

1 Thomas T. Chan, Esq. (SBN 129606)  
2 Ronald M. St. Marie, Esq. (SBN 101398)  
3 George K. Rosenstock, Esq. (SBN 117515)  
4 CHAN LAW GROUP LC  
5 1055 West Seventh Street, Suite 1880  
6 Los Angeles, California 90017  
7 Telephone: (213) 955-0211  
8 Facsimile: (213) 622-1154

9 Attorneys for Plaintiff and Counterclaim  
10 Defendant PERFUMEBAY.COM, INC.

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14 PERFUMEBAY.COM, INC., a  
15 California corporation,

16 Plaintiff,

17 v.

18 EBAY INC., a Delaware corporation,

19 Defendant.

20 EBAY INC., a Delaware corporation,

21 Counterclaim Plaintiff,

22 v.

23 PERFUMEBAY.COM, INC., a  
24 California corporation,

25 Counterclaim Defendant.  
26  
27  
28

Case No.: CV04-1358 CAS (SSx)

**PLAINTIFF PERFUMEBAY.COM'S  
ANSWER TO COUNTERCLAIM**

**DEMAND FOR JURY TRIAL**

1 Counterclaim Defendant PerfumeBay.com, Inc. (“PerfumeBay”) answers,  
2 denies, and admits the allegations of the Counterclaim as follows:

3 **The Parties**

4 1. PerfumeBay admits that eBay is a Delaware corporation having its  
5 principal place of business at 2144 Hamilton Avenue, San Jose, California 95125.

6 2. PerfumeBay admits that PerfumeBay is a California corporation  
7 having its principal place of business at 16130 Gothard Street, Huntington Beach,  
8 California 92647.

9 **Jurisdiction and Venue**

10 3. PerfumeBay admits that the Counterclaim alleges that this Court has  
11 jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367.

12 4. PerfumeBay denies the allegations of paragraph 4 of the counterclaim.

13 5. PerfumeBay admits that if this Court has jurisdiction to hear and  
14 adjudicate this matter, then venue is proper in this Court pursuant to 28 U.S.C. §  
15 1391.

16 **Common Allegations**

17 **EBay’s Use of the EBAY Marks**

18 6. PerfumeBay lacks knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in Paragraph 6 of the Counterclaim and on  
20 that basis denies the same.

21 7. PerfumeBay lacks knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in Paragraph 7 of the Counterclaim and on  
23 that basis denies the same.

24 8. PerfumeBay lacks knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in Paragraph 8 of the Counterclaim and on  
26 that basis denies the same  
27  
28

1           9.     PerfumeBay lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in Paragraph 9 (and each subparagraph  
3 thereof) of the Counterclaim and on that basis denies the same.

4           10.    PerfumeBay lacks knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in Paragraph 10 of the Counterclaim and on  
6 that basis denies the same.

7           11.    PerfumeBay lacks knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in Paragraph 11 of the Counterclaim and on  
9 that basis denies the same.

10          12.    PerfumeBay lacks knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in Paragraph 12 of the Counterclaim and on  
12 that basis denies the same.

13          13.    PerfumeBay lacks knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in Paragraph 13 of the Counterclaim and on  
15 that basis denies the same.

16          14.    PerfumeBay lacks knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in Paragraph 14 of the Counterclaim and on  
18 that basis denies the same.

19          15.    PerfumeBay lacks knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in Paragraph 15 of the Counterclaim and on  
21 that basis denies the same.

22          16.    PerfumeBay lacks knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in Paragraph 16 of the Counterclaim and on  
24 that basis denies the same.

25          17.    PerfumeBay lacks knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in Paragraph 17 of the Counterclaim and on  
27 that basis denies the same.

1 18. PerfumeBay lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in Paragraph 18 of the Counterclaim and on  
3 that basis denies the same.

4 **PerfumeBay.com’s Use of the PERFUME BAY Name and Mark**

5 19. PerfumeBay admits PerfumeBay operates an online business through  
6 which customers may purchase products via the internet at a website located at the  
7 URL address [www.perfumbay.com](http://www.perfumbay.com). PerfumeBay denies that it uses the  
8 designation PERFUMBAY as part of its trade name, to the extent PerfumeBay  
9 uses a colored star fish design in between the words Perfume and Bay on its web  
10 site. PerfumeBay admits that it uses as part of its trade name, PerfumeBay.com,  
11 and perfumbay.com in connection with its business and services. PerfumeBay  
12 denies each and every other allegation of Paragraph 19 of the Counterclaim.

