at 13.

<sup>19</sup> *Id* at 14.

<sup>20</sup> *Id* at 15.

<sup>21</sup> *Id* at 16.

<sup>22</sup> *Id* at 17.

<sup>23</sup> *Id* at 18.

<sup>24</sup> *Id* at 19.

<sup>25</sup> *Id* at 20.

Since ITI did not file suit against Colon, on May 4, 2007 Ebay reinstated the auctions.<sup>26</sup>

On May 6, 2007, Colon relisted the terminated auctions on Ebay.<sup>27</sup> On May 14, 2007, ITI filed a new Notice of Claimed Infringement with Ebay seeking termination of Colon's auctions.<sup>28</sup> Again, under Ebay's policy, Ebay terminated Colon's auctions and informed him that it terminated the auctions because of ITI's Notice of Claimed Infringement.<sup>29</sup> This time, Colon did not send a Counter-Notice to Ebay requesting it to reinstate the terminated auctions.<sup>30</sup> As stated in Colon's Complaint, apparently Colon was concerned that if he relisted the auctions, and Ebay terminated them again, Ebay would suspend his Ebay account.<sup>31</sup> According to his Complaint, Colon also alleged that Ebay informed him that if it suspended his account, it would reinstate his account only after it received ITI's consent.<sup>32</sup>

## II. ARGUMENT

### A. Since Ebay Is An Indispensible Party To This Case, The Court Must Dismiss The Instant Action Under Fed. R. Civ. P. 12(B)(7) And 19.

Fed. R. Civ. P. 19 provides a two-part test for determining whether an action should proceed in a nonparty's absence. The first question is whether complete relief can be afforded in the present procedural posture, or whether the nonparty's absence will impede either the nonparty's protection of an interest at stake or subject parties to

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<sup>26</sup> *Id* at 21.

<sup>27</sup> *Id* at 22.

<sup>28</sup> *Id* at 23.

<sup>29</sup> *Id* at 24.

<sup>30</sup> *Id* at 25.

<sup>31</sup> *Id*.

<sup>32</sup> *Id* at 26.

a risk of inconsistent obligations.<sup>33</sup> Only if the Court can answer this threshold question "yes," and if the nonparty cannot be joined (say for jurisdictional reasons), will the Court need to consider part two of the test.<sup>34</sup> The second question the Court must ask is, "in equity and good conscience," whether the action should go forward as cast.<sup>35</sup>

**1. Neither Of The Parties Can Obtain Complete Relief Absent  
Ebay Being Named As A Party.**

By Colon's own statements in its Complaint, he has suffered damages as a result of Ebay terminating his auctions.<sup>36</sup> Despite Colon's assertion that Ebay terminated his auctions because of ITI's actions, Ebay terminated Colon's auctions because of its VERO policy, which ITI does not control. Thus, although ITI's Notice of Claimed Infringement may have triggered Ebay's actions, Ebay terminated Colon's auctions, not ITI. Furthermore, in Colon's Demand for Relief, Colon requests the Court to issue a judgment that includes "[A]n injunction prohibiting Defendant from further interfering with the sale of [Colon's] products and requiring Defendant to rescind its notices of claimed infringement with Ebay and to authorize eBay to reinstate Plaintiff's account."<sup>37</sup> By asserting this demand, it is evident that Ebay is an indispensable party that ITI must join if the parties are to obtain full relief. If this case moves forward, ITI will raise an affirmative defense that, (1) ITI did not, nor could it suspend Colon's Ebay account by following Ebay's VERO policy, (2) ITI has no authority or control over whether Ebay will reinstate an account, and most importantly, (3) because ITI has no authority, only this Court can order Ebay to reinstate a suspended account. Thus, Ebay must be joined in this action.

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<sup>33</sup> See Fed.R.Civ.P. 19(a)(1)-(2); *City Of Marietta v. CSX Transp., Inc.*, 196 F.3d 1300, 1305 (11th Cir. 1999).

<sup>34</sup> See *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 8, 111 S.Ct. 315, 316 (1990).

<sup>35</sup> See Fed.R.Civ.P. 19(b); see also, *City of Marietta*, at 1305.

<sup>36</sup> Complaint at 8, 10.

<sup>37</sup> Complaint at 16.



**2. Since Both ITI And Colon Consented To Resolve Disputes Arising Out Of The VERO Policy In Santa Clara, California, Ebay Will Likely Object To Being Named In This Suit In This District, Thereby Precluding ITI Or This Court From Joining Ebay In This Case.**

As stated above, ITI did not terminate Colon's Ebay auctions. ITI merely filed a Notice of Infringement under Ebay's VERO policy based upon its good faith belief Colon had infringed its Intellectual Property rights. Ebay terminated Colon's auctions based upon its VERO policy. Since Ebay terminated Colon's auctions and Ebay's VERO policy is central to resolving this dispute, ITI must name Ebay as a necessary party under Rule 19.

Ebay, however, will likely object to being named as a party in this judicial district. As a member of Ebay's VERO program, ITI consented to resolve any dispute with Ebay in the Northern District of California.<sup>38</sup> Likewise, not only has Colon consented to the same jurisdiction through Ebay's Terms of Use, but Colon also consented to the jurisdiction when it filed its Counter-Notice to ITI's Notice on April 19, 2007.<sup>39</sup> Therefore, because both parties consented to resolving any disputes with Ebay in the Northern District of California, neither ITI nor the Court may join Ebay in this judicial district.

If this Court denies the instant application, the probable result will be an action against Ebay in the North District of California that concerns the same facts of this case as noted above. This separate, second action will adjudicate similar issues, causing a possible inconsistency in results, along with the wasteful duplicity of the parties' litigation resources, as well as those of the Courts and respective witnesses.

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<sup>38</sup> SOF at 28.

<sup>39</sup> *Id* at 29.



**3. In Equity And Good Conscience, The Case Should Not Move Forward Without Ebay Being Named As A Party.**

If a necessary party cannot be joined, the court must then proceed to Rule 19(b) and consider whether in "equity and good conscience," the suit should proceed without the necessary party.<sup>40</sup> The court balances four factors in this analysis: (1) how prejudicial a judgment would be to the nonjoined and joined parties, (2) whether the prejudice could be lessened depending on the relief fashioned, (3) whether the judgment without joinder would be adequate, and (4) whether the plaintiff would have any alternative remedies were the case dismissed for nonjoinder.<sup>41</sup>

**a. ITI Will Be Prejudiced Absent Ebay's Joinder.**

As stated above, ITI will plead as an affirmative defense that Ebay and the actions it took based on its VERO policy caused Colon any harm it suffered, not ITI's Notice of Claimed Infringement. To the extent that Colon seeks relief against ITI for its act of reporting Colon's illegal sales of its product, ITI will show that Ebay is the entity that actually caused damage to Colon.

**b. ITI's Prejudice Cannot Be Lessened By Altering The Relief Requested To Colon And Full Relief Cannot Be Obtained For Colon Unless Ebay Is Named As Part Of The Suit.**

Even by Colon's admission, it seeks reinstatement of its Ebay account through an injunction. Colon seeks injunctive relief requiring ITI to consent to Ebay reinstating Colon's Ebay account.<sup>42</sup> Again, ITI has no authority or control over Ebay to reinstate Colon's account. Unless the Court fashions Colon's relief to require Ebay

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<sup>40</sup> *Laker Airways, Inc. v. British Airways, PLC*, 182 F.3d 843, 848 (11th Cir. 1999).

<sup>41</sup> *Id.*

<sup>42</sup> Complaint at 16.

to reinstate its account, Colon cannot obtain full relief, and said requirement will not be effective unless Ebay is a party.

Moreover, if ITI is precluded from notifying Ebay in good faith when it believes Colon is infringing its Intellectual Property rights, ITI will be prejudiced by having to forego legitimate disputes with ITI in the future.

**c. Colon Has Alternate Remedies It May Seek If The Case Is Dismissed For Non-Joinder Of Ebay.**

Colon certainly has at least two other options if this case is dismissed. Colon can either re-file the instant suit in the Northern District of California, or it can still file a counter-notice to ITI's notice of infringement wherein Ebay will be required, under its VERO policy, to reinstate Colon's auctions.

In sum, for the reasons set forth above, this Court should dismiss this case without prejudice for failing to name Ebay as a necessary and indispensable party under Fed. R. Civ. P. 19.

**B. Alternatively, This Action Should Be Transferred To The Venue Of Either The Central Or Northern District Of California.**

Should this Court determine that dismissal under Fed. R. Civ. P. 19 is unwarranted, ITI respectfully requests that this Court transfer this matter for further proceedings to the United States District Court, for the Northern District of California. The authority to transfer an action is contained in 28 U.S.C. § 1404(a), which provides, "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district where it might have been brought."

ITI submits that the convenience of the parties and witnesses, and the interest of justice support such a transfer to the Northern District of California. Indeed, the Northern District of California is the only forum where personal jurisdiction and

venue may properly be vested in one action over all parties, including those that will likely be joined in this matter.

The purpose of Section 1404(a) is to “protect the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.”<sup>43</sup> To determine whether a transfer of venue will serve the interests of justice, a district court must consider (1) whether an adequate alternative forum is available; (2) the public and private factors and whether they favor dismissal; and (3) whether the plaintiff can reinstate his suit in the alternative forum without undue prejudice.<sup>44</sup> In the instant case, each of these factors weighs in favor of transfer to the Northern District of California.

### **1. The Northern District of California Is an Adequate Alternative Forum.**

An alternative forum is “available” to the plaintiff when the foreign court can assert jurisdiction over the litigation sought to be transferred.<sup>45</sup> Ordinarily, the requirement for an alternative forum will be satisfied when the defendant is amenable to process in the other jurisdiction.<sup>46</sup> The defendant also has the burden of proving the “adequacy” of the alternative forum.<sup>47</sup>

In the likelihood that ITI will join Ebay as a third-party defendant in this case, the Northern District of California is an adequate alternative forum for the parties. Both ITI and Ebay have their company headquarters in California. The Northern District of California decides a large number of Intellectual Property-related disputes, and is certainly familiar with the type of dispute raised in this case. Moreover, the caseload of the District Court in Santa Clara County, California is likely to be

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<sup>43</sup> *Van Dussen v. Barrack*, 376 U.S. 612, 616 (1964).

<sup>44</sup> *Leon v. Millon Air, Inc.*, 251 F.3d 1305, 1311 (11<sup>th</sup> Cir. 2001).

<sup>45</sup> *Id.*

<sup>46</sup> *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 (1981).

<sup>47</sup> *Leon*, at 1311.

substantially smaller compared to the Southern District of Florida based upon smaller population it serves. Thus, the Northern District of California is an adequate alternative forum to decide this case.

