I, Victoria Shapiro, declare and testify as follow:

1. I am admitted to practice law in the State of California. I represent Slimvac, Inc., which conducts business as DVRupgrade ("Slimvac").

2. On behalf of Slimvac, I am seeking a subpoena pursuant to 17 U.S.C. § 512(h) to obtain information sufficient to identify of a person or entity conducting business at eBay.com ("eBay") under the name "uoph" (hereinafter, "UOPH")

3. I have a good faith belief, based on the facts known to me, that UOPH is infringing Slimvac's intellectual property rights.

4. The purpose for which the subpoena is sought is to obtain the identity of alleged infringers and the information obtained therefrom will only be used for the purpose of protecting rights under 17 U.S.C. 101, et. seq.
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 5, 2012.

[Signature]

Victoria Shapiro, CA Bar # 202197
VICTORIA SHAPIRO, ESQ
CA BAR # 202197
9999 JEFFERSON BLVD
CULVER CITY, CALIFORNIA 90232

November 5, 2012

Registered Agent
eBay, Inc.
173 West Election Rd
Draper, Utah 84020

Re: Subpoena and Notice of Infringement

Dear Registered Agent:

I represent Slimvac, Inc. d/b/a DVRupgrade (hereinafter, “Slimvac”). We provide this notice pursuant to Section 512 of Title 17 of the U.S. Code (as enacted by the “Online Copyright Infringement Liability Limitation Act”) to request that eBay, Inc. provide information sufficient to identify the seller “uoph” (“UOPH”) on eBay.com.

Attached hereto as Exhibit A is a Notice of Claimed Infringement, which is incorporated into and made part of this letter.

This subpoena is being served only after eBay’s VeRO program was unable to produce identifying information for UOPH. Specifically, on or about October 22, 2012, Slimvac submitted a Notice of Claimed Infringement to eBay’s VeRO program. On October 23, 2012, Slimvac executed a Personal Information Agreement and requested that eBay provide identifying information for UOPH. On October 29, 2012, eBay provided the following information to Slimvac:

   uoph / uoph70@gmail.com
   UPH Consulting
   1605 West President George Bush Highway,
   Ste 120, Plano, TX, 75080
   US
   972 302 5965

The foregoing information is insufficient to identify UOPH. The address provided cannot be verified with the United States Postal Service, Google Maps, MapQuest or Yahoo Maps. The phone number is not in service. Furthermore, eBay did not provide Slimvac a contact name for UOPH or UPH Consulting.
Section 512(h) of the Copyright Act requires eBay to provide “information sufficient to identify the alleged infringer...to the extent such information is available to the service provider.” The Privacy Policy of eBay’s affiliated entity, PayPal, makes personal information concerning its account holders available to “[m]embers of the eBay Inc. corporate family -- like eBay” under enumerated circumstances. Such circumstances include, among other things, “help[ing] detect and prevent potentially illegal acts and violations of our policies.” Further, the PayPal Privacy Policy states that it will share personal information when “compelled to do so by a subpoena, court order or similar legal procedure.”

Slimvac contends that information sufficient to identify UOPH is readily available to eBay from its corporate affiliate PayPal. Based on Slimvac’s records and purchases of infringing products, UOPH maintains an account with PayPal under the email address uoph70@gmail.com, the same email address UOPH uses as an eBay seller. Internal Revenue Code Section 6050W requires PayPal to obtain and verify personal information for customers with $20,000 or more in gross payment volume and over 200 separate payments in a calendar year. Based on publicly available data, UOPH meets such criteria. As a result, Section 6050W requires PayPal to obtain and verify personal information about UOPH so that these transactions can be reported to the Internal Revenue Service.

In accordance with the terms of Section 512(h) of the Copyright Act, and on behalf of Slimvac, I request the information specified in the subpoena so that Slimvac can enforce its legal rights against UOPH.

I believe that the information in this notification is accurate. Under penalty of perjury, I hereby affirm that I am authorized to act on behalf of Slimvac, whose exclusive intellectual property rights have been infringed by UOPH. By providing this notice, Slimvac is not waiving its rights to engage in other enforcement activities, and reserves all rights to do so at any time.

You may contact me at the above-listed address or via phone at 310-963-9054. Thank you for your cooperation and prompt response.

Sincerely,

Victoria Shapiro

Attachment
EXHIBIT A
NOTICE OF CLAIMED INFRINGEMENT

To eBay, Inc.:

I, the undersigned, state under penalty of perjury that:

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

I have a good faith belief that the listings identified (by item number) below offer or offered items or contain materials that are not authorized by the IP Owner, its agent, or the law.

List of allegedly infringing listings, items, or materials:

320641625355
320640612124
220691758977
220707125953
320640612005
220723585335
220691749865
221010849906
220737557050

REASON:
Copyright – item infringement
3.1. Software offered for sale is in violation of an enforceable license agreement, which constitutes a copyright infringement.

Reason code: 3.1
Work(s) infringed:
InstantCake™ TiVo Installation Software

Name of IP Owner: Slimvac, Inc. d/b/a DVRupgrade
Name and title: Victoria Shapiro, Esq. attorney for Slimvac, Inc.
Company: Slimvac, Inc., d/b/a DVRupgrade
Address: 9999 Jefferson Blvd
City, State, and Zip: Culver City CA 90232
Email address (for correspondence with eBay): legal@dvrupgrade.com
Email address (to be given to eBay sellers): legal@dvrupgrade.com
Company Telephone: 424-644-5554

Truthfully,
/S/: Victoria Shapiro
UNITED STATES DISTRICT COURT
for the
Central District of California

In re DMCA Subpoena to eBay, Inc. (Plaintiff)
v. (Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Registered Agent, eBay, Inc.
173 West Election Road, Draper, UT 84020

☑ Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Information sufficient to identify the seller "uoph," from any and all sources, including but not limited to billing, administrative, payment, or sales records that prove the validity of the name(s), address(es), telephone number(s), email address(es), and social security number(s) or any other electronic or physical names, addresses or contact information.

Place: Slimvac, Inc.
9999 Jefferson Blvd
Culver City CA 90232

Date and Time: November 13, 2012 9:00 a.m.

☐ Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: 
Date and Time: 

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: NOV 5 2012

CLERK OF COURT

The name, address, e-mail, and telephone number of the attorney representing (name of party) Slimvac, Inc., who issues or requests this subpoena, are:

Victoria Shapiro, Esq., c/o Slimvac, Inc., 9999 Jefferson Blvd., Culver City CA 90232
Tel 310-963-9054, Fax 310-427-7188, email legal@dvrupgrade.com

FOR OFFICE USE ONLY
PROOF OF SERVICE
(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for (name of individual and title, if any) was received by me on (date).

☐ I served the subpoena by delivering a copy to the named person as follows:

                                                                                   on (date)   ____________ ; or

☐ I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day’s attendance, and the mileage allowed by law, in the amount of $ ________________.

My fees are $ ________________ for travel and $ ________________ for services, for a total of $ ________________ 0.00.

I declare under penalty of perjury that this information is true.

Date: ________________

Server’s signature

Printed name and title

Server’s address

Additional information regarding attempted service, etc:
Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction -- which may include lost earnings and reasonable attorney's fees -- on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to

(i) A subpoena if it requires: the person may

(ii) be employed, or regularly transacts business in person - except that, a person who is neither a party nor a party's officer to incur

(iii) a person who is neither a party nor a party's officer to incur

(C) Electrornically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(E) Inaccessible Electronically-Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(c) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).