

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

M-EDGE ACCESSORIES LLC,

Plaintiff,

v.

AMAZON.COM INC. and AMAZON
SERVICES LLC,

Defendants.

Civil Action No: MJG 11 cv 3332

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff, M-Edge Accessories LLC, complains of Defendants, Amazon.com Inc., and Amazon Services LLC, as follows:

NATURE OF THE CASE

1. This case presents a classic example of unlawful corporate bullying. M-Edge developed a very successful product line: personal electronic device jackets with multiple features for the Kindle and other e-readers. Amazon thereafter repeatedly sought to hijack the product through threats, deceit, interference with M-Edge's customer relationships, and patent infringement. M-Edge now asserts claims for patent infringement, unfair competition, intentional interference with contracts and economic relations, and false advertising.

THE PARTIES

2. M-Edge Accessories LLC ("M-Edge") is a Maryland limited liability company of approximately 50 employees located at 1360 Blair Drive, Odenton, MD 21113-1343. Dr. Patrick Mish founded M-Edge in 2006 to create fashionable and protective accessories for e-readers. M-Edge's products have been featured in numerous publications such as *People*

Magazine. Before Amazon “de-listed” M-Edge from Amazon.com, M-Edge’s products routinely constituted at least 20 of the top 25 most popular products in Amazon’s “Kindle Store”. One such product was M-Edge’s innovative lighted jacket which M-Edge patented.

3. Amazon Services LLC is a Nevada limited liability company with its corporate headquarters and principal place of business at 1200 12th Avenue Street, Suite 1200, Seattle, Washington 98114-2734. Amazon Services LLC has appointed as its registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 08501.

4. Defendant Amazon.com Inc. is a Delaware corporation with its corporate headquarters and principal place of business at 1200 12th Avenue South, Suite 1200, Seattle, Washington 98114-2734. Amazon.com, Inc. has appointed as its registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 08501. Amazon Services LLC and Amazon.com, Inc. are collectively referenced as “Amazon.”

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367(a).

6. Amazon transacts substantial business in this judicial district and has committed acts of infringement in this judicial district, at least by soliciting advertising from Maryland companies and by operating Internet websites and conducting business over those Internet websites that are accessible to residents of Maryland, including www.amazon.com, which offers for sale products which infringe the patent-in-suit. Amazon also has directed its tortious activity against a Maryland company, resulting in injury within Maryland.

7. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND

8. In 2008, Amazon released the first generation Kindle e-reader. Though the device was popular, it came with a flimsy cover which most consumers did not like; among other problems, the device frequently fell out of the cover. M-Edge addressed this shortcoming by producing a superior jacket which it marketed on Amazon.com.

9. M-Edge sold its jackets and other Kindle accessories under Amazon's standard contract, which resulted in an 8% commission to Amazon. After Oprah Winfrey discussed the Kindle on her show in October of 2008, M-Edge sold out its entire inventory within a matter of hours.

10. Amazon quickly recognized the success of the M-Edge product line, and in a January of 2009 meeting in San Francisco, Amazon executives represented that they wanted M-Edge to be a "special partner" with Amazon – a relationship, which Amazon represented would give M-Edge pre-launch information about next generation Kindles. In February of 2009, M-Edge entered into a "Kindle Compatible" agreement with Amazon, in which M-Edge agreed to pay Amazon another 7% fee (half of which was marketing dollars) in order to place M-Edge accessories in Amazon's "Kindle Store" on Amazon.com.

11. In May of 2009, M-Edge met with Amazon in Seattle at Amazon's request to discuss the possibility of being a "first-party" seller; in other words, a direct seller to Amazon. Given its small size, M-Edge was reluctant to enter into such an arrangement. Plus, the terms proposed by Amazon seemed overly generous to Amazon. M-Edge stated that it needed to defer a discussion of the first-party seller arrangement to a later date.

12. In November 20, 2009, Amazon and M-Edge entered into a new, "enhanced" agreement, purportedly reflecting M-Edge's status as a preferred seller due to the high volume of

sales and positive customer feedback. Under that agreement, M-Edge was seemingly locked in to paying Amazon an 8% commission on sales for three years (in addition to the 7% fee for the Kindle Compatible agreement, making the effective rate 15%).