## **2. The Public And Private Factors Clearly Weigh In Favor Of Transfer**

Private interests include the ease of access to sources of proof; availability of compulsory process for attendance of the unwilling, and the cost of obtaining attendance of willing, witnesses ... and all other practical problems that make trial of a case easy, expeditious and inexpensive.<sup>48</sup>

Courts have recognized that a transfer is appropriate where the necessary proof is located in a different forum. For example, in *CES Pub. Corp. v. Dealerscope, Inc.*, 544 F.Supp. 656, 662 (E.D. Pa. 1982), the court transferred a Lanham Act case to another forum where it found that the defendant's business records and officers and employees were located in another forum. In transferring the action, the court noted that the only link to the original forum was the location of the plaintiff's counsel within the forum.<sup>49</sup>

In the instant case, all of ITI's evidence is located in California. ITI's records, inventory, computer servers, databases, accounting records are all located in California.<sup>50</sup> Moreover, any of Ebay's documentary evidence is likely located in Northern California as well.

Furthermore, any witnesses in this case that could testify regarding the parties' claims would be located within the State of California. Colon admits he relied upon statements made to him by an Ebay employee<sup>51</sup> who is likely to be a witness in this case as well as other Ebay employees or officers. Any witnesses from Ebay, whether

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<sup>48</sup> See, *Leon*, at 1314.

<sup>49</sup> *Id.*

<sup>50</sup> SOF at 31.

they are a party in this suit or not, are located in Northern California. All of ITI's witnesses are located in California. Colon's only likely witness in his case who is not located in California is himself.

Given these witness contacts in California, it seems nonsensical, and certainly inconvenient, for the witnesses to travel across the county to Miami for the adjudication of this case, when there is an adequate Federal District Court within their locale that can accept a transfer order.

Of course as stated above, it is extremely important to note that since Ebay is likely to be named as a third party in this suit, and ITI cannot join Ebay in the Southern District of Florida, Miami Division, due to its consent to only sue Ebay in the Northern District of California for disputes arising out of its VERO program.<sup>52</sup> Although the Southern District of Florida likely has personal jurisdiction over Ebay due to Ebay's minimum contacts with the District, most of the witnesses in this case would have to travel over 3,000 miles when it would be much more convenient to have them appear in California. To make them travel to this District would also be contrary to the substantial justice and fairness set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

As stated previously, because the vast majority of the witnesses in this case reside in California, it follows that the cost of obtaining these witnesses for trial would be drastically reduced if this case were litigated in California. As stated above, all of the documentary evidence supporting both parties' claims and defenses is located in California.

Finally, none of the events in this case occurred in this forum. Colon selected a forum that bears little reasonable relationship to the events that form the basis of this action. Although Colon resides in this District, (1) ITI submitted its Notice of Claimed Infringement from its headquarters in Southern California to Ebay who is

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<sup>51</sup> Complaint at 9.

<sup>52</sup> SOF at 33.

located in San Jose, California; (2) Ebay terminated Colon's auctions from its location in San Jose; (3) Colon submitted its Counter-Notice to Ebay in San Jose; and (4) in an effort to resolve the dispute, Colon allegedly contacted ITI and employees at Ebay, all in California. Accordingly, this forum does not bear any significant relationship to this action. Thus, this factor weighs in favor of a transferring the case.

**3. Colon Can Reinstate His Suit In The Northern District Of California Without Undue Inconvenience Or Prejudice.**

Other than Colon having to travel to California, prosecuting his claims in the Northern District of California will likely be no less convenient for Colon than ITI and Ebay defending the claims in this District. Colon will still have to travel to California to depose all witnesses, ITI, and Ebay. And, Colon will likely have to travel to California to obtain documentary evidence in the case.

As to any prejudice to Colon, such claims would appear baseless, because Colon could already consented to litigating any disputes arising out of Ebay's VERO program in the Northern District of California.

In closing, the interests of justice dictate that this Court should dismiss or transfer this case to the Northern District of California. Other than Colon's residence in this District, Colon can offer no compelling reason for prosecuting this case in this forum. In contrast, the requested transfer is supported by, *inter alia*, (1) Colon's sale of his products through a California-based company, (2) neither ITI nor Ebay are residents of this District, (3) ITI does not do business with Colon, (4) ITI has never solicited Colon's business, and (5) at best, Colon has an unauthorized business relationship with one of ITI's agents, which began when Colon first contacted ITI's agent. Thus, in the interest of justice, the Court should transfer the instant litigation.

Accordingly, ITI respectfully submits that this Court use its transfer power to prevent any injustice Colon has created. ITI submits that in the interests of the

witnesses, the parties, and the courts, this action should be transferred to the Northern District of California for further proceedings.

### III. CONCLUSION

For all of the reasons stated above, this Court should dismiss this case under Fed. R. Civ. P. 12(b)(7). Alternatively, the Court should transfer the case from this District to the Northern District of California for further proceedings under 28 U.S.C. § 1404(a) under the doctrine of forum *non conveniens*.

**WHEREFORE**, the Defendant Innovate Technology, Inc. requests that the Court:

1. dismiss the instant litigation under Fed. R. Civ. P. 12(b)(7) for Colon's failure to name a necessary and indispensable party, namely Ebay, Inc.; or
2. transfer the instant litigation under 28 U.S.C. § 1404(a) to the U.S. District Court for the Northern District of California; and
3. provide any further relief to the Defendant Innovate Technology, Inc. that the Court deems just and proper.

Respectfully submitted,

THE HODKIN KOPELOWITZ  
OSTROW FIRM, P.A.  
Attorneys for Defendant,  
350 East Las Olas Boulevard, Suite 980  
Ft. Lauderdale, Florida 33301  
Telephone No. (954) 525-4100  
Facsimile No. (954) 525-4300

Dated: July 3, 2007

By: /s/ Joseph M. Grant  
JOSEPH M. GRANT  
Florida Bar No. 0137758  
Grant@thkolaw.com



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Electronic Filing and U.S. Mail to David P. Reiner, II, Esq., Reiner & Reiner, P.A. 9100 South Dadeland Boulevard Suite 1002, Miami, Florida 33156 this 3<sup>rd</sup> day of July, 2007.

By: s/ Joseph M. Grant

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**OSVALDO A. IZQUIERDO COLON,  
an Individual, and d/b/a BEST DEAL  
PERFORMANCE,**

**Case No.: 07-21349 CIV-KING-  
GARBER**

Plaintiff,

vs.

**INNOVATE! TECHNOLOGY, INC.,  
a/k/a INNOVATE MOTORSPORTS, a  
California Corporation,**

Defendant.

**AFFIDAVIT OF SCOTT BRECKENRIDGE**

I, Scott Breckenridge, hereby declare under penalty of perjury that I have personal knowledge of the facts stated herein, and would testify to the same if requested to do so, state as follows:

1. I am the Vice President of Sales of Innovate! Technology, Inc. ("ITI") I have worked at ITI since 2004.
2. ITI develops, markets, manufactures, and supports universal digital tuning tools for internal combustion engines and is based out of Southern California.

1           3.     ITI's core technologies include both patented and patent-pending digital  
2 circuits as well as copyrighted software that give it a superior advantage over analog  
3 designs used mostly by its competitors.

4           4.     ITI's product lines include wideband air/fuel ratio meters, sensors,  
5 gauges, data acquisition systems, and software.

6           5.     ITI sells its products exclusively through authorized distributors and  
7 retailers. Copies of ITI's Dealer and Distributor Agreements are attached as Exhibit  
8 B.

9           6.     ITI's Warehouse Distributor and Dealer Agreements govern the  
10 relationship between ITI and its distributors and retailers. See Exhibit B.

11           7.     There are three main elements to the Agreements. First, ITI sells its  
12 products only via authorized distributors and retailers. These distributors and retailers  
13 comply with ITI's policy of Minimum Advertised Pricing ("MAP"). Second, all  
14 retailers must respect ITI's patent, trademark and copyright ownership regarding ITI's  
15 products. In particular, ITI licenses its software used with and within, its equipment  
16 only to end users that purchase the product from authorized distributors and retailers.  
17 Third, ITI tracks the sales of its products using serial number stickers that are attached  
18 to each product sold. The removal of any serial numbers violates the terms of the  
19 Agreements and precludes ITI from tracking which distributor sold the product to a  
20 retailer, who in turn, sold it to an end user. See Exhibit B.

21           8.     In sum, ITI requires these policies to allow its authorized retailers to  
22 profit from the sale of ITI's products.

23           9.     ITI makes every effort to protect its Intellectual Property Rights as well  
24 as the integrity of its MAP program. On April 12, 2007, ITI filed a Notice of Claimed  
25 Infringement with Ebay against Colon. A copy of the Notice of Claimed  
26 Infringement is attached as Exhibit E.

27           10.    On April 12, 2007, Colon contacted ITI apparently in an attempt to  
28 learn why ITI sent its notice of claimed infringement to Ebay.

1 11. I informed Colon that ITI sent the notice because Colon was not an  
2 authorized dealer and by selling ITI's product, Colon infringed upon ITI's Intellectual  
3 Property rights and violated its policy of selling its products retail below a minimum  
4 price.

5 12. I then referred Colon to ITI's "About Me" page on Ebay that provides a  
6 more detailed explanation of possible reasons why ITI may request that Ebay  
7 terminate an auction.

8 13. In response to ITI relisting its unauthorized auctions, on May 14, 2007,  
9 ITI filed a new Notice of Claimed Infringement with Ebay seeking termination of  
10 Colon's auctions.

11 14. In the instant case, all of ITI's evidence is located in California. ITI's  
12 records, inventory, computer servers, databases, accounting records are all located in  
13 California.

14  
15 Dated this 3 day of <sup>JULY</sup>~~June~~, 2007

16  
17 Scott Breckenridge  
18 Scott Breckenridge  
19 VP SALES - Innovate! Technology, Inc.

20 Date: 7-3-2007

21  
22 SUBSCRIBED AND SWORN before me this 3 day of July 2007

23 Wilbur Olson  
24 Notary Public

25 My commission expires: 11/28/2010



28



## Warehouse Distributor Terms and Conditions of Sale

EFFECTIVE DATE: January 1, 2006

**MARKETING ALLOWANCE:** Innovate! Technology, Inc. utilizes a marketing allowance program to promote Innovate Motorsports products. The 25% WD discount program will be allocated in the following manner:

- Half of the 25% discount will be provided for maintaining stocking inventory of Innovate products, and half of the discount will be provided in the form of a **marketing allowance**. Both of these discounts will be applied **off invoice**.
- Marketing allowance can be used at WD's discretion to promote Innovate products.
- No proof of performance is required for the marketing allowance on an ongoing basis.
- The following terms must be met:
  1. Innovate products **cannot be advertised** at the retail/mail order/internet level **below MSRP**. This includes Product sold by the WD to their customers. Customers of the WD may not advertise below MAP.
  2. Innovate products **cannot be advertised** at the wholesale/trade level **below published Jobber price**.
  3. Account maintained in good standing with Innovate Technology, Inc.

