

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**THE THIRD STONE CO. LTD.,**

**Plaintiff,**

**v.**

**EBAY INTERNATIONAL AG,  
EBAY, INC., AND MARKTPLAATS  
BV**

**Defendants.**

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**Case No. 3:16-cv-0517**

**PLAINTIFF’S ORIGINAL COMPLAINT**

The Third Stone Co. Ltd. (“Third Stone”) files this Original Complaint, and in support thereof respectfully states as follows:

**I. PARTIES**

1. Third Stone is a limited liability company duly organized under the laws of China, with a principal address at Wangjing Soho 1B, Wangjing Chaoyang, Beijing, 100102 China.

2. Defendant eBay, Inc. is a Delaware corporation, with a principal address of 2065 Hamilton Avenue, San Jose, California 95125. Process may be served on its registered agent for service of process in Texas at CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.

3. Defendant eBay International AG is a corporation organized under the laws of Switzerland with a principal address of 22-24 Boulevard Royal, Luxembourg, Grand Duchy of Luxembourg 2449. eBay International may be served with process

under the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“the Hague Convention”), or, if necessary, any other method provided for in Federal Rule of Civil Procedure 4(f).

4. Defendant Marktplaats BV is a Netherlands company and may be served with process under the Hague Convention, by forwarding triplicate originals of process with this Complaint to the Central Authority for Netherlands, De Officier van Justitie (Public Prosecutor at the District Court of The Hague), Postbus 20302, 2500 EH, The Hague, Netherlands for service upon Marktplaats.

## II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338 and 15 U.S.C § 1121, as this action arises under United States trademark law, including the Lanham Act, codified at 15 U.S.C. § 1125(a). The Court may also maintain supplemental jurisdiction over Third Stone’s state law claims under 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendants because all of the Defendants conduct business in Texas.

7. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because Defendants are deemed to reside in this judicial district and a substantial part of the events giving rise to the claims herein occurred and continue to occur in this judicial district.

### III. STATEMENT OF FACTS

8. In early 2014, Dr. Lu Liang, founder and Chief Executive Officer of Third Stone, had an idea to develop a mobile application for a location-based secondhand marketplace.

9. Dr. Liang and his team of e-commerce veterans went to work developing a mobile application that focused on connecting buyers and sellers in the same geographic area.

10. The application was named “5miles” to suggest the local aspect of the application.

11. In August 2014, the Third Stone launched its mobile application in the U.S., 5miles (the “5miles App”), making it available for download at that time through Google Play and soon after through the Apple App Store.

12. The 5miles App is offered under the trademark “5miles” through Third Stone’s wholly owned subsidiary 5miles, LLC, a Delaware limited liability company.

13. Third Stone applied to register the standard character trademark “5miles” with the United States Patent and Trademark Office (“USPTO”). The standard character mark is the subject of two separate trademark applications: Application Serial No. 86/294,339 filed May 29, 2014, and 86/476,006 filed on December 10, 2014. True and correct copies of the ’339 and ’006 applications are attached as Exhibits A and B, respectively.

14. Third Stone has also applied to register its stylized design mark for “5miles” with the USPTO. The stylized design mark is the subject of U.S. Application

Serial No. 86/476,016 filed on December 10, 2014. A true and correct copy of the '016 application is attached as Exhibit C.

15. On February 23, 2016, the USPTO issued United States Trademark Registration No. 4,905,765 (“765 Registration”) for the 5miles standard character mark that is the subject of the '339 application. A true and correct copy of the '765 Registration is attached as Exhibit D.

16. The 5miles App has a distinctive icon (“5miles Icon”) featuring a stylized number 5 in white on an orange background as shown below:



17. The 5miles standard character mark, the 5miles stylized design mark and the 5miles Icon collectively make up the “5miles Marks.”

