

**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 MARC LEVY

I, Marc Levy, declare as follows:

1. I am an attorney at Faegre & Benson, LLP in Denver, Colorado, which represents Defendant Amazon.com, Inc. ("Amazon"), in connection with 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. Attached hereto as Exhibit A-5 is a true and correct copy of a letter from Defendant Video Professor, Inc. ("VPI"), in which it acknowledges that it was an Amazon vendor from December 12, 2003, through September 19, 2008.

3. The vendor relationship between Amazon and VPI was governed by Amazon's Vendor Manual. Attached hereto as Exhibit A-6 is a true and correct copy of the Vendor Manual.

4. Attached hereto as Exhibit A-7 is a true and correct copy of a letter countersigned by VPI on December 18, 2003, in which it acknowledged that it had received a copy of the Vendor Manual and that it had reviewed and accepted the requirements of the Vendor Manual.

5. Attached hereto as Exhibit A-8 are true and accurate copies of select pages of Plaintiff's Amended Answers to Defendant's First Set of Interrogatories. In Interrogatory No. 10, Defendant asked Plaintiff to "Identify each instance in which you contend a consumer was actually confused into believing that VPI was the source of any products offered on Amazon.com." VPI responded that it "did not document each instance. However, on numerous occasions over the past several years, consumers having purchased 'Professor Teaches' CDs have called VPI wanting to return the CDs to VPI, or have actually returned 'Professor Teaches CDs to VPI's warehouse."

6. Attached hereto as Exhibit A-9 is a true and accurate copy of Plaintiff's Answers to Defendant's First Set of Requests for Admissions. In Request for Admission No. 2, VPI admitted that it "is unaware of any instance in which a consumer who entered 'video professor' in an Internet search engine and then clicked on an Amazon Sponsored Advertisement believed that Amazon was a favored or authorized dealer of the VPI products displayed."

7. Attached hereto as Exhibit A-10 are true and accurate copies of documents Bates numbered VPI 443–44. These documents were produced in response to Amazon’s Request for Production No. 12, in which it requested “All Documents referring or relating to the rate(s) at which you convert hits on the www.videoprofessor.com website to sales of VIDEO PROFESSOR products from January 2007 through April 2009.”

8. Attached hereto as Exhibit A-11 are true and correct copies of pages from the VPI website at www.videoprofessor.com printed on October 15, 2009, illustrating the various video-based computer learning products VPI sells. As shown in the exhibit, VPI’s products are designed to help consumers learn how to use a number of popular computer software and technology products, including Microsoft® Windows®, Microsoft® Excel®, Microsoft® Outlook®, and eBay®, to name just several. Video Professor liberally uses the trademarks of Microsoft, eBay and others on its website to promote its products with titles including “Learn Windows®,” “Learn Excel®,” and “Learn Outlook®” and “Learn eBay®.” In very fine print, Video Professor indicates on its website that none of these companies sponsor or endorse Video Professor’s products. Video Professor also uses the trademarks of Microsoft, eBay and others in its television commercials. Examples of these commercials can be found at:

- <http://www.youtube.com/watch?v=bJF-1nMQpBU>;
- <http://www.youtube.com/watch?v=tHNDzop1OEo>; and
- <http://www.responsetube.com/video/137ed11d6ae770b/Video-Professor-Infomercial-Television-Commercial>.

9. Attached hereto as Exhibit A-12 is a true and accurate copy of a Google search results page generated by a search for the phrase “learn microsoft windows” conducted on October 13, 2009. This search results page shows a sponsored link for VPI, indicating that VPI bid on the trademarks Microsoft® and Windows®.

10. Attached hereto as Exhibit A-13 is a true and accurate copy of a Google search results page generated by a search for the phrase “learn microsoft excel” conducted on October 19, 2009. This search results page shows a sponsored link for VPI, indicating that VPI bid on the trademarks Microsoft® and Excel®.

11. Attached hereto as Exhibit A-14 is a true and accurate copy of a Google search results page generated by a search for the phrase “learn microsoft outlook” conducted on October 19, 2009. This search results page shows a sponsored link for VPI, indicating that VPI bid on the trademarks Microsoft® and Outlook®.

12. Attached hereto as Exhibit A-15 is a true and accurate copy of a Google search results page generated by a search for the phrase “learn ebay” conducted on October 13, 2009. This search results page shows a sponsored link for VPI, indicating that VPI bid on the trademark “eBay.”

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

Executed this 21st day of October 2009

s/ Marc Levy
Marc Levy