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CASE NUMBER: 16-2-27556-7 SEA

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

AMAZON.COM, INC., a Delaware
corporation; and FITNESS ANYWHERE
LLC, a Delaware limited liability company,

Plaintiffs,

v.

CHENG HAK YUNG a/k/a JOANA WONG
FERREIRA, an individual; MAN HONG
"SANDRA" CHAU, an individual; and JOHN
DOES 1-10,

Defendants.

No.

COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF, AND
MONETARY DAMAGES

Plaintiffs Amazon.com, Inc. ("Amazon") and Fitness Anywhere LLC ("TRX")
(collectively, "Plaintiffs") bring this action to enjoin infringement and misuse of intellectual
property rights, in addition to other relief, against Defendants Cheng Hak Yung a/k/a Joan a
Wong Ferreira; Man Hong "Sandra" Chau; and John Does 1-10, and allege as follows:

INTRODUCTION

1. After graduating from the University of Southern California, TRX founder and
inventor Randy Hetrick spent the next 14 years of his life serving this country as a Navy SEAL
commando. His operational career culminated as a Squadron Commander of the SEAL's elite
special missions unit. In 1997, in need of a way to maintain peak physical condition while on
deployment, Hetrick pieced together a jujitsu belt, parachute webbing and sheer ingenuity to
develop the first version of the TRX® Suspension Trainer™.

1 2. Over the next seven years, Hetrick sought and earned his MBA from Stanford
2 University, refined the TRX® Suspension Trainer™, and prepared to bring it to market. On
3 March 22, 2004, Hetrick began selling the Travel X—the precursor to the TRX® Suspension
4 Trainer™—out of the trunk of his car in San Francisco.

5 3. Since 2004, TRX has grown into a world-class and globally recognized fitness
6 brand, encompassing fitness gear and products, training, and education. TRX became a staple
7 component in U.S. Marine Corps training. By 2009, TRX could be found in gyms in more than
8 60 countries, with more than one million active users. TRX has continued to develop new
9 fitness products and education, all built around the TRX brand's arduous quality standards and
10 innovative designs.

11 4. TRX has become a leading provider of fitness-related technology, equipment,
12 workout programs, and education courses. TRX is also the exclusive owner of the brand TRX®.
13 TRX designs, manufactures, and sells, among other things, resistance products, including
14 various straps and ropes that are designed for body-weight resistance exercise (collectively, the
15 “TRX Products”). TRX and its predecessors began using TRX brand in 2004 and have
16 continuously sold fitness equipment under the internationally recognized and federally
17 registered TRX® trademark and other trademarks (collectively, the “TRX Trademarks”).

18 5. TRX Products have become enormously popular among professional athletes and
19 recreational fitness enthusiasts alike. People at all fitness levels now train with TRX—from
20 everyday people who want to feel and look their best, to some of the world's most elite athletes.
21 TRX Products are used routinely by all four branches of the military, and can be found in the
22 locker rooms of Major League Baseball teams, National Football League football teams, UFC
23 fighters, and Olympic-level cyclists, swimmers, and runners. Among the purchasing public,
24 genuine TRX Products are instantly recognizable as such. In the United States and around the
25 world, the TRX® brand has come to symbolize high quality. TRX Products are among the most
26 recognizable pieces of fitness equipment in the world.

27

6. TRX Products are distributed and sold to consumers through various sales channels, including the official trxtraining.com website, the TRX Training Center in San Francisco, tradeshow and industry events, and the official TRX storefront on Amazon.com.

7. TRX's total company revenues grew from less than \$7 million in 2008 to nearly \$50 million in recent years. One key catalyst behind such tremendous revenue growth was the investment that TRX made in its ecommerce sales channels which specifically included TRX's launch of genuine TRX Products on Amazon in 2008. TRX was then able to customize its marketing and sales presence on Amazon through the creation of TRX's Amazon storefront and coordinate its optimization efforts on this storefront with the Amazon retail team. These efforts, coupled with the strategic positioning of TRX Products on the TRX Amazon storefront, have enabled TRX to reach new levels of success, and have exposed TRX Products to the millions of global consumers that shop on Amazon.com every day. The TRX Amazon storefront enhances awareness of TRX, its brand, and the TRX Products, and it has a strong complementary impact on TRX's overall marketing and sales strategy, furthering TRX's credibility and brand recognition as the preeminent functional training company in the world today.

* * *

8. Since opening its virtual doors on the World Wide Web in July 1995, Amazon.com has become one of the most trusted consumer brands in the world. Each day, millions of consumers use Amazon's website to purchase a wide range of products across dozens of product categories from Amazon and third-party sellers. The Amazon brand allows customers to shop with confidence online from Amazon's numerous websites around the world.

9. Amazon depends on its reputation as an online marketplace where customers can conveniently select from the widest array of legitimate goods and services at competitive prices. Amazon's customers trust that when they make a purchase through Amazon's website—either directly from Amazon or from one of its millions of third-party sellers—they will receive authentic products manufactured by the true manufacturer of those products.

1 10. A small number of bad actors seek to abuse that trust by creating Amazon Seller
2 Accounts and using Amazon's marketplace to market, sell, and distribute counterfeit goods.
3 These sellers misuse and infringe the trademarks and other intellectual property of the actual
4 manufacturer or rights owner of those goods to deceive consumers and Amazon. When
5 customers purchase counterfeit goods, it undermines the trust that customers, sellers, and
6 manufacturers place in Amazon, thereby tarnishing Amazon's brand and causing irreparable
7 reputational harm.

8 11. Amazon has zero tolerance for counterfeits, and has invested heavily in
9 protecting the integrity of the Amazon marketplace for consumers, sellers, and manufacturers.
10 Amazon's anti-counterfeiting policy clearly prohibits the sale of counterfeit products: **"The sale**
11 **of counterfeit products, including any products that have been illegally replicated,**
12 **reproduced, or manufactured, is strictly prohibited."**¹

13 12. Amazon invests tens of millions of dollars annually developing sophisticated
14 technology to detect bad actors and potentially counterfeit products, and it employs dedicated
15 teams of software engineers, research scientists, program managers, and investigators to operate
16 and continually refine its anti-counterfeiting program. Among other things, when sellers register
17 to sell products through Amazon's Marketplace, Amazon's automated systems scan information
18 about the sellers for signals that the sellers might be bad actors, and Amazon blocks those sellers
19 during registration before they can offer any products for sale. On an ongoing basis, Amazon's
20 systems also automatically and continuously scan thousands of variables related to sellers,
21 products, and offers to detect activity that indicates products offered by a seller might be
22 counterfeit. Amazon uses innovative machine learning to improve its automated systems in
23 order to anticipate and stay ahead of bad actors. Numerous Amazon investigators around the
24 world respond quickly to review any listing identified as a potential counterfeit product. These
25 investigators also review notices of claimed infringement from rights owners, who know their
26

27 ¹ Available at <https://www.amazon.com/gp/help/customer/display.html?nodeId=201166010>.

