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November 10, 2009

VIA ELECTRONIC MAIL AND U.S. MAIL

Tim D. Nyhus
2414 98th Ave. E.
Edgewood, WA 98371
tim_nyhus@comcast.net

Unauthorized Use of the Academy's Intellectual Property

Dear Mr. Nyhus:

We are litigation counsel to the Academy of Motion Picture Arts and Sciences (the "Academy"). We write regarding eBay Item Number 130342177939 – "Academy Awards - Oscar Replica Statue - Movie Award" (the "Statue"). The Statue is substantially, strikingly, or confusingly similar to the Academy's "©Oscar®" statuette. The auction and/or sale of the "©Oscar®" statuette likeness, or any statuette or depiction strikingly, substantially, or confusingly similar thereto, and the use of the ACADEMY AWARDS® and the OSCAR® word mark is unauthorized. A copy of the e-Bay Web site listing for Item No. 130342177939 is enclosed.

Your advertisement on e-Bay acknowledges that the Statue is modeled on the "©Oscar®." Indeed, you identify the Statue as an "Academy Awards - Oscar Replica Statue - Movie Award." The "©Oscar®" statuette is a copyrighted property of the Academy, registered pursuant to Certificate of Registration No. G 38512 and Certificate of Registration of a Claim to Renewal of Copyright No. R 443432. In addition, the Academy has registered the "©Oscar®" statuette as a trademark, pursuant to Certificate of Registration Nos. 1,028,635, 1,895,980, and 1,960,182. The Academy's registrations are valid, current and incontestable. Any unauthorized sale or commercial use of a likeness of the statuette constitutes actionable copyright and trademark infringement. Academy of Motion Picture Arts and Sciences v. Creative House Promotions, Inc., 944 F. 2d 1446, 1455 (9th Cir. 1991) (holding that the "Oscar" design mark "should be given the strongest possible protection against infringement.").

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The OSCAR® word mark is a famous mark that deserves the strongest form of protection. See id. As a result of the long and continuous use of its OSCAR® mark in conjunction with its services, the Academy has gained valuable goodwill and a strong customer recognition in this trademark throughout the world. To protect these valuable rights, the Academy has obtained federal trademark registrations for its OSCAR® word mark pursuant to Certificate of Registration Nos. 1,096,990, 1,118,751, and 2,021,582.

The Academy has also obtained federal trademark registrations for its ACADEMY AWARDS® word mark pursuant to Certificate of Registration Nos. 1,880,473, 1,103,859, and 1,956,313 and for its ACADEMY AWARD® word mark pursuant to Certificate of Registration No. 2,245,965.

Your use of the "©Oscar®" statuette likeness, the OSCAR® word mark and the ACADEMY AWARDS® word mark suggests an endorsement of the product by the Academy. This suggestion of endorsement violates the laws pertaining to trademarks and copyrights, and specifically Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

To protect its valuable intellectual properties, the Academy must request that you provide written confirmation that you will immediately and permanently cease and desist from any unauthorized use of the ACADEMY AWARDS® word mark, the OSCAR® word mark and the "©Oscar®" statuette likeness, or any statuette or depiction strikingly, substantially, or confusingly similar thereto. Further, the Academy must request that you agree to immediately:

- (1) deliver up to the Academy for destruction all Statues in your possession, custody or control;
- (2) deliver up to the Academy for destruction all tools, including, but not limited to molds, specially designed for creating the Statue, or, in the alternative, identify by name, address and contact person all manufacturers, creators and/or sellers, of any and all of the items bearing the ACADEMY AWARDS® word mark, the "©Oscar®" statuette likenesses or the OSCAR® word mark including, without limitation, all molds used to make any Statues;
- (3) deliver up to the Academy for destruction any and all items bearing the ACADEMY AWARDS® OSCAR® word marks and all copies or depictions of the "©Oscar®," or works or depictions substantially or strikingly similar thereto, in your possession, custody or control;
- (4) advise the Academy of the gross revenues and profits derived from or attributable to the sale of the Statue(s) and any other items bearing the "©Oscar®" statuette likenesses or the OSCAR® word mark;
- (5) identify by name, address and contact person all purchasers of the Statue(s) and products bearing the "©Oscar®" likeness, the ACADEMY AWARDS® word mark, and/or the OSCAR® word mark;
- (6) provide your written assurance that you will not again manufacture, distribute, auction, offer for sale, sell or use in any manner unauthorized copies of the

"©Oscar®" statuette, or works or depictions substantially or strikingly similar thereto or works containing the ACADEMY AWARDS® or OSCAR® word marks; and

- (7) provide your written assurance that you will not again commercially use the ACADEMY AWARDS® or OSCAR® word marks or use copies of the "©Oscar®" statuette, or works or depictions substantially or strikingly similar thereto or otherwise describe, advertise or promote your products or services in a manner suggesting an association with, or endorsement by, the Academy.

If we do not receive your full and complete compliance to the foregoing terms by the close of business on November 16, 2009, the Academy will have no choice but to pursue its legal options. We await your timely response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Quinto', with a stylized flourish at the end.

David W. Quinto

Enclosure

cc: Bruce Davis
Ric Robertson
Scott Miller, Esq.

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Academy Awards - Oscar Replica Statue - Movie Award

Seller info
academyawardsknight (733 ☆)

me
100% Positive feedback
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Other item info

Item number: 130342177939
Item location: Puyallup, Washington, United States
Ships to: Worldwide
Payments: PayPal See details

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Item condition: --

Time left: 6 days 10 hours (Nov 11, 2009 21:42:33 PST)

Bid history: 1 bid

Current bid: **US \$49.99**

Your max bid: **US \$**

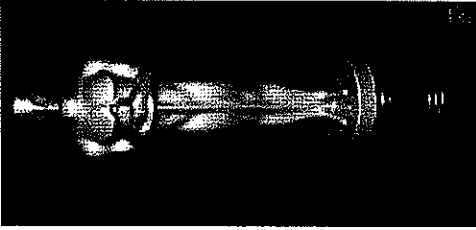
(Enter US \$50.99 or more)

Watch this item

Shipping: US Postal Service Priority Mail Medium Flat Rate Box | See all details
Estimated delivery within 5-6 business days

Returns: No Returns Accepted

Coverage: Pay with **PayPal** and your full purchase price is covered | See terms



Academy Awards - Oscar Replica Statue - Movie Award - eBay (Item 130342177839 end time Nov-11-09 21:42:33 PST)

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