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9 AMAZON.COM, INC., a Delaware  
10 corporation

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 AMAZON.COM, INC., a Delaware  
15 corporation,

16 Plaintiff,

17 vs.

18 DANIEL BYRON BLACK, an individual, and  
19 DOES 1-20,

20 Defendants.)

03/10/11 01:43  
03/10/25 11:09:43  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EMC  
C 03 3912

Case No. )  
) **COMPLAINT FOR TRADEMARK**  
) **INFRINGEMENT, CYBERPIRACY,**  
) **TRESPASS TO CHATTELS, UNFAIR**  
) **COMPETITION AND FALSE**  
) **ADVERTISING**

) Jury Trial Demanded

21 Plaintiff Amazon.com, Inc. ("Amazon.com"), through its attorneys, complains of  
22 defendants and hereby alleges as follows:

23 **I. SUMMARY**

24 Defendant Daniel Byron Black ("Black") and other unknown defendants are engaged in a  
25 marketing campaign in which they have been sending e-mails to consumers with forged "from"  
26 lines and other e-mail routing information, creating the impression that the e-mails are from  
27 Amazon.com. Defendants have intentionally used the AMAZON.COM® mark in the e-mail to  
28 cause the recipient to believe that the e-mail is from Amazon.com and/or to evade e-mail filters.  
29 Defendants do not have permission to use the AMAZON.COM® mark and are not affiliated in  
30 any way with Amazon.com.

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 and  
3 cyberpiracy. Defendants have recently conducted an e-mail marketing campaign advertising  
4 various products and services including credit card services and high school diplomas, using e-  
5 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.com, to circumvent  
8 e-mail filters, and to unfairly trade off the reputation and goodwill of the AMAZON.COM®  
9 mark. Since commencing operations on the World Wide Web in 1995, Amazon.com's annual  
10 sales have grown to over \$3.9 billion, and Amazon.com has become a Fortune 500 company.  
11 With tens of millions of customers worldwide, Amazon.com is among the best-known and most  
12 popular Internet retailers.

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

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

22 Preventing this confusion will help protect consumers from deceptive and fraudulent e-  
23 mail practices, allowing consumers to make fully informed choices about where they are  
24 shopping on the Internet, thereby promoting the consumer protection goals of the trademark and  
25 unfair competition laws. In this action, Amazon.com seeks to enjoin defendants from using the  
26 trade name and trademark AMAZON.COM® for the marketing and sale of their products. The  
27 unfair competition laws do not allow a latecomer to copy a mark and "free ride" on the goodwill  
28 associated with it. A myriad of other names are available. A marketer should not be allowed to

1 benefit from Amazon.com's long-term and extensive investment in AMAZON.COM® at the  
2 expense of Amazon.com and to the detriment of consumers.

## 3 II. JURISDICTION AND VENUE

4 1. This is a Complaint for violations of §§ 32 and 43 of the Lanham Act , 15 U.S.C.  
5 § 1114(1)(Trademark Infringement), 15 U.S.C. § 1125(a) (False Designation of Origin, Unfair  
6 Competition), 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), and for other common law claims  
7 arising under state law.

8 2. The Court has original subject matter jurisdiction over this action pursuant to 28  
9 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over the  
10 common law and state law claims pursuant to 28 U.S.C. § 1367.

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

18 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because a  
19 substantial part of the events giving rise to the claim occurred, and continue to occur, in this  
20 judicial district. The damage to Amazon.com described herein takes place in this judicial district  
21 and elsewhere.

## 22 III. INTRADISTRICT ASSIGNMENT

23 5. Pursuant to Civ. L.R. 3-2(b) and 3-5(b), the basis for assignment of this case to  
24 the San Francisco Division is that a substantial part of the events giving rise to the claim  
25 occurred, and continue to occur, in Marin County.

