

**EXHIBIT A**  
TO THE  
DECLARATION OF  
ROBERT D. KAPLAN

(TARPEY DEPOSITION  
TRANSCRIPT EXCERPTS)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SELLIFY LLC, ) No. 09CV 10268 (JSR)  
Plaintiff, )  
vs. ) CONFIDENTIAL  
AMAZON.COM INC., )  
Defendant. )

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DEPOSITION UPON ORAL EXAMINATION OF  
ANNE MARIE TARPEY

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1:28 p.m. to 3:16 p.m.

May 26, 2010

925 Fourth Avenue, Suite 2900

Seattle, Washington

Barbara L. Nelson, CCR  
Court Reporter

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A P P E A R A N C E S

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Whereupon,  
 ANNE MARIE TARPEY,  
 having been first duly sworn, was called as a witness  
 herein and was examined and testified as follows:

E X A M I N A T I O N

BY MR. DEHN:

Q Ma'am, would you be kind enough to give the  
 court reporter your full name?

A Sure. It's Anne Marie Tarpey.

Q Would you spell the last name, please?

A T-a-r-p, as in Paul, e-y.

Q Could you tell us what you do for a living?

A I am the Associates Operations Analyst for  
 Amazon.com.

Q And in general, what are the  
 responsibilities of an Associates Operations Analyst?

A I enforce the terms of the operating  
 agreement, the Associates Program operating agreement.

Q And when you say you enforce them, what's  
 that mean?

A Basically, I review associates' accounts and  
 determine whether or not they're in compliance with  
 the terms of the operating agreement and take action  
 if they aren't.

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Q Do you have, under your portfolio, all of  
 the associates, or is it just a segment of them that  
 you're responsible for and then others are responsible  
 for the other ones?

A No, I would be responsible for the  
 associates base.

Q Roughly how many associates are there?

A Over three million.

Q Three million?

A Mm-hmm.

Q Wow. Is the Associates Program what people  
 might generally call an affiliates marketing program?

A Yes.

MR. WANG: Objection to the form.

Q And when the phrase affiliates marketing  
 program is used, what does that mean to you? What are  
 affiliate marketers?

MR. WANG: Objection to the form. You can  
 answer.

THE WITNESS: Okay. Essentially -- well, I  
 can speak to the Associates Program. And that is that  
 we, in exchange for a person, a member linking from  
 their site to our site and referring customers and  
 sales to us, we pay them a small percentage of the  
 completed sale for that traffic.

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<p>1 Q Okay. Are you aware that there are other 2 companies out there that do similar things? 3 A Yes. 4 Q And does the phrase affiliate marketing 5 program have a generic meaning to you? 6 A Yeah, I mean, it would follow the same 7 structure that -- general structure as the Associates 8 Program in that they -- the members would be given 9 some sort of compensation for referring traffic. But 10 there are a variety of different models in affiliate 11 marketing. 12 Q Okay. How long have you been employed in 13 your present position? 14 A Since January of 2008. 15 Q Is that when you joined Amazon? 16 A No, I joined in March of 2005. 17 Q Okay. If we could work backwards from 2008, 18 when you assumed your present position, then let me 19 just ask you what position with Amazon you held and, 20 in general, what you did in those positions? 21 A Starting in 2005 or starting in 2008? 22 Q Let's start in 2008 and work backward. 23 A Okay. In 2008, I started in my current 24 role, so I began enforcing for the Associates Program 25 at that point.</p>	<p>1 of '98 until 2001, I worked in Amazon customer 2 service. And then, prior to 1998, I worked in a 3 variety of different positions as a case manager for 4 chronically mentally ill adults. 5 Q Do you have a college education? 6 A I do. 7 Q What is the nature of your degree? 8 A I have two bachelor's degrees, one in 9 psychology, one in English and American literature, 10 and then I have a master's degree in ecopsychology. 11 Q In your role in connection with the 12 enforcement of the Associates Program rules, has it 13 been necessary from time to time or has it been 14 appropriate, I should ask you, from time to time to 15 dismiss or discontinue a relationship with an Amazon 16 affiliate? 17 A Yes. 18 Q Okay. And on an annual basis, how many such 19 cases do you get? 20 A I typically enforce against 50 to 75 21 associates in a week. I'm trying to recollect what my 22 figure was for last year. It was around 3,000 23 accounts, I believe. 24 Q If you can recall, could you tell me, in 25 general, the bases for terminating an associate? And</p>
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<p>1 Q Okay. 2 A Prior to that, I worked in the Guarantee 3 Claims Department, and then in the Chargebacks 4 Department within the company. 5 Q And is the Guarantee Claims Department where 6 customers claim that a product was guaranteed and then 7 it didn't work, so I get my money back? Is that what 8 it is? 9 A Essentially, the Guarantee Claims Program 10 secures marketplace transactions for sales that are 11 fulfilled by third parties on our site. If the 12 product is not received or materially different, then 13 we would determine whether or not we would give the 14 customer their money back. And then chargebacks are 15 fairly self-explanatory. We deal with credit card 16 companies over disputed transactions. 17 Q Okay. And did you say that was the role you 18 had when you joined the company? 19 A Yes. 20 Q Okay. What did you do before you became 21 employed with Amazon in 2005? 22 A From 2000 -- let's see. In 2001, I worked 23 for a company who supported downloads of software for 24 about six months. And then I worked for a science 25 education curriculum company. And then, from November</p>	<p>1 let's take the most common one first and then work our 2 way down a little bit. What's the most common basis 3 to dismiss an associate? 4 A Sure. The biggest one -- area I would say 5 is bidding on our branded terms for sponsored ad 6 placements. And that's followed by people engaging in 7 scumware activity, which would be using a 8 technological means to tag an Amazon session and 9 therefore get credit for it without the end user being 10 aware that it's occurring. 11 Another area is personal orders, where an 12 associate would place orders through their tagged 13 links, which they're not permitted to do. And then 14 there's also people who register domain names with our 15 terms in them. Those are -- really, those are the big 16 four. There are a variety of lesser offenses. 17 Q Okay. The first one you mentioned, bidding 18 on our terms, is that something that only became 19 against the rules last year, when you changed the 20 rules with the Associate Program? 21 A No, it was -- I'm not sure when it was 22 implemented prior to my arrival in the position, but 23 that was an area that was prohibited when I arrived in 24 2008. 25 Q I see. And when you use the phrase our</p>