**AMAZON SEEKS EVEN LARGER PIECES OF THE PIE;
THREATENS M-EDGE**

13. In January of 2010, Amazon summoned M-Edge to Seattle and demanded that M-Edge pay a 25% commission instead of the existing 8% rate (despite the existing contract which ran through 2012). When combined with the existing 7% fee for the Kindle Compatible agreement, this demand translated into an effective rate of 32%. Amazon executive Jay Marine also threatened to remove --“de-list” -- M-Edge from Amazon.com, unless M-Edge became a direct seller to Amazon, something which M-Edge was reluctant to do, given its small size and Amazon’s refusal to commit to minimum volumes.

14. In February of 2010, Amazon’s Marine called M-Edge and stated that despite the existing contract terms, M-Edge had to retroactively pay the difference between the 8% fee and the 25% fee for all of January, 2010. That amount was approximately \$600,000; a sizable sum to M-Edge. M-Edge refused, pointing to its existing, three-year contract which it had just signed in November of 2009. Marine replied that Amazon was “disappointed”, and stated that there would be “ramifications” resulting from M-Edge’s refusal.

15. In March and April of 2010, Amazon – specifically, Jay Marine and Sara Otepka – continued to harass M-Edge about becoming a direct seller to Amazon on terms highly beneficial to Amazon. M-Edge responded that such a relationship made no sense to a company the size of M-Edge unless Amazon could guarantee minimum volumes.

16. In May of 2010, Amazon’s Otepka demanded that M-Edge sign a new agreement for 25% fee and retroactively pay Amazon the difference for past sales. When M-Edge protested

that it had an existing contract – which was supposed to be in place for three years – Otepka again played the “de-list” card. Specifically, Otepka expressly threatened to “de-list” M-Edge, despite having no valid grounds to do so. Otepka also threatened that Amazon would “play” with M-Edge’s Amazon.com product pages in such a way that “no one will be able to find you.” Otepka also threatened that Amazon would deny M-Edge pre-launch access to the Kindle 3 and future generation Kindles, unless M-Edge entered into a new contract, despite Amazon’s prior assurances that M-Edge would have such access.

17. M-Edge’s sales through Amazon.com accounted for 90% of the company’s revenue, and it doubted that it could survive the punishment promised by Otepka. Accordingly, in July of 2010, M-Edge succumbed to Amazon’s demands and threats. On July 20, 2010, the parties signed a new agreement, specifically, a revision of the November 20, 2009 agreement, under which M-Edge would be direct seller to Amazon on Kindle 3 accessories, and would pay a 32% commission/fee to Amazon for sales of accessories for prior versions of the Kindle. Through its threats to “de-list” M-Edge and manipulate its pages, Amazon was able to extort an additional \$6.5 million in commissions and fees from M-Edge which M-Edge would not otherwise have had to pay.

18. On July 28, 2010, Amazon announced the launch of the Kindle 3. This came as a surprise to M-Edge, as Amazon had only allowed M-Edge access to the device in Seattle one day earlier, leaving no time to re-tool accessories for the new dimensions of the device. Amazon also launched its own lighted jacket and began “knocking off” M-Edge in other ways, including copying M-Edge’s most popular jacket colors.

19. In January of 2011, M-Edge and Amazon held a meeting at the Consumer Electronics Show in Las Vegas. At this meeting, Amazon executives Ray and Colin English

demanded that M-Edge enter into yet another “better program” under which Amazon would be paid a larger share of M-Edge sales. The pair also demanded that M-Edge pay the salary of one of Amazon’s full-time employees, at a cost of nearly \$150,000 per year to M-Edge. When M-Edge balked at these new demands, Ray replied that Amazon may have to “realign its portfolio.” M-Edge understood this phrase to be yet another threat to “de-list” M-Edge from Amazon.com.

20. Amazon exerted additional pressure on M-Edge to accept Amazon’s new demands by making it incredibly difficult for M-Edge to be paid by Amazon for products directly sold by M-Edge to Amazon. By March of 2011 Amazon owed M-Edge nearly \$2 million in back payments; a significant sum for a small company. Amazon also began implementing onerous, new reporting requirements for M-Edge, sometimes on a weekly basis, that Amazon used as an excuse to delay and/or refuse payments owed to M-Edge.