1 products best. When Amazon finds counterfeit products from whatever source, it removes those
2 products immediately. Amazon regularly suspends or blocks sellers suspected of engaging in
3 illegal behavior or infringing others' intellectual property rights.

4 13. Amazon works closely with brands and rights owners, including TRX, to
5 strengthen protections for their brands on Amazon.com. In addition, Amazon partners with
6 rights owners, including TRX, and with law enforcement to identify and prosecute sellers
7 suspected of engaging in illegal activity. Lawsuits like this one, targeted directly at identified
8 bad actors, further complement Amazon's efforts to prevent the sale and distribution of
9 counterfeit goods.

10 * * *

11 14. As described throughout this Complaint, Defendants used Amazon's marketplace
12 to market, sell, and distribute counterfeit TRX Products. Defendants have deceived Amazon's
13 customers and Amazon, infringed and misused the intellectual property rights of TRX, and
14 harmed the integrity of Amazon's marketplace, by selling and/or offering for sale unauthorized
15 and unlicensed products, including fitness equipment, using counterfeit versions of TRX's
16 federally registered trademarks.

17 15. Amazon and TRX share a common interest in defeating Defendants' illegal
18 scheme. As a result, Amazon and TRX have cooperated closely in investigating Defendants and
19 are filing this action jointly to combat these online counterfeiters and to protect unknowing
20 customers from purchasing these counterfeit products. The harm to both TRX and Amazon
21 caused by Defendants' unlawful conduct will continue unless Defendants are immediately and
22 permanently enjoined from infringing TRX's intellectual property rights and from using
23 Amazon's website to sell goods or services.

24 16. Amazon and TRX therefore jointly and individually bring claims for injunctive
25 and other relief against Defendants, including claims for declaratory judgment, trademark
26 infringement, unfair competition and false advertising in violation of the Lanham Act (15 U.S.C.
27

1 § 1125), common law breach of contract, imposition of a constructive trust, and accounting of
2 Defendants' ill-gotten gains.

3 **PARTIES**

4 17. Amazon is a Delaware corporation with its principal place of business in Seattle,
5 Washington. Through its subsidiaries, Amazon owns and operates the Amazon.com website
6 and equivalent international websites. Amazon has more than 250 million active customers.

7 18. TRX is a Delaware limited liability company with its principal place of business
8 in San Francisco, California.

9 19. On information and belief, Defendant Cheng Hak Yung a/k/a Joana Wong
10 Ferreira ("Ferreira") is a resident of Oakland Gardens, New York.

11 20. On information and belief, Defendant Man Hong "Sandra" Chau ("Chau") is a
12 resident of Flushing, New York.

13 21. On information and belief, Defendants Ferreira and Chau own, operate,
14 supervise, and/or control the conduct of a business enterprise, the true name of which remains
15 unknown due to Defendants' intentional and fraudulent efforts to hide their own identities and
16 the identities of that enterprise. By themselves and through their business enterprise,
17 Defendants either personally participated in and/or had the right and ability to supervise, direct,
18 and control the wrongful conduct alleged in this Complaint, and derived a direct financial
19 benefit from that wrongful conduct.

20 22. On information and belief, Defendants John Does 1–10 (the "Doe Defendants")
21 are individuals and entities who reside in the United States and in foreign jurisdictions. On
22 information and belief, the Doe Defendants are an interrelated group of counterfeiters working
23 in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and
24 sell products bearing counterfeit versions of the TRX Trademarks. The Doe Defendants
25 supplied the counterfeit TRX Products described below to the other Defendants and knew and
26 intended that such products would be resold to consumers in the United States, including in the
27 State of Washington.

JURISDICTION & VENUE

23. The Court has original subject matter jurisdiction pursuant to RCW 2.08.010.

24. The Court has personal jurisdiction over all Defendants because they transacted business and committed tortious acts within and directed to the State of Washington, and Plaintiffs' claims arise from those activities. Defendants reached out to do business with Washington residents by operating one or more commercial, interactive internet storefronts through which Washington residents can purchase products bearing counterfeit versions of the TRX Trademarks. Each of the Defendants has targeted sales from Washington residents by operating these internet storefronts that (i) offer shipping to the United States, including Washington; (ii) accept payment in U.S. dollars; and (iii) on information and belief, sold products bearing counterfeit versions of the TRX Trademarks to residents of Washington. Each of the Defendants is committing tortious acts in Washington and has wrongfully caused TRX substantial injury in Washington.

25. The Court also has personal jurisdiction over Defendants Ferreira and Chau because, on information and belief, using fictitious names, they entered into and/or conspired with one another to enter into a contract with Amazon in which they expressly consented to jurisdiction in this Court.

26. Venue is proper in this Court pursuant to RCW 4.12.025 because, on information and belief, Defendants entered into agreements with Amazon in King County, and Amazon performed work under that agreement within King County. Venue is also proper in this Court pursuant to Civil Rule 82(a) because (i) Defendants performed acts in King County giving rise to service pursuant to RCW 4.28.180 and 4.28.185, (ii) Amazon resides in King County, and (iii) on information and belief, Defendants expressly consented to venue in this Court.

FACTS COMMON TO ALL CLAIMS

A. TRX's Intellectual Property

27. As a result of TRX's long-standing use of the TRX Trademarks, strong common law trademark rights have amassed in the TRX Trademarks. TRX's use of the marks has also

1 built substantial goodwill in and to the TRX Trademarks. The TRX Trademarks are well-known
2 marks and valuable assets of TRX. TRX Products typically include at least one of the TRX
3 Trademarks.

4 28. Several of the TRX Trademarks are registered with the United States Patent and
5 Trademark Office, a non-exclusive list of which is included below:

6	Reg. No.	Trademark	Goods and Services
7	3,202,696	TRX	For: Manually operated multipurpose
8			exercise, fitness, and sporting equipment,
9			and instructional material sold together
			therewith as unit in class 028.
10	3,255,160	SUSPENSION	For: Manually-operated exercise equipment
		TRAINING	in class 028.
11	4,027,129	TRX FORCE	For: Manually-operated exercise equipment
12			in class 028.
13	4,741,049		For: Manually-operated exercise equipment,
14			namely, extendible nylon strap-based trainer
15			with two handles and fixed at a midpoint
16			between the handles to a structure for
			allowing a user to use body weight to
			modulate the resistance felt during exercising
			with the trainer in class 028.

