

1 By this complaint, Amazon.com seeks to prevent consumer confusion and protect
2 AMAZON.COM®, one of the world's best-known brands, from intentional infringement
3 and cyberpiracy. Defendants have recently conducted an e-mail marketing campaign
4 advertising a multi-level marketing scheme promising to "turn \$25 into \$500,000 in just a
5 few months!" using e-mails that falsely claim that they are from "Amazon.com."

6 Defendants are using the AMAZON.COM® trademark in their e-mail marketing
7 campaign to immediately convey to consumers an association with Amazon, to circumvent
8 e-mail filters, and to unfairly trade off the reputation and goodwill of the
9 AMAZON.COM® mark. Since commencing operations on the World Wide Web in 1995,
10 Amazon.com's annual sales have grown to over \$3.9 billion, and Amazon.com has
11 become a Fortune 500 company. With tens of millions of customers worldwide,
12 Amazon.com is among the best-known and most popular Internet retailers.

13 Amazon.com has extensively promoted its business using the AMAZON.COM®
14 mark, and Internet shoppers and consumers almost universally recognize
15 AMAZON.COM® as a brand identifier for Amazon.com's websites and products.
16 Consumers have a strong association between the AMAZON.COM® mark and
17 Amazon.com's websites and the strength of the AMAZON.COM® trademark—one of
18 Amazon.com's most valuable corporate assets.

19 Defendants' use of AMAZON.COM® in connection with their marketing of goods
20 or services is likely to confuse consumers. Defendants' use of AMAZON.COM® will
21 lead some consumers to conclude that Amazon.com is a partner, has a business
22 relationship, or is somehow associated with defendants or their products.

23 Preventing this confusion will help protect consumers from deceptive and
24 fraudulent e-mail practices, allowing consumers to make fully informed choices about
25 where they are shopping on the Internet, thereby promoting the consumer protection goals
26 of the trademark and unfair competition laws. In this action, Amazon.com seeks to enjoin

1 defendants from using the trade name and trademark AMAZON.COM® for the marketing
2 and sale of their products. The unfair competition laws do not allow a latecomer to copy a
3 mark and “free ride” on the goodwill associated with it. A myriad of other names are
4 available. A marketer should not be allowed to benefit from Amazon.com’s long term and
5 extensive investment in AMAZON.COM® at the expense of Amazon.com and to the
6 detriment of consumers.

7 II. JURISDICTION AND VENUE

8 1. This is a Complaint for violations of §§ 32 and 43 of the Lanham Act, 15
9 U.S.C. § 1114(1) (Trademark Infringement), 15 U.S.C. § 1125(a) (False Designation of
10 Origin, Unfair Competition), 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), and for other
11 claims arising under state law.

12 2. The Court has original subject matter jurisdiction over this action pursuant to
13 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over
14 the state law claim pursuant to 28 U.S.C. § 1367.

15 3. The Court has personal jurisdiction over the defendants because the
16 defendants are located in and/or conduct business in Arizona. Also, the defendants have
17 purposefully availed themselves of the opportunity to conduct commercial activities in this
18 forum, and this Complaint arises out of those activities. E-mails sent from the defendants
19 actively display, disseminate, and promote the infringing AMAZON.COM mark. The
20 publication and dissemination of the infringing trademark in Arizona is causing ongoing
21 injury to Amazon.com.

22 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c), because a
23 substantial part of the events giving rise to the claim occurred, and continue to occur, in
24 this District. The damage to Amazon.com described herein takes place in this District and
25 elsewhere.

1 **III. THE PARTIES**

2 5. Amazon.com is a Delaware corporation with its principal place of business
3 in Seattle, Washington. On or about July 15, 1997, Amazon.com registered the trademark
4 AMAZON.COM® with the United States Patent and Trademark Office.

5 6. On information and belief, defendant Royal Responder, Inc. (“Royal
6 Responder”) is a Colorado corporation with its principal place of business in Thornton,
7 Colorado. Royal Responder operates an internet-based multi-level marketing business or
8 “Affiliate Program” selling products and services that assist in the sending of repetitive
9 bulk e-mail. Royal Responder operates the website <www.royal-responder.com>. Royal
10 Responder provides equipment, software and services in support of its customer’s e-mail
11 marketing campaigns.

12 7. On information and belief, James “Jay” Unzicker is an Arizona resident. On
13 information and belief, defendant Unzicker is registered owner of the e-mail addresses
14 “JayU@unneedspeed.net” and “jayu6430@royal-responder.com”. Defendant Unzicker is
15 an agent or affiliate of Royal Responder.

