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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 PRAKASH MELWANI,

10 Plaintiff,

11 v.

12 AMAZON.COM, INC., et al.,

13 Defendants.  
14

CASE NO. C21-1329RSM

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 This case comes before the Court on Defendant Amazon.com, Inc. (“Amazon”)’s Motion  
17 for Summary Judgment. Dkt #87. Plaintiff Prakash Melwani has filed a sealed opposition brief.  
18 Dkt. #103. The Court has determined that it can rule without the need of oral argument. For the  
19 following reasons, the Court GRANTS IN PART AND DENIES IN PART Amazon’s Motion.  
20

21 **II. BACKGROUND**

22 Plaintiff Melwani is the individual owner of the Royal Silk trademark and manufactures  
23 and sells a wide variety of products using this trademark through his company Royal Silk Direct,  
24 Ltd. Dkt. #94 at 9 and 17. Defendant Amazon is the well-known online retail giant.

25 Amazon sells its own products and allows third parties to sell products on its website.  
26 Royal Silk products have been sold on Amazon.com since 2006. Dkt. #91 (“Leach Decl.”), ¶ 5.  
27

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SUMMARY  
JUDGMENT – 1

1 Amazon allows third-party sellers like Royal Silk Direct to set their own prices and to display  
2 their own information in product listings.

3 As a seller on Amazon, Plaintiff agreed to the Amazon Business Solutions Agreement  
4 (“BSA”). *Id.* at ¶7. The BSA is the contract that governs the relationship between Amazon and  
5 third-party sellers on Amazon. *Id.* Plaintiff has also enrolled in Amazon’s Brand Registry, which  
6 is a program designed to help rightsholders protect their brands. Dkt. #96 (“Allen Decl.”), ¶¶ 3–  
7 4. Royal Silk Direct maintains an authorized Royal Silk “storefront” on Amazon.com.  
8

9 Plaintiff alleges he has been “plagued” by third party infringers of the Royal Silk marks  
10 across categories of goods at the Amazon marketplace. Dkt. #49 at 6. He attaches to Amended  
11 Complaint several screenshots from Amazon.com, relied on as evidence by both parties. *See id.*  
12 at 30–40. In the last two to three years, Plaintiff alleges that legal actions and notices have resulted  
13 in the removal of about 200 infringing listings from Amazon.com that were attributed to about  
14 100 different unauthorized third-party sellers. *Id.* Plaintiff’s central allegation of wrongful  
15 conduct is that when customers use Amazon’s Search Box (the search bar at the top of its e-  
16 commerce website) to search for “Royal Silk,” results regularly include many products not sold  
17 by Plaintiff. These products are sold by other third-party sellers and Amazon itself. Plaintiff  
18 alleges that these search results are “outright false or outright erroneous” as well as “false,  
19 deceptive and misleading in each case and likely to cause mistake or to deceive the public about  
20 the origin, sponsorship, connection, association, or affiliation of the third-party sellers to Plaintiff  
21 and its valid Royal Silk marks.” *Id.* at 15. Plaintiff alleges that Amazon has misappropriated his  
22 trademark name by using the keyword “Royal Silk” on its webpage in various ways that: confuse  
23 the customer, “rob and thwart Plaintiff’s ability to exercise his right to quality and image control,”  
24 and ultimately allow Amazon to “unlawfully profit[] from its own brands’ targeted use of  
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1 Plaintiff's marks." *Id.* at 18. Plaintiff alleges that Amazon sells the "Royal Silk" keyword to  
2 third party advertisers. *Id.* at 19.

