IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

AMAZON.COM, INC., a Delaware corporation,

Plaintiff,

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JOHN DOES 1-20, d/b/a update-information.us

Defendants.

No. 04-2-25672-1 SEA

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Jury Trial Demanded

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

I. JURISDICTION AND VENUE

1. This is a Complaint for an injunction, damages and other appropriate relief to prevent unknown Defendants from "phishing"—a practice of creating websites to impersonate Amazon.com and to illegally obtain personally identifying information from Amazon.com customers. This is an action for unfair business practices, trespass to chattels, intentional interference with business expectancy, conversion and for violations of the Washington Consumer Protection Act (RCW Ch. 19.86), sections 32 and 43 of the Lanham Act, 15 U.S.C. § 1114 (1) (Trademark Infringement), 15 U.S.C. § 1125(a) (False

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF - 1
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Designation of Origin, Unfair Competition / False Advertising), and 15 U.S.C. § 1125(d) (Cyberpiracy Protection).

- 2. This Court has personal jurisdiction over the Defendants, who have engaged in business activities in and directed to Washington, have committed a tortious act within the state, and have used personal property in the state.
- 3. Venue is proper in this Court pursuant to RCW 4.12.020-.025 in that a substantial part of the events or omissions giving rise to the claims pled herein occurred in King County, the causes of action arose in King County, and work was performed in King County.

II. THE PARTIES

- 4. Amazon.com is a Delaware corporation with its principal place of business in Seattle, Washington. On or about July 15, 1997, Amazon.com registered the trademark AMAZON.COM® with the United States Patent and Trademark Office.
- 5. Amazon.com is unaware of the true names and capacities of Defendants sued herein as DOES 1-20, and therefore sues these Defendants by such fictitious names. Amazon.com will amend this complaint to allege their true names and capacities when ascertained. Amazon.com is informed and believes and therefore alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Amazon.com's injuries as herein alleged were proximately caused by such Defendants.
- 6. The actions alleged herein to have been undertaken by the Defendants were undertaken by each Defendant individually, were actions that each Defendant caused to occur, were actions that each Defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions in which each Defendant assisted, participated or otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided and abetted the actions of the Defendants set forth below, in that

each Defendant had knowledge of those actions, provided assistance and benefited from those actions, in whole or in part. Each of the Defendants was the agent of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other Defendants.

III. THE AMAZON.COM® TRADEMARK

- 7. The term "Amazon.com" is not only the name of Plaintiff's company, but the most important and easily recognized identifier of the goods and services it offers. There is a particularly close association among consumers between Amazon.com the business, the AMAZON.COM® mark, and the products and services offered under the Amazon.com designation. For millions of consumers, the name "Amazon.com" has come to represent wide selection, fast delivery, fair pricing, and excellent security for Internet transactions. Courts in the United States and Greece have entered judgments for Amazon.com that attest to the fame and/or the strong association between the AMAZON.COM® mark and the services offered by Amazon.com.
- 8. AMAZON.COM® mark is one of the best known trademarks on the Internet. The AMAZON.COM® mark is famous by virtue of its inherent distinctiveness and substantial secondary meaning as a designation of the source of the products Amazon.com sells and by its continuous and broad use for virtually the entire life of the Internet as a commercial medium. The AMAZON.COM® mark is registered in over 125 individual countries, and has hundreds of additional registration applications pending all over the world. AMAZON.COM® is a registered trademark with the United States Patent and Trademark Office for a variety of services including, but not limited to, auctioneering, automated and computerized trading of goods and services for others provided over a global communication information network, and online retail store services featuring books, music, videotapes and more.

- 9. The AMAZON.COM® mark is particularly well known among Internet users. There are no similar marks in common commercial use. A recent review of the database maintained by the United States Patent and Trademark Office reveals not a single registration for any mark that included both "amazon" and "com."
- 10. Amazon.com is one of the best-known Internet retailers in the world today. Jeff Bezos ("Bezos"), the company's founder, was a pioneer in the use of the Internet as a medium of commerce. In 1995, Bezos created an Internet Web site ("Amazon.com Site") that permitted consumers around the world to purchase books on-line. Amazon.com was one of the first corporations to make the name of its business identical to the domain name from which its business operates—such that anyone using the Internet to find its Web site need only remember the name of the company.
- 11. Since its inception, the Amazon.com Site has continuously operated from the Internet address <www.amazon.com>. When Amazon.com opened its cyber-doors, its site primarily featured books, which is still an integral part of Amazon.com's business. Since then, Amazon.com has expanded its operations to include an even broader selection of products, offering full line of goods ranging from computer products and electronics to toys, compact discs and movies on videotape and DVD.
- 12. Since at least as early as 1995, Amazon.com has used the trademark AMAZON.COM® to promote its business and its websites.