17 29. The above U.S. registrations for the TRX Trademarks are valid, subsisting, in full
18 force and effect, and registrations 3,202,696 and 3,255,160 are incontestable pursuant to 15
19 U.S.C. § 1065. The registrations for the TRX Trademarks constitute prima facie evidence of
20 their validity and of TRX's exclusive right to use the TRX Trademarks pursuant to 15 U.S.C. §
21 1057(b). True and correct copies of the United States Registration Certificates for the above-
22 listed TRX Trademarks are attached hereto as *Exhibit A*.

23 30. The TRX Trademarks are distinctive when applied to the TRX Products,
24 signifying to the purchaser that the products come from TRX and are manufactured to TRX's
25 quality standards. Whether TRX manufactures the products itself or contracts with others to do
26 so, TRX has ensured that products bearing the TRX Trademarks are manufactured to the highest
27 quality standards.

1 31. The TRX Trademarks have been continuously used and never abandoned. The
2 innovative marketing and product designs of the TRX Products have enabled the TRX brand to
3 achieve widespread brand recognition and have made the TRX Trademarks some of the most
4 well-known marks in the exercise and fitness industry. The outstanding reputation, and
5 significant goodwill associated with the TRX brand have made the TRX Trademarks valuable
6 assets of TRX.

7 32. TRX has expended substantial time, money, and other resources in advertising
8 and promoting the TRX Trademarks, including expending millions of dollars annually in
9 advertising, promoting and marketing featuring the TRX Trademarks. TRX has also been the
10 subject of extensive publicity and has been featured in popular magazines including, but not
11 limited to, *Shape*, *Men's Fitness*, *Self*, *Muscle & Fitness*, *GQ*, *Triathlete*, *Women's Health*,
12 *Men's Health*, *Vogue*, and *Sports Illustrated*. TRX has also been featured on *ABC News*, *The*
13 *Today Show*, and in newspapers such as *The New York Times* and *The Wall Street Journal*. As a
14 result of this publicity, products bearing the TRX Trademarks are widely recognized and
15 exclusively associated by consumers, the public, and the trade as being high-quality products
16 sourced from TRX. TRX Products have become among the most popular of their kind in the
17 U.S. and the world. The TRX Trademarks have achieved tremendous recognition which has
18 only added to the inherent distinctiveness of the marks. As such, the goodwill associated with
19 the TRX Trademarks is of incalculable and inestimable value to TRX.

20 33. Genuine TRX Products are recognized by the public as being exclusively
21 associated with the TRX brand. Since 2006, genuine TRX Products have been promoted and
22 sold at the official trxtraining.com website. Sales of TRX Products via the trxtraining.com
23 website are significant. The trxtraining.com website features proprietary content, images and
24 designs exclusive to the TRX® brand.

25 34. Shortly after launching its official trxtraining.com website, TRX began selling
26 genuine TRX Products on Amazon.com. Consumer awareness of TRX, its brand, and TRX
27 Products was immediately enhanced and pushed to new heights because of the enormous reach

1 and visibility that Amazon has built as a trusted marketplace to a global consumer base. TRX
2 was subsequently able to brand its own Amazon storefront, presenting the heritage story of TRX
3 as a company to the massive Amazon consumer base and enabling genuine TRX Products to be
4 housed on webpages that bore authorized TRX Trademarks and content.

5 **B. Amazon's Marketplace & Anti-Counterfeiting Policies**

6 35. To become a third-party seller on Amazon's website, sellers must agree to
7 Amazon's Business Solutions Agreement ("BSA"), which governs the applicant's access to and
8 use of Amazon's services and sets forth Amazon's rules and restrictions for selling through the
9 website. By entering into the BSA, each seller represents and warrants that it "will comply with
10 all applicable laws in [the] performance of [its] obligations and exercise of [its] rights" under the
11 BSA.

12 36. The BSA incorporates (and sellers therefore agree to be bound by) Amazon's
13 Anti-Counterfeiting Policy,² which explicitly prohibits the sale of counterfeit goods on the
14 Amazon marketplace: "Customers trust that they can always buy with confidence on
15 Amazon.com. Products offered for sale on Amazon.com must be authentic. ***The sale of***
16 ***counterfeit products, including any products that have been illegally replicated, reproduced,***
17 ***or manufactured, is strictly prohibited.*"** (emphasis added).

18 37. Amazon's Anti-Counterfeiting Policy further describes Amazon's commitment to
19 preventing the sale and distribution of counterfeit goods in the Amazon marketplace, and the
20 consequences Amazon imposes when it becomes aware of counterfeiting:

21 We take product authenticity very seriously. It is each seller's
22 responsibility to source and sell only authentic products. If you
23 sell counterfeit goods, we may immediately suspend or terminate
24 your selling privileges and destroy inventory in our fulfillment
25 centers without reimbursement. In addition, if we determine that a
26 Seller Account has been used to engage in fraud or other illegal
27 activity, remittances and payments may be withheld or forfeited.
The sale of counterfeit goods can also lead to legal action by rights
holders and civil and criminal penalties.

27 ² Available at https://www.amazon.com/gp/help/customer/display.html/ref=hp_left_cn?ie=UTF8&nodeId=201166010.

We are constantly innovating on behalf of our customers and working with manufacturers, content owners, vendors, and sellers to improve the ways we detect and prevent counterfeit products from reaching our marketplace. We work hard on this issue every day because we know that our customers trust that they are buying authentic products when they shop on Amazon.com. This is why we stand behind the products sold on our site with our A-to-z Guarantee. We also encourage anyone who has a product authenticity concern to notify us, and we will investigate it thoroughly and take any appropriate actions.

C. TRX's Efforts to Combat Counterfeiting

38. The success of the TRX Products has resulted in the global proliferation of counterfeit TRX Products manufactured and distributed by counterfeiters seeking to exploit and profit from that success. As result of the threat from counterfeits, TRX has a worldwide anti-counterfeiting program and regularly investigates suspicious websites and online marketplace listings identified in proactive Internet sweeps and reported by consumers. Despite TRX's enforcement efforts online and on the ground, counterfeiters have persisted in manufacturing and selling counterfeit TRX Products online.

39. Counterfeiters often go to great lengths to conceal their identities and often use multiple and fictitious names and addresses to register and operate their massive network of Internet storefronts. Nonetheless, there are often numerous similarities among these storefronts. For example, many of the storefronts have virtually identical layouts, and the counterfeit TRX Products for sale bear similar irregularities and indicia of being counterfeit, suggesting that the counterfeit products were manufactured by and come from a common source.

