

EXHIBIT A

**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.

AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Defendant Amazon.com, Inc. ("Amazon") answers the below listed paragraphs of the Complaint of Plaintiff Video Professor, Inc. ("VPI"), as follows:

Nature of Proceedings. Regarding the two unnumbered paragraphs under this heading in the Complaint, the allegations are denied.

1. Amazon is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

2. Amazon admits it is a Delaware corporation with its principal place of business at 1200 12th Ave. South, Ste. 1200, Seattle, WA, 98144.

3. Admitted.

4. Amazon does not contest the exercise of personal jurisdiction over it for the purpose of this action but denies the remaining allegations of this paragraph.

5. Defendant admits that it has made more than 10,000 sale transactions to persons residing in Colorado during the last year but denies the remaining allegations of this paragraph.

6. Defendant admits that venue is proper in this district but denies the remaining allegations of this paragraph.

7. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

8. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

9. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

10. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

11. Defendant denies that the VIDEO PROFESSOR mark is world-famous or inherently distinctive, and is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

12. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

13. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

14. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

15. Defendant admits the allegations of this paragraph and further states that, in addition to using www.amazon.com to facilitate its own retail business, Defendant allows independent sellers to offer items for sale on www.amazon.com. Some of these independent sellers have offered VPI products, including "Video Professor" products for sale on www.amazon.com.

16. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

17. Defendant admits that it is the registrant and owner of the domain name www.amazon.com. Except as admitted, Amazon denies the allegations of this paragraph.

18. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

19. Defendant admits that, through Google's AdWords program, advertisers such as itself may bid on certain terms that an Internet user might enter as a search term on www.google.com.

20. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

21. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

22. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

23. Defendant admits that it purchased from Google the term "video professor," so that an Amazon advertisement appeared in the sponsored links section of a Google search results web page when Internet users searched for "video professor" on www.google.com but denies the remaining allegations of this paragraph.

24. Denied.

25. Defendant admits that when an Internet user clicked on the Amazon.com advertisement that appeared in the sponsored links section of a Google search results web page when Internet users searched for "video professor" on www.google.com, the user was taken to a search results web page on Amazon's web site for the search term "video professor." Except as admitted, the allegations in this paragraph are denied.

26. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

27. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

28. Defendant admits that the "Professor Teaches" CD-ROMS are not products of VPI but is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies them.

29. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

30. Denied.

31. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

37. Denied.

38. Denied

39. Denied.

40. Denied.

41. Denied.

42. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

43. Defendant admits that Colorado has an interest in ensuring that persons and entities doing business with Colorado residents fully comply with Colorado laws. Except as admitted, this paragraph is denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

54. Denied.

55. Denied.

56. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

63. Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies them.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

70. Denied.

71. Denied.

72. Denied.

73. Defendant incorporates by reference each and every allegation contained in this Answer as if fully set forth herein.

74. Denied.

75. Denied.

76. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred because Amazon's use of the name VIDEO PROFESSOR is a nominative fair use of the name and/or a descriptive fair use of the name.
3. Plaintiff's claims are barred by the First Amendment of the United States Constitution.

4. Plaintiff's claims are barred by the doctrine of laches, acquiescence, and/or estoppel.

5. To the extent Plaintiff claims that Amazon's use of the PROFESSOR TEACHES mark in selling or advertising Professor Teaches products infringes VPI's VIDEO PROFESSOR mark, this claim fails under the doctrine of *Jus Tertii*, because the owner of the PROFESSOR TEACHES mark, Individual Software, Inc. ("ISI") is the senior user and Amazon is in privity with ISI.

6. Defendant reserves all other affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Lanham Act, and any other defenses at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

WHEREFORE, Defendant prays for judgment against Plaintiff and in addition:

a. That Plaintiff's claims be dismissed in their entirety with prejudice, that judgment be entered in favor of Defendant and against Plaintiff, and that Plaintiff be denied all relief requested in its claims;

b. That the Court award Defendant its attorneys' fees, costs, and expenses in this action under 15 U.S.C. § 1117, as this is an exceptional case, and under applicable state law; and

c. That the Court award Defendant such further relief as this Court may deem just and proper.

Respectfully submitted this 16th day of April, 2010.

s/ Jared B. Briant

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Attorneys for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on April 16, 2010, I electronically filed the foregoing **AMENDED ANSWER AND AFFIRMATIVE DEFENSES** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following persons at the given email addresses:

Gregory C. Smith
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/s/ Jared B. Briant

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