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<p>1 terms, are you referring to Amazon's trademarks?  2 A Yes.  3 Q Are there terms that are forbidden for this  4 purpose beyond the ones that would be registered  5 trademarks?  6 MR. WANG: Objection to the form.  7 THE WITNESS: The only ones that are  8 specifically expressed in the operating agreement are  9 proprietary terms, but we do include a component in  10 the operating agreement which says that they need to  11 respect the intellectual property rights of others.  12 Q So in this first category you gave me, when  13 you said bidding on our terms, okay, are you including  14 in that when people bid on keywords which are the  15 intellectual property of others, as well as Amazon, or  16 are you strictly talking about Amazon at this point?  17 A Just Amazon.  18 Q Just Amazon, okay. All right. Since these  19 four categories are the big four that you mentioned,  20 is it then -- well, would it not be part of the big  21 four -- would it be a fairly unusual occurrence for  22 there to be a termination because someone else's  23 intellectual property was used?  24 MR. WANG: Objection to the form.  25 THE WITNESS: I would not say that it's</p>	<p>1 on products that we offer. So specialty sites would  2 be able to say, you know, I can recommend this  3 particular product and that kind of thing and offer  4 their own opinions.  5 Q When an associate creates a link to Amazon,  6 does the associate create that -- is the associate  7 responsible for the content of the actual link?  8 A Yes and no. They could build their own text  9 link, but we offer a variety of link-building tools  10 via Associates Central, and that would be -- the link  11 content would be provided by us.  12 Q Do associates ever put -- do they ever  13 create and put ads for Amazon on their Web sites?  14 A I'm not sure what you mean by ads. Do you  15 mean like actual links and the banner ads and things  16 like that?  17 Q Well, it could be in the form of banner ad.  18 I guess here's my question, though. You mentioned the  19 fact that associates could create text on a Web site,  20 which would link to Amazon?  21 A Right.  22 Q So there would be the part that we generally  23 consider the text, the content of a Web site. It  24 could have a little underscore and a link to Amazon, I  25 take it?</p>
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<p>1 rare, but it's less frequent than this.  2 Q Do you have any idea roughly how many times  3 that would occur during a year in -- let's say the  4 last year and be the basis for termination?  5 A I'm going to say anywhere between 10 to 25  6 accounts. It's hard for me to speculate without my  7 record in front of me.  8 Q Uh-huh. Ms. Tarpey, what's the general  9 purpose of the Amazon Associates Program?  10 A Well, it's to obviously increase traffic to  11 the Amazon site by encouraging others to provide links  12 to their customers to come to Amazon to purchase  13 products or services.  14 Q And maybe this is a little harder to  15 understand for a person who's not connected, or a lay  16 person like me, but why would a big company like  17 Amazon find it necessary or advisable to get third  18 parties to drive traffic? Someone like me might  19 think, They haven't heard of Amazon already?  20 MR. WANG: Objection to the form. I think  21 this may be beyond the scope of Ms. Tarpey, but if she  22 has an answer, she can give it.  23 THE WITNESS: I don't know why -- what the  24 initial rationale would be, but I do know that there  25 is value in third parties offering opinions and advice</p>	<p>1 A Yes.  2 Q Okay. But then many Web sites also feature  3 various materials that we might think of as more  4 traditional web advertising, in the form of a banner  5 or a logo or some other thing. Do some associates use  6 those sorts of mechanisms to link to Amazon, as well?  7 A Yes.  8 Q Under the operating agreement, are  9 associates permitted to use Amazon's trade names  10 and/or logos as part of their links?  11 A We have a very specific list of trademark  12 guidelines, as to how associates can use our logos,  13 things like that. We do have -- the banner ads that  14 we provide on the site sometimes include our logos and  15 things like that, but in terms of just kind of cutting  16 and pasting a logo from the Amazon site, that's  17 generally not permitted.  18 Q Okay. Well, I guess my question is are they  19 allowed, under some circumstances, to use Amazon's  20 trademarks and logos, assuming they follow whatever  21 rules you impose on them?  22 MR. WANG: Objection to the form.  23 THE WITNESS: If their use follows the  24 trademark guidelines, then yes, they would be  25 permitted to use them.</p>

