

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SELLIFY LLC, :
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 : Plaintiff, :
 : No. 09 CV 10268 (JSR)
 : - against - :
 : **DECLARATION OF**
 : **ANNE TARPEY**
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 : Defendant. :
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Anne Tarpey declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Associates Operations Analyst at Amazon.com, Inc. I have two bachelor's degrees from West Chester State University – one in Psychology and one in English and American literature – and a master's degree from Antioch University in eco-psychology. I have worked at Amazon.com since 2005 (and previously worked for Amazon.com from 1998 to 2001), and have held the position of Associates Operations Analyst since January 2008.

2. My primary responsibility in that position is to enforce the terms and conditions of the Operating Agreement governing Amazon.com's "Associates Program," which is the Amazon.com program through which independent third parties can sign up to earn advertising fees by advertising Amazon.com products on their own websites.

3. The basic structure of the Associates Program is that participants place links to Amazon.com on their own websites. If a customer visits Amazon.com as a result of clicking on one of those links, the Associates Program participant earns an advertising fee (usually around 4%) on items that are placed in that customer's cart during a session (typically

lasting 24 hours), as long as the customer ultimately purchases the item within 89 days of the click-through.

4. The Associates Program has approximately 3,200,000 participants. To participate in the Associates Program, a user must, among other things, agree to the terms and conditions of the Associates Program Operating Agreement. A copy of the Associates Program Operating Agreement is attached to this declaration as **Exhibit A**.

5. In May 2009, I became aware – following a letter sent to Amazon.com’s general counsel, L. Michelle Wilson, from counsel for Sellify LLC – that sponsored advertisements had been purchased on the Google search engine that displayed the messages “Don’t Buy from Scammers” and “Beware the SCAM Artists” when a user searched for the keywords onequality, onequality.com, and onequlaity.com (the “Cutting Edge Ads”). If users clicked on the Cutting Edge Ads, they would be routed directly from Google to the amazon.com website.

6. Amazon.com did not purchase the keywords onequality, onequality.com, or onequlaity.com on the Google search engine, nor did it place the Cutting Edge Ads. By looking at the URL contained in the link in the Cutting Edge Ads, I was able to identify Cutting Edge Designs – a participant in the Associates Program – as the source of those advertisements. (The link contains a “tag” that can be traced to Cutting Edge Designs.)

7. The Cutting Edge Ads violated the rules in the Associates Program Operating Agreement. Specifically, as of May 1, 2009, the Operating Agreement prohibited Associates, such as Cutting Edge Designs, from sending users directly to Amazon.com’s websites through keyword purchasing on search engines (such as Google). While Associates were permitted to put links to the amazon.com website on their own websites, they were *not*

permitted to put links to the amazon.com website into advertisements generated by Internet users searching on Google, Yahoo! or other search engines for keywords purchased by the Associates. In addition, the Associates Program Operating Agreement expressly provides that Associates bear sole responsibility for not engaging in activities that are libelous, defamatory, or otherwise violate others' intellectual property rights.

8. For these reasons, I contacted Cutting Edge Designs upon learning of the Cutting Edge Ads. On May 26, 2009, I notified Cutting Edge Designs by e-mail that we had been contacted by Onequality.com objecting to Cutting Edge Designs' use of the "onequality.com" term. I instructed Cutting Edge Designs to cease its ad campaigns including that term immediately, and to cease placing links to the amazon.com website in any sponsored advertisement. I told Cutting Edge Designs that if these activities did not cease Amazon.com would close its Associates account and withhold any accrued advertising fees. A copy of my May 26, 2009 e-mail to Cutting Edge Designs (which was sent under the name "David") is attached as **Exhibit B**.

9. Even before my May 26, 2009 e-mail, Cutting Edge Designs was made aware of the Associates Program policy prohibiting Associates from sending users directly to Amazon.com's websites through keyword purchasing on search engines. On April 6, 2009, we sent an e-mail to all Associates (including Cutting Edge Designs) informing them that the practice would no longer be allowed. A copy of that e-mail is attached as **Exhibit C**. We also posted a notification of this policy on the Amazon.com Associates Blog, which is the official blog of the Amazon Associates Program. A copy of that blog posting is attached as **Exhibit D**. And on April 27, 2009, we sent a targeted, follow-up e-mail to those Associates who, as indicated by our records, had continued to send users directly to Amazon.com through keyword

purchasing on search engines. Cutting Edge Designs was a recipient of that e-mail as well. A copy of that e-mail is attached as **Exhibit E**.

10. On July 14, 2009, I learned – following a letter sent to different counsel at Amazon.com – that despite my May 26 e-mail, Cutting Edge Designs had not removed the Cutting Edge Ads from Google.

11. I immediately notified Cutting Edge Designs by e-mail that because they had not complied with the demands in my May 26, 2009 e-mail, we had closed their Associates account and were withholding all advertising fees. A copy of my July 14, 2009 e-mail to Cutting Edge Designs (which was sent under the name “Richard”) is attached as **Exhibit F**.

12. From March through August 2009, Cutting Edge Designs accrued advertising fees on fewer than 25 items (for total advertising fees of \$241.92).¹ A copy of the report itemizing Cutting Edge Designs’ advertising fees is attached as **Exhibit G**.

13. With more than 3 million participants in the Associates Program, all of whom are independent operators, Amazon.com cannot – and does not – monitor or control the Associates’ activities. However, when I learn of violations – or alleged violations – of the Associates Program Operating Agreement, I respond promptly to address them and attempt to enforce the rules of the Operating Agreement.² I typically enforce against 50 to 75 Associates Program participants each week, and roughly 3,000 over the course of a year.

¹ The total gross amount paid to Amazon.com for these items was \$6047.76. This is not Amazon.com’s net profit on those items, as it does not account for the cost of the items or other overhead.

² In contacting Cutting Edge Designs following the communication from Onequality.com, I was not passing judgment on the legitimacy of their claims. Rather, it is Amazon.com’s practice to err on the side of alleged trademark rights holders when objections to the use of a trademark are raised.


14. Withholding an Associate's advertising fees and closing the Associate's program account are reasonable, effective, and practical measures for addressing the type of behavior that Cutting Edge Designs engaged in. These measures eliminate the financial benefit of the actor's misconduct, which is presumably the motive for the misconduct in the first instance.

15. I understand that the plaintiff in this case claims that it contacted Amazon.com in March 2009 concerning the Cutting Edge Ads. I have looked at the document the plaintiff has produced in this regard (which is attached to this declaration as **Exhibit H**). That document indicates that Chris Maki – who I understand to be the principal of the plaintiff – contacted Amazon.com's Seller Central department, an area of Amazon.com solely dedicated to matters concerning companies that sell items on the Amazon.com website. As I understand, Sellify LLC's complaint had nothing to do with any matter relating in any way to Seller Central. The document does not give any indication of the substance of Mr. Maki's communications with Seller Central but, in any event, there would have been no reason for plaintiff to believe that contacting Seller Central was a reasonable means by which to raise a concern relating to a Google advertisement plaintiff believed infringed its intellectual property rights.

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

Executed on June30, 2010


ANNE TARPEY