IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-CV-00636-REB-KLM

VIDEO PROFESSOR, INC.
    Plaintiff,

v.

AMAZON.COM, INC.
    Defendant.

DECLARATION OF ERIC HERRMANN

I, Eric Herrmann, declare as follows:

1. I am Senior Manager of Software Development for Amazon.com, Inc.

("Amazon"), Defendant in the above-referenced matter. I submit this Declaration in

support of Amazon's Motion for Summary Judgment and Memorandum of Law in

Support Thereof. I have personal knowledge of the facts recited below, and if called

upon to testify concerning them under oath, I could and would do so competently.

2. Amazon is a leading Internet retailer. While Amazon got its start in 1995

primarily as an online bookstore, today Amazon aims to offer Earth's Biggest Selection

of products. As part of that mission, Amazon not only sells products on the

amazon.com website, but also allows other retailers to sell their products on the

website.

3. Amazon employs a search function on its website to help direct consumers to the products in which they are interested in learning about or purchasing. Consumers can use this search function by entering a word or phrase into the search box at the top of the amazon.com homepage, a print-out of which is attached hereto as Exhibit A-1. Amazon's search function helps provide consumers with relevant results. These results often will include not only products in which the consumer has expressed interest, but also related products that may appeal to the consumer. For example, users who entered the phrase "video professor" into the amazon.com search box on October 15, 2009, were directed to the landing page which is printed and attached hereto as Exhibit A-2.

4. In listing products available for sale on its website, Amazon identifies the name of the seller, whether Amazon itself or a third party. For example, users who clicked on the "1 Used & new" link in the first listing for "Video Professor Starter Pack" on the landing page attached hereto as Exhibit A-2 were directed to the page attached hereto as Exhibit A-3, which identifies the seller of the product as "BOBSVIDEOS." Users who clicked on the "Buy new" link in the second listing for "Professor Teaches Word, Excel & Powerpoint 2007" on the landing page attached hereto as Exhibit A-2 were directed to the page attached hereto as Exhibit A-4, which identifies the seller of the product as "Amazon.com."

5. Like many companies, Amazon uses keyword advertising with search engines to help advertise products available on amazon.com to consumers. Keyword advertising allows companies to advertise on major Internet search engines such as

Google. By placing bids on keywords, an advertiser can cause a "sponsored link" to appear in a special, designated area alongside natural search results when a user types the keyword into a search engine.

6.   [REDACTED]

7. I understand that Amazon began a vendor relationship with Plaintiff Video Professor, Inc. ("VPI") in December 2003, under which Amazon purchased VPI-brand products from VPI and resold them on amazon.com. From December 2003 until April 2009, Amazon.com occasionally placed bids on the keyword "video professor" with Google through the system described above. On the occasions during this time period when Amazon.com placed a bid on the keyword "video professor," if a person typed the words "video professor" into the Google search engine's search box, and if Amazon won its bid for "video professor," then an Amazon advertisement would appear on the search results page as a sponsored link.

8. If the person who entered the search for "video professor" clicked on an Amazon sponsored link, he/she was presented with a webpage on the amazon.com site that included real-time, natural search results as if the user had entered the original keywords in Amazon's internal search function. At all relevant times, this landing page

would show both VPI- brand products as well as other related products available for

sale on the amazon.com website.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of October 2009

  *s/ Eric Herrmann*_____
Eric Herrmann