1 **IV. THE PARTIES**

2 6. Amazon.com is a Delaware corporation with its principal place of business in  
3 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 7. Amazon.com is informed and believes and thereon alleges that, defendant Daniel  
6 Byron Black (“Black”) is an individual residing in Novato, California. Black is engaged in the  
7 business of providing services and facilities to conduct and facilitate the sending of bulk,  
8 unsolicited e-mail, or “spam.” Black owns and operates a variety of Internet websites, including  
9 the websites <www.esalez-bizop.biz> and <www.ec-buy.biz>, at which he advertises goods and  
10 services. Black promotes the goods and services he advertises by, among other things, the  
11 sending of spam.

12 8. Amazon.com is unaware of the true names and capacities of defendants sued  
13 herein as Does 1 through 20, (Black and Does 1 through 20 are collectively referred to herein as  
14 “defendants”) and therefore sues these defendants by such fictitious names. Amazon.com will  
15 amend this complaint to allege their true names and capacities when ascertained. Amazon.com  
16 is informed and believes and thereon alleges that each of the fictitiously named defendants is  
17 responsible in some manner for the occurrences herein alleged, and that Amazon.com’s injuries  
18 as herein alleged were proximately caused by such defendants. These fictitiously named  
19 defendants, along with defendant Black, are herein collectively referred to as “defendants.”

20 9. The actions alleged herein to have been undertaken by defendants were  
21 undertaken by each defendant individually, were actions that each defendant caused to occur,  
22 were actions that each defendant authorized, controlled, directed, or had the ability to authorize,  
23 control or direct, and/or were actions in which each defendant assisted, participated or otherwise  
24 encouraged, and are actions for which each defendant is liable. Each defendant aided and  
25 abetted in the actions of the defendants set forth below, in that each defendant had knowledge of  
26 those actions, provided assistance and benefited from those actions, in whole or in part. Each of  
27 the defendants was the agent of each of the remaining defendants, and in doing the things  
28

1 hereinafter alleged, was acting within the course and scope of such agency and with the  
2 permission and consent of other defendants.

### 3 V. THE AMAZON.COM® TRADEMARK

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

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

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

19 • Many millions more have come to know the AMAZON.COM® mark through  
20 Amazon.com’s extensive advertising in a variety of media. Since 1996, Amazon.com has spent  
21 hundreds of millions on advertising—all of which makes prominent use of the  
22 AMAZON.COM® mark—on television and radio, and in newspapers and magazines.

23 • According to the MMXI Europe May 2000 European Audience Ratings Report,  
24 the Amazon.com, Amazon.co.uk, and Amazon.de sites reach more consumers in Europe than  
25 any other site on the Internet.

26 • A recent survey by Media Metrix, a company that monitors traffic to popular e-  
27 commerce Web sites, identified the Amazon.com Site as one of the most frequently visited  
28 shopping sites on the Internet, and the largest seller of books (ahead of sites operated by Barnes

1 & Noble and Borders), music (ahead of sites operated by Columbia House and BMG Music),  
2 toys, software (ahead of sites operated by <Bestbuy.com> and <CompUSA.com>) and video  
3 (ahead of the <BlockBuster.com> site).

4 • Amazon.com's achievements have generated tremendous attention in the media—  
5 thousands of articles have been written about the company over the last few years. Feature  
6 stores in Fortune, Business Week, The New York Times, USA Today, Advertising Age and  
7 Wired have touted the company's success and have identified it as a leading force in the "New  
8 Economy."

9 • The Amazon.com name is found on literally thousands of Internet Web sites. Not  
10 only do important Internet retailers (e.g., AOL.com) carry Amazon.com "banner" ads on their  
11 homepages, but more than 800,000 other Web site operators around the world have become  
12 Amazon.com "Associates," and are thus permitted to link to the Amazon.com Site and to display  
13 the AMAZON.COM® mark on their Web sites.