• If these terms are not met, you will only receive half of the discount, commencing upon notification of non-compliance with policy.

### CO-OP ADVERTISING PROGRAM:

- All accounts that qualify for marketing allowance program are eligible to apply for co-op credits up to 50% of the total cost of advertising not to exceed 5% of previous quarter's net purchases.
- Claims are to be submitted within 90 days of publishing date, and will be processed in a timely manner.
- Claims will include written request of funds, a sample of the ad, the date(s) the ad was run, and a copy of the paid bill for the ad. Claims accepted will result in issuance of credit memo in 2-4 weeks. DO NOT take deductions off payments.

### TERMS:

- Net 30 upon approval of credit. A 1.5% per month service charge will be added after 30 days. All accounts that are not able to meet our terms will be placed on a COD (bank check) basis until account is paid in full.
- Credit Card or COD (bank check) is required prior to credit approval.

### FREIGHT POLICY:

- Continental US and Canada: Freight will be pre-paid on shipments with a net invoice value greater than \$1500.
- AK, HI, and International: A 3% freight allowance will be given on shipments with a net invoice value greater than \$1500.
- Innovate will select pre-paid carriers.
- Shipments of less than \$1500 units will be sent FOB Irvine, CA.
- Examine all shipments carefully. Claims for damages or shortages must be made immediately with the carrier. Parcel post damages must be reported immediately to Innovate! Technology, Inc.

**REFUSING SHIPMENT:** A company that refuses a shipment for any reason will be financially responsible for all shipping costs as well as a 15% restocking fee for the returned parts, and risks losing WD status.

**BACK ORDERS:** Orders are usually shipped complete, but should an out of stock situation arise, all backorders will be noted on the invoices. Backordered parts will then be shipped, as they become available, for a period of 30 days from the original order date. Thereafter, customers will be notified prior to shipment of backorder.

**RETURNS:** No unauthorized returns of any type are accepted. Prior authorization is required and merchandise must be shipped prepaid with a return authorization (RMA #) clearly shown on the outside of the package. All returns are subject to a 15% restocking fee at Innovate's discretion.

### PRICING:

- All prices are effective at time of shipment and are subject to change without prior notice.

### INTELLECTUAL PROPERTY:

- Authorized Resellers of Innovate Motorsports products are allowed to utilize trademarks, copyrights, patents, and other intellectual property on Innovate! Technology, Inc. Such use is solely for the purpose of reselling Innovate products, does not constitute ownership, and may be revoked by Innovate at any time at Innovate's sole discretion.

### DROP-SHIP FEES:

- Drop shipment is available. A \$7 charge is added for each drop ship address, and is in addition to regular shipping charges.

PHONE ORDER LINE: 949.502.8400 [www.tuneyourengine.com](http://www.tuneyourengine.com) FAX: 949.502.8439  
Innovate Motorsports 5 Jenner #100, Irvine, CA 92618



## Dealer Terms and Conditions of Sale

*Innovate! Technology, Inc. (dba: Innovate Motorsports) requires all companies to agree to the following terms and conditions of sale.*

**EFFECTIVE DATE: July 1, 2004**

### MAP PRICING (Minimum Advertised Price)

**MARKETING ALLOWANCE:** Innovate! Technology, Inc. utilizes a marketing allowance program to promote Innovate Motorsports products. The 20% Dealer discount program will be allocated in the following manner:

- Half of the 20% discount will be provided for maintaining stocking inventory of Innovate products, half of the discount will be provided in the form of a **marketing allowance**. Both of these discounts will be applied **off invoice**.
- Marketing allowance can be used at dealer's discretion to promote Innovate products. No proof of performance is required for the marketing allowance on an ongoing basis.
- The following terms must be met:
  1. Innovate products **cannot be advertised** at the retail/mail order/internet level **below MSRP**.
  2. Account maintained in good standing with Innovate Technology, Inc.
- If these terms are not met, you will only receive half of the discount, commencing upon notification of non-compliance with policy.

Innovate! Technology, Inc.  
5 Jenner, #100  
Irvine, CA  
PHONE: 949.502.8400 FAX: 949.502.8439  
**WWW.INNOVATEMOTORSPORTS.COM**



## Addendum to Warehouse Terms & Conditions

### Warehouse Distributor Terms and Conditions of Sale

*Innovate! Technology, Inc. (dba: Innovate Motorsports) requires all companies to agree to the following terms and conditions of sale.*

EFFECTIVE DATE: July 1, 2004

#### MAP PRICING (Minimum Advertised Price)

1. Innovate products **cannot be advertised** at the retail/mail order/internet level **below MSRP**.
2. Innovate products **cannot be advertised** at the wholesale/trade level **below published Jobber price**.
3. Account maintained in good standing with Innovate Technology, Inc.

Sign \_\_\_\_\_

Date \_\_\_\_\_

Innovate! Technology, Inc.  
5 Jenner #100  
Irvine, CA 92618  
Phone: 949.502.8400  
Fax: 949.502.8439  
[www.innovatemotorsports.com](http://www.innovatemotorsports.com)

See Innovate Motorsports Warehouse Terms & Conditions for full Program details.



[Home](#) > [Help Topics](#) > [Transaction Problems and Protections](#) > [What eBay Can Do](#) > [Reporting Intellectual Property Infringements \(VeRO\)](#)

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## Reporting Intellectual Property Infringements (VeRO)

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eBay developed the Verified Rights Owner (VeRO) Program to facilitate cooperation between eBay and rights owners protecting their intellectual property rights.

### Highlights of the program include:

- Expeditious removal of listings reported to eBay by over 5,000 intellectual property rights owners.
- Proactive monitoring and removal by eBay of listings that violate eBay policies designed to prevent the listing of infringing items on eBay.
- Ability to save searches and have the results emailed to you through [Favorite Searches](#).
- Suspension of repeat offenders.
- Cooperation with rights owners seeking personal information on alleged infringers.

However, because eBay cannot be an expert in your intellectual property rights in over 25,000 categories, and cannot verify that sellers have the right to sell the millions of items they post on eBay each day, we need your help in identifying listings which do not appear on their face to infringe your rights.

### How to report a listing to eBay

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The following steps are for reporting a listing to eBay. **Only the intellectual property rights owner can report of potentially infringing items or listings through eBay's VeRO Program.** If you are not the intellectual property rights owner, you can still help by getting in touch with the rights owner and encouraging them to contact us. For a list of rights owners who participate in our VeRO program, [view the list of About Me Pages](#).

#### Step One:

If you have a good faith belief that a listing on eBay infringes your copyright, trademark, or other intellectual property rights, all you need to do is download our Notice of Claimed Infringement (NOCI) form, fill it out, and fax it to eBay. [Download eBay's NOCI form](#)

**Note:** You will need Adobe® Acrobat Reader to view and print our NOCI form. You can [download a free copy](#) at Adobe's Web site.

#### Step Two:

After we receive your first NOCI, eBay will send you an electronic version of our NOCI form as well as instructions on how to submit future reports electronically.

#### Step Three:

We encourage you to educate eBay users about your products and legal positions by creating an "About Me" page. We have found that many of our users cease listing potentially infringing items when presented with such information.

[Learn how to set up your About Me page](#). Once you have posted your About Me page, send us an email and we will include it in our list of [Intellectual Property Rights Owner About Me pages](#).

[Email us](#) for more information.

#### Related Help topics

- [Buyer Protection Programs](#)
- [Prohibited and Restricted Items: Overview](#)
- [Why eBay May Remove Your Listings](#)
- [Item Description and Picture Theft](#)



**VeRO Program**  
**P.O. Box 1497**  
**Draper, UT 84020**  
**Phone (408) 376-6132**  
**Fax (408) 516-8811**  
**www.ebay.com**

Thursday, April 19, 2007

Via Fax and Regular Mail

**Scott Breckenridge**  
**Innovate Motorsports**  
**5 Jenner, #100**  
**Irvine, CA 92618**

**Re: Counter Notice Regarding Removed Listing(s)**

**Dear Scott,**

Enclosed is a Counter Notice that was completed by an eBay user. This user believes that the noted listings, which you requested be ended, were removed in error.

Since eBay neither sees nor inspects any of the items that are offered for sale on the site, we are unable to judge their authenticity or legality. However, recognizing that errors may be made or there may be genuine disputes over the legality of items, eBay follows a Counter Notice procedure for handling situations where a user disputes the removal of their listing. This procedure substantially follows the requirements of the Digital Millennium Copyright Act, 17 U.S.C. section 512, as amended.

Please note that if, within 10 business days after receipt of this letter, we do not receive notification that you have filed an action in federal court seeking an order to restrain the user from re-listing, we are required to allow the seller to repost the listings we removed from eBay pursuant to your notice.

Accordingly, please notify us by May 3, 2007 whether you have sought the necessary court order. Otherwise, we will allow the user to repost the removed listing. Alternatively, you may notify us immediately that the items may be relisted and we will notify the user.

Please let us know if you have any questions.

Very truly yours,

*Yuri*

**VeRO Program**  
**Fax: (408) 516-8811**  
**vero@ebay.com**

**Enclosures**

**cc: Michael Richter**  
**Associate General Counsel, Litigation**

*I HAVE THE BEST PRICE PERF.*

**Notice of Claimed Infringement**

Date: April 10, 2007

eBay Inc.  
Attn: eBay VeRO Program  
2145 Hamilton Ave.  
San Jose, CA 95125  
Fax Number: (408) 516-8811

Dear eBay:

I, the undersigned, state **UNDER PENALTY OF PERJURY** that

- I am the owner, or an agent authorized to act on behalf of the owner, of certain intellectual property rights ("IP Owner");
- I have a good faith belief that the listings identified (by item number) in the addendum attached hereto, offer items or contain materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and
- The information in this notice is accurate.

Please act expeditiously to remove the listings identified in the addendum.

**I May Be Contacted At (\*required)**

Name of IP Owner:\* Innovate!Technology, Inc.