40. In addition to operating under multiple fictitious names, counterfeiters use a variety of other common tactics to evade enforcement efforts. For example, counterfeit resellers, like Defendants, will often create new online marketplace accounts—on Amazon or other sites—under new aliases once they receive notice of a lawsuit. Further, counterfeit resellers, such as Defendants, typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of TRX's enforcement efforts. It is also common for counterfeit resellers to maintain off-shore

1 bank accounts outside the jurisdiction of the Court into which they routinely move the proceeds
2 of their illegal sales.

3 **D. Defendants' Unlawful Conduct**

4 41. On information and belief, on or about March 9, 2012, Defendant Ferreira—
5 using the name Cheng Hak Yung—entered into the BSA with Amazon and created an Amazon
6 Seller Account. On information and belief, Defendant Chau conspired with Defendant Ferreira
7 to create and use this Seller Account to commit the wrongful conduct alleged in this Complaint.

8 42. On or about September 2, 2016, Defendants began marketing, advertising,
9 selling, and distributing products advertised as “suspension straps” through their Seller Account
10 on Amazon’s marketplace.

11 43. In October 2016, Amazon received complaints that Defendants, through their
12 Seller Account, were marketing and distributing counterfeit and/or “knock-off” goods.

13 44. On or about October 29, 2016, Amazon, through an outside third-party
14 investigator, purchased the suspension straps marketed by Defendants through their Seller
15 Account. Defendants shipped their products to Amazon’s investigator, and the products were
16 received on or about November 4, 2016.

17 45. Defendants’ products contained “TRX®” “TRX® Force™,” and “TRX®
18 Suspension Trainer™” labels and markings, mimicking the appearance of genuine TRX
19 Products sold by TRX.

20 46. On or about November 8, 2016, based on the absence of certain identifying
21 marks and numbers, as well as other conclusive indicia of counterfeiting, TRX confirmed that
22 the above articles sold and shipped by Defendants through their Seller Account were not
23 manufactured by or under license from TRX.

24 47. The products sold by Defendants bearing the TRX brand are unauthorized and
25 infringing counterfeits of the actual and legitimate products of the same name manufactured by
26 TRX. TRX has not licensed or authorized Defendants to use any of the TRX Trademarks, and
27 none of the Defendants are authorized retailers of genuine TRX Products.

1 48. Defendants, without any authorization or license from TRX, have knowingly and
2 willfully used and continue to use the TRX Trademarks in connection with the advertisement,
3 distribution, offering for sale, and sale of counterfeit TRX Products into the United States and
4 Washington over the Internet. Defendants have sold counterfeit TRX Products into the United
5 States, including, on information and belief, the State of Washington.

6 49. At all times, Defendants Ferreira and Chau knew that the BSA prohibited the use
7 of Amazon's marketplace platform to distribute counterfeit goods or to violate any applicable
8 laws. Defendants knowingly and intentionally breached the BSA by marketing, selling, and
9 distributing counterfeit goods on Amazon's marketplace. Defendants' marketing,
10 manufacturing, sale, and distribution of counterfeit goods have deceived Amazon's consumers
11 and Amazon, harmed TRX, and tarnished Amazon's brand.

12 50. On or about November 8, 2016, Amazon exercised its rights under the BSA to
13 block Defendants' Seller Account and remove all of its product listings from the Amazon.com
14 website.

15 51. Defendants' use of the TRX Trademarks in connection with the advertising,
16 distribution, offering for sale, and sale of counterfeit TRX Products, including the sale of
17 counterfeit TRX Products into the United States, including Washington, is likely to cause and
18 has caused confusion, mistake, and deception by and among consumers and is irreparably
19 harming TRX and Amazon.

20 52. In Amazon's experience, it is not uncommon for sellers of counterfeit goods
21 blocked by Amazon to attempt to create new seller identities to obtain access to the Amazon
22 marketplace. Therefore, unless Defendants and all of their affiliated and/or successor entities
23 are immediately and permanently enjoined from using Amazon's website to sell goods and from
24 continuing to infringe TRX's intellectual property rights, the harm caused by Defendants to
25 Amazon, TRX, and consumers is likely to continue.

CAUSES OF ACTION

First Claim – by TRX
Trademark Infringement and Counterfeiting
(15 U.S.C. § 1114)

53. TRX incorporates by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

54. Defendants have, without authorization, used in commerce counterfeit imitations of federally recognized TRX Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The TRX Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from TRX Products sold or marketed under the TRX Trademarks.

55. Defendants have sold, offered to sell, marketed, distributed, and advertised products bearing counterfeit reproductions of the TRX Trademarks without TRX's permission.

56. TRX is the exclusive owner of the TRX Trademarks. TRX's United States Registrations for the TRX Trademarks (*Exhibit A*) are in full force and effect. Upon information and belief, Defendants have knowledge of TRX's rights in the TRX Trademarks, and are willfully infringing and intentionally using counterfeits of the TRX Trademarks. Defendants' willful, intentional and unauthorized use of the TRX Trademarks is likely to cause, and is causing, confusion, mistake, and deception as to the origin and quality of the counterfeit TRX Products among the general public.

57. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

58. As a result of Defendants' wrongful conduct, TRX is entitled to recover its actual damages, Defendants' profits attributable to the infringement, and treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a) and (b). Alternatively, TRX is entitled to statutory damages under 15 U.S.C. § 1117(c).

59. TRX is further entitled to injunctive relief. TRX has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) the TRX Trademarks are

1 unique and valuable property that have no readily determinable market value; (b) Defendants'
2 infringement constitutes harm to TRX's reputation and goodwill such that TRX could not be
3 made whole by any monetary award; (c) if Defendants' wrongful conduct is allowed to
4 continue, the public is likely to become further confused, mistaken, or deceived as to the source,
5 origin, or authenticity of the counterfeit TRX Products; and (d) Defendants' wrongful conduct,
6 and the result harm to TRX, is continuing.

7 **Second Claim – by TRX**
8 **False Designation of Origin, False Advertising, and Unfair Competition**
9 **(15 U.S.C. § 1125)**

10 60. TRX incorporates by reference the allegations of each and all of the preceding
11 paragraphs as though set forth herein.

12 61. By using the TRX Trademarks on the counterfeit TRX Products, Defendants
13 have made false and misleading representations and descriptions of fact in connection with the
14 offering for sale and sale of counterfeit TRX Products. Defendants' false and misleading
15 representations and descriptions of fact misrepresent the nature, characteristics, qualities, or
16 origin of their goods, services, and commercial activities.

17 62. Defendants' promotion, marketing, offering for sale, and sale of counterfeit TRX
18 Products has created and is creating a likelihood of confusion, mistake, and deception among the
19 general public as to the affiliation, connection, or association with TRX or the origin,
20 sponsorship, or approval of Defendants' counterfeit TRX Products by TRX.