IV. THE NATURE OF "PHISHING"

- 13. Phishing, also known as carding or brand spoofing, is a scam whereby the perpetrator sends out e-mail, which appears to be from a legitimate business with whom the recipient has a business relationship, in an attempt to deceive the recipient into providing personal and financial information about himself to the perpetrator.
- 14. A phishing scam usually involves the perpetrator informing the recipient, via an e-mail that is forged to look as if it came from a legitimate business with whom the

recipient has a relationship, that the recipient needs to update or validate his billing or account information to keep his account active. The perpetrator's e-mail then directs the recipient to a website that imitates the website of the legitimate business with whom the recipient has a relationship. The imitation website often uses the legitimate business's trademarks and other unique features. The consumer, mislead into believing that the e-mail is a bona fide request and that the website is actually the legitimate business' website, unwittingly provides personal and financial information to the perpetrator.

- 15. According to a July 2004 Internet Security Intelligence Briefing from VeriSign, "[p]hising attacks targeted 57 million Internet users during [2003]. On average, three to five percent of all individuals who received a phishing email responded and became victims to the fraud." See http://www.verisign.com/corporate/briefing/.
- 16. Phishing poses a significant threat to consumers who shop or transact business over the Internet. By obtaining personal and financial information about consumers, the perpetrators of phishing scams can wreak havoc on these consumers' lives. Not only do the phishing perpetrators often obtain credit card information, but they also obtain other personal information such as account names, passwords and social security numbers. With this information in hand, the phishing perpetrators can pass themselves off as the consumer.
- 17. Phishing also poses a significant threat to the operation of legitimate online businesses. Consumers who are continually bombarded with phishing scams no longer know which e-mail messages are legitimate and which messages are trying to steal their identity. This is especially true when the phishing perpetrators use the legitimate business's trademarks and service marks in their e-mail or on their websites to steal consumers' personal and financial information.

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18. On information and belief, sometime on or before July 21, 2004,
Defendants began conducting a phishing scam directed at internet consumers. As part of
that scam, Defendants, acting together and in concert, created a website that imitates
Amazon.com's website and attempts to deceive consumers into disclosing confidential
information. Defendants sent email messages to lure victims to their imitation website.
Those messages stated:

Dear Amazon User,

We're writing to let you know that a buyer has attempted to buy your item. Unfortunately, the payment could not be completed due to seller information. We advise you to follow the link listed below and correct/update our database.

If you encounter any problems using our service please do contact us as soon as possible. We have updated our system to protect our community against fraudulent usage of credit cards.

You can correct/update information following the link below:

http://s1.amazon.com/exec/varzea/subst/your-account/correct.html

You can find answers to your other questions about selling at Amazon here: www.amazon.com/seller-help

Thank you for selling with Amazon.com. Our apologies for any inconvenience caused by this delay—we hope it is resolved quickly.

Amazon.com
Earth's Biggest Selection
http://www.amazon.com

The "from" address in the email is made to make the email appear as though it was sent from "payments@amazon.com." See Exhibit A. Amazon.com was not involved in any way in the creation or sending of these email messages. When a recipient clicked on the hyperlink in the email message, the recipient was taken to the website www.update-information.us where the recipient was asked to provide his email address and his

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INJUNCTIVE RELIEF - 7
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Amazon.com password. See Exhibit B. The website was made to look like

Amazon.com's website and included counterfeit Amazon.com trademarks. When the user inputted his email address and password, that information was sent to Defendants, not to Amazon.com.

- 19. Amazon.com did not provide permission to Defendants to use its AMAZON.COM® trademark for any reason, including their phishing activities.
- 20. On information and belief, Defendants intentionally adopted the AMAZON.COM® mark to trade on the fame and goodwill associated with the AMAZON.COM® mark, to deceive Amazon.com customers into providing personal information to the Defendants, and to evade customers' anti-spam filters specifically designed to permit the receipt of e-mail from Amazon.com.
- 21. Defendants' use of the AMAZON.COM® mark is likely to cause consumer confusion, mistake, and deception. This likelihood of confusion, mistake, and deception is even greater because Defendants' website is made to look like Amazon.com's website.
- 22. Defendants' use of the AMAZON.COM® mark is likely to lead consumers to mistakenly conclude that the e-mail from Defendants was exclusively or jointly sent by, licensed or certified by, or otherwise sponsored or approved by Amazon.com, or that Defendants' websites are somehow otherwise affiliated, connected, or associated with Amazon.com. Consumers are likely to be misled as to the true source, sponsorship, or affiliation of the e-mail and website.
- 23. On information and belief, through their use of the AMAZON.COM® mark, Defendants have intentionally and with knowledge sought to cause consumer confusion, mistake, and deception.