Name and Title:\* Patrick Thompson, President

Company: Innovate Motorsports

Address:\* 5 Jenner, #100

City, State, and Zip:\* Irvine, CA 92618

email address (for correspondence with eBay): patrick@innovatemotorsports.com

email address (to be given to eBay sellers):\* ip@innovate-tech.com

Telephone:\* 949.502.8401

Fax: 949.502.8439


In addition to the undersigned, the following persons have the proper authority to sign future Notices of Claimed Infringement on behalf of the IP Owner:

Name: Scott Breckenridge Email: scott@innovatemotorsports.com

Name: Cort Charles Email: cort@innovatemotorsports.com

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Truthfully,



Signature

**Addendum to Notice of Claimed Infringement**  
**List of Allegedly Infringing Listings, Items, or Materials**

A Note on Reason Codes: When identifying item numbers please use the reasons below. When removing items from the site, eBay will inform sellers of the specific reason for the removal of their items. We believe providing sellers with this information benefits all parties.

Select the most appropriate reason. Please associate each item you report with only one reason code.

<p><b>Reason Codes</b>                  (Note that the numbers may not be sequential everywhere. This is not a mistake, but simply reflects that some reason codes are not legally applicable in all countries.)</p> <p><b>Trademark – <i>Item</i> infringement</b></p> <ul style="list-style-type: none"> <li>1.1. Trademark owner doesn't make this type of product</li> <li>1.2. Item(s) is an unlawful replica of a product made by the trademark owner</li> <li>1.3. Item(s) is an unlawful importation of product bearing trademark</li> </ul> <p><b>Trademark – <i>listing</i> content infringement</b></p> <ul style="list-style-type: none"> <li>2.1. Listing(s) contains unlawful comparison to trademark owner's brand name</li> <li>2.2. Listing(s) contains unlawful use of trademark owner's logo</li> </ul> <p><b>Copyright – <i>Item</i> infringement</b></p> <ul style="list-style-type: none"> <li>3.1. Software offered for sale in violation of a license</li> <li>3.2. Item(s) is a bootleg recording of live performance</li> <li>3.3. Item(s) is an unlawful copy of media (software, games, movies, etc.)</li> <li>3.4. Item(s) is unlawful duplication of printed material</li> <li>3.5. Item(s) is an unlawful copy of other copyrighted work (paintings, sculptures, etc.)</li> </ul> <p><b>Copyright – <i>listing</i> content infringement</b></p> <ul style="list-style-type: none"> <li>4.1. Listing(s) uses unauthorized copy of copyrighted text</li> <li>4.2. Listing(s) uses unauthorized copy of copyrighted image</li> <li>4.3. Listing(s) uses unauthorized copy of copyrighted image and text</li> </ul> <p><b>Other Infringement</b></p> <ul style="list-style-type: none"> <li>5.1. Item(s) infringes a valid patent (requires patent registration number)</li> <li>5.3. Item(s) violates a celebrity's right of publicity</li> <li>5.4. Listing(s) content violates a celebrity's right of publicity</li> </ul>
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<p><b>Reason Code</b> <u>5.1</u></p> <hr/> <p><b>Work(s) infringed:</b> <u>Various Patents (US 6,978,655 B2; US 7,089,811 B2, and more)</u></p> <p><b>Item Number(s):</b> <u>270105623799, 270105796400, 270106968203, 270105997743, 270107011156</u>  <u>270108225192, 270106100145, 270108291084, 270107135686, 270106175153, 270108546141</u></p>
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<p><b>Reason Code</b> <u>5.1</u></p> <hr/> <p><b>Work(s) infringed:</b> <u>Various Patents (US 6,978,655 B2; US 7,089,811 B2, and more)</u></p> <p><b>Item Number(s):</b> <u>270106464458, 270108639778, 270107458077, 270107551569, 270108752301,</u>  <u>270106797523, 270106903836, 270108285500, 270069883008, 270104463088, 270108331074</u></p>
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I HAVE THE BEST PRICE PERI

Notice of Claimed Infringement

Date: April 11, 2007

eBay Inc.
Attn: eBay VeRO Program
2145 Hamilton Ave.
San Jose, CA 95125
Fax Number: (408) 516-8811

Dear eBay:

I, the undersigned, state UNDER PENALTY OF PERJURY that

- I am the owner, or an agent authorized to act on behalf of the owner, of certain intellectual property rights ("IP Owner");
I have a good faith belief that the listings identified (by item number) in the addendum attached hereto, offer items or contain materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and
The information in this notice is accurate.

Please act expeditiously to remove the listings identified in the addendum.

I May Be Contacted At (\*required)

Name of IP Owner: Innovate!Technology, Inc.
Name and Title: Patrick Thompson, President
Company: Innovate Motorsports
Address: 5 Jenner, #100
City, State, and Zip: Irvine, CA 92618
email address (for correspondence with eBay): patrick@innovatemotorsports.com
email address (to be given to eBay sellers): ip@innovate-tech.com
Telephone: 949.502.8401
Fax: 949.502.8439

In addition to the undersigned, the following persons have the proper authority to sign future Notices of Claimed Infringement on behalf of the IP Owner:

Name: Scott Breckenridge Email: scott@innovatemotorsports.com
Name: Cort Charles Email: cort@innovatemotorsports.com
Name: Email:

Truthfully,
Scott Breckenridge
Signature

Addendum to Notice of Claimed Infringement  
List of Allegedly Infringing Listings, Items, or Materials

A Note on Reason Codes: When identifying item numbers please use the reasons below. When removing items from the site, eBay will inform sellers of the specific reason for the removal of their items. We believe providing sellers with this information benefits all parties.

Select the most appropriate reason. Please associate each item you report with only one reason code.

<p><b>Reason Codes</b> (Note that the numbers may not be sequential everywhere. This is not a mistake, but simply reflects that some reason codes are not legally applicable in all countries.)</p> <p><b>Trademark – Item Infringement</b></p> <ul style="list-style-type: none"><li>1.1. Trademark owner doesn't make this type of product</li><li>1.2. Item(s) is an unlawful replica of a product made by the trademark owner</li><li>1.3. Item(s) is an unlawful importation of product bearing trademark</li></ul> <p><b>Trademark – listing content infringement</b></p> <ul style="list-style-type: none"><li>2.1. Listing(s) contains unlawful comparison to trademark owner's brand name</li><li>2.2. Listing(s) contains unlawful use of trademark owner's logo</li></ul> <p><b>Copyright – Item Infringement</b></p> <ul style="list-style-type: none"><li>3.1. Software offered for sale in violation of a license</li><li>3.2. Item(s) is a bootleg recording of live performance</li><li>3.3. Item(s) is an unlawful copy of media (software, games, movies, etc.)</li><li>3.4. Item(s) is unlawful duplication of printed material</li><li>3.5. Item(s) is an unlawful copy of other copyrighted work (paintings, sculptures, etc.)</li></ul> <p><b>Copyright – listing content infringement</b></p> <ul style="list-style-type: none"><li>4.1. Listing(s) uses unauthorized copy of copyrighted text</li><li>4.2. Listing(s) uses unauthorized copy of copyrighted image</li><li>4.3. Listing(s) uses unauthorized copy of copyrighted image and text</li></ul> <p><b>Other infringement</b></p> <ul style="list-style-type: none"><li>5.1. Item(s) infringes a valid patent (requires patent registration number)</li><li>5.3. Item(s) violates a celebrity's right of publicity</li><li>5.4. Listing(s) content violates a celebrity's right of publicity</li></ul>
--

<p><b>Reason Code</b> <u>5.1</u></p> <p><b>Work(s) infringed:</b> <u>Various Patents (US 6,978,655 B2; US 7,089,811 B2, and more)</u></p> <p><b>Item Number(s):</b> <u>270108957346, 270108807193, 270108985777, 270108986327,</u> <u>270108986590, 270109064102</u></p> <p><b>Reason Code</b> _____</p> <p><b>Work(s) infringed:</b> _____</p> <p><b>Item Number(s):</b> _____</p>
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**From:** eBay Customer Support [rwebhelp@eBay.com]  
**Sent:** Wednesday, April 11, 2007 5:27 PM  
**To:** Patrick  
**Subject:** VE62821 Response to your fax to eBay's VERO Department.  
(KMM251216024V37542L0KM)

Dear Patrick,

Thank you for contacting eBay in regard to your Notice of Claimed Infringement.

We reviewed the Notice of Claimed Infringement you sent us regarding the following Item numbers:

270105623799 270105796400 270106968203 270105997743 270107011156  
270108225192 270106100145 270108291084 270107135686 270106175153  
270108546141 270106464458 270108639778 270107458077 270107551569  
270108752301 270106797523 270106903836 270108285500 270069883008  
270104463088 270108331074

In order to process your Notice we need additional information about the claim that you are making. Please reply to this message with a more detailed explanation so that we may investigate this issue further.

Thank you for your time.

Sincerely,

Sammie  
eBay Customer Support



**From:** Scott Breckenridge [Scott@Innovate-tech.com]  
**Sent:** Monday, July 02, 2007 1:14 PM  
**To:** Patrick  
**Subject:** FW: Third request

Patrick Thompson  
Innovate! Technology, Inc.  
5 Jenner, #100 Irvine, CA 92618  
ph: (949) 502-8401 (direct)

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

From: Scott Breckenridge  
Sent: Tuesday, April 17, 2007 8:35 AM  
To: eBay Customer Support  
Subject: Third request

To: eBay Customer Support  
Subject: IP Infringement

ELECTRONIC NOTICE OF CLAIMED INFRINGEMENT (Original Signature on File)

Date: 4-17-2007

eBay Inc.

Attn: eBay VeRO Program

2145 Hamilton Ave.

San Jose, CA 95125

Fax Number: (408) 516-8811

Dear eBay:

I, the undersigned, state UNDER PENALTY OF PERJURY that:

- I am the owner, or an agent authorized to act on behalf of the owner, of certain intellectual property rights ("IP Owner");

- I have a good faith belief that the listings identified below (by item

number) offer items or contain materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and

- The information in this notice is accurate.

Please act expeditiously to remove the listings identified in the addendum.

Name of IP Owner: Innovate! Technology, Inc.

Name and Title: Patrick Thompson, President

Company: Innovate Motorsports

Address: 5 Jenner #100

City, State, and Zip: Irvine, CA, 92614

Email address (for correspondence with eBay): Patrick@innovatemotorsports.com

Email address (to be given to eBay sellers): ip@innovate-tech.com

Telephone: 949-502-8401

Fax: 949-502-8439

\*Required field

In addition to the undersigned, the following individuals are authorized to sign future Notices of Claimed Infringement on behalf of the IP

Owner:

Name: \_Scott Breckenridge\_\_\_\_\_

Email: \_scott@innovatemotorsports\_\_\_\_\_

Name: \_Cort Charles\_\_\_\_\_

Email: \_cort@innovatemotorsports.com\_

\*\*\*A Note on Reason Codes\*\*\*

When identifying Item numbers please use the reasons below. When choosing "other" please provide a detailed explanation of the alleged infringement. When we removing listings from the site, we inform sellers of the specific reason for the removal. We believe providing sellers with this information benefits everyone.

