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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Washington
corporation,

Plaintiff,

v.

JOHN DOES 1-20 d/b/a
healthproductsnow.net

Defendants.

No. **CV03 2622**

COMPLAINT FOR TRADEMARK
INFRINGEMENT, CYBERPIRACY,
UNFAIR COMPETITION, AND
UNFAIR BUSINESS PRACTICE

Jury Trial Demanded

Plaintiff Amazon.com, Inc. ("Amazon.com"), through its attorneys, alleges as follows:

I. SUMMARY

Defendants, whose true names are not presently known, are engaged in a marketing campaign in which they have been sending e-mails to consumers with forged "from" lines and other e-mail routing information, creating the impression that the e-mails are from Amazon.com. Defendants have intentionally used the AMAZON.COM® mark in the e-mail to cause the recipient to believe that the e-mail is from Amazon.com and/or to get past e-mail filters. Defendants do not have permission to use the AMAZON.COM® mark and are not affiliated in any way with Amazon.com.

By this complaint, Amazon.com seeks to prevent consumer confusion and protect AMAZON.COM®, one of the world's best-known brands, from intentional infringement and cyberpiracy. Defendants have recently conducted an e-mail marketing campaign advertising "Human Growth Hormone" or "HGH," using e-mails that falsely claim that they are from

COMPLAINT FOR TRADEMARK INFRINGEMENT,
CYBERPIRACY, UNFAIR COMPETITION, AND
UNFAIR BUSINESS PRACTICE - 1

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1 "Amazon.com."

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

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

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

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

1 **II. JURISDICTION AND VENUE**

2 1. This is a Complaint for violations of §§ 32 and 43 of the Lanham Act , 15 U.S.C. §
3 1114(1)(Trademark Infringement), 15 U.S.C. § 1125(a) (False Designation of Origin, Unfair
4 Competition), 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), and for other claims arising under state
5 law.

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

9 3. The Court has personal jurisdiction over the defendants because the defendants have
10 purposefully availed themselves of the opportunity to conduct commercial activities in this forum,
11 and this Complaint arises out of those activities. E-mails sent from the defendants actively display,
12 disseminate, and promote the infringing AMAZON.COM mark. The publication and dissemination
13 of the infringing trademark in Washington is causing ongoing injury to Amazon.com.

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

17 **III. THE PARTIES**

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

21 6. Amazon.com is unaware of the true names and capacities of defendants sued herein
22 as DOES 1-20, and therefore sues these defendants by such fictitious names. Amazon.com will
23 amend this complaint to allege their true names and capacities when ascertained. Amazon.com is
24 informed and believes and therefore alleges that each of the fictitiously named defendants is
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1 responsible in some manner for the occurrences herein alleged, and that Amazon.com's injuries as
2 herein alleged were proximately caused by such defendants.

3 7. The actions alleged herein to have been undertaken by the defendants were
4 undertaken by each defendant individually, were actions that each defendant caused to occur, were
5 actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or
6 direct, and/or were actions in which each defendant assisted, participated or otherwise encouraged,
7 and are actions for which each defendant is liable. Each defendant aided and abetted the actions of
8 the defendants set forth below, in that each defendant had knowledge of those actions, provided
9 assistance and benefited from those actions, in whole or in part. Each of the defendants was the
10 agent of each of the remaining defendants, and in doing the things hereinafter alleged, was acting
11 within the course and scope of such agency and with the permission and consent of other defendants.

12 IV. THE AMAZON.COM® TRADEMARK

13 8. The term "Amazon.com" is not only the name of Plaintiff's company, but the most
14 important and easily recognized identifier of the goods and services it offers. There is a particularly
15 close association among consumers between Amazon.com the business, the AMAZON.COM®
16 mark, and the products and services offered under the Amazon.com designation. For millions of
17 consumers, the name "Amazon.com" has come to represent wide selection, fast delivery, fair
18 pricing, and excellent security for Internet transactions. Courts in the United States and Greece have
19 entered judgments for Amazon.com that attest to the fame and/or the strong association between the
20 AMAZON.COM® mark and the services offered by Amazon.com.

21 9. AMAZON.COM® mark is one of the best known trademarks on the Internet. For
22 instance:

- 23 • Tens of millions of customers from over 220 countries have made purchases through the
24 Amazon.com Site. Every one of these purchasers has, at a minimum, seen the
25 AMAZON.COM® mark on the Web site, on the packaging in which his or her order was
26

1 shipped, and in e-mail communications that confirm each order.