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<p>1 Q Okay. Other than the rules imposed in the 2 operating agreement, do affiliates have the freedom to 3 create the content of the material surrounding the 4 links to Amazon? 5 A Well, they would have control over their own 6 site content. 7 MR. DEHN: Okay. Let me do this. I don't 8 have another copy of this, Jeff. I just want to see 9 if the witness can identify this. 10 MR. WANG: Okay. 11 MR. DEHN: Let me have it marked. Would you 12 mark this as Tarpey 1, please? 13 (Marked Deposition Exhibit Number 1.) 14 Q Ms. Tarpey, I have a document that was 15 presented to us as Amazon, or AMZ pages 21 through 30. 16 It's headed Associates Program Operating Agreement. 17 And I just want to show this to you and see if this 18 is, in fact, the agreement that governs the Amazon 19 associates? 20 A Yes. 21 Q Okay. Ms. Tarpey, how specific can 22 associates make a link to Amazon's web page? In other 23 words, if they want to key in on a certain page 24 featuring certain types of merchandise, can they do 25 that, as well as just keying to the Amazon.com home</p>	<p>1 accounts that don't have that dash-20 on them. 2 Q Okay. Other than -- 3 MR. WANG: By the way, I'm sorry to 4 interrupt you. Just, again, as we're talking about 5 the ins and outs of the Amazon site and its program, 6 I'd just like to make sure that we mark the deposition 7 as confidential. 8 MR. DEHN: Absolutely. 9 Q Other than the dash-20 tag, how many 10 characters is the -- is it proper for me to call that 11 the associate ID? 12 A I think that's -- 13 Q Okay. How many characters is the associate 14 ID? 15 A It can really vary. I would say that it 16 really depends on the kind of associate ID that 17 they've created, because each associate store ID can 18 also create subtags or tracking IDs, and so it 19 really depends. It widely varies. 20 Q Okay. 21 A It can go anywhere from, you know, one to 22 three characters to up to 15, I would say. 23 Q I see. Now, other than -- other than the 24 obvious differences, now obvious that you discussed 25 them, but now the obvious differences in terms of the</p>
<p>1 page? 2 A Yes. 3 Q And is the link created by the -- I'm sorry, 4 back up. I think you said that a link to Amazon could 5 be created either by the associate or they could use, 6 I guess, a template furnished by Amazon; am I correct? 7 A Yes. 8 Q Okay. If the -- let's assume that an 9 associate uses a link furnished by Amazon. Is it 10 possible that other Amazon associates, out of the 11 three million or so you mentioned, would use an 12 identical link to get to Amazon? 13 MR. WANG: Objection to the form. You can 14 answer. 15 THE WITNESS: It wouldn't be -- well, let me 16 put it to you this way. It wouldn't be identical if 17 the associate in question would like to get paid for 18 it. The link would have to vary the associate tag 19 that's included in that URL in order to receive credit 20 for the sales. 21 Q I see. What does the associate tag look 22 like? 23 A The basic format of it would be a series of 24 alphanumeric characters and then a dash-20 after it 25 for U.S. and Canadian accounts. There are some older</p>	<p>1 associate ID, would it be possible for two different 2 associates to have an identical link to Amazon that's 3 been furnished by Amazon? 4 MR. WANG: Objection to the form. 5 THE WITNESS: I would say no, because the 6 tracking IDs are all unique. The store IDs are 7 all unique to ensure that the proper associate would 8 get credit for it. There can't be duplication. 9 Q No, no, that's what I said. Other than 10 that. Other than that associate ID. I thought we 11 were talking about the -- you said tracking ID. I 12 thought I was referring to the same thing. 13 A Right. 14 Q Other than that tracking ID, is it possible 15 that two or more associates could be using the same 16 link to Amazon, furnished by Amazon, for the purpose 17 of getting it to the Amazon site? 18 MR. WANG: Objection to the form. 19 THE WITNESS: Yes. 20 Q Okay. 21 A They could link to the same -- a same 22 product with a different tag in the URL with the same 23 browse page with the same -- or with a different tag. 24 Q Okay. So for example, if let's say, you 25 know, two different associates, both wanted to link to</p>