Please select the most appropriate reason. Select only one reason code per item.

Reason Codes (Note that the numbers are not always sequential. This is because some reason codes may not be applicable in all countries.)

Trademark - Item infringement

- 1.1. Trademark owner doesn't make this type of product
- 1.2. Item is an unlawful replica of a product made by the trademark owner
- 1.3. Item is an unlawful importation of product bearing trademark

Trademark - listing content infringement 2.1. Listing contains unlawful comparison to trademark owner's brand name 2.2. Listing contains unlawful use of trademark owner's logo

Copyright - item infringement

3.1. Software offered for sale in violation of a license 3.2. Item is a bootleg recording of live performance 3.3. Item is an unlawful copy of media (software, games, movies, etc.) 3.4. Item is unlawful duplication of printed material 3.5. Item is an unlawful copy of other copyrighted work (paintings, sculptures, etc.)

Copyright - listing content infringement 4.1. Listing uses unauthorized copy of copyrighted text 4.2. Listing uses unauthorized copy of copyrighted image 4.3. Listing uses unauthorized copy of copyrighted image and text

Other infringement

5.1. Item infringes a valid patent (requires patent registration number) 5.3. Item violates a celebrity's right of publicity 5.4. Listing content violates a celebrity's right of publicity

Reason Code: 5.1

Work infringed: Various Patents (US 6,978,655 B2; US 7, 089,811 B2, and more)

Item Numbers: 190064363568, 190063608844, 190063611718, 190063613272, 200099901691, 200099902011, 200099970852, 200100351799, 200100530495

Truthfully,

/S/: Patrick Thompson

Thanks,  
Scott Breckenridge  
VP Sales  
Innovate! Technology, Inc. / Innovate Motorsports  
5 Jenner Ste. 100  
Irvine, CA 92618  
(949) 502.8400, x405 fax: (949) 502.8439  
Scott@innovatemotorsports.com  
<http://www.tunevouengine.com/>

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

From: eBay Customer Support [<mailto:rswebhelp@ebay.com>]  
Sent: Friday, April 13, 2007 7:09 AM  
To: Scott Breckenridge  
Subject: VE62821 Response to your fax to eBay's VERO Department. (KMM251376085V73288L0KM)

Dear Scott,

Thank you for faxing eBay in regard to your Notice of Claimed Infringement.

We are pleased to inform you that the following listings you reported are currently being removed by eBay. Please allow approximately 30 minutes for the removal process to be completed.

270109442147 270109199559 270109249648 270109251090 270109271686  
270109271847 270109300863 270109434099 110113912161

We will notify the seller and bidders that the listings have been removed at your request.

Now that we have a copy of your Notice of Claimed Infringement on file, you can report infringing listings by email. For your convenience, I have included an electronic version of our Notice of Claimed Infringement form below. For fastest response time, please submit Notices of Claimed Infringement by email to [vero@ebay.com](mailto:vero@ebay.com).

Thank you for your time.

Sincerely,  
Cyrus

eBay Customer Support

\*\*\*\*\*

ELECTRONIC NOTICE OF CLAIMED INFRINGEMENT (Original Signature on File)

Date:

eBay Inc.  
Attn: eBay VeRO Program  
2145 Hamilton Ave.  
San Jose, CA 95125  
Fax Number: (408) 516-8811

Dear eBay:

I, the undersigned, state UNDER PENALTY OF PERJURY that:

- I am the owner, or an agent authorized to act on behalf of the owner, of certain intellectual property rights ("IP Owner");
- I have a good faith belief that the listings identified below (by item number) offer items or contain materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and
- The information in this notice is accurate.

Please act expeditiously to remove the listings identified in the addendum.

I May Be Contacted At

Name of IP Owner:\*

Name and Title:\*

Company:

Address:\*

City, State, and Zip:\*

Email address (for correspondence with eBay):

Email address (to be given to eBay sellers):\*

Telephone:\*

Fax:

\*Required field

In addition to the undersigned, the following individuals are authorized to sign future Notices of Claimed Infringement on behalf of the IP

Owner:

Name: \_\_\_\_\_  
Email: \_\_\_\_\_  
Name: \_\_\_\_\_  
Email: \_\_\_\_\_

\*\*\*A Note on Reason Codes\*\*\*

When identifying Item numbers please use the reasons below. When choosing "other" please provide a detailed explanation of the alleged infringement. When we removing listings from the site, we inform sellers of the specific reason for the removal. We believe providing sellers with this information benefits everyone.

Please select the most appropriate reason. Select only one reason code per item.

Reason Codes (Note that the numbers are not always sequential. This is because some reason codes may not be applicable in all countries.)

Trademark - Item infringement

- 1.1. Trademark owner doesn't make this type of product
- 1.2. Item is an unlawful replica of a product made by the trademark owner
- 1.3. Item is an unlawful importation of product bearing trademark

Trademark - listing content infringement 2.1. Listing contains unlawful comparison to trademark owner's brand name 2.2. Listing contains unlawful use of trademark owner's logo

Copyright - item infringement

- 3.1. Software offered for sale in violation of a license
- 3.2. Item is a bootleg recording of live performance
- 3.3. Item is an unlawful copy of media (software, games, movies, etc.)
- 3.4. Item is unlawful duplication of printed material
- 3.5. Item is an unlawful copy of other copyrighted work (paintings, sculptures, etc.)

Copyright - listing content infringement 4.1. Listing uses unauthorized copy of copyrighted text 4.2. Listing uses unauthorized copy of copyrighted image 4.3. Listing uses unauthorized copy of copyrighted image and text

Other infringement

- 5.1. Item infringes a valid patent (requires patent registration number)
- 5.3. Item violates a celebrity's right of publicity
- 5.4. Listing content violates a celebrity's right of publicity

Reason Code:

Work infringed (e.g. "Acme" trademark, Rabbit 5.0 software):

Item Numbers:

Reason Code:

Work infringed:

Item Numbers:

Reason Code:

Work infringed:

Item Numbers:

Truthfully,

/S/: [Your name here]

**COUNTER-NOTICE REGARDING REMOVED LISTING**

I am aware that Innovate Motorsports, a participant in eBay's Verified Rights Owner (VeRO) Program (the "Reporting Party"), has submitted a sworn notice of infringement stating that the listing(s) identified below infringes its intellectual property rights.

*I understand that eBay has removed such listing(s) at the request of the Reporting Party. I further understand that if, within ten business days of your receiving this notice, the Reporting Party does not file a legal action in federal court seeking to prevent me from re-posting the identified listing(s) and/or seeking a federal court order to restrain me from engaging in infringing activity relating to such listings, eBay will allow me to re-post the listing(s).*

Therefore, I, the undersigned, **CERTIFY UNDER PENALTY OF PERJURY** that:

The listing(s) identified below does not offer an item that infringes, and the listing(s) does not itself infringe, upon the Intellectual Property Rights of the Reporting Party.

270109251090, 270109271686, 270109199559,  
270109434099, 270109249648, 270109442147,  
270109271847, 270109300863

I will not offer any items or place any listings on eBay that infringe upon the Intellectual Property Rights of the Reporting Party.

**Indemnification.** I agree to indemnify eBay from and against any and all claims, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, which eBay may incur in connection with any of the listing(s) identified above or the items offered therein.

**False Statements.** I understand that my knowing misrepresentation herein that material was removed by mistake or misidentification may expose me to legal liability for damages, including costs and attorneys' fees. I further understand that perjury is a felony which may be punishable by imprisonment of not more than five years or a fine.

**Legal Action.** I understand that if the Reporting Party disagrees with this Counter-Notice, it may file a legal action against me to prevent the re-posting of the above-referenced listing(s).


**Consent to Federal Jurisdiction and Service of Process.** For any actions that might arise out of the listing(s) identified above, I consent to the jurisdiction of the Federal District Court for the County of Santa Clara, California. I further agree to accept service of process from the Reporting Party or its agent, law enforcement, and eBay for any such actions.

**Contact Information.** I certify that the following contact information is accurate and valid. I acknowledge that eBay will compare the contact information provided herein with my eBay contact information, and false or fraudulent information may result in suspension of my eBay account(s).

I may be contacted at:

Name: Oswaldo Antonio Izquierdo Colón  
Title and Company: Owner Best Deal Performance  
Street Address\*: 323 NE 30 AVE  
City, State, and Zip: Homestead, FL 33033  
Email address: i have the best price performance@hotmail.com  
Telephone: (561) 558-7340  
Fax: (786) 349-0548

\* Please provide the street address at which you reside; a Post Office (P.O.) Box or the like is not sufficient.

Signature   
**UNDER SWORN PENALTY OF PERJURY**  
Date 4/17/04

Please fax your completed Counter-Notice to (408) 516-8811

[Home](#) > [Help Topics](#) > [Your User Agreement](#)

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## Your User Agreement

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The following describes the terms on which eBay offers you access to our services.

### Introduction

Welcome to eBay. By using the services on the eBay websites (eBay.com and other related websites where this agreement appears) (the "Sites"), you are agreeing to the following terms, including those available by hyperlink, (the "Agreement" or "User Agreement") with eBay Inc. and the general principles for the websites of our subsidiaries and international affiliates. If you reside outside of the United States, you are contracting with one of our international eBay companies: In countries within the European Union, your contract is with eBay Europe S.à r.l.; in all other countries, your contract is with eBay International AG. If you have any questions, please refer to the Help section on the Sites.

Before you may become a member of eBay, you must read and accept all of the terms and conditions in, and linked to, this User Agreement and the Privacy Policy. We strongly recommend that, as you read this User Agreement, you also access and read the linked information. By accepting this User Agreement, you also agree that your use of some eBay-branded websites or websites we operate may be governed by separate user agreements and privacy policies. The agreement that applies on any of our domains and subdomains is always the agreement that appears in the footer of each website.

This Agreement is effective on July 9, 2007, for current users, and upon acceptance for new users. The previous amendment to this Agreement was effective for all users on February 1, 2006.

### Using eBay

While using the Sites, you will not:

- post content or items in an inappropriate category or areas on the Sites;
- violate any laws, third party rights, or our policies such as the [Prohibited and Restricted Items](#) policies;
- use the Sites if you are not able to form legally binding contracts, are under the age of 18, or are temporarily or indefinitely suspended from our Sites;
- fail to deliver payment for items purchased by you, unless the seller has materially changed the item's description after you bid, a clear typographical error is made, or you cannot authenticate the seller's identity;
- fail to deliver items purchased from you, unless the buyer fails to meet the posted terms, or you cannot authenticate the buyer's identity;
- manipulate the price of any item or interfere with other user's listings;
- circumvent or manipulate our fee structure, the billing process, or fees owed to eBay;
- post false, inaccurate, misleading, defamatory, or libelous content (including personal information);
- take any action that may undermine the feedback or ratings systems (such as displaying, importing or exporting feedback information off of the Sites or for using it for purposes unrelated to eBay);
- transfer your eBay account (including feedback) and User ID to another party without our consent;
- distribute or post spam, chain letters, or pyramid schemes;
- distribute viruses or any other technologies that may harm eBay, or the interests or property of eBay users;
- copy, modify, or distribute content from the Sites and eBay's copyrights and trademarks; or
- harvest or otherwise collect information about users, including email addresses, without their consent.