16 8. The actions alleged herein to have been undertaken by the defendants were
17 undertaken by each defendant individually, were actions that each defendant caused to
18 occur, were actions that each defendant authorized, controlled, directed, or had the ability
19 to authorize, control or direct, and/or were actions in which each defendant assisted,
20 participated or otherwise encouraged, and are actions for which each defendant is liable.
21 Each defendant aided and abetted the actions of the defendants set forth below, in that
22 each defendant had knowledge of those actions, provided assistance and benefited from
23 those actions, in whole or in part. Each of the defendants was the agent of each of the
24 remaining defendants, and in doing the things hereinafter alleged, was acting within the
25 course and scope of such agency and with the permission and consent of other defendants.
26

1 **IV. THE AMAZON.COM® TRADEMARK**

2 9. The term “Amazon.com” is not only the name of Plaintiff’s company, but
3 the most important and easily recognized identifier of the goods and services it offers.
4 There is a particularly close association among consumers between Amazon.com the
5 business, the AMAZON.COM® mark, and the products and services offered under the
6 Amazon.com designation. For millions of consumers, the name “Amazon.com” has come
7 to represent wide selection, fast delivery, fair pricing, and excellent security for Internet
8 transactions. Courts in the United States and Greece have entered judgments for
9 Amazon.com that attest to the fame and/or the strong association between the
10 AMAZON.COM® mark and the services offered by Amazon.com.

11 10. AMAZON.COM® mark is one of the best known trademarks on the
12 Internet. For instance:

13 Tens of millions of customers from over 220 countries have made purchases
14 through the Amazon.com Site. Every one of these purchasers has, at a minimum, seen the
15 AMAZON.COM® mark on the Web site, on the packaging in which his or her order was
16 shipped, and in e-mail communications that confirm each order.

- 17 • Many millions more have come to know the AMAZON.COM® mark
18 through Amazon.com’s extensive advertising in a variety of media. Since
19 1996, Amazon.com has spent hundreds of millions on advertising—all of
20 which makes prominent use of the AMAZON.COM® mark—on television
21 and radio, and in newspapers and magazines.
- 22 • According to the MMXI Europe May 2000 European Audience Ratings
23 Report, the Amazon.com, Amazon.co.uk, and Amazon.de sites reach more
24 consumers in Europe than any other site on the Internet.
- 25 • A recent survey by Media Metrix, a company that monitors traffic to
26 popular e-commerce Web sites, identified the Amazon.com Site as one of

1 the most frequently visited shopping sites on the Internet, and the largest
2 seller of books (ahead of sites operated by Barnes & Noble and Borders),
3 music (ahead of sites operated by Columbia House and BMG Music), toys,
4 software (ahead of sites operated by <Bestbuy.com> and
5 <CompUSA.com>) and video (ahead of the <BlockBuster.com> sites).

- 6 • Amazon.com's achievements have generated tremendous attention in the
7 media—thousands of articles have been written about the company over
8 the last few years. Feature stores in *Fortune*, *Business Week*, *The New*
9 *York Times*, *USA Today*, *Advertising Age* and *Wired* have touted the
10 company's success and have identified it as a leading force in the "New
11 Economy."
- 12 • The Amazon.com name is found on literally thousands of Internet Web
13 sites. Not only do important Internet retailers (e.g., AOL.com) carry
14 Amazon.com "banner" ads on their homepages, but more than 800,000
15 other Web site operators around the world have become Amazon.com
16 "Associates," and are thus permitted to link to the Amazon.com Site and to
17 display the AMAZON.COM® mark on their Web sites.
- 18 • A recent study by Interbrand Group, a leading international brand
19 consultancy company, ranked the 100 most valuable brands in the world,
20 all of which Interbrand identified as having a value in excess of \$1 billion.
21 Interbrand's study included the AMAZON.COM® mark, ranking its value
22 above such well-known trade names as "Hilton®" and "Guinness®."
23 Another Interbrand study recognized the AMAZON.COM® mark's value
24 in the year 2001, ranking its value above 24 other trade names such as
25 "Burger King®" and "Wall Street Journal®."

1 11. The AMAZON.COM® mark is famous by virtue of its inherent
2 distinctiveness and substantial secondary meaning as a designation of the source of the
3 products Amazon.com sells and by its continuous and broad use for virtually the entire life
4 of the Internet as a commercial medium. The AMAZON.COM® mark is registered in the
5 European Union and in 72 individual countries, and has over 400 additional registration
6 applications pending all over the world. AMAZON.COM® is a registered trademark with
7 the United States Patent and Trademark Office for a computerized on-line search and
8 ordering service featuring the wholesale and retail distribution of books, music, motion
9 pictures, multimedia products and computer software in the form of printed books,
10 audiocassettes, videocassettes, compact disks, floppy disks, CD ROMs, and direct digital
11 transmission.

