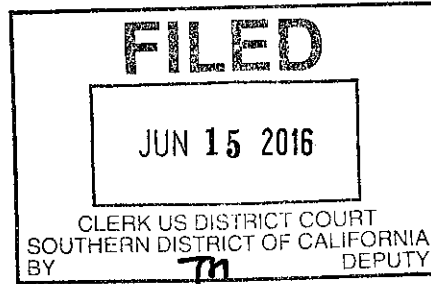


1 Ayse Sen  
1845 N Broadway #231  
2 Escondido CA 92026  
3 Tel: 858-750-8753

4 Plaintiff Pro Se'



5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 Ayse Sen,  
12 Plaintiff,  
13 vs.  
14 Amazon.com, Inc. and Does 1  
15 through 10, Inclusive.  
16 Defendants

Case No.: **16 CV 1486 JAH JLB**

) COMPLAINT FOR:  
) 1. TRADEMARK INFRINGEMENT,  
) 2. UNFAIR COMPETITION, FALSE  
) ADVERTISING  
) 3. Tortititious Interference

) DEMAND FOR JURY TRIAL

17  
18 Plaintiff alleges:

19 Plaintiff Ayse Sen (hereinafter "Plaintiff"), for her  
20 Complaint against defendant Amazon.com, Inc. (hereinafter,  
21 "Defendant" or "Amazon.com") and Does 1 through 10, about a  
22 Registered Trademark called Baiden with the registration number  
23 86,351,643 Registered November 3, 2015 (hereinafter "Mark" or  
24 "Baiden") alleges as follows:

25 ///

26 ///

27 ///

**I. JURISDICTION AND VENUE**

- 1  
2 1. This is a complaint for Trademark Infringement, Unfair  
3 Competition, and False Description arising under  
4 Sections 32 and 43 of the Lanham Act, 15 U.S.C.  
5 Sections 1114(1) (Trademark Infringement) and 1125(a)  
6 (Unfair Competition and False Description) and for  
7 Injury to Business Reputation.
- 8 2. This Court has original subject matter jurisdiction  
9 over this action pursuant to 28 U.S.C. Sections 1331  
10 and 1338(a) and 15 U.S.C. Section 1121. This Court  
11 has related claim jurisdiction over the state law tort  
12 claim pursuant to 28 U.S.C. Section 1338(b) and 28  
13 U.S.C. Section 1367.
- 14 3. This Court has personal jurisdiction over the  
15 Defendants, Amazon.com, Inc., because Defendants  
16 maintain their principal place of business in the  
17 State of California.
- 18 4. Venue is proper in this district under 28 U.S.C. Section  
19 1391(a), in that all of the Defendants are subject to  
20 personal jurisdiction in this district at the time the  
21 action is commenced, and under 28 U.S.C. Section 1391(b)  
22 and (c) because a substantial part of the events or  
23 omissions giving rise to the claims occurred in this  
24 district, a substantial part of the property that is the  
25 subject of the action is situated in this district, and  
26 the Defendants maintain their principal place of business  
27 in this district.

1                    **II. THE PARTIES**

2                    5. Plaintiff, Ayse Sen, is and at all times mentioned  
3                    herein, is an individual, and is a resident of the County  
4                    of San Diego, California.

5                    6. Upon information and belief, Defendant, Amazon.com, Inc.,  
6                    is, and at all times mentioned herein was, a corporation  
7                    organized and existing under the laws of the State of  
8                    California, their agent for service of process is titled  
9                    as "Corporation Service Company which will do business in  
10                    California as CSC - Lawyers Incorporating Service", 2710  
11                    Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

12                    7. Plaintiff, is unaware of the true names and capacities of  
13                    defendants sued herein as DOES 1 through 10, inclusive,  
14                    and therefore sues these defendants by such fictitious  
15                    names. Plaintiff will amend this complaint to allege  
16                    their true names and capacities when ascertained.  
17                    Plaintiff is informed and believes and therefore alleges  
18                    that each of the fictitiously named defendants is  
19                    responsible in some manner for the occurrences herein  
20                    alleged, and Plaintiff's injuries as herein alleged were  
21                    proximately caused by such defendants. These  
22                    fictitiously named defendants along with the defendants  
23                    named above, are herein referred to collectively as  
24                    "Defendants."