21 63. Defendants' use of the TRX Trademarks and its false and misleading
22 representations and descriptions of fact in interstate commerce in connection with its offering
23 for sale of counterfeit TRX Products has either deceived or has the capacity to deceive a
24 substantial segment of potential consumers, and such deception is material, in that it is likely to
25 influence the consumers' purchasing decisions.

26 64. Defendants have used, and continue to use, TRX Trademarks without
27 authorization to compete unfairly with TRX and to deceive consumers.

65. Defendants' wrongful conduct constitutes false designation of origin, false advertising, and unfair competition, all willful violations of Section 43 of the Lanham Act, 15 U.S.C. § 1125. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.

66. As a result of Defendants' wrongful conduct, TRX is entitled to recover its actual damages, Defendants' profits attributable to the infringement, and treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a) and (b). Alternatively, TRX is entitled to statutory damages under 15 U.S.C. § 1117(c).

67. TRX is further entitled to injunctive relief. TRX has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Defendants' conduct constitutes harm to TRX such that TRX could not be made whole by any monetary award; (b) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of the counterfeit TRX Products; and (c) Defendants' wrongful conduct, and the resulting harm to TRX, is continuing.

**Third Claim – by All Plaintiffs
Declaratory Judgment
(RCW Ch. 7.24)**

68. Plaintiffs incorporate by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

69. An actual controversy has arisen between Plaintiffs and all Defendants, in that Plaintiffs contend—and believe that Defendants would deny—the following:

- a. Defendants marketed, sold, and distributed counterfeit TRX Products through the Amazon marketplace.
- b. Defendants infringed and misused the intellectual property rights of TRX.
- c. Defendants Ferreira and Chau personally participated in and/or had the right and ability to supervise, direct, and control the conduct alleged herein, and derived a direct financial benefit from that wrongful conduct.

70. The parties have genuine and opposing interests, which are direct and substantial.

1 71. Plaintiffs have suffered, are suffering, and will continue to suffer invasion of their
2 statutory, common law, and contractual rights due to Defendants' wrongful conduct.

3 72. A judicial determination of the parties' controversy would provide final and
4 conclusive relief.

5 73. For these and other reasons, Plaintiffs are entitled to a declaration that
6 conclusively determines those controversies listed above.

7 **Fourth Claim – by Amazon**
8 **False Advertising**
 (Lanham Act, 15 U.S.C. § 1125(a))

9 74. Amazon incorporates by reference the allegations of each and all of the preceding
10 paragraphs as though set forth herein.

11 75. Defendants infringed and misused the intellectual property rights of TRX in
12 marketing, selling, and distributing products through the Amazon marketplace, thereby making
13 false and misleading statements of fact about the origin, sponsorship or approval of the goods
14 they sold.

15 76. These statements deceived or had the capacity to deceive Amazon as to whether
16 Defendants were selling counterfeit goods in violation of BSA. Defendants' deceptive acts were
17 material to Amazon's decision to allow Defendants to sell their goods on the Amazon
18 marketplace because Amazon would not have permitted them to sell their goods but for the
19 deceptive acts.

20 77. Defendants' acts constitute willful false statements in connection with goods
21 and/or services distributed in interstate commerce, in violation of § 43(a) of the Lanham Act, 15
22 U.S.C. § 1125(a).

23 78. Defendants Ferreira and Chau are subject to liability for the wrongful conduct
24 alleged herein, both directly and under various principles of secondary liability, including
25 without limitation, respondeat superior, vicarious liability, and/or contributory infringement.

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27

79. Defendants' acts have caused irreparable injury to Amazon. The injury to Amazon is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Amazon for its injuries, and Amazon lacks an adequate remedy at law.

80. Amazon is entitled to an injunction against Defendants, their officers, agents, representatives, servants, employees, successors and assigns, and all other persons in active concert or participation with them, as set forth in the Prayer for Relief below, along with its attorneys' fees and costs in bringing this lawsuit.

Fifth Claim – by Amazon Breach of Contract

81. Amazon incorporates by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

82. Defendant Ferreira and/or Chau established Amazon Seller Accounts and entered into Amazon's BSA. Defendants also contractually agreed to be bound by the Conditions of Use of the Amazon website.

83. Defendants' infringement and misuse of the intellectual property rights of TRX materially breaches their contractual obligations to Amazon.

84. Defendants are subject to liability for the wrongful conduct alleged herein, both directly and under various principles of secondary liability, including without limitation, respondeat superior, vicarious liability, and/or contributory infringement.

85. Defendants' acts have caused irreparable injury to Amazon, and that injury is ongoing. An award of monetary damages alone cannot fully compensate Amazon for its injuries, and Amazon lacks an adequate remedy at law.

86. Amazon is entitled to an injunction against Defendants, their officers, agents, representatives, servants, employees, successors and assigns, and all other persons in active concert or participation with them, as set forth in the Prayer for Relief below.

**Sixth Claim – by TRX
Imposition of a Constructive Trust**

87. TRX incorporates by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

88. By virtue of Defendants' wrongful conduct, Defendants have illegally received money and profits that rightfully belong to TRX.

89. On information and belief, Defendants hold the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced. All such money and profits, in whatever form, are held by Defendants as a constructive trustee for TRX.

**Seventh Claim – by TRX
Accounting**

90. TRX incorporates by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

91. TRX is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendants that are attributable to the acts of infringement.

92. TRX is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

93. The amount of money due from Defendants to TRX is unknown to TRX and cannot be ascertained without a detailed accounting by Defendants of the precise number of counterfeit TRX Products advertised, marketed, offered for sale, sold, or distributed by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Amazon respectfully prays for the following relief:

A. That the Court issue an order permanently enjoining Defendants, their officers, agents, representatives, servants, employees, successors and assigns, and all others in active concert or participation with them, from:

(i) selling products on any of Amazon's websites;

-
- 1 (ii) opening any Amazon Seller Accounts;
2 (iii) assisting, adding or abetting any other person or business entity in
3 engaged or performing any of the activities referred to in subparagraphs
4 (i) and (ii) above;

5 B. That the Court enter judgment in Amazon's favor on all claims brought by
6 Amazon; and

7 WHEREFORE, TRX respectfully prays for the following relief:

8 C. That Defendants, their affiliates, officers, agents, servants, employees, attorneys,
9 confederates, and all persons acting for, with, by, through, under or in active concert with them
10 be temporarily, preliminarily, and permanently enjoined and restrained from:

- 11 (i) using the TRX Trademarks or any reproductions, counterfeit copies or
12 colorable imitations thereof in any manner in connection with the
13 distribution, marketing, advertising, offering for sale, or sale of any
14 product that is not a genuine TRX Product or is not authorized by TRX to
15 be sold in connection with the TRX Trademarks;
16 (ii) passing off, inducing, or enabling others to sell or pass off any product as
17 a genuine TRX Product or any other product produced by TRX, that is not
18 TRX's or not produced under the authorization, control, or supervision of
19 TRX and approved by TRX for sale under the TRX Trademarks;
20 (iii) committing any acts calculated to cause consumers to believe that
21 Defendants' counterfeit TRX Products are those sold under the
22 authorization, control or supervision of TRX, or are sponsored by,
23 approved by, or otherwise connected with TRX;
24 (iv) engaging in any other activity constituting an infringement of any of
25 TRX's Trademarks, or of TRX's rights in, or right to use or to exploit, the
26 TRX Trademarks; and
27

1 (v) assisting, aiding, or abetting any other person or entity in engaging in or
2 performing any of the activities listed above;

3 D. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503
4 impounding all counterfeit TRX Products and/or materials bearing any of TRX's Trademarks,
5 and any related business records, that are in Defendants' possession or under their control;

6 E. That the Court enter an order declaring that Defendants hold in trust, as
7 constructive trustees for the benefit of TRX, the illegal profits obtained from their distribution of
8 counterfeit TRX Products and related materials, and requiring Defendants to provide TRX a full
9 and complete accounting of all amounts due and owing to TRX as a result of Defendants'
10 unlawful activities;

11 F. That Defendants be required to pay all profits realized by Defendants by reason
12 of their unlawful acts alleged herein, along with all general, special, actual, and statutory
13 damages which TRX has sustained, or will sustain, as a consequence of Defendants' unlawful
14 acts, and that such damages be enhanced, doubled, or trebled as provided for by 17 U.S.C.
15 § 504(c) and 15 U.S.C. § 1117(b); and

16

17 WHEREFORE, Plaintiffs further respectfully pray for the following relief:

18 G. That Defendants be required to pay to Plaintiffs both the costs of this action and
19 the reasonable attorneys' fees incurred by Plaintiffs in prosecuting this action; and

20 H. That the Court grant Plaintiffs such other, further, and additional relief as the
21 Court deems just and equitable.

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1 DATED this 14th day of November, 2016.

2 DAVIS WRIGHT TREMAINE LLP
3 *Attorneys for Plaintiffs Amazon.com, Inc. and*
4 *Fitness Anywhere LLC*

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Exhibit A

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KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 16-2-27563-0 SEA

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

AMAZON.COM, INC., a Delaware
corporation,

No.

Plaintiff,

COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF

v.

TOYSNET, a business entity; KINAAE
MINEO, an individual; YIYI LIU, an
individual; DISK VISION a/k/a C NEW
VISION LLC, a business entity;
CHRISTOPHER DONOVAN, an individual;
and JOHN DOES 1-10,

Defendants.

Plaintiff Amazon.com, Inc. ("Amazon") brings this action to enjoin infringement and
misuse of intellectual property rights, in addition to other relief, against Defendants ToysNet,
Kinaae Mineo, Yiyi Liu, Disk Vision a/k/a C New Vision LLC, Christopher Donovan, and John
Does 1-10, and alleges as follows:

INTRODUCTION

1. Since opening its virtual doors on the World Wide Web in July 1995,
Amazon.com has become one of the most trusted consumer brands in the world. Each day,
millions of consumers use Amazon's website to purchase a wide range of products across
dozens of product categories from Amazon and third-party sellers. The Amazon brand allows
customers to shop with confidence online from Amazon's numerous websites around the world.

COMPLAINT – 1

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3048

2. Amazon depends on its reputation as an online marketplace where customers can conveniently select from the widest array of legitimate goods and services at competitive prices. Amazon's customers trust that when they make a purchase through Amazon's website—either directly from Amazon or from one of its millions of third-party sellers—they will receive authentic products manufactured by the true manufacturer of those products.

3. A small number of bad actors seek to abuse that trust by creating Amazon Seller Accounts and using Amazon's marketplace to market, sell, and distribute counterfeit goods. These sellers misuse and infringe the trademarks and other intellectual property of the actual manufacturer or rights owner of those goods to deceive consumers and Amazon. When customers purchase counterfeit goods, it undermines the trust that customers, sellers, and manufacturers place in Amazon, thereby tarnishing Amazon's brand and causing irreparable reputational harm.

4. Amazon has zero tolerance for counterfeits, and has invested heavily in protecting the integrity of the Amazon marketplace for consumers, sellers, and manufacturers. Amazon's anti-counterfeiting policy clearly prohibits the sale of counterfeit products: **"The sale of counterfeit products, including any products that have been illegally replicated, reproduced, or manufactured, is strictly prohibited."**¹

5. Amazon invests tens of millions of dollars annually developing sophisticated technology to detect bad actors and potentially counterfeit products, and it employs dedicated teams of software engineers, research scientists, program managers, and investigators to operate and continually refine its anti-counterfeiting program. Among other things, when sellers register to sell products through Amazon's Marketplace, Amazon's automated systems scan information about the sellers for signals that the sellers might be bad actors, and Amazon blocks those sellers during registration before they can offer any products for sale. On an ongoing basis, Amazon's systems also automatically and continuously scan thousands of variables related to sellers,

¹ Available at <https://www.amazon.com/gp/help/customer/display.html?nodeId=201166010>.

1 products, and offers to detect activity that indicates products offered by a seller might be
2 counterfeit. Amazon uses innovative machine learning to improve its automated systems in
3 order to anticipate and stay ahead of bad actors. Numerous Amazon investigators around the
4 world respond quickly to review any listing identified as a potential counterfeit product. These
5 investigators also review notices of claimed infringement from rights owners, who know their
6 products best. When Amazon finds counterfeit products from whatever source, it removes those
7 products immediately. Amazon regularly suspends or blocks sellers suspected of engaging in
8 illegal behavior or infringing others' intellectual property rights.

9 6. Amazon works closely with brands and rights owners to strengthen protections
10 for their brands on Amazon.com. In addition, Amazon partners with rights owners and law
11 enforcement to identify and prosecute sellers suspected of engaging in illegal activity. Lawsuits
12 like this one, targeted directly at identified bad actors, further complement Amazon's efforts to
13 prevent the sale and distribution of counterfeit goods.

14 7. As described throughout this Complaint, Defendants used Amazon's marketplace
15 to market, sell, and distribute counterfeit goods purporting to be "Forearm Forklift" products
16 manufactured and distributed by A.A.C. Forearm Forklift, Inc. Although Amazon's automated
17 systems detected those inauthentic products and suspended Defendants and their listings,
18 Defendants tried to further their fraudulent scheme by submitting forged invoices to Amazon
19 purporting to show that their products were authentic. Defendants have deceived Amazon's
20 customers and Amazon, infringed and misused the intellectual property rights of A.A.C.
21 Forearm Forklift, Inc., and harmed the integrity of Amazon's marketplace. This harm will
22 continue unless Defendants are immediately and permanently enjoined from using Amazon's
23 website to sell goods or services.