### Abusing eBay

eBay and the Community work together to keep the Sites working properly and the Community safe. Please report problems, offensive content, and policy violations to us.

eBay's Verified Rights Owner (VeRO) program works to ensure that listed items do not infringe upon the copyright, trademark or other rights of third parties. If you believe that your rights have been violated, please notify our VeRO team through our [Verified Rights Owner \(VeRO\) Program](#) and we will investigate.

Without limiting other remedies, we may limit, suspend, or terminate our service and user accounts, prohibit access to our website, delay or remove hosted content, and take technical and legal steps to keep users off the Sites if we think that they are creating problems, possible legal liabilities, or acting inconsistently with the letter or spirit of our policies. We also reserve the right to cancel unconfirmed accounts or accounts that have been inactive for a long time.

### Fees and Services

---



Joining eBay and bidding on listed items is free. We do charge fees for using other services, such as listing items. When you list an item or use a service that has a fee you have an opportunity to review and accept the fees that you will be charged based on our [Fees schedule](#), which we may change from time to time. Changes to that Policy are effective after we provide you with at least fourteen days' notice by posting the changes on the Sites. We may choose to temporarily change the fees for our services for promotional events (for example, free listing days) or new services, and such changes are effective when we post the temporary promotional event or new service on the Sites.

Unless otherwise stated, all fees are quoted in U.S. Dollars. You are responsible for paying all fees and applicable taxes associated with the Sites in a timely manner with a valid payment method. If your payment method fails or your account is past due, we may collect fees owed using other collection mechanisms. (This includes charging other payment methods on file with us, retaining collection agencies and legal counsel, and for accounts over 180 days past due, deducting the amount owed from your PayPal account balance.)

## Content License

When you give us content, you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in the content, in any media known now or in the future.

## Liability

You will not hold eBay responsible for other users' actions or inactions, including things they post. You acknowledge that we are not a traditional auctioneer. Instead, the Sites are a venue to allow anyone to offer, sell, and buy just about anything, at anytime, from anywhere, in a variety of pricing formats and venues, such as stores, fixed price formats and auction-style formats. We are not involved in the actual transaction between buyers and sellers. We have no control over and do not guarantee the quality, safety or legality of items advertised, the truth or accuracy of listings, the ability of sellers to sell items, the ability of buyers to pay for items, or that a buyer or seller will actually complete a transaction.

We do not transfer legal ownership of items from the seller to the buyer, and nothing in this agreement shall modify the governing provisions of California Commercial Code § 2401(2) and Uniform Commercial Code § 2-401(2), under which legal ownership of an item is transferred upon physical delivery of the item to the buyer by the seller. Unless the buyer and the seller agree otherwise, the buyer will become the item's lawful owner upon physical receipt of the item from the seller, in accordance with California Commercial Code § 2401(2) and Uniform Commercial Code § 2-401(2). Further, we cannot guarantee continuous or secure access to our services, and operation of the Sites may be interfered with by numerous factors outside of our control. Accordingly, to the extent legally permitted, we exclude all implied warranties, terms and conditions. We are not liable for any loss of money, goodwill, or reputation, or any special, indirect, or consequential damages arising out of your use of our Sites. Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so such disclaimers and exclusions may not apply to you.

Regardless of the previous paragraph, if we are found to be liable, our liability to you or to any third party is limited to the greater of (a) the total fees you paid to us in the 12 months prior to the action giving rise to the liability, and (b) \$100.

## Release

If you have a dispute with one or more users, you release us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

## Access and Interference

The Sites contains robot exclusion headers. Much of the information on the Sites is updated on a real-time basis and is proprietary or is licensed to eBay by our users or third parties. You agree that you will not use any robot, spider, scraper or other automated means to access the Sites for any purpose without our express written permission.

Additionally, you agree that you will not:

- take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure;
- copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (except for Your Information) from the Sites without the prior expressed written permission of eBay and the appropriate third party, as applicable;
- interfere or attempt to interfere with the proper working of the Sites or any activities conducted on the Sites; or
- bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Sites.

## Privacy

We do not sell or rent your personal information to third parties for their marketing purposes without your explicit consent. We use your information only as described in the [eBay Privacy Policy](#). We view protection of users' privacy as a very important community principle. We store and process your information on computers located in the United States that are protected by physical as well as technological security devices. You can access and modify the information you provide us and choose not to receive certain communications by signing-in to your account. We use third parties to verify and certify our privacy principles. For a complete description of how we use and protect your personal information, see the [eBay Privacy Policy](#). If you object to your information being transferred or used in this way please do not use our services.

### Indemnity

You will indemnify and hold us (and our officers, directors, agents, subsidiaries, joint ventures and employees), harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of this Agreement, or your violation of any law or the rights of a third party.

### No Agency

No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

### Notices

Except as explicitly stated otherwise, legal notices shall be served on eBay's national registered agent (in the case of eBay) or to the email address you provide to eBay during the registration process (in your case). Notice shall be deemed given 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to the address provided during the registration process. In such case, notice shall be deemed given three days after the date of mailing.

### Resolution of Disputes

If a dispute arises between you and eBay, our goal is to provide you with a neutral and cost effective means of resolving the dispute quickly. Accordingly, you and eBay agree that we will resolve any claim or controversy at law or equity that arises out of this Agreement or our services (a "Claim") in accordance with one of the subsections below or as we and you otherwise agree in writing. Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution by going to the [About Customer Support](#) help page. We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

- **Law and Forum for Disputes** - This Agreement shall be governed in all respects by the laws of the State of California as they apply to agreements entered into and to be performed entirely within California between California residents, without regard to conflict of law provisions. You agree that any claim or dispute you may have against eBay must be resolved by a court located in Santa Clara County, California, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts located within Santa Clara County, California for the purpose of litigating all such claims or disputes.
- **Arbitration Option** - For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- **Improperly Filed Claims** - All claims you bring against eBay must be resolved in accordance with this Resolution of Disputes Section. All claims filed or brought contrary to the Resolution of Disputes Section shall be considered improperly filed. Should you file a claim contrary to the Resolution of Disputes Section, eBay may recover attorneys' fees and costs up to \$1000, provided that eBay has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

### Additional Terms

The following policies are part of this Agreement and provide additional terms and conditions related to specific services offered on the Site:

- **Outage Policy** - <http://pages.ebay.com/help/policies/everyone-outage.html>
- **Prohibited, Questionable & Infringing Item Policy** - <http://pages.ebay.com/help/policies/items-ov.html>
- **Board Usage Policy** - <http://pages.ebay.com/help/policies/everyone-boards.html>
- **Listing Policy** - <http://pages.ebay.com/help/policies/listing-ov.html>
- **Investigations**- <http://pages.ebay.com/help/tp/programs-investigations.html>

- **Real Estate Policy** - <http://pages.ebay.com/help/policies/real-estate.html>
- **Community Content Policy** (covers Reviews, Guides, Blog Entries, Wiki Articles, and Member-Created Product Descriptions) - <http://pages.ebay.com/help/policies/member-created-content-ov.html>
- **eBay Groups Guidelines** - <http://pages.ebay.com/help/policies/group-guidelines.html>

Each of these policies may be changed from time to time. Changes take effect when we post them on the Sites. When using particular services on the Sites, you are subject to any posted policies or rules applicable to services you use through the Sites, which may be posted from time to time. All such policies or rules are hereby incorporated into this Agreement.

## General

eBay Inc. is located at 2145 Hamilton Ave., San Jose, CA 95125. If you reside outside of the United States and registered on these Sites, the services are offered in countries within the European Union by eBay Europe S.à r.l., located at 15, rue Notre Dame, L- 2240 Luxembourg, and in all other countries by eBay International AG, located at Helvetiastrasse 15/17, 3005, Bern, Switzerland. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. In our sole discretion, we may assign this Agreement in accordance with the Notices Section. Headings are for reference purposes only and do not limit the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this Agreement.

We may amend this Agreement at any time by posting the amended terms on this Site. Except as stated elsewhere, all amended terms shall automatically be effective 30 days after they are initially posted. Additionally, we will notify you through the eBay Message Center. This Agreement may not be otherwise amended except in a writing signed by you and us. This Agreement sets forth the entire understanding and agreement between us with respect to the subject matter hereof. The following Sections survive any termination of this Agreement: Fees and Services (with respect to fees owed for our services), Release, Content License, Liability, Indemnity and Resolution of Disputes.

You may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

## Related Help topics

- [User Agreement Revisions](#)
- [eBay Privacy Policy](#)



eBay home | Pay | Register | Sign out | Site Map | Community | Help

Search eBay Motors Start new search

Search Advanced Search



Back to list of items Listed in category: eBay Motors > Parts & Accessories > Automotive Tools > Diagnostic Tools / Equipment

INNOVATE LM-1 AIR FUEL METER WIDE BAND W/ AUXBOX LMA-3  
BEST DEAL ON EBAY! SHIPS SAME DAY U PAY (order b4 2PM)!

Item number: 270117877826

This item has ended with Buy it Now.

Sell an item like this or buy a similar item below.