18. Third Stone registered the domain *5milesapp.com* on May 20, 2014.

19. Since at least as early as August 21, 2014, Third Stone has used the 5miles Marks in interstate commerce.

20. Third Stone has launched its 5miles App in several cities throughout the United States, including without limitation, Boston, Dallas, Houston, Miami, Los Angeles, Chicago, New York, and Philadelphia.

21. The 5miles App averages 30,000 downloads a day and, as of January 2016, has been downloaded approximately 5.6 million times and has hundreds of thousands of monthly active users across the U.S., the vast majority of which are based in Texas. In addition, since it launched in 2014, the 5Miles App has been used

to list goods and services with a value exceeding \$1 billion, and the gross merchandise value on the 5Miles App now exceeds \$100 million every month.

22. eBay acquired a mobile app named Rumgr in October 2014. Rumgr performed the same or similar functions to the 5miles App.

23. eBay registered or caused to be registered the domain name *close5.com* on July 2, 2014.

24. Upon information and belief, eBay rebranded the Rumgr app as “Close5.” eBay launched the Close5 app in San Diego in November 2014.

25. The Close5 app performs the same or similar functions to the 5miles App.

26. eBay’s Close5 app has an icon that prominently features a stylized number 5 in white on a red background. eBay’s mark “Close5,” the stylized design of the numeral 5, and the Close5 app icon are collectively referred to as the “Close5 Marks.”