3 The way that search results are generated on Amazon.com is not intuitive or simple. As  
4 explained by Amazon's attached declarations and exhibits, the search results display a  
5 combination of what the customer likely wants (as determined by Amazon) and what sellers want  
6 the customer to see (as determined by Amazon and sellers willing to pay advertising fees to  
7 Amazon). According to Amazon, sponsored ads may be displayed at the top of, alongside, or  
8 within shopping results and on product pages. Dkt. #93 ("Sengupta Decl."), ¶ 3. Ads are shown  
9 to customers on search results pages based on keywords. *Id.* Amazon allows third parties to bid  
10 on keywords in four different ways: broad, phrase, exact, or negative. *Id.* at ¶ 4. A "broad" match  
11 may include singulars, plurals, variations, synonyms, and related terms as determined by the  
12 meaning of the keyword and the context of the advertised products. *Id.* at ¶ 5. The keyword itself  
13 may not be contained in the customer shopping query. *Id.* For "phrase" keyword bids, the  
14 shopping query must contain the exact phrase or sequence of words. *Id.* A shopping query for  
15 "exact" keyword bid must exactly match the keyword or sequence of words in order for the ad to  
16 appear, and may also match close variations of the exact term. *Id.* Sellers may also use "negative"  
17 keyword bids to exclude queries, either using negative phrases or negative exact match types. *Id.*  
18 The parties agree that "[t]he act of Amazon allowing third parties to bid on 'Royal Silk' as  
19 advertising keywords is permissible under New York law." Dkt. #94 ("Bennett Decl."), ¶14, Ex.  
20 L at 1.

21 When ads are shown to customers in search results, they are marked as "Sponsored" in a  
22 smaller, grayed-out font. *See* Dkt. #87 at 10. It is not immediately obvious from the search result  
23 page who is selling each product—the image, seller, and product description are provided without  
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1 a clear label for each. *See, e.g., id.* (a screenshot with a product image of a sack with the words  
2 “Royal Silk” emblazoned on the front, followed by a bold word “Fairfield,” followed by the words  
3 “Fairfield... Royal Silk Fiber Fill Bag...”). Once a customer clicks on an item for sale, however,  
4 the seller is identified on the next page in the “sold by” line immediately below the “Add to Cart”  
5 and “Buy Now” buttons on each product’s detail page. Leach Decl. at ¶4. During the checkout  
6 process, the order confirmation page also identifies the seller on the same page where the user  
7 clicks the “Place Your Order” button. *Id.*

8  
9 The Amended Complaint brought causes of action for false designation of origin under  
10 15 U.S.C. § 1125(a)(1)(A), false advertising under 15 U.S.C. § 1125(a)(1)(B), breach of the  
11 implied covenant of good faith and fair dealing, trademark dilution under N.Y. General Business  
12 Law § 360-1, and unfair competition under the common law of New York. Dkt. #49. All of these  
13 were dismissed by this Court except the New York trademark dilution and unfair competition  
14 claims. Dkt. #56. These are now the subject of the instant Motion.

15  
16 Amazon has retained an expert, Hal Poret, who conducted a survey of 500 participants to  
17 test brand awareness of Plaintiff’s Royal Silk marks. Dkt. #88 (“Poret Decl.”). Half of the  
18 participants were selected from New York State, the rest coming from around the United States.  
19 *Id.* at 22. Only 12% of the survey respondents were aware of the brand Royal Silk. *Id.* at 14. In  
20 contrast, consumers recognized comparator brands Under Armour, Kate Spade, and Nine West at  
21 95.8%, 78.0%, and 71.0% respectively. *Id.*

### 22 III. DISCUSSION

#### 23 A. Legal Standard for Summary Judgment

24 Summary judgment is appropriate where “the movant shows that there is no genuine  
25 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
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1 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are  
2 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at  
3 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of  
4 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*  
5 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers,*  
6 *969 F.2d 744, 747 (9th Cir. 1992)*).

7  
8 On a motion for summary judgment, the court views the evidence and draws inferences  
9 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*  
10 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable  
11 inferences in favor of the non-moving party. *See O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*  
12 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient  
13 showing on an essential element of her case with respect to which she has the burden of proof”  
14 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

## 15 **B. New York Claims**

16 The Court will address Plaintiff’s remaining claims simultaneously. The New York anti-  
17 dilution statute states:  
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19 Likelihood of injury to business reputation or of dilution of the  
20 distinctive quality of a mark or trade name shall be a ground for  
21 injunctive relief in cases of infringement of a mark registered or not  
22 registered or in cases of unfair competition, notwithstanding the  
absence of competition between the parties or the absence of  
confusion as to the source of goods or services.

