

The following is a telephonic ruling for JANUARY 18, 2001,
Department 74, the Honorable LINDA B. QUINN presiding.

Case Number GIC746980

1. Defendant eBay, Inc.'s General Demurrer to Plaintiffs' Second Amended Complaint

The Court grants defendant eBay, Inc.'s Evidence Code § 452(h) request for judicial notice of the following fact, "A user listing an item for sale on eBay's web site selects the category and subcategory under which her item will appear on eBay's web site." Plaintiffs' opposition fails to object to this request for judicial notice.

Defendant eBay, Inc.'s general demurrer to causes of action one and three of plaintiffs' second amended complaint, negligence and Business & Professions Code §17200 liability, respectively, is sustained without leave to amend. Causes of action one and three of plaintiffs' second amended complaint are barred by the 47 U.S.C. § 230 safe harbor immunity raised in defendant eBay, Inc.'s demurrer, and the causes of action have not factually pled around the immunity.

Defendant eBay, Inc.'s general demurrer to cause of action four of plaintiffs' second amended complaint, Civil Code § 1739.7 liability, is sustained without leave to amend. Civil Code §1739.7 imposes a duty on a "dealer" who "provides a description of that collectible as being autographed." Plaintiffs' second amended complaint does not allege that defendant eBay, Inc. "provides a description of that collectible as being autographed." The allegation in paragraphs 52-53 of the second amended complaint, *i.e.*, that defendant eBay, Inc. includes on its web site categories under which items for sale are listed, and that one of those categories is labeled, "Sports: Autographs," is insufficient to impose an obligation on defendant eBay to furnish a COA under Civil Code § 1739.7(b). A category label is not a description of a specific collectible; further, per defendant eBay, Inc.'s request for judicial notice, it is the web site user who decides which category he or she will assign to her item. The "joint sale" relationship alleged in paragraphs 48-49 and 68 of plaintiffs' second amended complaint looks like aiding and abetting liability, and Civil Code § 1739.7 is silent on aiding and abetting liability.

2. Defendant eBay's Motion to Strike Plaintiffs' Second Amended Complaint

Defendant eBay's unopposed motion to strike plaintiffs' second amended complaint, is moot given the above demurrer ruling which sustains, without leave to amend, defendant eBay's general demurrer to cause of action three of plaintiffs' second amended complaint. The claims sought to be stricken in defendant eBay, Inc.'s motion to strike are pled in conjunction with cause of action three of plaintiffs' second amended complaint.

3. Defendant eBay, Inc.'s General Demurrer to Defendant Donald Frangipani's Second Amended Cross-Complaint

Defendant eBay, Inc.'s general demurrer to cause of action one of defendant Frangipani ("defendant Frangipani") second amended cross-complaint, violation of California Business & Professions Code § 16720, is sustained without leave to amend. The cause of action fails to plead that defendant eBay, Inc. had sufficient economic power in the tying market to coerce the purchase of the tied product and that a substantial amount of sale was effected in the tied product." (See, *Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal. App. 4th 171, 184.) Instead, the cause of action pleads these matters in conclusory terms with no explanation as to why conclusory terms are sufficient.

Defendant eBay, Inc.'s general demurrer to causes of action two and three of defendant Frangipani's second amended cross-complaint, common law and statutory appropriation of name or likeness, respectively, are sustained without leave to amend. The causes of action fail to factually plead that defendant eBay, Inc. used defendant Frangipani's name and likeness. Instead, the cause of action makes a conclusory allegation in that respect with no explanation as to why a conclusory allegation is sufficient. Also, the causes of action fails to identify a direct connection between the use of Frangipani's name or

likeness and any advantage achieved by defendant eBay, Inc.

Defendant eBay, Inc.'s general demurrer to causes of action four and five of defendant Frangipani's second amended cross-complaint, negligent and intentional interference with prospective economic advantage, respectively, is sustained without leave to amend. The causes of action fail to allege facts to support the newly added list of statutory and common law violation pled in paragraph 30 of the second amended cross-complaint. The causes of action also fail to factually allege any direct relationship between the purported violations and the interference of which Frangipani complains.

4. November 17, 2000 Tentative Class Certification Ruling

The Court vacates the November 17, 2000 tentative ruling which granted plaintiffs' motion for class certification. Given the above ruling which sustains, without leave to amend, defendant eBay, Inc.'s general demurrers to causes of action one, three, and four of plaintiffs' second amended complaint, there is no longer any reason to maintain plaintiffs' action as a class action.

REQUESTS FOR ORAL ARGUMENT MUST BE MADE IN ACCORDANCE WITH LOCAL RULE 5.20.

LINDA B. QUINN

JUDGE OF THE SUPERIOR COURT