24 8. Amazon therefore brings claims for injunctive and other relief against
25 Defendants, including claims for declaratory judgment, a violation of the Lanham Act (15
26 U.S.C. § 1125), and common law breach of contract.

1 **PARTIES**

2 9. Amazon is a Delaware corporation with its principal place of business in Seattle,
3 Washington. Through its subsidiaries, Amazon owns and operates the Amazon.com website
4 and equivalent international websites. Amazon has more than 250 million active customers.

5 10. On information and belief, Defendant ToysNet is a corporation with its principal
6 place of business in Hacienda Heights, California.

7 11. On information and belief, Defendants Kinaae Mineo and Yiyi Liu are residents
8 of California and own, operate, supervise, and/or control the conduct and business of ToysNet.
9 On information and belief, Defendants Mineo and Liu either personally participated in and/or
10 had the right and ability to supervise, direct, and control the wrongful conduct alleged in this
11 Complaint, and derived a direct financial benefit from that wrongful conduct.

12 12. On information and belief, Defendant Disk Vision a/k/a C New Vision LLC
13 (“Disk Vision”) is a corporation with its principal place of business in Brandon, Florida.

14 13. On information and belief, Defendant Christopher Donovan is a resident of
15 Kentucky and owns, operates, supervises, and/or controls the conduct and business of Disk
16 Vision. On information and belief, Defendant Donovan either personally participated in and/or
17 had the right and ability to supervise, direct, and control the wrongful conduct alleged in this
18 Complaint, and derived a direct financial benefit from that wrongful conduct.

19 14. On information and belief, Defendants John Does 1–10 (the “Doe Defendants”)
20 are individuals and entities working in active concert to knowingly and willfully manufacture,
21 import, distribute, offer for sale, and sell counterfeit Forearm Forklift products. The Doe
22 Defendants supplied the counterfeit products described below to the other Defendants and knew
23 and intended that such products would be resold to consumers in the United States, including in
24 the State of Washington.

25 **JURISDICTION & VENUE**

26 15. The Court has original subject matter jurisdiction pursuant to RCW 2.08.010.

1 16. The Court has personal jurisdiction over all Defendants because they transacted
2 business and committed tortious acts within and directed to the State of Washington, and
3 Plaintiffs' claims arise from those activities. Defendants reached out to do business with
4 Washington residents by operating one or more commercial, interactive internet storefronts
5 through which Washington residents can purchase products bearing counterfeit versions of the
6 trademarks and other intellectual property owned by Forearm Forklift. Defendants targeted
7 sales from Washington residents by operating these internet storefronts that (i) offer shipping to
8 the United States, including Washington; (ii) accept payment in U.S. dollars; and (iii) on
9 information and belief, sold counterfeit products to residents of Washington. Each of the
10 Defendants is committing tortious acts in Washington and has wrongfully caused Amazon
11 substantial injury in Washington.

12 17. Venue is proper in this Court pursuant to RCW 4.12.025 because Defendants
13 ToysNet and Disk Vision a/k/a C New Vision LLC entered into agreements with Amazon in
14 King County, and Amazon performed work under that agreement within King County. Venue is
15 also proper in this Court pursuant to Civil Rule 82(a) because (i) Defendants performed acts in
16 King County giving rise to service pursuant to RCW 4.28.180 and 4.28.185, (ii) Amazon resides
17 in King County, and (iii) Defendants expressly consented to venue in this Court.

18 **FACTS COMMON TO ALL CLAIMS**

19 18. To become a third-party seller on Amazon's website, sellers must agree to
20 Amazon's Business Solutions Agreement ("BSA"), which governs the applicant's access to and
21 use of Amazon's services and sets forth Amazon's rules and restrictions for selling through the
22 website. By entering into the BSA, each seller represents and warrants that it "will comply with
23 all applicable laws in [the] performance of [its] obligations and exercise of [its] rights" under the
24 BSA.

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26
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1 19. The BSA incorporates (and sellers therefore agree to be bound by) Amazon's
2 Anti-Counterfeiting Policy,² which explicitly prohibits the sale of counterfeit goods on the
3 Amazon marketplace: "Customers trust that they can always buy with confidence on
4 Amazon.com. Products offered for sale on Amazon.com must be authentic. ***The sale of***
5 ***counterfeit products, including any products that have been illegally replicated, reproduced,***
6 ***or manufactured, is strictly prohibited.***" (emphasis added).

7 20. Amazon's Anti-Counterfeiting Policy further describes Amazon's commitment to
8 preventing the sale and distribution of counterfeit goods in the Amazon marketplace, and the
9 consequences Amazon imposes when it becomes aware of counterfeiting:

10 We take product authenticity very seriously. It is each seller's
11 responsibility to source and sell only authentic products. If you
12 sell counterfeit goods, we may immediately suspend or terminate
13 your selling privileges and destroy inventory in our fulfillment
14 centers without reimbursement. In addition, if we determine that a
15 Seller Account has been used to engage in fraud or other illegal
16 activity, remittances and payments may be withheld or forfeited.
17 The sale of counterfeit goods can also lead to legal action by rights
18 holders and civil and criminal penalties.

19 We are constantly innovating on behalf of our customers and
20 working with manufacturers, content owners, vendors, and sellers
21 to improve the ways we detect and prevent counterfeit products
22 from reaching our marketplace. We work hard on this issue every
23 day because we know that our customers trust that they are buying
24 authentic products when they shop on Amazon.com. This is why
25 we stand behind the products sold on our site with our A-to-z
26 Guarantee. We also encourage anyone who has a product
27 authenticity concern to notify us, and we will investigate it
 thoroughly and take any appropriate actions.

21 21. On or about May 12, 2015, Defendant ToysNet entered into the BSA with
22 Amazon and created an Amazon Seller Account. On or about May 21, 2016, Defendant
23 ToysNet began marketing, advertising, selling, and distributing products using the name
24 "Forearm Forklift" on the Amazon marketplace.

25 22. On or about June 1, 2016, Defendant Disk Vision entered into the BSA with
26 Amazon and created an Amazon Seller Account. On or about June 17, 2016, Defendant Disk

27 ² Available at https://www.amazon.com/gp/help/customer/display.html/ref=hp_left_cn?ie=UTF8&nodeId=201166010.

1 Vision began marketing, advertising, selling, and distributing products using the name "Forearm
2 Forklift" on the Amazon marketplace.

3 23. On information and belief, Forearm Forklift is a registered trademark of Above
4 All Co. Corp., and is used in commerce to describe patented products designed and
5 manufactured by A.A.C. Forearm Forklift, Inc.

