

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SELLIFY LLC,

Plaintiff,

- against -

AMAZON.COM, INC.,

Defendant.

:
: 09 CV 10268 (JSR)
: ECF Case

: **ANSWER**

-----X

Defendant Amazon.com, Inc. (“Amazon.com”), by its undersigned attorneys,
hereby answers the Complaint of Plaintiff Sellify LLC (“Plaintiff”) as follows:

1. Admits that the action purports to be brought under the statutes, regulations, and common law specified in paragraph 1.
2. Denies the allegations of paragraph 2.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.
4. Denies the allegations of paragraph 4 except admits that Amazon.com is a Delaware corporation with its principal place of business in Seattle, Washington and that through its website (Amazon.com), Amazon.com offers items for sale to customers located throughout the world, including customers located in the State of New York.
5. States that the allegations of paragraph 5 state conclusions of law to which no response is required.
6. States that the allegations of paragraph 6 state conclusions of law to which no response is required.

7. States that the allegations of paragraph 7 state conclusions of law to which no response is required.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Denies the allegations of paragraph 20 except admits that Amazon.com is a large and well-known online business.

21. Admits the allegations of paragraph 21.

22. Denies the allegations of paragraph 22 except admits that Amazon.com is a large online retailer.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23.

24. Admits the allegations of paragraph 24.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.

26. Denies the allegations of paragraph 26 except admits that Amazon.com provides excellent customer service and admits that the quote in paragraph 26 has been attributed to Mr. Bezos.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.

31. Denies the allegations of paragraph 31 except admits that Amazon.com engages in advertising.

32. Denies the allegations of paragraph 32 except admits that Amazon.com maintains an “Associates Program.”

33. Denies the allegations of paragraph 33 except admits that participants in the Associates Program can be eligible for referral fees.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Denies the allegations of paragraph 35.

36. Denies the allegations of paragraph 36 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

37. Denies the allegations of paragraph 37, except admits that a company called Cutting Edge Designs was, for a period of time, a participant in Amazon.com’s “Associates Program.”

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

42. Denies the allegations of paragraph 42.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Denies the allegations of paragraph 46.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49.

50. Denies the allegations of paragraph 50 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

51. Denies the allegations of paragraph 51 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54.

55. Denies that Cutting Edge Designs was an agent or affiliate of Amazon.com and otherwise denies the allegations of paragraph 55 insofar as they concern Amazon.com; otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56.

57. Denies the allegations of paragraph 57.

58. Denies the allegations of paragraph 58.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59.

60. Denies the allegations of paragraph 60 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61.

62. Denies the allegations of paragraph 62.

63. Denies the allegations of paragraph 63 and respectfully refers the Court to the referenced communications for the contents thereof.

64. Denies the allegations of paragraph 64 and respectfully refers the Court to the referenced communications for the contents thereof.

65. Denies the allegations of paragraph 65.

66. Denies the allegations of paragraph 66 except admits that Ms. Sheehan placed a call to Plaintiff's counsel and explained that Amazon.com believed the ad(s) was (were) placed by an participant in the Associates Program; that Amazon.com did not place the ad(s); that the entity's activities were beyond Amazon.com's control (beyond closing the entity's Associates Program account); and that the entity's Associates Program account had been suspended.

67. Denies the allegations of paragraph 67.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68.

69. Denies the allegations of paragraph 69 and respectfully refers the Court to the referenced communications for the contents thereof.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70.

71. Repeats and incorporates its responses to paragraphs 1 to 70 of the Complaint.

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 72.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73.

74. Denies the allegations of paragraph 74.

75. Denies the allegations of paragraph 75.

76. Denies the allegations of paragraph 76 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

77. Denies the allegations of paragraph 77.

78. Denies the allegations of paragraph 78.

79. Denies the allegations of paragraph 79.

80. Denies the allegations of paragraph 80.

81. Denies the allegations of paragraph 81.

82. Repeats and incorporates its responses to paragraphs 1 to 81 of the Complaint.

83. Denies the allegations of paragraph 83.

84. To the extent the allegations of paragraph 84 state conclusions of law, no response is required. Otherwise, denies the allegations of paragraph 84 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

85. Denies the allegations of paragraph 85.

86. To the extent the allegations of paragraph 86 state conclusions of law, no response is required. Otherwise, denies the allegations of paragraph 86 except admits that that

through its website (Amazon.com), Amazon.com offers items for sale to customers located throughout the world, including customers located in the State of Connecticut.

87. Denies the allegations of paragraph 87.

88. Denies the allegations of paragraph 88.

89. Repeats and incorporates its responses to paragraphs 1 to 88 of the Complaint.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90.

91. Denies the allegations of paragraph 91.

92. Denies the allegations of paragraph 92.

93. Denies the allegations of paragraph 93.

94. Repeats and incorporates its responses to paragraphs 1 to 93 of the Complaint.

95. Denies the allegations of paragraph 95.

96. Denies the allegations of paragraph 96.

97. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 97.

98. Denies the allegations of paragraph 98.

99. Denies the allegations of paragraph 99.

100. Denies the allegations of paragraph 100.

101. Denies the allegations of paragraph 101.

102. Denies the allegations of paragraph 102.

103. Admits that Plaintiff's Complaint purports to demand a trial by jury on all issues so triable.

First Affirmative Defense

104. The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

105. Plaintiff's claims are barred in whole or in part by 47 U.S.C. § 230.

Third Affirmative Defense

106. If Amazon.com infringed or violated any rights of Plaintiff, it did so innocently and/or without the necessary scienter.

Fourth Affirmative Defense

107. Plaintiff's damages, if any, are limited by Amazon.com's innocent intent and/or lack of the necessary scienter.

Fifth Affirmative Defense

108. Plaintiff's claims are barred in whole or in part because Plaintiff has failed to mitigate its damages, if any.

Sixth Affirmative Defense

109. Plaintiff's claim for injunctive relief is moot.

Seventh Affirmative Defense

110. Plaintiff's claims are barred in whole or in part by the doctrines of preemption, estoppel, waiver, unclean hands, and laches.

WHEREFORE, Amazon.com requests that judgment be entered:

- (A) Dismissing the Complaint in its entirety, with prejudice;
- (B) Awarding Amazon.com the costs and disbursements of this action; and
- (C) Awarding Amazon.com such other and further relief as the Court deems

just and proper.

Dated: New York, New York
February 5, 2010

FRIEDMAN KAPLAN SEILER &
ADELMAN LLP

By: /s/ Robert D. Kaplan
Robert D. Kaplan (rkaplan@fklaw.com)
Jeffrey R. Wang (jwang@fklaw.com)
1633 Broadway
New York, NY 10019-6708
(212) 833-1100

Attorneys for defendant Amazon.com, Inc.