- 2 • Many millions more have come to know the AMAZON.COM® mark through
3 Amazon.com's extensive advertising in a variety of media. Since 1996, Amazon.com has
4 spent hundreds of millions on advertising—all of which makes prominent use of the
5 AMAZON.COM® mark—on television and radio, and in newspapers and magazines.
- 6 • According to the MMXI Europe May 2000 European Audience Ratings Report, the
7 Amazon.com, Amazon.co.uk, and Amazon.de sites reach more consumers in Europe than
8 any other site on the Internet.
- 9 • A recent survey by Media Metrix, a company that monitors traffic to popular e-commerce
10 Web sites, identified the Amazon.com Site as one of the most frequently visited shopping
11 sites on the Internet and the largest seller of books (ahead of sites operated by Barnes &
12 Noble and Borders), music (ahead of sites operated by Columbia House and BMG Music),
13 toys, software (ahead of sites operated by <Bestbuy.com> and <CompUSA.com>) and video
14 (ahead of <BlockBuster.com>).
- 15 • Amazon.com's achievements have generated tremendous attention in the media—thousands
16 of articles have been written about the company over the last few years. Feature stores in
17 *Fortune*, *Business Week*, *The New York Times*, *USA Today*, *Advertising Age* and *Wired* have
18 touted the company's success and have identified it as a leading force in the "New
19 Economy."
- 20 • The Amazon.com name is found on literally thousands of Internet Web sites. Not only do
21 important Internet retailers (e.g., AOL.com) carry Amazon.com "banner" ads on their
22 homepages, but more than 800,000 other Web site operators around the world have become
23 Amazon.com "Associates," and are thus permitted to link to the Amazon.com Site and to
24 display the AMAZON.COM® mark on their Web sites.
- 25 • A recent study by Interbrand Group, a leading international brand consultancy company,
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1 ranked the 100 most valuable brands in the world, all of which Interbrand identified as
2 having a value in excess of \$1 billion. Interbrand's study included the AMAZON.COM®
3 mark, ranking its value above such well-known trade names as "Hilton®" and "Guinness®."
4 Another Interbrand study recognized the AMAZON.COM® mark's value in the year 2001,
5 ranking its value above 24 other trade names such as "Burger King®" and "Wall Street
6 Journal®."

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

16 11. The AMAZON.COM® mark is particularly well known among Internet users, the
17 trading areas and channel of trade used by both Amazon.com and Defendants. There are no similar
18 marks in common commercial use. A recent review of the database maintained by the United States
19 Patent and Trademark Office reveals not a single registration for any mark that included both
20 "amazon" and "com."

21 12. Amazon.com is one of the best-known Internet retailers in the world today. Jeff
22 Bezos ("Bezos"), the company's founder, was a pioneer in the use of the Internet as a medium of
23 commerce. In 1995, Bezos created an Internet Web site ("Amazon.com Site") that permitted
24 consumers around the world to purchase books on-line. Amazon.com was one of the first
25 corporations to make the name of its business identical to the domain name from which its business
26

1 operates—such that anyone using the Internet to find its Web site need only remember the name of
2 the company.

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

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

11 V. DEFENDANTS ILLEGAL ACTS

12 15. On information and belief, sometime on or before May 7, 2003, defendants conducted
13 an extensive e-mail campaign. As part of that campaign, defendants, acting together and in concert,
14 created and sent large volumes of e-mail messages advertising the sale of "Human Growth
15 Hormone" or "HGH." The e-mails directed respondents to the website
16 <www.healthproductsnow.net>, at which the product could be ordered. The e-mails were designed
17 so that they appeared to be sent from Amazon.com, and used the AMAZON.COM® mark in the e-
18 mail header as the "from" address. *See* Exhibit A. The e-mails also used the AMAZON.COM®
19 mark in the e-mail header as the "to" address, causing the e-mails to be sent to Amazon.com's
20 servers, as well as to the numerous addressees listed as "cc's."

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

23 17. On information and belief, Defendants intentionally adopted the AMAZON.COM®
24 mark to trade on the fame and goodwill associated with the AMAZON.COM® mark, and to evade
25 customers' anti-spam filters specifically designed to permit the receipt of e-mail from Amazon.com.
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1 18. Defendants' use of the AMAZON.COM® mark is likely to cause consumer
2 confusion, mistake, and deception. This likelihood of confusion, mistake, and deception is even
3 greater because both Amazon.com and Defendants operate their businesses over the Internet.

4 19. Defendants' use of the AMAZON.COM® mark is likely to lead consumers to
5 mistakenly conclude that the e-mail from defendants was exclusively or jointly sent by, licensed or
6 certified by, or otherwise sponsored or approved by Amazon.com, or that HGH or
7 <www.healthproductsnow.net> are somehow otherwise affiliated, connected, or associated with
8 Amazon.com. Consumers are likely to be misled as to the true source, sponsorship, or affiliation of
9 the e-mail.