6 24. In addition to using the name "Forearm Forklift" to describe the products they
7 sold, Defendants ToysNet and Disk Vision also used photographs, graphics, text, and other trade
8 dress designed to induce Amazon and its customers into believing Defendants were selling
9 genuine Forearm Forklift products.

10 25. On information and belief, the products sold by Defendants ToysNet and Disk
11 Vision bearing the Forearm Forklift brand are unauthorized and infringing counterfeits of the
12 actual and legitimate products of the same name manufactured by A.A.C. Forearm Forklift, Inc.
13 On further information and belief, the counterfeit products sold by Defendants were packaged
14 differently than the genuine articles manufactured and sold by A.A.C. Forearm Forklift, Inc.,
15 and were of a different width, length, material, quality, and manufacturing method.

16 26. On information and belief, A.A.C. Forearm Forklift, Inc. has not licensed or
17 authorized Defendants to manufacture products bearing the Forearm Forklift brand, or to use or
18 exploit the intellectual property rights of Above All Co. Corp. and/or A.A.C. Forearm Forklift,
19 Inc. in manufacturing, marketing, selling, or distributing products bearing the Forearm Forklift
20 brand.

21 27. On information and belief, Defendants have knowingly and willfully used, and
22 continue to infringe and misuse, the intellectual property Above All Co. Corp. and/or A.A.C.
23 Forearm Forklift, Inc. in connection with the advertisement, distribution, offering for sale, and
24 sale of counterfeit Forearm Forklift products into the United States and Washington over the
25 Internet. Defendants have sold counterfeit Forearm Forklift products into the United States,
26 including, on information and belief, the State of Washington.

27

1 28. At all times, Defendants ToysNet and Disk Vision knew that the BSA prohibited
2 the use of Amazon's marketplace to distribute counterfeit goods or to violate any applicable
3 laws. Defendants knowingly and intentionally breached the BSA by marketing, selling, and
4 distributing counterfeit goods on Amazon's marketplace. Defendants' marketing,
5 manufacturing, sale, and distribution of counterfeit goods have deceived Amazon's consumers
6 and Amazon, and have tarnished Amazon's brand.

7 29. On or about June 30, 2016, Amazon's automated mechanisms for detecting and
8 removing counterfeits identified Defendant Disk Vision's listing for orange Forearm Forklift
9 Lifting and Moving Straps as a suspected counterfeit, and Amazon removed the listing from
10 Amazon.com. Amazon did not allow Disk Vision to resume listing Forearm Forklift straps until
11 on or about September 5, 2016, after Disk Vision provided Amazon with a purported invoice
12 showing Disk Vision acquired 1,000 Forearm Forklift products directly from the manufacturer.
13 Amazon subsequently came to believe the invoice was forged. On information and belief, Disk
14 Vision provided Amazon with the forged invoice to mislead Amazon into believing that Disk
15 Vision was selling genuine Forearm Forklift straps when, in fact, it was not.

16 30. On or about September 23, 2016, Amazon's automated anti-counterfeiting
17 mechanisms again identified Defendant Disk Vision's Forearm Forklift Listing as a suspected
18 counterfeit, and Amazon exercised its rights under the BSA to block Disk Vision's Seller
19 Account and remove all of its listings from the Amazon.com website.

20 31. Similarly, Amazon's automated anti-counterfeiting mechanisms identified
21 Defendant ToysNet's listing for Forearm Forklift Moving and Lifting Straps as a suspected
22 counterfeit, and Amazon removed ToysNet's Forearm Forklift listing. Amazon allowed
23 ToysNet to resume listing Forearm Forklift straps only after ToysNet provided Amazon with a
24 purported invoice showing ToysNet acquired 1,680 Forearm Forklift products directly from the
25 manufacturer. Amazon subsequently came to believe the invoice was forged. On information
26 and belief, ToysNet provided Amazon with the forged invoice to mislead Amazon into believing
27 that ToysNet was selling genuine Forearm Forklift straps when, in fact, it was not.

1 37. Amazon has suffered, is suffering, and will continue to suffer invasion of its
2 statutory, common law, and contractual rights due to Defendants' wrongful conduct.

3 38. A judicial determination of the parties' controversy would provide final and
4 conclusive relief.

5 39. For these and other reasons, Amazon is entitled to a declaration that conclusively
6 determines those controversies listed above.

7 **Second Claim**
8 **False Advertising**
9 **(Lanham Act, 15 U.S.C. § 1125(a))**

10 40. Amazon incorporates by reference the allegations of each and all of the preceding
11 paragraphs as though set forth herein.

12 41. Defendants ToysNet and Disk Vision infringed and misused the intellectual
13 property rights of Above All Co. Corp. and/or A.A.C. Forearm Forklift, Inc. in marketing,
14 selling, and distributing products through the Amazon marketplace, thereby making false and
15 misleading statements of fact about the origin, sponsorship or approval of the goods they sold.

16 42. These statements deceived or had the capacity to deceive Amazon as to whether
17 Defendants ToysNet and Disk Vision were selling counterfeit goods in violation of BSA.
18 Defendants' deceptive acts were material to Amazon's decision to allow Defendants to sell their
19 goods on the Amazon marketplace because Amazon would not have permitted them to sell their
20 goods but for the deceptive acts.

21 43. Defendants ToysNet and Disk Vision's acts constitute willful false statements in
22 connection with goods and/or services distributed in interstate commerce, in violation of § 43(a)
23 of the Lanham Act, 15 U.S.C. § 1125(a).

24 44. Defendants Mineo, Liu, and Donovan are subject to liability for the wrongful
25 conduct alleged herein, both directly and under various principles of secondary liability,
26 including without limitation, respondeat superior, vicarious liability, and/or contributory
27 infringement.

PRAYER FOR RELIEF

WHEREFORE, Amazon respectfully prays for the following relief:

- A. That the Court issue an order permanently enjoining Defendants, their officers, agents, representatives, servants, employees, successors and assigns, and all others in active concert or participation with them, from:
- (i) selling products on any of Amazon's websites;
 - (ii) opening any Amazon Seller Accounts;
 - (iii) assisting, adding or abetting any other person or business entity in engaged or performing any of the activities referred to in subparagraphs (i) and (ii) above;
- B. That the Court enter judgment in Amazon's favor on all claims brought by Amazon; and
- C. That Defendants be required to pay to Amazon both the costs of this action and the reasonable attorneys' fees incurred by Amazon in prosecuting this action; and
- D. That the Court grant Amazon such other, further, and additional relief as the Court deems just and equitable.

DATED this 14th day of November, 2016.

DAVIS WRIGHT TREMAINE LLP
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