23 NYGBL § 360-I (formerly § 368d). A claim under New York’s anti-dilution statute requires  
24 “either likelihood of confusion or bad faith.” *Nina Ricci, S.A.R.L. v. Gemcraft Ltd.*, 612 F. Supp.  
25 1520, 1532 n.11 (S.D.N.Y. 1985) (citing *Beneficial Corp. v. Beneficial Cap. Corp.*, 529 F. Supp.  
26 445, 451 (S.D.N.Y. 1982)). To demonstrate likelihood of confusion, Plaintiff must prove “(1)  
27

1 that the trademark is truly distinctive or has acquired secondary meaning, and (2) a likelihood of  
2 dilution either as a result of ‘blurring’ or ‘tarnishment.’” *Bubble Genius LLC v. Smith*, 239 F.  
3 Supp. 3d 586, 603 (E.D.N.Y. 2017) (citations omitted). Blurring occurs “where the defendant  
4 uses or modifies the plaintiff’s trademark to identify the defendant’s goods and services, raising  
5 the possibility that the mark will lose its ability to serve as a unique identifier of the plaintiff’s  
6 product.” *Deere & Co. v. MTD Prods., Inc.*, 41 F.3d 39, 43 (2d Cir. 1994) (cleaned up).  
7 Tarnishment occurs where a mark is “‘linked to products of shoddy quality, or is portrayed in an  
8 unwholesome or unsavory context,’ with the result that ‘the public will associate the lack of  
9 quality or lack of prestige in the defendant’s goods with the plaintiff’s unrelated goods.’” *Deep*  
10 *Foods Inc. v. Deep Foods Inc.*, 419 F. Supp. 3d 569, 585 (W.D.N.Y. 2019). New York’s General  
11 Business Law §360-1 “does not permit a dilution claim unless the marks are ‘substantially’  
12 similar.” *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93, 111 (2d Cir. 2010).

13  
14 “The essence of an unfair competition claim under New York law is that the defendant  
15 has misappropriated the labors and expenditures of another, likely to cause confusion or to  
16 deceive purchasers as to the origin of the goods.” *Saratoga Vichy Spring Co. v. Lehman*, 625  
17 F.2d 1037, 1044 (2d Cir. 1980); *see also Jeffrey Milstein, Inc. v. Greger, Lawlor, Roth, Inc.*, 58  
18 F.3d 27, 35 (2d Cir. 1995). “To prevail on a New York unfair competition claim, a plaintiff must  
19 show either actual confusion or a likelihood of confusion, and there must be some showing of  
20 bad faith on the part of the defendants.” *Sly Mag., LLC v. Weider Publ’ns L.L.C.*, 346 F. App’x  
21 721, 723 (2d Cir. 2009) (internal quotation marks omitted); *see also Miss Universe*, 672 F. Supp.  
22 2d at 596 (similar).

23  
24 Amazon highlights Plaintiff’s lack of evidence to support these claims:

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26 ...Plaintiff has admitted in his interrogatory responses that there is  
27 no evidence of Amazon causing any instance of actual consumer

1 confusion or deception regarding the Royal Silk Marks. (Bennett  
2 Decl. ¶3, Ex. A at 7 (“Plaintiff does not know, does not have  
3 available, and cannot recite the instances of actual consumer  
4 confusion or deception about confusion or deception regarding the  
5 Asserted Marks caused by Amazon.”).) He has also admitted that he  
6 has no evidence that Amazon (1) diluted, tarnished, or made less  
7 distinctive any of Plaintiff’s Royal Silk Marks, or (2) harmed,  
8 tarnished, or damaged Plaintiff’s public image or business  
9 reputation. (*Id.* at 7–8 (“Plaintiff does not know, does not have  
available, and cannot recite all facts supporting the contention that  
Amazon diluted, tarnished, or made less distinctive any of the  
Asserted Marks,” and “Plaintiff does not know, does not have  
available, and cannot recite all facts supporting the contention that  
Amazon harmed, tarnished, and damaged the public image and  
business reputation of Plaintiff.”).) Discovery in this case is closed.

10 Dkt. #87 at 11.

11 Amazon attacks the distinctiveness of Plaintiff’s trademark, citing to the 500-person  
12 survey of its expert witness and two New York cases where similar survey results were  
13 dispositive. *Id.* at 15 (citing *Jackpocket, Inc. v. Lottomatrix NY LLC*, 645 F. Supp. 3d 185, 229–  
14 30, 280, (S.D.N.Y. 2022) and *Alzheimer’s Disease and Related Disorders Ass’n., Inc. v.*  
15 *Alzheimer’s Found. of Am., Inc.*, 307 F. Supp. 3d 260, 290 (S.D.N.Y. 2018)).