**AMAZON DEMANDS ANOTHER NEW CONTRACT AND
A SHARE OF M-EDGE’S SALES TO OTHER VENDORS**

21. Beginning in 2009, M-Edge began to sell Kindle and other e-reader accessories directly to several large retail chains. By September of 2011, M-Edge had ten non-Amazon retail customers – all of which were known to Amazon -- and the list was growing.

22. Amazon was quite aware of M-Edge’s success with other retailers, and began scheming to get a cut of such M-Edge sales.

23. Amazon summoned M-Edge to Seattle for a meeting on June 6, 2011. At this meeting, Amazon executive David Vasen stated that Amazon would be starting a new “Preferred Vendor Program” which M-Edge would have to join.

24. On July 11, 2011, Amazon’s Vasen revealed the details of the Preferred Vendor Program to M-Edge. Incredibly, the centerpiece of the program was a requirement that M-Edge pay Amazon 10% of the manufacturer suggested retail price of M-Edge’s sales to other retailers

for e-reader accessories and other products that did not bear the Amazon logo or any of its trademarks. Amazon could offer no legal, contractual or ethical basis for such a demand. The Program also included a 34% increase in fees to Amazon for M-Edge's direct sales to Amazon. Seeing no possible justification for Amazon's new demands, M-Edge expressed reluctance to enter into the "program".

25. On August 19, 2011, Vasen again demanded that M-Edge: (1) pay Amazon a share of M-Edge's sales to other retailers, and (2) increase Amazon's fee on direct sales to Amazon. M-Edge refused.

AMAZON SETS OUT TO PUNISH M-EDGE

26. On August 22, 2011, Vasen stated that M-Edge owed Amazon under the Kindle compatible agreement for sales in which the Amazon logo was not used. When M-Edge protested that no fees were owed in such a circumstance, Vasen declared that the money was owed "in the spirit of the agreement."

27. Meanwhile, Amazon continued to give M-Edge the runaround on accounting issues by refusing to release back payments for direct sales made to Amazon, despite M-Edge's provision of documentary evidence of prior shipments.

28. In or about September of 2011, Amazon actively sought to discourage M-Edge's customers and potential customers – the identities of which were all known to Amazon -- from buying from M-Edge. Amazon's efforts included circulating to M-Edge's customers and potential customers in the United States and in the United Kingdom a list of "Amazon Approved Accessory Vendors," on which list M-Edge was conspicuously absent. Amazon deliberately sought to create the impression that M-Edge had done something wrong and hence was not

“approved.” Amazon buttressed that message with discussions with M-Edge customers and potential customers in which it verbally discouraged such customers from dealing with M-Edge.

29. Amazon’s efforts had their intended effect. Almost immediately, customers and potential customers asked M-Edge why it was not on Amazon’s list. Worse, several customers and potential customers have refused to deal with M-Edge and others have expressed reluctance to deal with M-Edge, fearing repercussions with Amazon.

30. On September 30, 2011 Vasen sent M-Edge an email, in which he falsely stated that the July 20, 2010 agreement prohibited M-Edge “from selling any Kindle accessories as a third party seller on Amazon.com.” Vasen also stated “M-Edge is not an ‘approved’ or ‘preferred’ Kindle Accessories manufacturer.”

31. In October of 2011, M-Edge repeatedly tried to discuss the parties’ relationship with Vasen, but Vasen refused to have such a discussion.

32. On October 21, 2011 Amazon sent M-Edge an email falsely stating that M-Edge owed Amazon \$953,000. In actuality, Amazon owed M-Edge approximately \$40,000.00.

33. On November 23, 2011 Amazon sent M-Edge a letter terminating the November 20, 2009 agreement, falsely stating that the termination was due to M-Edge’s “repeated failure to perform its obligations under the Agreement.”

34. Amazon continues to display M-Edge products in its Kindle Store, falsely representing that certain M-Edge covers are “currently unavailable.” When a user types a search for “M-Edge” in the Kindle Store, Amazon also displays covers made by Amazon and other vendors, including the “Amazon Kindle Lighted Leather Cover,” which product infringes M-Edge’s patent.

