

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SELLIFY LLC,	:
	: 09 CV 10268 (JSR)
Plaintiff,	: ECF Case
	:
- against -	: ANSWER TO FIRST
	: <u>AMENDED COMPLAINT</u>
AMAZON.COM, INC.,	:
	:
Defendant.	:
	:

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Defendant Amazon.com, Inc. (“Amazon.com”), by its undersigned attorneys,
hereby answers the First Amended 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 the allegations of paragraph 3.
4. Denies the allegations of paragraph 4.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.
6. Denies the allegations of paragraph 6 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.
7. States that the allegations of paragraph 7 state conclusions of law to which no response is required.

8. States that the allegations of paragraph 8 state conclusions of law to which no response is required.

9. States that the allegations of paragraph 9 state conclusions of law to which no response is required.

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 knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Denies the allegations of paragraph 22 except admits that Amazon.com is a large and well-known online business.

23. Admits the allegations of paragraph 23.

24. Denies the allegations of paragraph 24 except admits that Amazon.com is a large online retailer.

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

26. Admits the allegations of paragraph 26.

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

28. Denies the allegations of paragraph 28 except admits that Amazon.com provides excellent customer service and admits that the quote in paragraph 28 has been attributed to Mr. Bezos.

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 knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. Denies the allegations of paragraph 33 except admits that Amazon.com engages in advertising.

34. Denies the allegations of paragraph 34 except admits that Amazon.com maintains an "Associates Program."

35. Denies the allegations of paragraph 35 except admits that participants in the Associates Program can be eligible for referral fees.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. Denies the allegations of paragraph 37.

38. Denies the allegations of paragraph 38 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

39. Denies the allegations of paragraph 39, except admits that a company called Cutting Edge Designs was, for a period of time, a participant in Amazon.com's "Associates Program."

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 knowledge or information sufficient to form a belief as to the truth of 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 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 knowledge or information sufficient to form a belief as to the truth of 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 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 knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51.

52. Denies the allegations of paragraph 52 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

53. Denies the allegations of paragraph 53 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

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

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55.

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

57. Denies that Cutting Edge Designs was an agent or affiliate of Amazon.com and otherwise denies the allegations of paragraph 57 insofar as they concern Amazon.com; otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58.

59. Denies the allegations of paragraph 59.

60. Denies the allegations of paragraph 60.

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

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63.

64. Denies the allegations of paragraph 64.

65. Denies the allegations of paragraph 65 and respectfully refers the Court to the referenced communications for the contents thereof.

66. Denies the allegations of paragraph 66 and respectfully refers the Court to the referenced communications for the contents thereof.

67. Denies the allegations of paragraph 67.

68. Denies the allegations of paragraph 68 except admits that counsel for Plaintiff wrote to Amazon.com and that Ms. Sheehan placed a call to Plaintiff's counsel and explained that Amazon.com believed the ad(s) was (were) placed by a 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.

69. Denies the allegations of paragraph 69.

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

71. Denies the allegations of paragraph 71 and respectfully refers the Court to the referenced communications for the contents thereof.

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

73. Denies the allegations of paragraph 73.

74. Denies the allegations of paragraph 74.

75. Repeats and incorporates its responses to paragraphs 1 to 74 of the First Amended Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76.

77. Denies knowledge or information sufficient to form a belief as to the truth of 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. Denies the allegations of paragraph 82 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

83. Denies the allegations of paragraph 83.

84. Denies the allegations of paragraph 84.

85. Denies the allegations of paragraph 85.

86. Denies the allegations of paragraph 86.

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 First Amended Complaint.

90. Denies 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. To the extent the allegations of paragraph 94 state conclusions of law, no response is required. Otherwise, denies the allegations of paragraph 94 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations.

95. Denies the allegations of paragraph 95.

96. To the extent the allegations of paragraph 96 state conclusions of law, no response is required. Otherwise, denies the allegations of paragraph 96 except admits 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.

97. Denies the allegations of paragraph 97.

98. Denies the allegations of paragraph 98.

99. Repeats and incorporates its responses to paragraphs 1 to 98 of the First Amended Complaint.

100. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 100.

101. Denies the allegations of paragraph 101.

102. Denies the allegations of paragraph 102.

103. Denies the allegations of paragraph 103.

104. Denies the allegations of paragraph 104.

105. Denies the allegations of paragraph 105.

106. Denies the allegations of paragraph 106.

107. Repeats and incorporates its responses to paragraphs 1 to 106 of the First Amended Complaint.

108. Denies the allegations of paragraph 108.

109. Denies the allegations of paragraph 109.

110. Denies the allegations of paragraph 110.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 111.

112. Denies the allegations of paragraph 112.

113. Denies the allegations of paragraph 113.

114. Denies the allegations of paragraph 114.

115. Denies the allegations of paragraph 115.

116. Denies the allegations of paragraph 116.

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

First Affirmative Defense

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

Second Affirmative Defense

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

Third Affirmative Defense

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

Fourth Affirmative Defense

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

Fifth Affirmative Defense

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

Sixth Affirmative Defense

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

Seventh Affirmative Defense

124. 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 26, 2010

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