16 Plaintiff, in turn, argues that material facts are in dispute. He attacks the methodology  
17 used by Amazon’s expert to determine whether the Royal Silk mark is distinctive. Dkt. #103 at  
18 4–5. He points to a 2005 jury verdict in a New York court that determined his Royal Silk mark  
19 was “distinctive” for purposes of the legal issues in that case. *Id.* at 3. He reminds the Court that  
20 Royal Silk products have been sold on Amazon.com since 2006.

21 In both *Jackpocket* and *Lottomatrix, supra*, the court’s rulings were included in findings  
22 of fact and conclusions of law after trials on the merits. As such, these cases do not stand for the  
23 proposition that a single survey result, whose methodology is attacked by the opposing party, can  
24 alone justify summary judgment dismissal of a claim such as this one. It is improper on summary  
25 judgment to grant summary judgment dismissal of a claim such as this one. It is improper on summary  
26 judgment to grant summary judgment dismissal of a claim such as this one. It is improper on summary  
27 judgment to grant summary judgment dismissal of a claim such as this one.

1 judgment to weigh this evidence to determine the truth of the matter, and in any event the Court  
2 is to view the evidence and draw inferences in the light most favorable to Plaintiff as the non-  
3 moving party. The Court finds that Plaintiff has made a sufficient showing as to distinctiveness  
4 to survive summary judgment. The remainder of Amazon’s arguments on this topic are best  
5 presented to the jury.

6 Amazon next argues that it cannot be liable for blurring or tarnishment unless it “used”  
7 Plaintiff’s mark, and that “Courts, however, reject dilution by blurring or tarnishment claims  
8 where the defendant does not itself use the marks to create an association with its own products.”  
9 Dkt. #87 at 17 (citing *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93, 112 (2d Cir. 2010)). In response,  
10 Plaintiff does not address Amazon’s citations but states “[i]t is undeniable that Amazon ‘used’  
11 the ROYAL SILK mark by selling the keywords to third-party sellers via its entity Amazon Ads;”  
12 that “Amazon ‘used’ the ‘Royal Silk’ mark to generate its Search Results as well as to populate  
13 the Search Results with sponsored and non-sponsored ads by third-party sellers and advertisers  
14 interested in the ‘Royal Silk’ keywords;” and that “Amazon used the keywords “Royal Silk” to  
15 sell its own products.” Dkt. #103 at 3–4. The Court finds the evidence that Amazon used the  
16 Royal Silk mark in these ways sufficient to create a material dispute of fact. Furthermore, the  
17 *Tiffany* case is not entirely dispositive. Amazon’s citation demonstrates only that the court in that  
18 case could not find eBay “used” Tiffany’s mark to refer to eBay’s own product, thus there was  
19 “no second mark or product at issue here to blue with or tarnish ‘Tiffany.’” 600 F.3d at 112. The  
20 Second Circuit then stated “Tiffany argues that counterfeiting dilutes the value of its product.  
21 Perhaps. But insofar as eBay did not itself sell the goods at issue, it did not itself engage in  
22 dilution.” *Id.* Here, it could be argued that Amazon did sell the goods at issue, and did use the  
23 Royal Silk keyword to sell its own Amazon branded products in some instances. There are several  
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1 factual discrepancies between the *Tiffany* case and the facts here. These discrepancies are  
2 sufficient to make it impossible for the Court to rely on this case to rule as a matter of law that  
3 Amazon did not “use” the Royal Silk mark for purposes of the New York anti-dilution statute.  
4 The same is true of Amazon’s other case, *Nike, Inc. v. B&H Customs Servs., Inc.*, 565 F. Supp.  
5 3d 498, 513, 517-18 (S.D.N.Y. 2021). The defendant in that case was not accused of selling the  
6 products at issue but merely shipping them. Here, Amazon is accused of selling the products at  
7 issue. To the extent Amazon believes that it did not sell these products under New York law, but  
8 merely provided a marketplace for third-party sellers, such has not been adequately established  
9 in the briefing on this Motion and can be argued at trial.  
10