View larger picture

**Buy it Now price:** US \$524.95  
 Make no payments for 3 months Apply

**Ended:** May-13-07 10:01:48 PDT

**Shipping costs:** US \$10.95  
 UPS Ground  
 Service to United States  
 (more services)

**Ships to:** United States

**Item location:** South Eastern United States, United States

**Buyer:** latamud ( 239 ☆ )

**You can also:** Email to a friend

Listing and payment details: Show

Meet the seller

**Seller:** ihavethebestpriceperformance (3613 ☆)

**Feedback:** 100% Positive

**Member:** since May-15-06 in United States

- Read feedback comments
- Ask seller a question
- Add to Favorite Sellers
- View seller's other items: Store | List
- Visit seller's Store: ihavethebestpriceperformance69

Buy safely

1. Check the seller's reputation  
 Score: 3613 | 100% Positive  
 Read feedback comments
2. Check how you're protected  
 This item is covered up to \$2,000 See eligibility  
 Returns: Seller accepts returns.  
 30 Days Money Back

Description (revised)

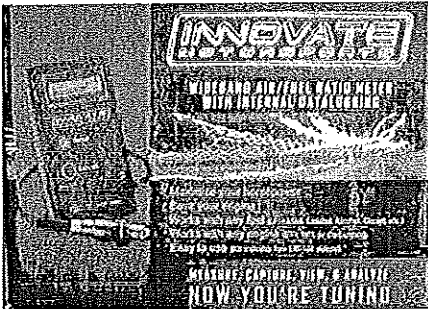
Item Specifics - Item Condition  
Condition: New

ihavethebestpriceperformance69

Visit my eBay Store: ihavethebestpriceperformance69

Sign up for Store newsletter

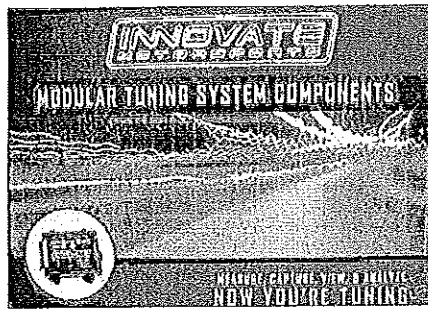
## INNOVATE LM-1 AIR FUEL METER KIT W/ AUXBOX LMA-3



**HOW TO COMPARE WITH A ANALYZE  
NOW YOU'RE TUNING**



- Store Categories
- Store home
- Autometer Gauges
  - \* Antique Street Rod Gauges
  - \* C2 Gauges
  - \* Carbon Fiber Gauges
  - \* Cobalt Gauges
  - \* Cobra Gauges
  - \* Diesel Truck Gauge kits
  - \* Gauge Pods
  - \* Lunar Gauges
  - \* Nexus Gauges
  - \* NV Gauges
  - \* Phantom
  - \* Phantom II Gauges
  - \* Sport Comp Gauges
  - \* Sport Comp II
  - \* Ultra Lite
  - \* Ultra Lite II Gauges
  - \* Z-Series Gauges
- Cab Roof Lights
- Chrome Truck Accessories
  - Chrysler 300 Chrome Accessory
  - Dodge Magnum Chrome Accessory
  - Hawk Brakes
  - JET Mask Air flow
  - Sensors
  - KC Hlites
  - LED Third Brake Lights
  - MSD Ignition
  - Hology HotWires
  - TRQ Chrome Door/Mirror Covers
  - TRQ Exhaust Tips SS & Chrome



**WE HAVE THE BEST PRICE AND SERVICE ON INNOVATE MOTORSPORTS AND WE CARRY GENUINE INNOVATE MOTORSPORTS LM-1 KIT WITH LMA-3 AUXBOX.**

**This is a BRAND NEW Innovate Motorsports LM-1 Kit with LMA-3 AuxBox in the factory sealed box.**

**THIS OFFER IS FOR AN INNOVATE MOTORSPORTS LM-1 DIGITAL AIR FUEL METER KIT WITH THE LMA-3 AUXBOX.**

**THE LM-1 TUNNER WILL HELP YOU TUNE YOUR ENGINE FOR CORRECT AIR FUEL RATIOS, WITHOUT HAVING TO RESORT TO EXPENSIVE AND TIME CONSUMING DYNO SESSIONS. UNIT IS SELF CALIBRATING SO IT WILL CORRECT FOR CHANGES IN ALTITUDE, TEMPERATURE ETC.. THE SENSOR WILL STORE THE DATA INTERNALLY WHICH CAN THEN BE DOWNLOADED TO A PC TO BE ANALYZED AND VIEWED WITH ANY SPREAD SHEET PROGRAM OR THE INCLUDED EASY TO USE SOFTWARE.**

**THE INCLUDED THE LMA-3 AUXBOX IS FOR USE WITH THE LM-1 DIGITAL AIR/FUEL RATIO METER. THE AUXBOX CONNECTS TO THE AUXILIARY INPUT OF THE LM-1 AIR FUEL METER. 5 BUILT IN SENSORS MAKE THE AUXBOX A MUST HAVE! THE BUILT IN SENSORS ARE: BOOST SENSOR (GOOD UP TO 44.1 PSI), EGT SENSOR (EXHAUST GAS TEMP SENSOR) OR CYLINDER HEAD TEMP SENSOR, ACCELERATION (USES A 2-AXIS ACCELEROMETER), RPM CONVERSION SENSOR, AND A DWELL SENSOR (INJECTOR DUTY CYCLE). THE LMA-3 ALSO HAS FIVE EXTERNAL INPUTS WHICH ARE VERY USEFULL FOR COLLECTING DATA OFF OTHER VEHICLE SENSORS. MTS COMPLIANT.**

**INCLUDES THE FOLLOWING:**

- LM1 TUNER.
- LMA-3 AuxBox.

- 9V BATTERY FOR LM1 TUNER.
- CD WITH ALL THE NECESSARY SOFTWARE AND DOCUMENTS.
- BOSCH WIDEBAND OXYGEN SENSOR.
- ANALOG OUTPUT CABLE.
- 10 FOOT SENSOR CABLE.
- 10 FOOT CIGARETTE LIGHTER POWER CABLE.
- 6 FOOT PC SERIAL CABLE.
- OXYGEN SENSOR BUNG AND PLUG.
- INNOVATE MOTORSPORTS QUICK START GUIDE.
- AUXBOX MOUNTING HARDWARE.
- 6 FOOT THERMOCOUPLE WIRE.
- AUXBOXX CABLE TO CONNECT TO THE LM-1.
- AUXBOX USER MANUAL.
- INNOVATE MOTORSPORTS STICKER.

**PART NUMBER INN3723 & INN3742**

PLEASE EMAIL US IF YOU HAVE ANY QUESTIONS OR CONCERNS. ALL EMAILS WILL BE ANSWERED IN LESS THAN 24 HOURS. PLEASE LOOK AT OUR EBAY STORE FOR MORE AUTO, TRUCK, AND SUV ACCESSORIES AND PERFORMANCE PARTS.

WE HAVE THE BEST PRICE AND SERVICE ON INNOVATE MOTORSPORTS AND WE CARRY THE ENTIRE LINE!

**OUR PROMISE TO YOU:**

We will list items with the best descriptions possible and with accurate pictures, ALL items are in stock in our warehouse, we will process your order within 24 hours of receiving payment, we will answer all your emails, we will do everything in our power to fix any issues that may arise and if we can not fix it we will refund your payment. We want to have repeat buyers who trust us, our goal is to keep a perfect feedback. You will have the most pleasant buying experience with us!

**PAYMENT INFORMATION:**

We only accept Paypal and you can pay with your major credit card using Paypal. Paypal is the safest and most secure way for buyers and sellers to sell online and that is why we use it. If you have any questions on how to use paypal email us and we will help you.

**SHIPPING INFORMATION:**

Buyer to pay \$9.95 shipping and handling inside the contiguous United States (excludes

Alaska, Hawaii and Puerto Rico). SHIPPING to HAWAII, ALASKA and PUERTO RICO is \$19.95. We ship by DHL ground. Most items will ship within 24 hours of payment, but may take as long as 2 days to ship. WILL NOT SHIP TO CANADA OR INTERNATIONAL!

**Insurance is \$1.00 (required).**

**TRACKING INFORMATION:**

As soon as we ship we will email you a tracking number, this should happen within 24 hours of auction end (obviously longer on weekends). If you have not received a tracking number within 3 days of auction end email us immediately.

**PARTS AVAILABILITY:**

ALL parts that we list are in stock in our warehouse. We are not drop-shippers. You should never have an issue with paying us and never receiving your part as our supplier does not have it. This is very common with other sellers. If some extremely strange thing were to happen and you buy something that we can not ship you will get an immediate refund in less than 24 hours.

**RETURN POLICY:**

YOU MUST CONTACT US BEFORE YOU RETURN ANY ITEM. WE MUST ISSUE AN RGA (RETURN GOODS AUTHORISATION) NUMBER TO BE ABLE TO KNOW WHO THE PART BELONGS TO SO WE CAN REFUND THE CORRECT BUYER. FAILURE TO DO THIS WILL RESULT IN LONGER PROCESSING TIME OR FAILURE TO GET A REFUND UNTIL YOU CONTACT US.

Our customers satisfaction is the most important thing to us. We will maintain an excellent feedback rating as proof of that. In the rare instance where you receive a part in error, or there was an error in the listing contact us immediately to resolve the issue. We will send a prepaid call tag to pick up the item and give you a FULL REFUND. Returns must be in their original boxes and in sellable condition.

Items with missing parts or warranty items: contact us immediately to solve the issue. These issues will be resolved at no expense to the buyer, but they have to be handled on an individual basis.

If for some reason you are not satisfied with what you bought send it back to us and we will refund the purchase price minus shipping costs.

**EMAILS:**

ALL emails will be answered in less than 24 hours. ALL questions will be answered and ALL issues will be resolved.

**Please click here to see my other auctions.**



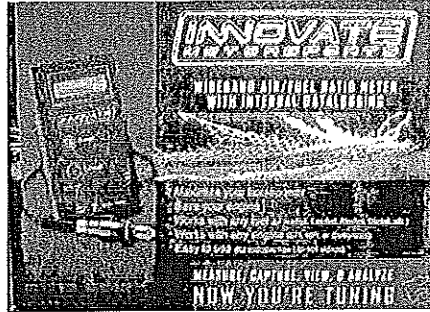
Created by eBay Seller's Assistant Pro v.2.5.036

On Feb-24-06 at 02:55:20 PST, seller added the following information:

After purchasing, pay instantly with your credit card through PayPal



Select a picture



Thanks for looking!  
The power of protection from AOL and eBay. Learn more

Find more items from the same seller. Bid or Buy Now!



**AUTOMETER COBALT DIGITAL PRO SHIFT LIGHT SYSTEM GAUGE**

*Buy Now* US \$173.95  
Time left: 2d 6h 46m



**NOLOGY HOTWIRES SPARK PLUG WIRES 03-08 SCION XB XB**

*Buy Now* US \$189.95



**AUTOMETER NV MECHANICAL 60 PSI TURBO BOOST GAUGE NEW**

*Buy Now* US \$49.99  
Time left: 1d 20h 23m



**NOLOGY HOTWIRES SPARK PLUG WIRES 00-05 HONDA S2000 2.0**

*Buy Now* US \$149.95

[Visit seller's Store](#)

**Shipping and handling**

Ships to  
United States

Country: United States

Shipping and Handling

US \$10.95

US \$20.95

To

United States

United States

Service

UPS Ground  
1 to 8 business days\*

Other (see description)

\* Sellers are not responsible for service transit time. This information is provided by the carrier and excludes weekends and holidays. Note that transit times may vary, particularly during peak periods.

