

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SELLIFY LLC, :
: :
Plaintiff, :
: : No. 09 CV 10268 (JSR)
- against - :
: : **DECLARATION OF**
AMAZON.COM, INC., : **DAVE COTTER**
: :
Defendant. :
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Dave Cotter declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Principal Program Manager at Amazon.com, Inc. I have worked at Amazon.com since June 2007, and held the position of Director of Amazon Associates from January 2008 to March 2010.
2. As Director of Amazon Associates, I directed and managed the Amazon.com Associates Program. The Associates Program is an Amazon.com marketing program through which independent third parties can sign up to earn advertising fees by advertising Amazon.com products on their own websites.
3. As of June 2010, the Associates Program has more than 3,000,000 members (at last count, it was 3,369,136).
4. The way the Associates Program works is that participants (“Associates”) place links to Amazon.com on their own websites. If a customer visits Amazon.com as a result of clicking on an Associate’s link, 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.

5. To participate in the Associates Program, a participant must, among other things, agree to the terms and conditions of the Associates Program Operating Agreement. As head of the Associates Program, I am responsible for the Operating Agreement. I understand that a copy of the Operating Agreement is attached to the Declaration of Anne Tarpey as Exhibit A.

6. The Operating Agreement is the key document governing an Associate's participation in the Associates Program. It sets forth the nature of the relationship between Amazon.com and participants in the Associates Program, and makes clear that Associates are *not* – and may not represent themselves as – agents of Amazon.com.

7. Paragraph 16 is a critical paragraph for this point. It provides that Associates are “independent contractors,” and that “nothing in this Operating Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between you and us or our respective affiliates.” It states that Associates “will have no authority to make or accept any offers or representation on our or our affiliates’ behalf.” And it prohibits Associates (as does paragraph 10) from making any statements or otherwise misrepresenting or embellishing their extremely limited relationship with Amazon.com.

8. The Operating Agreement also expresses another key tenet of the Associates Program: that Associates are *solely responsible* for their sites. We set out this principle in Paragraph 5 of the Operating Agreement – entitled “**Responsibility for Your Site**” – in which we spell out that each Associate is “solely responsible for your site, including its development, operation, and maintenance and all materials that appear on or within it.” And to

illustrate the point, we include a non-exclusive list of items for which the Associate is solely responsible. One of those items is “using the Content, your site, and the materials on or within your site in a manner that does not infringe, violate, or misappropriate any of our rights or those of any other person or entity (including copyrights, trademarks, privacy, publicity or other intellectual property or proprietary rights).”

9. These provisions that I have mentioned are absolutely crucial for Amazon.com. With over 3 million Associates, we cannot possibly – and do not – monitor the content of their websites or control what they choose to put on those sites. Nor can we give those more than 3 million Associates the authority to bind Amazon.com or make any representations on our behalf.

10. For these reasons, we carefully circumscribe our relationship with Associates, as described above and – in more detail – in the Operating Agreement.

* * *

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

Executed on June 20, 2010



DAVE COTTER