13 20. PerfumeBay denies the allegation of paragraph 20 of the  
14 Counterclaim that PerfumeBay sells “used” mens’ and women’s fragrances.  
15 PerfumeBay admits the remaining allegations of paragraph 20 of the Counterclaim.

16 21. PerfumeBay admits the allegations of paragraph 21 of the  
17 counterclaim.

18 22. Paragraph 22 of the Counterclaim constitutes a legal conclusion;  
19 PerfumeBay denies the allegations of Paragraph 22 of the Counterclaim.

20 23. Paragraph 23 of the Counterclaim constitutes a legal conclusion;  
21 PerfumeBay denies the allegations of Paragraph 23 of the Counterclaim.

22 24. PerfumeBay lacks knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in Paragraph 24 of the Counterclaim and on  
24 that basis denies the same.

25 25. Paragraph 25 of the Counterclaim constitutes a legal conclusion;  
26 PerfumeBay denies the allegations of Paragraph 25 of the Counterclaim.

27 26. Paragraph 26 of the Counterclaim constitutes a legal conclusion;  
28 PerfumeBay denies the allegations of Paragraph 26 of the Counterclaim.

1 denies the allegation in said paragraph.

2 27. In answer to paragraph 27 of the Countercomplaint, PerfumeBay.com  
3 denies the allegation in said paragraph.

4 28. Paragraph 28 of the Counterclaim constitutes a legal conclusion;  
5 PerfumeBay denies the allegations of Paragraph 28 of the Counterclaim.

6 29. PerfumeBay admits the allegation of Paragraph 29 of the  
7 Counterclaim.

8 30. PerfumeBay denies the allegation of Paragraph 30 of the  
9 Counterclaim.

10 31. PerfumeBay denies the allegations of Paragraph 31 of the  
11 Counterclaim.

12 32. PerfumeBay admits the allegations of Paragraph 32 of the  
13 Counterclaim.

14 33. PerfumeBay admits that PerfumeBay's services are accessed by the  
15 Internet URL address [www.perfumbay.com](http://www.perfumbay.com). Except as so admitted, PerfumeBay  
16 denies the remaining allegations in Paragraph 33 of the Counterclaim.

17 34. PerfumeBay denies the allegations of paragraph 34 of the  
18 Counterclaim.

19 35. In answer to paragraph 35 of the Countercomplaint, PerfumeBay  
20 admits that it has used the trademark PERFUME BAY in interstate commerce  
21 since at least October 30, 1999. Except as so admitted, PerfumeBay.com denies  
22 the remaining allegations in said paragraph on the ground that PerfumeBay.com  
23 lacks information sufficient to form a belief as to the truth of the allegations.

24 **First Cause of Action**

25 **(Federal Trademark Infringement)**

26 36. PerfumeBay realleges and incorporates by reference paragraphs 1-35  
27 of this Answer.













1  
2 WHEREFORE, PerfumeBay prays for judgment as follows:

- 3 1. That Counterclaimant take nothing by way of its  
4 Counterclaim;  
5 2. That the Counterclaim be dismissed;  
6 3. That PerfumeBay be awarded its costs of suit incurred herein;  
7 4. That PerfumeBay be awarded its reasonable attorneys' fees  
8 incurred herein; and  
9 5. For such other and further relief as the Court deems just and proper.  
10

11 CHAN LAW GROUP LC  
12

13  
14 DATED: June 18, 2004

By: \_\_\_\_\_  
George K. Rosenstock  
Attorneys for Plaintiff and Counterclaim  
Defendant PerfumeBay.com  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **DEMAND FOR JURY TRIAL**

2  
3 PerfumeBay.com hereby demands a trial by jury for all issues raised in this action.  
4

5 CHAN LAW GROUP LC  
6

7  
8 DATED: June 18, 2004

By: \_\_\_\_\_

9 George K. Rosenstock  
10 Attorneys for Plaintiff and Counterclaim  
11 Defendant PerfumeBay.com  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28