27. The Close5 app icon is confusingly similar to the 5miles Icon as shown below:



5miles

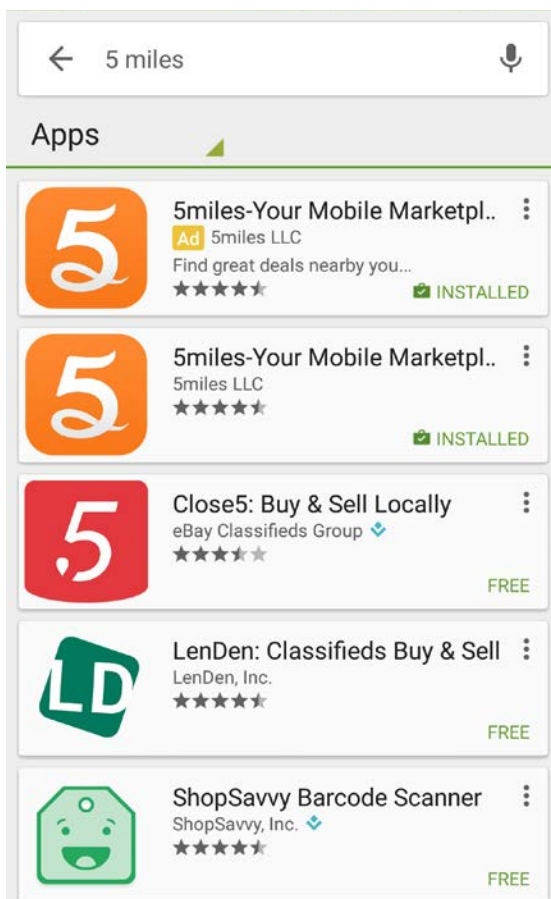


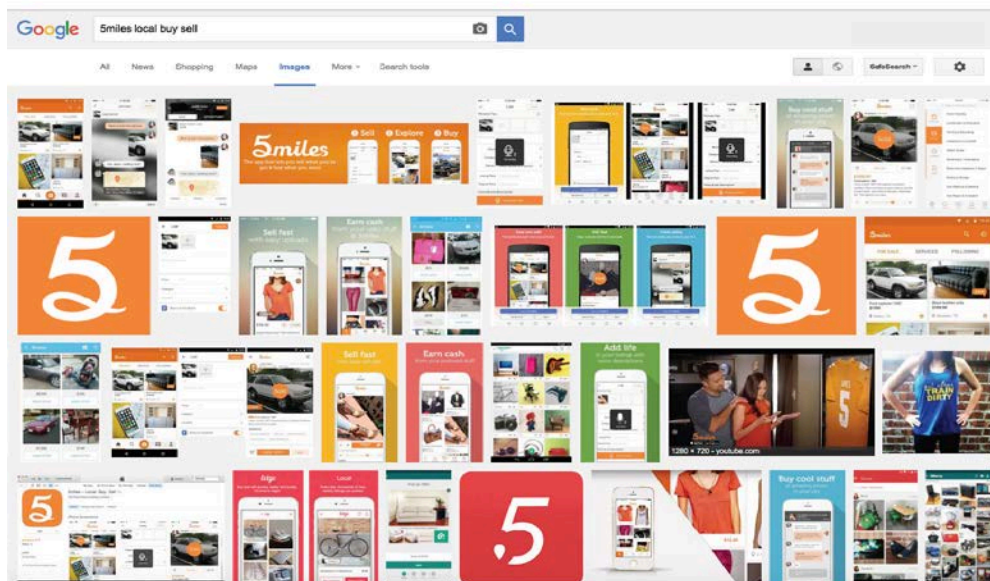
Close5

28. Third Stone and eBay offer similar goods and services under the 5miles Marks and Close5 Marks, respectively.

29. Third Stone and eBay target the same consumers for the goods and services offered under the 5miles Marks and Close5 Marks, respectively. The relevant consuming public is the general population who use mobile devices.

30. Consumers are likely to encounter the 5miles Marks and the Close5 Marks side-by-side or in close proximity to each other, as shown below:





May 26, 2015 - "5miles is the fun and easy way to buy and sell items and services with ... we've already contributed \$8 million USD to the local economy in ...

**OfferUp - Buy, Sell, Simple.**

<https://offerupnow.com/>  
OfferUp is revolutionizing how we sell by making it a snap! Instantly connect with buyers and sellers ... buy and sell locally. How it Works. OfferUp for Android ...

**Download 5miles: Local. Buy. Sell 3.2 Apk (6.33Mb), For ...**

<https://www.apk4now.com/apk/10171/5miles-local-buy-sell/download>  
Oct 16, 2015 - Download 5miles: Local. Buy. Sell 3.2 Apk file (6.33Mb) for Android with direct link. Free Shopping Application to download from APK4Now, ...

**Buy and Sell locally with Close5**

<https://www.close5.com/>  
Close5 provides a safe and easy environment to list your items and sell them fast. Shop cars, home goods and Children's items locally with Close5.

**5miles - Shop & Sell (@5milesapp) | Twitter**

<https://twitter.com/5milesapp?lang=en>  
The latest Tweets from 5miles - Shop & Sell (@5milesapp). Sell what you've got, buy what you want ... Buy and sell locally at 5miles. Download now!

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**5miles - Local. Buy. Sell Download | ZDNet**

[downloads.zdnet.com/product/2649-76473108/](http://downloads.zdnet.com/product/2649-76473108/)  
Jan 13, 2016 - 5miles is an easy, safe, and fun way to discover great classifieds in your area. Buy & sell your stuff, find a place to live, hire local ser.

**5miles: Local. Buy. Sell 3.6.4 APK**

[apk-dl.com](http://apk-dl.com) > Apps > Shopping  
5miles: Local. Buy. Sell 3.6.4 APK Android, 5miles is an easy, safe, and fun way to discover great classifieds in your area. Buy & sell your stuff.

31. Defendants have advertised and promoted the Close5 mobile application under the Close5 Marks, at times using the tagline “Everything within 5 miles” both in advertising and within its Close5 App. The combination of this tagline with the Close5 Marks so resembles the 5miles Marks that there have been instances of actual consumer confusion.