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<p>1 particularly on behalf of Amazon.com, which is her 2 purpose here. But if you'd like to ask her personal 3 opinion, then I'd ask that you phrase the question 4 that way.</p> <p>5 MR. DEHN: No. Well, I don't really want 6 Ms. Tarpey's personal opinion, but what she says is 7 I'm the enforcement person.</p> <p>8 Q And I think your testimony, in fairness, is 9 that, you know, we would enforce against someone if we 10 think it's infringement; we would not enforce if we 11 think it's fair use. So I guess I'm asking what is 12 your understanding as to what fair use is?</p> <p>13 MR. WANG: I'm going to object to the 14 question and instruct you that, to the extent that 15 that belief is informed by discussions you had with 16 Counsel, which you say you have from time to time with 17 respect to fair use, you should exclude that from your 18 answer.</p> <p>19 THE WITNESS: To be honest, I leave it to 20 Counsel to determine what is fair use and what is --</p> <p>21 Q Fair enough, okay. Approximately how many 22 times have you looked into the issue of whether a 23 keyword purchased by someone else, by an associate, is 24 either infringement or a fair use?</p> <p>25 A As I said before, I'm not certain how many</p>	<p>1 have any sense as to what percentage of those fees 2 were derived from keyword bidding or other paid search 3 on search engines?</p> <p>4 A No, I really could not even give you an 5 idea.</p> <p>6 Q Did anyone at Amazon, other than legal 7 counsel, discuss with you the reasons why the policy 8 was changed in this fashion?</p> <p>9 A I was informed of the decision after it had 10 been made, and my recollection is that the primary 11 reason was the associates were cannibalizing our own 12 sponsored link efforts, and that -- and we decided 13 that we wanted to take over the entirety of the 14 sponsored links traffic, rather than leave a portion 15 of it to the associates.</p> <p>16 Q Okay. Is it, to your knowledge, is a 17 sponsored link purchase a significant strategy of 18 Amazon's at this time?</p> <p>19 MR. WANG: Objection to the form.</p> <p>20 THE WITNESS: I am not privy to any of those 21 discussions, so I can't offer an answer.</p> <p>22 Q In this document, in the first page of this 23 document, Tarpey 2, the third full paragraph, it says, 24 Please stop all paid search advertising activity 25 within five business days of the date of this e-mail</p>
<p>Page 27</p> <p>1 -- the number of times. It's been fairly infrequent. 2 In terms of the keyword bidding specifically, I'm 3 sorry, I can't come up with a more specific answer.</p> <p>4 Q Prior to Amazon's adoption of the change in 5 its associates policy, so that it would no longer pay 6 referral fees for purchases resulting from sponsored 7 links in keyword purchases -- I'm sorry, let me start 8 again, because I want to use the phrase.</p> <p>9 In the second paragraph in Tarpey 2, it 10 says, Associates are not permitted to engage in 11 keyword bidding or other paid search on Google, Yahoo, 12 MSN, and other search engines and their extended 13 search networks to send traffic to our site.</p> <p>14 Prior to the time when this policy was 15 adopted, was keyword bidding or other page search on 16 these search engines a common way for associates to 17 drive traffic to Amazon?</p> <p>18 MR. WANG: Objection to the form. You can 19 answer.</p> <p>20 THE WITNESS: Yes.</p> <p>21 Q Do you have any idea what the -- you know, 22 what the proportion would have been? I'm sorry.</p> <p>23 A Sure.</p> <p>24 Q Let me relate that to something. Of the 25 referral fees that were paid to associates, do you</p>	<p>Page 29</p> <p>1 and discontinue any further activity of that nature.</p> <p>2 Do you have any knowledge as to whether that 3 paid search advertising activity was stopped by the 4 recipient of this e-mail, Cuttinggededesigns?</p> <p>5 A It was not.</p> <p>6 Q And how did you determine that?</p> <p>7 A I received another e-mail in July stating 8 that the ad was still up.</p> <p>9 Q As the enforcement person, is it your 10 practice, typically, to look into -- or someone 11 working with you, is it your practice to look into, 12 you know, what's going on after the five days, a 13 five-day period passes?</p> <p>14 A Well, my typical enforcement process is to 15 review a variety of reports for offenders, but they're 16 based on traffic, and it's quite often just the people 17 that are driving the most traffic that I see. I 18 follow up on other cases as and when I can.</p> <p>19 Q I see that the person who signed this 20 particular e-mail is David, Associates Account 21 Specialist. Is he someone who works with you?</p> <p>22 A Actually, it's my signature block.</p> <p>23 Q Okay.</p> <p>24 A And the reason why I adopt pseudonyms for 25 notices is, as I'm sure you can understand, when</p>