14 • A recent study by Interbrand Group, a leading international brand consultancy  
15 company, ranked the 100 most valuable brands in the world, all of which Interbrand identified as  
16 having a value in excess of \$1 billion. Interbrand's study included the AMAZON.COM® mark,  
17 ranking its value above such well-known trade names as "Hilton®" and "Guinness®." Another  
18 Interbrand study recognized the AMAZON.COM® mark's value in the year 2001, ranking its  
19 value above 24 other trade names such as "Burger King®" and "Wall Street Journal®."

20 12. The AMAZON.COM® mark is famous by virtue of its inherent distinctiveness  
21 and substantial secondary meaning as a designation of the source of the products Amazon.com  
22 sells and by its continuous and broad use for virtually the entire life of the Internet as a  
23 commercial medium. The AMAZON.COM® mark is registered in the European Union and in  
24 72 individual countries, and has over 400 additional registration applications pending all over the  
25 world. AMAZON.COM® is a registered trademark with the United States Patent and  
26 Trademark Office for a computerized on-line search and ordering service featuring the wholesale  
27 and retail distribution of books, music, motion pictures, multimedia products and computer  
28

1 software in the form of printed books, audiocassettes, videocassettes, compact disks, floppy  
2 disks, CD ROMs, and direct digital transmission.

3 13. The AMAZON.COM® mark is particularly well known among Internet users, the  
4 trading areas and channel of trade used by both Amazon.com and defendants. There are no  
5 similar marks in common commercial use. A recent review of the database maintained by the  
6 United States Patent and Trademark Office reveals not a single registration for any mark that  
7 included both “amazon” and “com.”

8 14. Amazon.com is one of the best-known Internet retailers in the world today. Jeff  
9 Bezos (“Bezos”), the company’s founder, was a pioneer in the use of the Internet as a medium of  
10 commerce. In 1995, Bezos created an Internet Web site (“Amazon.com Site”) that permitted  
11 consumers around the world to purchase books on-line. Amazon.com was one of the first  
12 corporations to make the name of its business identical to the domain name from which its  
13 business operates—such that anyone using the Internet to find its Web site need only remember  
14 the name of the company.

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

21 16. Since at least as early as 1995, Amazon.com has used the trademark  
22 AMAZON.COM® to promote its business and its websites.

## 23 VI. DEFENDANTS’ ILLEGAL ACTS

24 17. On information and belief, sometime on or before June 17, 2003, defendants  
25 began an extensive e-mail campaign. As part of that campaign, defendants, acting together and  
26 in concert, created and sent large volumes of e-mail messages advertising, among other things,  
27 an “Simple [Credit Card] Services” and “Attain a school diploma rapidly.” Some of the e-mails  
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1 were designed so that they appeared to be sent from Amazon.com, and used the  
2 AMAZON.COM® mark in the e-mail header as the “from” address. See, e.g., Exhibits A and B.

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

5 19. On information and belief, defendants intentionally adopted the  
6 AMAZON.COM® mark to trade on the fame and goodwill associated with the  
7 AMAZON.COM® mark, and to evade customers’ anti-spam filters specifically designed to  
8 permit the receipt of e-mail from Amazon.com.

9 20. Defendants’ use of the AMAZON.COM® mark is likely to cause consumer  
10 confusion, mistake, and deception. This likelihood of confusion, mistake, and deception is even  
11 greater because both Amazon.com and defendants operate their businesses over the Internet.

12 21. Defendants’ use of the AMAZON.COM® mark is likely to lead consumers to  
13 mistakenly conclude that the e-mail from defendants was exclusively or jointly sent by, licensed  
14 or certified by, or otherwise sponsored or approved by Amazon.com, or that defendants are  
15 somehow otherwise affiliated, connected, or associated with Amazon.com. Consumers are likely  
16 to be misled as to the true source, sponsorship, or affiliation of the e-mail.

17 22. On information and belief, through their use of the AMAZON.COM® mark,  
18 defendants have intentionally and with knowledge sought to cause consumer confusion, mistake,  
19 and deception.