10 20. On information and belief, through their use of the AMAZON.COM® mark,
11 Defendants have intentionally and with knowledge sought to cause consumer confusion, mistake,
12 and deception.

13 **COUNT I**

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

15 21. Amazon.com realleges paragraphs 1-20 of this Complaint as if fully set forth herein.

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

22 **COUNT II**

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

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

25 24. Defendants have used and continue to use AMAZON.COM® in connection with
26

1 goods or services, in commerce, in a manner that is likely to cause confusion, mistake, or deception
2 as to the origin, sponsorship, or approval of their goods or services. Defendants are directly,
3 contributorily, and/or vicariously liable for these actions. Amazon.com has been damaged by these
4 acts in an amount to be proved at trial. Amazon.com is also entitled under the Lanham Act to
5 injunctive and equitable relief against defendants.

6 **COUNT III**

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

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

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

16 **COUNT IV**

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

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

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

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COUNT V

UNFAIR BUSINESS PRACTICE UNDER WASHINGTON STATE LAW

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

30. Defendants' use of AMAZON.COM® to promote, market, or sell products and services, including on their website, constitutes an Unfair Business Practice pursuant to R.C.W. 19.86. Defendants' use of AMAZON.COM® is an unfair or deceptive practice occurring in trade or commerce that impacts the public interest and has caused injury to Amazon.com. Defendants' unfair business practice has caused and 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.

COUNT VI

TRESPASS TO CHATTELS

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

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

33. By spoofing Amazon.com's domain name in the e-mail "to" line and using false or imaginary e-mail addresses, defendants intentionally directed their e-mail to Amazon.com's computer, computer networks and computer services. This resulted in Amazon.com's computer systems being required to receive and process a significant amount of junk e-mail, utilizing the limited resources of Amazon.com's systems and making those resources unavailable for authorized uses.

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

1 e-mail campaign.

2 35. Defendants have knowingly, intentionally and without authorization used and
3 intentionally trespassed upon Amazon.com's property.

4 36. As a result of defendants' actions, Amazon.com has been damaged in an amount to be
5 proven at trial.

6 **COUNT VII**

7 **UNFAIR COMPETITION**

8 37. Amazon.com realleges paragraphs 1-36 of this Complaint as if fully set forth herein.

9 38. Defendants' use of the AMAZON.COM® mark to promote, market, or sell their
10 products constitutes Unfair Competition. Defendants' use of the AMAZON.COM® mark is likely
11 to cause confusion, mistake, and deception among consumers. Defendants have acted in bad faith
12 and/or deliberately or willfully to infringe upon the AMAZON.COM® mark. Defendants are
13 directly, contributorily, and/or vicariously liable for these actions.

14 WHEREFORE, plaintiff respectfully prays that this Court:

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

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

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

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

22 3. Order an award of treble damages, in an amount to be determined at trial, pursuant to
23 R.C.W. Ch. 19.86, and

24 4. Order an award of treble damages as provided by Section 35(a) of the Lanham Act;
25 and

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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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UNFAIR BUSINESS PRACTICE - 11

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EXHIBIT A

From: "Tony" <ESfuEdvymRD@amazon.com>
To: <InMspFMXzmXe@amazon.com>
Sent: Wednesday, May 21, 2003 3:08 PM
Subject: Seem 21 Once More Through Our Assistance O89LC

Do You Suffer from ANY of These Signs of Aging?

- Weight Problems
- Wrinkles, Fine Lines
- Poor Memory
- Lack of Enthusiasm
- Sagging Skin
- Diminished Eyesight
- Failing Sexual Performance
- Low Energy
- Skin Problems
- Sleep Difficulties
- Blood Pressure, Low/High
- Lack of Muscle Tone

HGH Enhancer may be the answer

Human Growth Hormone (HGH) is a natural substance, produced by the body's pituitary gland in large quantities during our youthful years. As we begin to age, HGH production declines by up to 80%, commencing at about age 25-30. Many doctors have associated diminished HGH levels with the symptoms of aging. And, HGH has another amazing effect - it increases metabolism, which results in the burning body fat, even during periods of sleep.

Our product is made from a combination of amino acids and natural glandular extractions -- developed through clinical studies and intensive research, honed into the ideal proportions and properly combined -- actually stimulate the pituitary gland into releasing HGH at levels similar to those experienced during adolescence. HGH Enhancer combines the highest quality ingredients in capsule form, allowing complete absorption, while many competitor products only achieve about a 30% absorption rate.

If you would like to learn more about our product please [visit our website](#)

Not interested? Please [unsubscribe](#) your address!