32. Third Stone’s rights in the 5miles Marks are senior to eBay’s rights in the Close5 Marks.

33. Third Stone first learned of Close5 in February 2015, when it noticed eBay’s trademark application pending before the USPTO. Third Stone filed a notice of opposition against the Close5 application with the USPTO’s Trademark Trial and Appeal Board on February 23, 2015. Shortly after the institution of the opposition, Third Stone and eBay entered into settlement discussions. eBay refused to comply with Third Stone’s demands despite Third Stone’s senior use of the 5miles Marks, and the settlement talks fell apart.

#### **IV. CAUSES OF ACTION**

##### **COUNT I**

##### **TRADEMARK INFRINGEMENT UNDER 15 U.S.C. §1125**

34. Third Stone incorporates by reference the allegations contained in Paragraphs 1 through 33 as if fully set forth herein.

35. This is an action for trademark infringement and arises under the trademark laws of the United States, namely Title 15 of the United States Code and more particularly, 15 U.S.C. §1125(a).

36. Third Stone is the owner of the ’765 Registration.



37. Third Stone's extensive use of the 5miles Mark that is the subject of the Registration in interstate commerce has substantial common law rights in the 5miles Mark.

38. Consumers of Third Stone's goods and services are, or likely will be, confused as to the source of the goods and services advertised and offered by Defendants under the Close5 mark.

39. Such confusion will substantially harm Third Stone's goodwill and damage Third Stone's significant investment of time and resources into creating the 5miles Mark and the goodwill that now surrounds it.

40. Defendants are and have been aware of the 5miles App and the 5miles Marks, including prior to the launch of the Close5 App.

41. Defendants' actions constitute willful infringement of Third Stone's rights in the 5miles Marks.

42. Third Stone therefore seeks preliminary and permanent injunctive relief to enjoin eBay's threatened and unauthorized use of the Close5 trademarks that are confusingly similar to the 5miles Mark. Third Stone also seeks preliminary and permanent injunctive relief to enjoin eBay from taking any action with Google or Apple that may affect the continuing and uninterrupted availability of Third Stone's 5Miles App on their respective mobile app platforms.

**COUNT II**  
**COMMON LAW TRADEMARK INFRINGEMENT**

43. Third Stone incorporates by reference the allegations contained in Paragraphs 1 through 42 as if fully set forth herein.

44. Third Stone uses and has continuously used the 5miles Marks while marketing its mobile application throughout Texas and the United States.

45. Third Stone's extensive use of the 5miles Marks in interstate commerce has substantial common law rights in the 5miles Marks.

46. Consumers of Third Stone's goods and services are, or likely will be, confused as to the source of the goods and services advertised and offered by eBay under the Close5 mark.

47. Consumers of Third Stone's goods and services have, in fact, been confused by the Close5 mark, thinking that the eBay mobile application is offered, endorsed or controlled by Third Stone or vice versa.

48. Such confusion has and will continue to substantially harm Third Stone's goodwill and damage Third Stone's significant investment of time and resources into creating the 5miles Marks and the goodwill that now surrounds them.

49. Third Stone therefore seeks preliminary and permanent injunctive relief to enjoin eBay's threatened and unauthorized use of the Close5 trademarks.

**PRAYER FOR RELIEF**

WHEREFORE PREMISES CONSIDERED, Third Stone prays that the Court enter a judgment against Defendants granting Third Stone the following relief:

- a. A preliminary injunction enjoining and restraining Defendants from the use of the 5miles Marks and any mark that is the same as or confusingly similar to the 5miles Marks, including without limitation Close5, the tagline “Everything within 5 miles,” and the Close5 app icon;
- b. A permanent injunction enjoining and restraining Defendants from the use of the 5miles Marks and any mark that is the same as or confusingly similar to the 5miles Marks, including without limitation Close5, the tagline “Everything within 5 miles,” and the Close5 app icon;
- c. That the Court declare this is an exceptional case under the Lanham Act and award Third Stone its attorneys’ fees; and
- d. That the Court award Third Stone such other relief as the Court deems proper.

Date: February 25, 2016

Respectfully submitted,

/s/ Joshua J. Bennett

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