20  
21 **COUNT I**

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

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

25 24. Defendants’ use of the AMAZON.COM® to promote, market, or sell products  
26 and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114. Amazon.com is  
27 informed and believes that defendants’ intentional and willful infringement of the  
28 AMAZON.COM® registered trademark has caused and will continue to cause damage to



1 Amazon.com, and is causing irreparable harm to Amazon.com for which there is no adequate  
2 remedy at law. Defendants, and each of them, are directly, contributorily, and/or vicariously  
3 liable for these actions.  
4

## 5 **COUNT II**

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

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

9 26. Amazon.com is informed and believes that defendants, and each of them, have  
10 used and continue to use AMAZON.COM® in connection with goods or services, in commerce,  
11 in a manner that is likely to cause confusion, mistake, or deception as to the origin, sponsorship,  
12 or approval of their goods or services. Defendants, and each of them, are directly, contributorily,  
13 and/or vicariously liable for these actions. Amazon.com has been damaged by these acts in an  
14 amount to be proved at trial. Amazon.com is also entitled under the Lanham Act to injunctive  
15 and equitable relief against defendants.  
16

## 17 **COUNT III**

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

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

21 28. Defendants' bad faith intent to profit from use of AMAZON.COM®, by sending  
22 e-mail messages that state they are from AMAZON.COM® that are confusingly similar to  
23 Amazon.com's distinctive marks, constitutes cyberpiracy under 15 U.S.C. § 1125(d).  
24 Defendants' cyberpiracy of AMAZON.COM® has caused and will continue to cause damage to  
25 Amazon.com, in an amount to be proved at trial, and is causing irreparable harm to Amazon.com  
26 for which there is not an adequate remedy at law. Defendants, and each of them, are directly,  
27 contributorily, and/or vicariously liable for these actions.  
28

1 **COUNT IV**

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

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

5 30. Defendants' use of the AMAZON.COM® mark to promote, market, or sell their  
6 products or services, including on their website, constitutes Unfair Competition pursuant to 15  
7 U.S.C. § 1125(a). Defendants' use of the AMAZON.COM® mark is likely to cause confusion,  
8 mistake, and deception among consumers. Defendants' unfair competition has caused and will  
9 continue to cause damage to Amazon.com, and is causing irreparable harm to Amazon.com for  
10 which there is no adequate remedy at law. Defendants, and each of them, are directly,  
11 contributorily, and/or vicariously liable for these actions.

12 **COUNT V**

13 **TRESPASS TO CHATTELS**

14  
15 31. Amazon.com realleges paragraphs 1-30 of this Complaint as if fully set forth  
16 herein.

17 32. The computers, computer networks and computer services used to operate  
18 Amazon.com's business are the personal property of Amazon.com.

19 33. Defendants, and each of them, knew that their bulk-emailing practices inevitably  
20 lead to a significant portion of their e-mail being undeliverable. When an e-mail is  
21 undeliverable, "bounce" messages are generated to advise the sender of this fact. By spoofing  
22 Amazon.com's domain name in the e-mail header, defendants insured that Amazon.com's  
23 computer equipment – rather than defendants' own equipment – was burdened by the  
24 innumerable bounce messages resulting from the e-mail campaign.

25 34. Defendants, and each of them, have knowingly, intentionally and without  
26 authorization used and intentionally trespassed upon Amazon.com's property.

27 35. As a result of defendants' actions, Amazon.com has been damaged in an amount  
28 to be proven at trial.



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**COUNT VII**  
**FALSE ADVERTISING UNDER CAL. BUSINESS AND**  
**PROFESSIONS CODE SECTION 17500 et seq.**

40. Amazon.com realleges paragraphs 1-39 of this Complaint as if fully set forth herein.

41. Amazon.com is informed and believes that defendants, and each of them, have engaged in false advertising pursuant to California Business and Professions Code Section 17500 et seq. by using AMAZON.COM® while intending to promote, market, or sell products and services, including on their website, as incorporated by reference herein. Defendants' use of AMAZON.COM® to promote, market, or sell property or services constitutes an untrue or misleading statement likely to cause confusion, mistake, and deception among consumers, and defendants knew, or in the exercise of reasonable care should have known said statement was untrue or misleading. Amazon.com is informed and believes that defendants have acted in bad faith and/or deliberately or willfully to infringe upon the AMAZON.COM® mark. Defendants are directly, contributorily, and/or vicariously liable for these actions.