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COUNT I

(Trademark Infringement Under Lanham Act 15 U.S.C. § 1114)

- 24. Amazon.com realleges paragraphs 1-23 of this Complaint as if fully set forth herein.
- 25. Defendants' use of the AMAZON.COM® on their imitation website and in email promoting and marketing their imitation website constitutes trademark infringement pursuant to 15 U.S.C. § 1114. Defendants' intentional and willful infringement of the AMAZON.COM® registered trademark 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. Defendants are directly, contributorily, and/or vicariously liable for these actions.

COUNT II

(False Designation of Origin Under Lanham Act 15 U.S.C. § 1125(a))

- 26. Amazon.com realleges paragraphs 1-25 of this Complaint as if fully set forth herein.
- 27. Defendants have used and continue to use the AMAZON.COM® mark in commerce in connection with their imitation website and in email promoting and marketing their imitation website, 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.

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COUNT III

(Cyberpiracy Prevention Under Lanham Act 15 U.S.C. § 1125(d))

- 28. Amazon.com realleges paragraphs 1-27 of this Complaint as if fully set forth herein.
- 29. 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))

- 30. Amazon.com realleges paragraphs 1-29 of this Complaint as if fully set forth herein.
- 31. Defendants' use of the AMAZON.COM® mark to promote, market, or sell their products or services, including on their website, constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a). Defendants' use of the AMAZON.COM® mark is likely to cause confusion, mistake, and deception among consumers. Defendants' unfair competition 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 V

Defendants are directly, contributorily, and/or vicariously liable for these actions.

(Unfair Business Practice Under Washington State Law)

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

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33. 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)

- 34. Amazon.com realleges paragraphs 1-33 of this Complaint as if fully set forth herein.
- 35. The computers, computer networks and computer services that host and process information relating to Amazon.com's website are the personal property of Amazon.com.
- 36. Defendants were aware that their actions were specifically prohibited by Amazon.com's Terms of Use and/or were on notice that their actions were not authorized by Amazon.com in any way.
- 37. Defendants have knowingly, intentionally and without authorization used and intentionally trespassed upon Amazon.com's property.
- 38. As a result of Defendants' actions, Amazon.com has been damaged in an amount to be proven at trial.

COUNT VII

(Conversion)

39. Amazon.com realleges paragraphs 1-38 of this Complaint as if fully set forth herein.

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- 40. Defendants have willfully interfered with and converted Amazon.com's personal property, without lawful justification, as a result of which Amazon.com has been deprived of possession and use of its property. 41. As a result of Defendants' actions, Amazon.com has been damaged in an
- amount to be proven at trial.

WHEREFORE, plaintiff 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:
- Using AMAZON.COM® trademark, or any version thereof, in (A) connection with their imitation website or email advertising their imitation website; and
 - (B) Infringing Amazon.com's AMAZON.COM® trademark;
 - 2. Order an award of damages in an amount to be determined at trial; and
- 3. Order an award of treble damages, in an amount to be determined at trial, pursuant to R.C.W. Ch. 19.86, and
- 4. Order an award of treble damages as provided by Section 35(a) of the Lanham Act:
- 5. Order an award of statutory damages for violations of 15 U.S.C. §1125(d)(1) or for use of counterfeit marks; and
- 6. Order an award of attorney's fees and costs as provided by Section 35(a) of the Lanham Act and R.C.W. 19.86, and
 - 7. Order an award of punitive damages to be determined at trial; and
 - 8. Any other or further relief that the Court deems appropriate.

VI. **JURY DEMAND**

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

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OF COUNSEL: David A. Zapolsky, Associate General Counsel Kathryn M. Sheehan, Corporate Counsel Amazon.com, Inc.

Attorneys for Plaintiff Amazon.com, Inc.

EXHIBIT A

From:

payments@amazon.com

Sent:

Thursday, August 05, 2004 7:13 PM

To:

:@yahoo.com

Subject:

Immediate Attention Required!

Dear Amazon User,

We're writing to let you know that a buyer has attempted to buy your item. Unfortunately, the payment could not be completed due to seller information. We advise you to follow the link listed below and correct/update our database

If you encounter any problems using our services please do contact us as soon possible. We have updated our system to protect our community against fraudulent usage of credit cards.

You can correct/update information following the link below:

http://sl.amazon.com/exec/varzea/subst/your-account/correct.html <http://www.varzea-update-info.us/varzea/>

You can find answers to your other questions about selling at Amazon here: www.anazon.com/seller-help

Thank you for selling with Amazon.com. Our apologies for any inconvenience caused by this delay--we hope it is resolved quickly.

Amazon.com
Earth's Biggest Selection
http://www.amazon.com