11 Amazon argues that “[e]ven if Plaintiff could point to some evidence that Amazon uses  
12 Plaintiff’s trademarks in a way that would be relevant to his dilution claim, Plaintiff cannot  
13 overcome the fact that Amazon search results for ‘royal silk’ do not dilute Plaintiff’s trademarks  
14 as a matter of law.” Dkt. #87 at 18. The Court disagrees that such can be determined now, based  
15 on this evidence, as a matter of law. The record shows that searching for “Royal Silk” on  
16 Amazon.com could present customers with products that appear to be labeled “Royal Silk” either  
17 as a description or in the product image, even though those products were not being sold by  
18 Plaintiff. Viewing the evidence and drawing inferences in the light most favorable to Plaintiff as  
19 the non-moving party, this could constitute evidence to support Plaintiff’s New York dilution  
20 claim.  
21

22 Turning to the unfair competition claim, Amazon makes the same arguments about “use”  
23 as above. Amazon also quotes this Court as finding that Plaintiff has “failed to demonstrate a  
24 likelihood of confusion as a matter of law.” Dkt. #87 at 27 (citing Dkt. #56 at 9). The Court’s  
25 full statement was, “[t]he Court has already found Plaintiff failed to demonstrate a likelihood of  
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1 confusion as a matter of law in the federal context.” Dkt. #56 at 9. This was quoted from a  
2 paragraph where the Court permitted the instant New York claims to survive Amazon’s Motion  
3 to Dismiss. Amazon presents a subsection titled “Plaintiff lacks any evidence of bad faith,” Dkt.  
4 #87 at 27. Amazon’s briefing here really demonstrates what Amazon should tell a jury—that its  
5 evidence is more convincing than Plaintiff’s evidence. Plaintiff’s main evidence of bad faith  
6 appears to be the circumstance that Amazon offered “assurances” to Plaintiff that it would protect  
7 his trademark through a “brand gate” but that this tool “simply did not work,” as evidenced by  
8 the screenshots relied on by both parties showing “Royal Silk” products for sale from third-party  
9 sellers. *See* Dkt. #103 at 7–11. Although circumstantial, the Court finds that Plaintiff has  
10 presented at least some evidence of bad faith, and that this question is a fact-intensive inquiry best  
11 left for the jury.  
12

### 13 **C. Monetary and Punitive Damages**

14 For each of his claims, “Plaintiff is seeking neither lost profits nor royalty payments.”  
15 Bennett Decl. at ¶ 3, Ex. A. at 6. Instead, Plaintiff seeks defendant’s profits and punitive damages.  
16 *Id.* Amazon argues that both forms of damages are unavailable as a matter of law. Dkt. #87 at  
17 28–29.  
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19 The Court agrees that monetary and punitive damages are not available under Plaintiff’s  
20 anti-dilution claim. *See Law Offs of Bradley J. Rephen, P.C. v. Lemberg & Assoc., LLC*, No.  
21 7:10-cv-4964-JGM, 2011 WL 13267203, at \*4 (S.D.N.Y. 2011) (“The sole relief possible on a  
22 section 360-1 claim is injunctive relief.”). Damages for Plaintiff’s unfair competition claim are  
23 available if Plaintiff can demonstrate lost revenues. *See E.J. Brooks Co. v. Cambridge Sec. Seals*,  
24 31 N.Y.3d 441, 449 (2018). Here, Plaintiff has not produced any evidence that he lost money  
25 because of Amazon’s conduct. In fact, Plaintiff refused to produce any evidence of his own  
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1 profits and revenues—and agreed that he would not rely on any such evidence in this case.  
2 Bennett Decl. at ¶ 10, Ex. H at 6; *Id.* at ¶ 1, Ex. I at 1. Instead, Plaintiff seeks damages based on  
3 Amazon’s revenues from third-party sellers’ purchase of keyword advertisements triggered by the  
4 keyword “royal silk.” *Id.* at ¶ 3, Ex. A at 6 and ¶ 13, Ex. K at 9. The Court finds that this cannot  
5 form a source of damages without some basis in law, and Plaintiff fails to point to such. The  
6 Court concludes that Plaintiff has failed to demonstrate “the amount which the plaintiff would  
7 have made except for the defendant’s wrong,” *see E.J. Brooks, supra*, that such is an essential  
8 element of his claim for compensatory damages, and that his failure means he cannot seek  
9 compensatory damages at trial.  
10