COUNT I
PATENT INFRINGEMENT

35. Plaintiff realleges and incorporates herein by reference paragraphs 1-34 above.

36. Plaintiff owns the right, title and interest in and has standing to sue for infringement of: United States Patent No. 8,047,670 (the “‘670 Patent”) entitled “Booklight for a Protective Cover of an eReader” which issued on November 1, 2011. The ‘670 Patent is attached hereto as **Exhibit A**.

37. Amazon has infringed, and is now directly infringing, at least claim 1 of the ‘670 Patent through, among other activities, the manufacture, use, sale and/or offer for sale of covers for eReaders with integrated lights, including but not limited to Amazon’s Kindle Lighted Leather Cover. In the alternative, Amazon also has infringed the ‘670 Patent by contributing to the infringement of others through the use, sale, and offer for sale of such products with its Kindle eReaders. Specifically, in the alternative, to the extent the claims of the patent are construed to require a battery, as opposed to simply a light source, the accused Kindle Lighted Leather Covers provide a material component of the assembly claimed by the ‘670 Patent which is especially designed and made for use with Amazon’s Kindle eReader that provides power for the light source. Furthermore, Amazon is now selling and offering such Kindle Lighted Leather Covers with knowledge of the ‘670 Patent, and with the knowledge that its accused covers are made and used in a manner such that there are no reasonable non-infringing uses. A claim chart applying claims of the ‘670 Patent as to the Kindle Lighted Leather Covers is attached as **Exhibit B**.

38. Amazon’s infringement and contributory infringement has injured Plaintiff and Plaintiff is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

COUNT II
COMMON LAW UNFAIR COMPETITION

39. Plaintiff realleges and incorporates herein by reference paragraphs 1-38 above.

40. Amazon has damaged and jeopardized M-Edge's business by using fraud, deceit, trickery and other unfair methods. Among other conduct,

- a. Amazon coerced M-Edge by unlawful threats to destroy its business unless M-Edge revised an existing contract with terms unjustly benefitting Amazon. Through its threats to de-list M-Edge and manipulate its pages, Amazon was able to extort an additional \$6.5 million in commissions and fees from M-Edge, which M-Edge would not otherwise have paid.
- b. Amazon also falsely promised M-Edge pre-launch access to next generation Kindles as a basis for the new contract, yet Amazon already had agreed to such access in January of 2009. Then, in August of 2011, Amazon again used pre-launch access as a purported justification for an even more onerous "Preferred Vendor Program."
- c. Amazon punctuated its coercion with accounting discrepancies and obstacles, such as (1) withholding back payments – as much as \$2 million – despite M-Edge's provision of requisite documentation for payment; (2) frequently and arbitrarily changing M-Edge's reporting requirements; and (3) falsely claiming that M-Edge owed Amazon nearly \$1 million, even though Amazon owed M-Edge approximately \$40,000.00 at the time.
- d. Despite coercing M-Edge into a new contract in July of 2010, Amazon demanded even more outrageous terms in the Summer of 2011, including a demand for 10% of the MSRP on M-Edge's sales to third party vendors. Amazon had no legal, contractual or ethical justification for such demands.
- e. When M-Edge refused Amazon's demands, Amazon punished M-Edge by, among other conduct: (1) demanding payment under the Kindle Compatible agreement for sales in which the Amazon logo was not used; (2) contacting M-Edge's customers and potential customers to discourage them from doing business with M-Edge; and (3) "de-listing" M-Edge and preventing M-Edge from doing business on Amazon.
- f. For good measure, Amazon also deceived M-Edge on several occasions, including (1) false assurances of access to next generation

Kindle; (2) false demands for payment; (3) false statements about M-Edge requirements; and (4) false statements about the purported basis for terminating and “de-listing” M-Edge.

41. Amazon engaged in deliberate wrongdoing with wrongful motives, ill will and actual malice specifically directed at M-Edge.