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18 the United States Patent and Trademark Office for a computerized on-line search and
19 ordering service featuring the wholesale and retail distribution of books, music, motion
20 pictures, multimedia products and computer software in the form of printed books,
21 audiocassettes, videocassettes, compact disks, floppy disks, CD ROMs, and direct digital
22 transmission.

23 13. Amazon.com is one of the best-known Internet retailers in the world today.
24 Jeff Bezos (“Bezos”), the company’s founder, was a pioneer in the use of the Internet as a
25 medium of commerce. In 1995, Bezos created an Internet Web site (“Amazon.com Site”)
26 that permitted consumers around the world to purchase books on-line. Amazon.com was

1 one of the first corporations to make the name of its business identical to the domain name
2 from which its business operates—such that anyone using the Internet to find its Web site
3 need only remember the name of the company.

4 14. Since its inception, the Amazon.com Site has continuously operated from the
5 Internet address <www.amazon.com>. When Amazon.com opened its cyber-doors, its site
6 primarily featured books, which is still an integral part of Amazon.com’s business. Since
7 then, Amazon.com has expanded its operations to include an even broader selection of
8 products, offering full line of goods ranging from computer products and electronics to
9 toys to compact discs and movies on videotape and DVD.

10 15. Since at least as early as 1995, Amazon.com has used the trademark
11 AMAZON.COM® to promote its business and its websites.

12 V. DEFENDANTS ILLEGAL ACTS

13 16. On information and belief, sometime on or before April 1, 2003, defendants
14 began an extensive e-mail campaign. As part of that campaign, defendants, acting
15 together and in concert, created and sent large volumes of e-mail messages advertising a
16 multi-level marketing scheme promoted by Royal Responder, Inc., claiming that the
17 program would “Turn \$25 into \$500,000 in just a few months!” Many of the e-mails were
18 designed so that they appeared to be sent from Amazon.com, and used the
19 AMAZON.COM® mark in the e-mail header as the “from” address. *See* Exhibit A.
20 Others used the AMAZON.COM® mark in the e-mail header as the “Received from”
21 and/or “Reply To” address. *See* Exhibit B.

22 17. Amazon.com did not provide permission to defendants to use its
23 AMAZON.COM® trademark for any reason, including their e-mail marketing campaign.

24 18. On information and belief, Defendants intentionally adopted the
25 AMAZON.COM® mark to trade on the fame and goodwill associated with the
26

1 AMAZON.COM® mark, and to evade customers' anti-spam filters specifically designed
2 to permit the receipt of e-mail from Amazon.com.

3 19. Defendants' use of the AMAZON.COM® mark is likely to cause consumer
4 confusion, mistake, and deception. This likelihood of confusion, mistake, and deception is
5 even greater because both Amazon.com and Defendants operate their businesses over the
6 Internet.

7 20. Defendants' use of the AMAZON.COM® mark is likely to lead consumers
8 to mistakenly conclude that the e-mail from defendants was exclusively or jointly sent by,
9 licensed or certified by, or otherwise sponsored or approved by Amazon.com, or that
10 Royal Responder is somehow otherwise affiliated, connected, or associated with
11 Amazon.com. Consumers are likely to be misled as to the true source, sponsorship, or
12 affiliation of the e-mail.

13 21. On information and belief, through their use of the AMAZON.COM® mark,
14 Defendants have intentionally and with knowledge sought to cause consumer confusion,
15 mistake, and deception.

16 **COUNT I**

17 **TRADEMARK INFRINGEMENT UNDER LANHAM ACT 15 U.S.C. § 1114**

18 22. Amazon.com realleges paragraphs 1-22 of this Complaint as if fully set forth
19 herein.