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<p>1 you're handling people's money, they can be quite 2 aggressive and angry. And the person who was in this 3 role previously had some issues with signing her true 4 name and having people come to our offices. 5 Q Quite understandable. Do you recall, then, 6 at the time that -- at the time that this message was 7 sent, how many open enforcement files you would have 8 had at that particular time? 9 A As I said, I usually enforce between 50 and 10 -- again, 50 to 75 accounts would be including 11 warnings and closures, so I'm not certain how many 12 would have been available for follow-up at that point, 13 if you understand what I mean. How many cases I 14 hadn't 100 percent confirmed had been resolved. 15 Because, to be honest, most people, after their first 16 warning, will desist the activity, so there's no need 17 to follow up again. You know, provide them with a 18 certain grace period beyond the five business days 19 that are stated in the e-mail, and if they come to my 20 attention again, I will close them, as in this case. 21 Q Okay. So is it fair to say that it would 22 not normally be your practice to, say at the end of 23 the five days, to try to search yourself and just see 24 what comes up? 25 A I would say more often than not, no, I don't</p>	<p>1 from? 2 A Well, they were from me doing the actual 3 search. 4 Q Oh, so you did the actual search -- 5 A Yes. 6 Q -- at the time that you were -- or around 7 the time that you sent this e-mail to Cuttingedge? 8 A Yes. 9 Q Okay. 10 A I would have captured this information prior 11 to sending the notification. 12 Q Okay. Thank you. I should have asked you, 13 at the time that you prepared this e-mail to 14 Cuttingedge, could you just tell us generally what, if 15 anything else, you did in -- you know, in connection 16 with preparing this e-mail or otherwise dealing with 17 Cuttingedge? 18 A Well, first of all, I document whatever 19 offense has been brought to my attention, and then I'd 20 also check to see if they were related to any prior 21 offenders for the same activity. 22 Q How do you do that? 23 A We have a variety of different proprietary 24 tools to determine whether or not accounts are related 25 by a variety of different criteria.</p>
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<p>1 get the opportunity to do that. 2 Q You don't get the opportunity because your 3 workload is heavy and -- 4 A Yes. 5 Q Okay. Just directing your attention back to 6 Tarpey 2, I was under the impression that the pages 7 here that were provided were something that 8 accompanied this particular e-mail, but I could be 9 wrong. Could you look at those pages and let me know 10 whether, in conjunction with the page one, which is 11 the e-mail that you sent to Cuttingedgedesigns and 12 MSN.com, whether you supplied any of this other 13 documentation to Cuttingedge? 14 A Documents -- pages two, three, four, five, 15 and six are all internal documentation that I did not 16 attach to notifications sent to the associate. 17 Q Okay. But this would -- so this would have 18 been documentation that would have been in your file? 19 A Precisely. 20 Q Okay. And where would you have obtained 21 this documentation? 22 A These are screenshots of the ad itself 23 and -- as well as a screenshot of the internal tool I 24 use to identify who has tagged a particular session. 25 Q And do you know where these screenshots came</p>	<p>1 Q Ms. Tarpey, do you have any idea, following 2 the adoption of the new policy regarding paid search 3 on search engines, do you have any idea of 4 approximately how many associates you discovered to be 5 in violation of that particular policy? 6 A As a ballpark figure, about 150 within the 7 first two to three months. 8 Q Did you start enforcing that policy 9 immediately upon the adoption of the new -- of the 10 rule change? 11 A Yes. 12 Q Okay. And how did you typically determine 13 -- this case with Cuttingedge, obviously, it was a 14 complaint made by my client, but what was the typical 15 way in which you discovered that people were still 16 using paid search? 17 A I worked closely with our own sponsored 18 links team and used their reporting, which would show 19 associates who had referred traffic from search 20 engines within that day and what keywords they had 21 used to do that. And then I would go out and search 22 for those specific terms to determine whether or not 23 there was an actual sponsored ad placement, because 24 there's no way to differentiate between what was free 25 traffic in the free search results and what was</p>

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<p>1 Tarpey 3, please?</p> <p>2 THE WITNESS: Before we move on, do you mind</p> <p>3 if I take a break and go to the rest room?</p> <p>4 MR. DEHN: Please do, please do.</p> <p>5 (Recess taken from 2:31 to 2:34 p.m.)</p> <p>6 (Marked Deposition Exhibit Number 3.)</p> <p>7 Q Ms. Tarpey, I'll represent that Tarpey 3</p> <p>8 consists of pages labeled AMZ 8 through 11, and</p> <p>9 furnished by Amazon's Counsel. Apparently the first</p> <p>10 three pages consist of an e-mail thread. Do you</p> <p>11 recognize this thread?</p> <p>12 A I do.</p> <p>13 Q It appears that the -- well, I see three</p> <p>14 different mentions of different dates here.</p> <p>15 A Oh.</p> <p>16 Q The May 26th of 2009 seems to be the</p> <p>17 earliest one, and that appears to be the same as we</p> <p>18 saw in the previous document, Tarpey 2; is that</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. And then there was another message</p> <p>22 that was sent on Tuesday, July 14th. Do you see</p> <p>23 that, beginning on the bottom of page one?</p> <p>24 A Yes.</p> <p>25 Q Did you send that message, as well?</p>	<p>1 this point it also included changing their segment to</p> <p>2 -- from whatever they had stated on their application</p> <p>3 to the associate's fraud segment, so they could be</p> <p>4 easily identified as fraudulent associate.</p> <p>5 Q Okay. And then there appears to be a third</p> <p>6 message here beginning on page one, September 9th,</p> <p>7 2009. Was this a message that you sent to</p> <p>8 Cuttingedge, as well?</p> <p>9 A They -- let me clarify. So this message</p> <p>10 sent on September 9th included the notices that I</p> <p>11 sent on May 26th and July 14th.</p> <p>12 Q Okay.</p> <p>13 A And it was re-sent in response to the</p> <p>14 inquiry from Cuttingedge on page ten, or also it says</p> <p>15 page three at the bottom of the page, when he asks,</p> <p>16 Why is my account closed, with four question marks.</p> <p>17 Q Was that the sum total of his message to</p> <p>18 you, Why is my account closed?</p> <p>19 A Yes.</p> <p>20 Q All right. And I don't think you answered</p> <p>21 this precise question before. Over let's say the past</p> <p>22 year -- I'm sorry, strike that.</p> <p>23 In your experience at Amazon.com in this</p> <p>24 particular position, how many accounts did you close</p> <p>25 or suspend because associates had purchased</p>
<p>Page 47</p> <p>1 A Yes.</p> <p>2 Q And what was the occasion for sending that</p> <p>3 message?</p> <p>4 A I had received notice that the ad was still</p> <p>5 up on -- I can't remember. It was actually -- I think</p> <p>6 it was either the day before or the day of the notice</p> <p>7 being sent to Cuttingedgesigns in July.</p> <p>8 Q And from whom did you receive that notice?</p> <p>9 A From Kathy Sheehan, I believe.</p> <p>10 Q And who's Kathy Sheehan?</p> <p>11 A She's our Senior Corporate Counsel.</p> <p>12 Q Okay. And so what action did you take on</p> <p>13 July 14th of 2009?</p> <p>14 A I actually closed the associate's account</p> <p>15 and withheld payment of all unpaid referral fees.</p> <p>16 Q Do you recall how much that was,</p> <p>17 approximately? I probably have a document, but what</p> <p>18 do you recall?</p> <p>19 A I think it was right around \$600, but I'm</p> <p>20 not certain.</p> <p>21 Q Okay. Other than withholding that amount,</p> <p>22 what else, if anything, does closing an associate</p> <p>23 account consist of?</p> <p>24 A It includes marking the account as closed</p> <p>25 and marking it not to be paid. And I believe that at</p>	<p>Page 49</p> <p>1 trademarked terms belonging to someone else?</p> <p>2 A Had purchased trademarked terms for use as</p> <p>3 --</p> <p>4 Q As keywords?</p> <p>5 A As keywords?</p> <p>6 Q Yes.</p> <p>7 A I would say less than five.</p> <p>8 Q Had other complaints -- in your experience,</p> <p>9 had other complaints come to your attention from</p> <p>10 people saying that one of your associates is out there</p> <p>11 using my trademark as a keyword?</p> <p>12 A Yes, I do -- I recollected at least two</p> <p>13 other occasions where we've received objections to</p> <p>14 someone using the trademarked term of another.</p> <p>15 Q Okay. But the total number of objections</p> <p>16 would be less than five, do you think?</p> <p>17 MR. WANG: Objection to the form.</p> <p>18 THE WITNESS: I would say that the total</p> <p>19 number of account actions have been less than five.</p> <p>20 Q Okay. Do you have a rough estimate as to</p> <p>21 how many objections, whether deemed significant enough</p> <p>22 to warrant taking action on your part or not, what the</p> <p>23 rough total number of objections would have been?</p> <p>24 A I would simply be guessing. I would say</p> <p>25 maybe 20. It's very hard for me to say, because the</p>