42. Amazon’s conduct constitutes unfair competition under Maryland state law. M-Edge has been damaged by such conduct.

COUNT III
INTENTIONAL INTERFERENCE WITH CONTRACTS
AND ECONOMIC RELATIONS

43. Plaintiff realleges and incorporates herein by reference paragraphs 1-42 above.

44. Throughout the course of events described in this Amended Complaint, Amazon knew of M-Edge’s contracts and/or advantageous business relations with its customers, including, but not limited to, ten (10) non-Amazon retail customers referenced above.

45. Despite this knowledge, and with the deliberate and malicious intention of causing economic injury to M-Edge, Amazon wrongfully and unlawfully interfered with M-Edge’s contractual and business relationships with those customers by and through the wrongful and improper means described in this First Amended Complaint, including, but not limited to:

- (i) attempting to extort from M-Edge commissions on sales made by M-Edge to such retailers of products and accessories that did not bear the Amazon logo or any its trademarks;
- (ii) circulating to M-Edge’s customers and potential customers in the United States and in the United Kingdom a list of “Amazon Approved Accessory Vendors,” on which list M-Edge was conspicuously absent, so as to create the false impression that M-Edge had done something wrong and hence was not “approved”;
- (iii) engaging in discussions with M-Edge customers and potential customers in which Amazon verbally discouraged such customers from dealing with M-Edge; and

- (iv) selling and offering to sell to M-Edge's customers products that infringe the '670 Patent

46. As a direct and proximate result of this tortious interference, many of M-Edge's retail and other customers now refuse to deal with M-Edge thereby causing severe economic injury and loss to M-Edge and its lawful business.

47. Amazon engaged in these and other intentional and willful acts with actual malice calculated to cause damage to M-Edge in its lawful business, with the unlawful purpose to cause such damage and loss. Amazon performed such acts without right or justifiable cause.

48. Amazon's unlawful interference has resulted in actual damage and loss to M-Edge.

COUNT IV
LANHAM ACT – FALSE ADVERTISING

49. Plaintiff realleges and incorporates herein paragraphs 1-48 above.

50. In violation of 15 U.S.C. §1125(a)(1)(B), Amazon has made, and is continuing to make false or misleading representations about M-Edge and its products – as well as Amazon products and those of other vendors – in interstate commerce. Such representations are material in that they are and were likely to influence the purchasing decisions of visitors to Amazon.com and retailers of e-Reader products, and the misrepresentations actually have deceived or had the tendency to deceive a substantial segment of their audience.

51. M-Edge has been and is likely to continue to be injured as a result of the misrepresentations, either by direct diversion of sales or by lessening of goodwill associated with its products.

52. Amazon's representations have been willful.

RELIEF REQUESTED

For **Count I**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendants Amazon.com Inc. and Amazon Services LLC, and against their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

A. An award of damages adequate to compensate Plaintiff for the infringement that has occurred, together with prejudgment interest from the date the infringement began, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;

B. A permanent injunction prohibiting further infringement, inducement and/or contributory infringement of the '670 Patent; and

C. Such other relief that Plaintiff is entitled to under law and any other further relief that this Court or a jury may deem just and proper.

For **Count II**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendants Amazon.com Inc. and Amazon Services LLC, and against their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

A. An accounting for all of Defendants' profits arising out of their acts of unfair competition;

B. An award of compensatory damages including the losses suffered by M-Edge as the result of Defendants' acts of unfair competition; and

C. An award of punitive damages.

For **Count III**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendants Amazon.com Inc. and Amazon Services LLC, and against their

subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

A. An award of compensatory damages including the losses suffered by M-Edge as the result of Defendants' tortious interference; and

B. An award of punitive damages.

For **Count IV**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendants Amazon.com Inc. and Amazon Services LLC, and against their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

A. The entry of judgment in favor of Plaintiff and against Defendants;

B. An award of actual damages in the amount of (1) Defendants' profit derived from the sales at issue, and (2) M-Edge's lost sales as the result of Amazon's conduct;

C. An award of enhanced damages pursuant to 15 U.S.C. §1117(a); and

D. An award of attorney's fees and costs pursuant to 15 U.S.C. §1117(a).

JURY DEMAND

Plaintiff demands a trial by jury on all issues presented in this First Amended
Complaint.

Respectfully submitted,

/s/ John E. McCann, Jr.

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