11 To obtain punitive damages, Plaintiff must show that Amazon’s conduct: (1) was  
12 “egregious”; and (2) violates a public right or is a part of a pattern of similar conduct directed at  
13 the public generally. *Rocanova v. Equitable Life Assur. Soc. of U.S.*, 83 N.Y.2d 603, 613 (1994);  
14 *see also Linkable Networks, Inc. v. Mastercard Inc.*, 125 N.Y.S.3d 92, 94 (2020). The Court finds  
15 that egregiousness is typically left for the trier of fact. Amazon argues that its conduct here was  
16 not directed at the public:  
17

18 New York courts have recognized that punitive damages’ “purpose  
19 is not to remedy private wrongs but to vindicate public rights.”  
20 *Rocanova*, 83 N.Y. 2d at 613; *see also New York Univ. v. Cont’l Ins.*  
21 *Co.*, 87 N.Y.2d 308, 315–16 (1995). Thus, it is not enough for  
22 Plaintiff to show conduct directed to himself, he must show conduct  
23 “directed at the public generally.” *Id.* Plaintiff has not done so. His  
24 allegations are directed at supposed wrongs done to him  
25 personally—for example, the dilution of his individual  
26 trademarks—and not conduct directed more broadly at the public.  
27 That’s not enough. *See TVT Records v. Island Def Jam Music Grp.*,  
412 F.3d 82, 95 (2d Cir. 2005) (defendant’s breach of a contract with  
plaintiff “hewed more to the ‘isolated transaction incident to an  
otherwise legitimate business’ than to the ‘gross and wanton fraud  
upon the public’ required by *Walker*”); *United States ex rel.*  
*Evergreen Pipeline Const. Co., Inc. v. Merritt Meridian Const.*  
*Corp.*, 95 F.3d 153, 161 (2d Cir. 1996) (defendant’s failure to pay

1 plaintiff as well as defendant’s fraud did not “evinced[] a pattern of  
2 conduct harming the general public”).

3 Dkt. #87 at 30–31.

4 On this issue, Plaintiff states only:

5 Put simply — Amazon engages in unfair competition not just  
6 through bad-faith misappropriation and profiteering of Plaintiff’s  
7 ROYAL SILK mark, but also through bad-faith misappropriation  
8 and profiteering of trademarks belonging to tens of millions of other  
9 third-party rights owners who are sellers on Amazon’s platform.  
10 Amazon does so because it is perfectly legal for it to sell  
11 trademarked keywords and terms regardless of who they belong to.  
12 It is also legal for third-party sellers and advertisers to buy such  
13 trademarked keywords from Amazon. However, what is not legal  
14 — is for Amazon to pocket all the change without any accounting  
15 or compensation to the rights owners. In short, Amazon is not just  
16 ripping-off Plaintiff but also ripping-off tens of millions of other  
17 rights owners.

18 Dkt. #103 at 20.

19 Plaintiff’s lack of evidence here is fatal to his claim. The Court can easily imagine that  
20 Amazon’s alleged conduct here is experienced by hundreds if not thousands of other third-party  
21 sellers. The Court imagines it would have been relatively easy for Plaintiff to gather evidence of  
22 such. Nothing of the sort is presented to the Court. Instead, there is only argument and  
23 speculation, which cannot create a genuine dispute of fact. Given all of the above, the Court will  
24 dismiss Plaintiff’s request for punitive damages.

#### 25 **IV. CONCLUSION**

26 The Court is concerned by Plaintiff’s lack of evidence of customer confusion. On the  
27 other hand, it seems possible for a jury to consider the evidence of Amazon’s bad faith, as  
presented by Plaintiff, as well as the undisputed evidence of how Amazon displays Plaintiff’s  
products in search results, and come to reasonable conclusions about the likelihood of confusion  
without testimony from actual customers. The Court is also concerned about Plaintiff’s lack of

1 expert testimony. As it currently stands, Plaintiff will have an uphill battle proving his case at  
2 trial.

3 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
4 finds and ORDERS that Defendant Amazon's Motion for Summary Judgment, Dkt #87, is  
5 GRANTED IN PART AND DENIED IN PART as stated above. Plaintiff may not seek  
6 compensatory or punitive damages at trial.

7 DATED this 18<sup>th</sup> day of January, 2024.  
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10 RICARDO S. MARTINEZ  
11 UNITED STATES DISTRICT JUDGE  
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