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<p>1 sheer volume of issues that I receive, to ballpark it 2 any better than that.</p> <p>3 Q Okay. But in comparison to the -- I think 4 you said you've got 50 or 75 cases you're considering 5 per week, so in comparison to that, it would be a very 6 small number; would that be fair to say?</p> <p>7 A Yes.</p> <p>8 Q I noticed in Tarpey 3, there was -- in one 9 of those, I think it was the July message, there was a 10 statement that, if you want, you can reapply to reopen 11 your account if you promise to obey the rules, 12 something along those lines?</p> <p>13 MR. WANG: Objection. I believe it's --</p> <p>14 Q Does that capture the substance?</p> <p>15 MR. WANG: Objection to the form.</p> <p>16 THE WITNESS: It's actually included in the 17 message on September 9th.</p> <p>18 Q Ah, I'm sorry. I thought it was part of the 19 July. Okay.</p> <p>20 A No, it is not included in the July message.</p> <p>21 Q Okay. I'm sorry. All right. But in 22 substance, you informed Cuttingedge that it could, if 23 it promised to obey your rules, it could, in fact, 24 reapply to reopen an account; correct?</p> <p>25 A Yeah.</p>	<p>1 A It's a screenshot of the results from a 2 particular command line tool. It's not -- I don't 3 actually hold on to this as an independent record. I 4 was using this to show what the status of the account 5 was and the annotation that I had made on it at the 6 time of closure.</p> <p>7 Q Okay. Thank you. All right. Now, going 8 back to Tarpey 4, do you recognize this document?</p> <p>9 A I do.</p> <p>10 Q And what is this?</p> <p>11 A This was the notification sent to associates 12 to let them know that we were going to be no longer 13 paying them for traffic referred from paid search 14 placements directly to our site, that sent users 15 directly to our site.</p> <p>16 Q And I think we began to discuss this before, 17 but we ended up discussing something else, so I wanted 18 to come back to it. Do you have an understanding, 19 from any of your colleagues at Amazon, why this 20 particular change at that time applied only to U.S. 21 and Canada?</p> <p>22 A I am not certain.</p> <p>23 Q Has anyone ever told you what they believed 24 the reason was?</p> <p>25 A Well, I could speculate that the reason</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. To your knowledge, has Cuttingedge 2 reapplied to open a new account?</p> <p>3 A Not to my knowledge.</p> <p>4 MR. DEHN: Would you mark that as Tarpey 4, 5 please. 6 (Marked Deposition Exhibit Number 4.)</p> <p>7 Q Would you take a look at that, ma'am?</p> <p>8 A Sure.</p> <p>9 MR. WANG: Just to be clear, for the record, 10 I think that AMZ 11 was included as part of Tarpey 3, 11 but --</p> <p>12 MR. DEHN: Ah.</p> <p>13 MR. WANG: I believe that is a separate 14 document. I don't have any other objection or comment 15 beyond that. Just to make it clear for the record.</p> <p>16 Q Okay. Let's clear up that problem. If you 17 could just go back to Tarpey 3 for one second?</p> <p>18 A Absolutely.</p> <p>19 Q The last page --</p> <p>20 A Yes.</p> <p>21 Q -- appears to be a screenshot of some kind?</p> <p>22 A It is. And this is how the associate's 23 information appears in one of our internal tools.</p> <p>24 Q Okay. So this is an internal document from 25 your files, as well; is that correct?</p>	<p style="text-align: right;">Page 53</p> <p>1 would be --</p> <p>2 MR. WANG: I don't think he wants you to 3 speculate.</p> <p>4 THE WITNESS: Okay.</p> <p>5 Q Have you ever had any conversations with 6 anyone about the reason behind it?</p> <p>7 A No.</p> <p>8 Q Mr. Wang is correct that I don't want you to 9 really speculate, but have you seen any evidence or 10 any information suggesting a reason why the change was 11 limited to U.S. and Canada?</p> <p>12 MR. WANG: Objection to the form.</p> <p>13 THE WITNESS: Not to my recollection.</p> <p>14 Q Okay. And was this document sent to all 15 Amazon associates?</p> <p>16 A That's my understanding, yes.</p> <p>17 MR. DEHN: I'd like that marked as Tarpey 5, 18 please. 19 (Marked Deposition Exhibit Number 5.)</p> <p>20 Q Ma'am, have you ever seen this document 21 before that's marked as Tarpey 5?</p> <p>22 A I believe I saw it yesterday.</p> <p>23 Q Have you ever -- directing your attention 24 specifically to the screenshot, have you ever seen 25 that document showing the apparent results of a Google</p>