**Domestic handling time**

Will usually ship within 1 business day of receiving cleared payment.

**Shipping Insurance**

Included (in the shipping and handling cost)

**Return policy**

Item must be returned within: 30 Days

Refund will be given as: Money Back

Return policy details:

**RETURN POLICY:**  
YOU MUST CONTACT US BEFORE YOU RETURN ANY ITEM. WE MUST ISSUE AN RGA (RETURN GOODS AUTHORIZATION) NUMBER TO BE ABLE TO KNOW WHO THE PART BELONGS TO SO WE CAN REFUND THE CORRECT BUYER. FAILURE TO DO THIS WILL RESULT IN LONGER PROCESSING TIME OR FAILURE TO GET A REFUND UNTIL YOU CONTACT US.  
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**Payment details**



Payment method



Preferred/Accepted

Seller Preferred

**Seller's payment instructions**

We only accept paypal, if you have any questions on using paypal contact us.

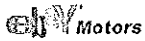
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Seller assumes all responsibility for listing this item.

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INNOVATE WIDEBAND STANDALONE GAUGE KIT LC-1 XD-16 XD16  
BEST DEAL ON EBAY! SHIPS SAME DAY U PAY (order b4 2PM)!

Item number: 270099043179

This item has ended with Buy it Now.

See an item like this or buy a similar item below.



Buy Now price: US \$317.95  
Make no payments for 3 months Apply  
Ended: Mar-16-07 21:14:21 PDT  
Shipping costs: US \$9.95  
UPS Ground  
Service to United States  
Ships to: United States  
Item location: South Eastern United States, United States  
Buyer: goldvenger93 (27 ☆)

View larger picture

You can also: Email to a friend

Listing and payment details: Show

Meet the seller

Seller: ihavethebestpriceperformance (3616 ☆) Power Seller  
Feedback: 100% Positive  
Member: since May-15-06 in United States  
Read feedback comments  
Ask seller a question  
Add to Favorite Sellers  
View seller's other items: Store | List  
Visit seller's Store:  
ihavethebestpriceperformance93

Buy safely

- 1. Check the seller's reputation  
Score: 3616 | 100% Positive  
Read feedback comments
- 2. Check how you're protected  
PayPal This item is covered up to \$2,000 See eligibility  
Returns: Seller accepts returns.  
30 Days Money Back

Description (revised)

Item Specifics - Item Condition  
Condition: New

ihavethebestpriceperformance93

Visit my eBay Store: ihavethebestpriceperformance93

Sign up for Store newsletter

INNOVATE WIDEBAND STANDALONE DIGITAL GAUGE  
W/LC-1 XD-16

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- [Antique Street Rod Gauges](#)
- [C2 Gauges](#)
- [Carbon Fiber Gauges](#)
- [Cobalt Gauges](#)
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- [Gauge Pods](#)
- [Lunar Gauges](#)
- [Nexus Gauges](#)
- [NV Gauges](#)
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**WE HAVE THE BEST PRICE AND SERVICE ON INNOVATE MOTORSPORTS AND WE CARRY**  
**GENUINE INNOVATE MOTORSPORTS XD-16 52MM**  
**PROGRAMMABLE DIGITAL GAUGE WITH LC-1 WIDEBAND O2**  
**LAMBDA CABLE.**

**This is a BRAND NEW Innovate Motorsports XD-16 52mm Programmable Digital Gauge with LC-1 Wideband o2 Lambda Cable in the factory sealed box.**

**THIS OFFER IS FOR AN INNOVATE MOTORSPORTS XD-16 52MM PROGRAMMABLE DIGITAL GAUGE WITH LC-1 WIDEBAND O2 LAMBDA CABLE. GAUGE COMES SET UP FROM THE FACTORY AS AN AIR/FUEL RATIO GAUGE BUT IT CAN BE PROGRAMMED TO DISPLAY ANY FUNCTION IN THE MTS CHAIN. IT CAN ALSO BE MOUNTED DIRECTLY TO AN LM-1 A/F METER. GAUGE CAN BE CONFIGURED TO DISPLAY DIFFERENT PROGRAMMABLE LED COLORS.**

**ALSO INCLUDED IS AN INNOVATE MOTORSPORTS LC-1 LAMBDA CABLE WITH OXYGEN SENSOR. THIS IS A WIDEBAND CONTROLLER. COMPLETELY SEALED WIDEBAND CONTROLLER CABLE. WILL TIE IN TO ANY ECU THAT ACCEPTS A WIDEBAND INPUT. TWO OUTPUTS ARE COMPATIBLE WITH MOST DATA ACQUISITION HARDWARE, DYNAMOMETER SOFTWARE, AND MOST GAUGES.**

**INCLUDES THE FOLLOWING:**

- XD-16 PROGRAMMABLE GAUGE.
- SERIAL CABLE TO CONNECT XD-16 TO LM-1.
- MALE 2.5 TO 2.5 TO CONNECT TO AUXBOX, DL-32 LC-1, LM-1, OR ST-12.
- TERMINATOR PLUG.
- GAUGE MOUNTING HARDWARE KIT.
- LC-1 LAMBDA CABLE.
- WIDEBAND O2 SENSOR BY BOSCH.
- CD WITH ALL THE NECESSARY SOFTWARE AND DOCUMENTS.
- PC INTERFACE CABLE.
- MISC PC ACCESSORIES.
- OXYGEN SENSOR BUNG AND PLUG.
- INNOVATE MOTORSPORTS STICKER.

**PART NUMBER INN3781 (SAME AS A 3769 & 3780)**

PLEASE EMAIL US IF YOU HAVE ANY QUESTIONS OR CONCERNS. ALL EMAILS WILL BE ANSWERED IN LESS THAN 24 HOURS. PLEASE LOOK AT OUR EBAY STORE FOR MORE AUTO, TRUCK, AND SUV ACCESSORIES AND PERFORMANCE PARTS.

WE HAVE THE BEST PRICE AND SERVICE ON INNOVATE MOTORSPORTS AND WE CARRY THE ENTIRE LINE!

**OUR PROMISE TO YOU:**

We will list items with the best descriptions possible and with accurate pictures, ALL items are in stock in our warehouse, we will process your order within 24 hours of receiving payment, we will answer all your emails, we will do everything in our power to fix any issues that may arise and if we can not fix it we will refund your payment. We want to have repeat buyers who trust us, our goal is to keep a perfect feedback. You will have the most pleasant buying experience with us!

**PAYMENT INFORMATION:**

We only accept Paypal and you can pay with your major credit card using Paypal. Paypal is the safest and most secure way for buyers and sellers to sell online and that is why we use it. If you have any questions on how to use paypal email us and we will help you.

**SHIPPING INFORMATION:**

Buyer to pay \$8.95 shipping and handling inside the contiguous United States (excludes Alaska, Hawaii and Puerto Rico). SHIPPING to HAWAII, ALASKA and PUERTO RICO is \$39.95. We ship by DHL ground. Most items will ship within 24 hours of payment, but may take as long as 2 days to ship. WILL NOT SHIP TO CANADA OR INTERNATIONAL!

**Insurance is \$1.00 (required).**

**TRACKING INFORMATION:**

As soon as we ship we will email you a tracking number, this should happen within 24 hours of auction end (obviously longer on weekends). If you have not received a tracking number within 3 days of auction end email us immediately.

**PARTS AVAILABILITY:**

ALL parts that we list are in stock in our warehouse. We are not drop-shippers. You should never have an issue with paying us and never receiving your part as our supplier does not have it. This is very common with other sellers. If some extremely strange thing were to happen and you buy something that we can not ship you will get an immediate refund in less than 24 hours.

**RETURN POLICY:**

YOU MUST CONTACT US BEFORE YOU RETURN ANY ITEM. WE MUST ISSUE AN RGA (RETURN GOODS AUTHORISATION) NUMBER TO BE ABLE TO KNOW WHO THE PART BELONGS TO SO WE CAN REFUND THE CORRECT BUYER. FAILURE TO DO THIS WILL RESULT IN LONGER PROCESSING TIME OR FAILURE TO GET A REFUND UNTIL YOU

**CONTACT US.**

Our customers satisfaction is the most important thing to us. We will maintain an excellent feedback rating as proof of that. In the rare instance where you receive a part in error, or there was an error in the listing contact us immediately to resolve the issue. We will send a prepaid call tag to pick up the item and give you a FULL REFUND. Returns must be in their original boxes and in sellable condition.

Items with missing parts or warranty items: contact us immediately to solve the issue. These issues will be resolved at no expense to the buyer, but they have to be handled on an individual basis.

If for some reason you are not satisfied with what you bought send it back to us and we will refund the purchase price minus shipping costs.

**EMAILS:**

ALL emails will be answered in less than 24 hours. ALL questions will be answered and ALL issues will be resolved.

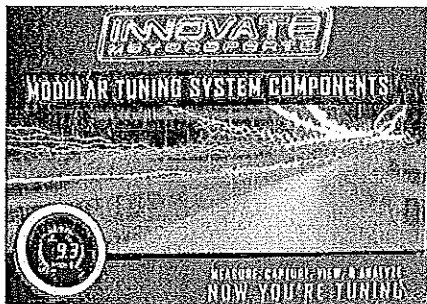
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On Feb-24-06 at 02:55:20 PST, seller added the following information:

**After purchasing, pay instantly with your credit card through PayPal!**



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Find more items from the same seller. Bid or Buy Now!



**AUTOMETER COBALT SERIES 100 PSI BOOST GAUGE NEW 6106**

Buy Now US \$66.95



**AUTOMETER CARBON FIBER MECHANICAL FUEL PRESSURE GAUGE**

Buy Now US \$46.48  
 Time left: 2d 18h 29m



**AUTOMETER SPORT COMP II 5" SHIFT LIGHT TACHOMETER 3699**

Buy Now US \$199.95  
 Time left: 3d 6h 39m



**AUTOMETER CARBON FIBER 20 PSI VACUUM BOOST GAUGE KIT**

Buy Now US \$52.90  
 Time left: 3d 6h 26m

[Visit seller's Store](#)

**Shipping and handling**

Ships to United States

Country: United States

Shipping and Handling	To	Service
US \$9.95	United States	UPS Ground <small>1 to 6 business days*</small>

\*Sellers are not responsible for service transit time. This information is provided by the carrier and excludes weekends and holidays. Note that transit times may vary, particularly during peak periods.

**Domestic handling time**  
 Will usually ship within 1 business day of receiving cleared payment.

**Shipping Insurance**  
 Included (in the shipping and handling cost)

**Return policy**

Item must be returned within: 30 Days

Refund will be given as: Money Back

**Return policy details:**  
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 We only accept paypal, if you have any questions on using paypal contact us.

**Other options**

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