42. Amazon.com is informed and believes that defendants threaten to, and unless restrained, will continue to use AMAZON.COM® to promote, market, or sell products and services and commit false advertising and the other unlawful acts as set forth above unless otherwise restrained. Defendants' false advertising has caused and unless enjoined, will continue to cause damage to Amazon.com, and is causing irreparable harm to Amazon.com for which there is no adequate remedy at law.

WHEREFORE, Amazon.com respectfully prays that this Court:

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

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

4 (B) Infringing Amazon.com's AMAZON.COM® trademark;

5 2. Order an award of damages in an amount to be determined at trial;

6 3 Order an award of treble damages as provided by Section 35(a) of the Lanham  
7 Act;

8 4. Order an award of attorney's fees and costs as provided by Section 35(a) of the  
9 Lanham Act and Cal. Business and Professions Code Section 17200 et seq.,

10 5. Order an award of punitive damages to be determined at trial ; and

11 6. Any other or further relief that the Court deems appropriate.

12 **VII. JURY DEMAND**

13 Amazon.com hereby demands a trial by jury of all issue in this case.

14  
15  
16 Dated: August 25, 2003

17 PRESTON GATES & ELLIS LLP

18  
19 By   
20 D. LILAH BLINDER

21 OF COUNSEL:

22 David A. Zapolsky, Associate General Counsel

23 Kathryn M. Sheehan, Corporate Counsel

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27 Telephone: 206-266-1323

28 Facsimile: 206-834-7010

Attorneys for Plaintiff

AMAZON.COM, INC., a Delaware corporation

K:\40741\00053\DL1B\DL1BP21R2

# **EXHIBIT A**

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**From:** "Bryant" <kVnzXoBCSxl@amazon.com>  
**To:** <QVuPa5ySzQ@amazon.com>  
**Sent:** Wednesday, June 25, 2003 8:25 AM  
**Subject:** Simple CC Services bhyzp

## Expand Your Business, Accept Credit Cards!

**Retail or online, big or small, we provide businesses of all types an opportunity to have their own no hassle Credit Card Merchant Account. Good credit, bad credit, no credit -- not a problem! We can handle ANY business and client type!**

**Make your business grow by giving your customers an easy and secure method of paying for your products or services. Studies have shown conclusively that having a merchant account can increase your sales upto 40% or more. Don't let your potential customers wonder why you don't accept credit cards!**

### **No Setup Fees - Low Monthly Cost**

**To learn more about this offer, please visit our website. There are no costs or obligations involved in filling out the form. One of our staff will contact you within 5-10 business days and will answer any questions you may have. Currently we can only service businesses in the U.S.**

## **Vist Our Website**

Not interested? [Visit here](#)

Eth A

7/31/2003

# **EXHIBIT B**



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**From:** "Francis Nigel" <ZkKdiTRyqQg@amazon.com>  
**To:** <DFVMg@amazon.com>  
**Sent:** Wednesday, July 02, 2003 11:24 AM  
**Subject:** Attain a school diploma rapidly 378

**Would you like to own a Bachelors, Masters, MBA or Doctorate (PhD) University Degree in the field of your choice?**

**Obtain the diploma you deserve based on your present knowledge and life experience. No compulsory tests, classes or interviews required.**

**Call us at 1-408-715-2576 (available 24/7) and increase your chances of a prosperous future and greater money earning power!**

If you are not interested  
in this offer please  
[visit this link](#)

E+h B

7/31/2003