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<p>1 found out about this was from Counsel, you should 2 exclude from your answer discussions you had with 3 Counsel. 4 THE WITNESS: Sure. The primary issues, 5 from my perspective, were the fact that he was using 6 trademarked terms to display his ad and the using -- 7 sending users directly to Amazon from that ad. 8 Q Right. So those are the two that we've 9 discussed at some length. Were there any other issues 10 with respect to these scammer ads? 11 A Not that I'm recollecting. 12 Q Okay. Other than with Counsel, did you have 13 any discussion with colleagues at Amazon regarding the 14 content of these ads? 15 A No. I mean -- wait. I was on the thread 16 with Eric Herrmann and Counsel about it, but all the 17 conversations took place on that thread with Counsel. 18 (Marked Deposition Exhibit Number 6.) 19 Q There's Tarpey 6. 20 A Okay. 21 Q Ma'am, Tarpey 6 is a document provided to us 22 by Amazon's Counsel with the number AMZ 755. The 23 first sentence -- well, I guess this document contains 24 -- it contains a question saying, What is the Amazon 25 Associates Program? And the answer is, Launched in</p>	<p>1 all. 2 MR. WANG: Very fancy. 3 MR. DEHN: Yeah, well, some fancy Manhattan 4 guy had to run this off your DVD, and I told him to 5 use cheap paper, but he didn't listen. So this is 6 Tarpey 7. 7 THE WITNESS: Okay. 8 Q Ma'am, is this also -- this document, did 9 this also come from the FAQ that you referred to? 10 A Yes. 11 Q Okay. Are you aware of any reason why 12 Amazon would instruct its associates not to call 13 themselves affiliates? 14 A I'm not sure of the precise rationale behind 15 it. 16 Q Has anyone ever discussed that with you at 17 all? 18 A No. 19 Q Would -- the for example statement here, it 20 says, For example, you should refrain from using words 21 such as network, affiliate, partnership, reseller, 22 alliance or relationship agreement or any other words 23 which may lead one to confuse the program with any 24 other advertising initiatives. 25 Would -- suppose an associate did use one or</p>
<p>Page 59</p> <p>1 1996, Associates is Amazon.com's affiliate marketing 2 program. 3 Is this -- is this information that's 4 furnished to associates, ma'am? 5 A Yes. 6 Q Okay. And in what form? This is sort of -- 7 the appearance of this is sort of computerized style, 8 but in what form do people generally get this? 9 A It would be in an FAQ available on 10 Associates Central. 11 Q Okay. And what is Associates Central? 12 A That's the interface that members use to 13 view help content, generate links, view their reports, 14 et cetera. 15 Q Okay. That sentence, that first sentence 16 that I read, Launched in 1996, Associates is 17 Amazon.com's affiliate marketing program, is that an 18 accurate statement, ma'am? 19 A Yes. 20 Q Okay. That's all I have for that one. 21 Number 7. 22 (Marked Deposition Exhibit Number 7.) 23 MR. WANG: This is on heavy stock paper. 24 MR. DEHN: Yeah, because you know what? I 25 gave you my original and then I made copies. That's</p>	<p>Page 61</p> <p>1 more of those terms to describe themselves. Would 2 that be justification for any kind of enforcement 3 against them? 4 A Well, they are, per the operating agreement, 5 they are responsible for accurately describing their 6 relationship with us. So that would be a violation of 7 the operating agreement. 8 Q Have you ever taken enforcement action 9 against any associate for using one or more of these 10 terms to describe themselves? 11 A Not for one or more of these terms, but I 12 have taken action against accounts that have 13 misrepresented the relationship with us by not making 14 the relationship between the two of us clear. 15 Q Okay. But if someone -- for example, if an 16 associate referred to himself as an affiliate, you 17 wouldn't do anything to him, would you? 18 MR. WANG: Objection to the form. 19 THE WITNESS: I guess I've just never seen 20 it. I mean, theoretically I would, as a violation of 21 the operating agreement. 22 Q Okay. But there hasn't been an instance in 23 which you have taken an enforcement action against 24 anyone for describing themselves in one of these 25 terms, is there?</p>