20 23. Defendants' use of the AMAZON.COM® to promote, market, or sell
21 products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114.
22 Defendants' intentional and willful infringement of the AMAZON.COM® registered
23 trademark has caused and will continue to cause damage to Amazon.com, and is causing
24 irreparable harm to Amazon.com for which there is no adequate remedy at law.
25 Defendants are directly, contributorily, and/or vicariously liable for these actions.
26

COUNT II

FALSE DESIGNATION OF ORIGIN UNDER LANHAM ACT 15 U.S.C. § 1125(a)

24. Amazon.com realleges paragraphs 1-24 of this Complaint as if fully set forth herein.

25. Defendants have used and continue to use AMAZON.COM® in connection with goods or services, in commerce, in a manner that is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of their goods or services. Defendants are directly, contributorily, and/or vicariously liable for these actions. Amazon.com has been damaged by these acts in an amount to be proved at trial. Amazon.com is also entitled under the Lanham Act to injunctive and equitable relief against defendants.

COUNT III

CYBERPIRACY PREVENTION UNDER LANHAM ACT 15 U.S.C. § 1125(d)

26. Amazon.com realleges paragraphs 1-26 of this Complaint as if fully set forth herein.

27. Defendants' bad faith intent to profit from use of AMAZON.COM®, by sending e-mail messages that state they are from AMAZON.COM® that are confusingly similar to Amazon.com's distinctive marks, constitutes cyberpiracy under 15 U.S.C. § 1125(d). Defendants' cyberpiracy of AMAZON.COM® has caused and will continue to cause damage to Amazon.com, in an amount to be proved at trial, and is causing irreparable harm to Amazon.com for which there is not an adequate remedy at law. Defendants are directly, contributorily, and/or vicariously liable for these actions.

COUNT IV

UNFAIR COMPETITION UNDER LANHAM ACT 15 U.S.C. § 1125(a)

28. Amazon.com realleges paragraphs 1-28 of this Complaint as if fully set forth herein.

1 “bounce” messages are generated to advise the sender of this fact. By spoofing
2 Amazon.com’s domain name in the e-mail header, defendants insured that Amazon.com’s
3 computer equipment – rather than defendants’ own equipment – was burdened by the
4 innumerable bounce messages resulting from the e-mail campaign.

5 35. Defendants have knowingly, intentionally and without authorization used
6 and intentionally trespassed upon Amazon.com’s property.

7 36. As a result of defendants’ actions, Amazon.com has been damaged in an
8 amount to be proven at trial.

9 **COUNT VII**

10 **UNFAIR COMPETITION (Arizona law)**

11 37. Amazon.com realleges paragraphs 1-37 of this Complaint as if fully set forth
12 herein.

13 38. Defendants’ use of the AMAZON.COM® mark to promote, market, or sell a
14 products on the <www.royal-responder.com> website constitutes Unfair Competition.
15 Defendants’ use of the AMAZON.COM® mark is likely to cause confusion, mistake, and
16 deception among consumers. Defendants have acted in bad faith and/or deliberately or
17 willfully to infringe upon the AMAZON.COM® mark. Defendants’ conduct substantially
18 interferes with Amazon.com’s rights and disrupts competition improperly.

19 39. Defendants are directly, contributorily, and/or vicariously (either as co-
20 conspirators or otherwise as a matter of law) liable for these actions.

21 WHEREFORE, plaintiff respectfully prays that this Court:

22 1. Issue a permanent injunction, enjoining and prohibiting Defendants, or their
23 agents, servants, employees, officers, attorneys, successors and assigns from:

24 (A) Using AMAZON.COM® trademark, or any version thereof, in connection
25 with the description, marketing, promotion, advertising, or sale of any products or
26 services, including defendants’ e-mails or websites; and

- 1 (B) Infringing Amazon.com's AMAZON.COM® trademark;
2 2. Order an award of damages in an amount to be determined at trial; and
3 3. Order an award of treble damages as provided by Section 35(a) of the
4 Lanham Act; and
5 4. Order an award of attorney's fees and costs as provided by Section 35(a) of
6 the Lanham Act and to the extent appropriate under Arizona law, and
7 5. Order an award of punitive damages to be determined at trial and
8 6. Any other or further relief that the Court deems appropriate.

9 **COUNT VIII.**

10 **JURY DEMAND**

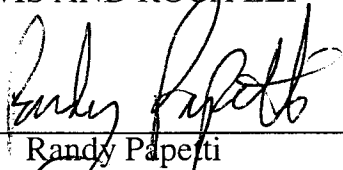
11 Plaintiff hereby demands a trial by jury of all issue in this case.

12 DATED this 25th day of August 2003.

13 Of Counsel:
14 David A. Zapolsky, Associate General Counsel
15 Kathryn M. Sheehan, Corporate Counsel
16 Amazon.com, Inc.

17 -and-

18 LEWIS AND ROCA LLP

19 By 
20 Randy Papeti
21 Attorneys for Plaintiff Amazon.com, Inc.
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