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<p>1 A Not that I --</p> <p>2 MR. WANG: Objection to the form. Sorry.</p> <p>3 THE WITNESS: Sorry. Not that I recollect,</p> <p>4 no. As I said, I've taken action for those who have</p> <p>5 not clearly represented the relationship by --</p> <p>6 Q Could you clarify that a little bit?</p> <p>7 A Absolutely.</p> <p>8 Q I mean, if it's not by use of one of these</p> <p>9 terms, how has someone, in your experience, misstated</p> <p>10 the nature of their relationship with Amazon and then</p> <p>11 been enforced against as a result?</p> <p>12 A Well, wait. Actually, it would be a related</p> <p>13 term. They'd say something like partnered with</p> <p>14 Amazon.com, or just failed to mention that their</p> <p>15 content and the links that they provide on the site</p> <p>16 are not to Amazon. And they -- because they're</p> <p>17 required to specifically call out that they are in</p> <p>18 association with Amazon.com, and in essence confusing</p> <p>19 customers as to who is the source of the materials</p> <p>20 that are being displayed on the site.</p> <p>21 Q Yeah, I want to go back to something you</p> <p>22 just said.</p> <p>23 A Sure.</p> <p>24 Q You said something about -- I'm not sure</p> <p>25 what you were getting at, but I think you said that</p>	<p>1 Q Okay. Whatever the prescribed statement is?</p> <p>2 A Exactly, exactly.</p> <p>3 MR. DEHN: Okay. We're up to Number 8.</p> <p>4 (Marked Deposition Exhibit Number 8.)</p> <p>5 Q I'll show you what we marked Exhibit 8.</p> <p>6 A Sure.</p> <p>7 Q Ma'am, this document is numbered AMZ 18 and</p> <p>8 19, provided by Amazon's Counsel.</p> <p>9 A Okay.</p> <p>10 Q Ms. Tarpey, do you recognize this particular</p> <p>11 document?</p> <p>12 A I do.</p> <p>13 Q And what is this?</p> <p>14 A This is a series of FAQs based on the</p> <p>15 operating agreement changes of May 1st, 2009, to</p> <p>16 prohibit paid search placements sending users directly</p> <p>17 to Amazon.</p> <p>18 Q Was this document sent to people in</p> <p>19 conjunction with your memo that we identified earlier</p> <p>20 that was sent to all the Amazon associates?</p> <p>21 A I had thought that a specific URL was</p> <p>22 included. It's actually -- you can't really see it,</p> <p>23 but on Tarpey 4, in the first paragraph, there's</p> <p>24 actually, in the last sentence, there's, Please visit</p> <p>25 this page, underscore, for FAQs.</p>
<p>Page 63</p> <p>1 they would have to make clear that they were</p> <p>2 associated with Amazon?</p> <p>3 MR. WANG: Objection to the form.</p> <p>4 Q Is that right?</p> <p>5 A At one point, we had a logo that people</p> <p>6 would use to say "in association with Amazon.com."</p> <p>7 And the operating agreement requires a specific</p> <p>8 statement now, and I'm not sure of the exact language,</p> <p>9 but that that language be included on the Web site to</p> <p>10 indicate that they are a member of the Associates</p> <p>11 Program.</p> <p>12 Q I see. So if I had a Web site, for example,</p> <p>13 and I -- you know, on my web page, I had something</p> <p>14 about a great new toaster oven.</p> <p>15 A Mm-hmm.</p> <p>16 Q And by the way, it's available everywhere.</p> <p>17 You can get it at Amazon, underscore, and then they</p> <p>18 could click on that link and go right to Amazon. Are</p> <p>19 you saying they wouldn't be allowed to do that unless</p> <p>20 there's somewhere on that Web site they indicated they</p> <p>21 were an Amazon associate?</p> <p>22 MR. WANG: Object to the form. You can</p> <p>23 answer.</p> <p>24 THE WITNESS: They should. They should have</p> <p>25 an association with Amazon on their page.</p>	<p>Page 65</p> <p>1 Q Yes.</p> <p>2 A And this would have been the page that was</p> <p>3 linked there.</p> <p>4 Q Okay. Great. Tarpey 9, please.</p> <p>5 (Marked Deposition Exhibit Number 9.)</p> <p>6 Q Okay. Ma'am, do you recognize this</p> <p>7 document, Tarpey 9?</p> <p>8 A I do.</p> <p>9 Q For the record, this is a document</p> <p>10 originally marked S-47 through S-53. It came from</p> <p>11 Plaintiff's document production. What is this</p> <p>12 document, ma'am?</p> <p>13 A This looks like a capture of the Amazon</p> <p>14 Associates Blog postings.</p> <p>15 Q And when it says the Official Amazon</p> <p>16 Associates Blog, what's official about it?</p> <p>17 A The entries are posted by our marketing</p> <p>18 team.</p> <p>19 Q And does this document consist of -- or,</p> <p>20 well, let me rephrase the question. Does this</p> <p>21 document contain a number of tips to associates</p> <p>22 regarding how to effectively function as associates of</p> <p>23 Amazon?</p> <p>24 MR. WANG: Objection to the form.</p> <p>25 THE WITNESS: This essentially notifies them</p>