25                    ///

26                    ///

27                    ///

**III. FACTUAL BACKGROUND**

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3 8. This is a complaint for Trademark Infringement, under  
4 the Lanham Act, 15 U.S.C. § 1051 et seq.; 15 U.S.C. §  
5 1114(a); unfair competition(15 U.S.C. § 1125), false  
6 advertising of origin under the Lanham Act, 15 U.S.C. §  
7 1125(a) arising from Defendant's unauthorized use of  
8 Plaintiff's trademark, BAIDEN in online pay-per-click  
9 (PPC) Campaigns and Promotions.

10 9. There are also claims alleged herein arise under the  
11 Trademark Act, 15 U.S.C. § 1051, et seq., and under the  
12 Copyright Act of 1976, 17 U.S.C. §101, et seq., for (i)  
13 contributory and vicarious liability for trademark  
14 infringement; and (iii) contributory and vicarious  
15 liability for copyright infringement. The copy of the  
16 said trademark registration is attached hereto as Exhibit  
17 A.

18  
19 10. Plaintiff further asserts that there is tortious  
20 interference with Plaintiff's prospective and actual  
21 business relations, and tortious interference with an  
22 economic advantage. Defendant uses improper methods of  
23 disrupting or diverting the business relationships of  
24 another which fall outside the boundaries of fair  
25 competition.

26 11. In September 2013 Plaintiff noticed that there was a  
27 review under one of her products with her Mark on  
28

1 Defendant's platform clearly advertising a competitive  
2 product with a link to the competitive product listing.  
3 This review clearly is infringing upon Plaintiff's Mark  
4 by using her Branding and goodwill to promote an  
5 irrelevant product. See Exhibit B. Plaintiff corresponded  
6 with Amazon.com Legal Department to remove the review  
7 since it was not a review about her product but it is a  
8 review and a promotion of a competitive listing using her  
9 branding and Mark. Even though Amazon.com removed the  
10 review upon her first complaint, it was restored after a  
11 short time. Plaintiff's many attempts after restoring the  
12 unfair advertising review was not responded and regarded  
13 by Defendant.

14 12. Free advertising and promotion of the competitive  
15 product under Plaintiff's listing caused financial loss  
16 since August 2013. By not taking action Defendant made  
17 Plaintiff pay for it with the lost sales, product  
18 disparagement, counter productive Branding, Mark dilution  
19 over the years.

20 13. Plaintiff's product is made from high quality,  
21 expensive raw materials with time sensitive proprietary  
22 methods to manufacture the most effective skin  
23 exfoliation products. The product also includes the  
24 packaging, marketing, and other branding efforts. The  
25 packaging alone costs more than the competitive product  
26 that is advertised freely under her listing. By allowing  
27 such a review with false statement in terms of the  
28

1 product price and advertising low quality, cheap product  
2 as replacement of her product as a review Defendant  
3 caused product disparagement.

4 14. Over the several years this reviewer changed her  
5 review often. Some of the versions were confusing for  
6 customers and diluting the Mark as though the competitive  
7 product was part of Mark.

8 15. After restoring her review, the reviewer was also  
9 encouraged and continued the similar advertising under  
10 other products that sent traffic to her products at the  
11 platform and caused to extend financial loss besides  
12 weakening the strength of her Mark. See Exhibit C.

13 16. Plaintiff also noticed that Defendant was sponsoring  
14 pay-per-click campaigns (PPC) using Mark and bidding on  
15 Mark or/and Mark related keywords on major search engines  
16 besides allowing the review abuse. Defendant is using  
17 Mark in the title of the ads and bidding on Mark to drive  
18 the traffic to a landing page where all off the  
19 competitive exfoliation products put together including  
20 the competitive product subject of the above review. This  
21 PPC campaigns have been causing financial loss over the  
22 years infringing upon Plaintiff's Mark to drive traffic  
23 to the competitive products.

24 17. These campaigns take place on the major Search Engines  
25 diverting the online traffic of the people that are  
26 searching the Mark or/and Mark related keywords to a  
27 landing page at Amazon.com's website that has

1 competitors' products. This PPC campaigns has attractive  
2 ads that use Mark in the title. See samples of  
3 advertising in Exhibit D and the Landing page in Exhibit  
4 E. Even though the page contains the plaintiff's product  
5 as one of the products, plaintiff has lost some sales and  
6 her Mark has been infringed upon to promote competitive  
7 products, help their brand recognition besides increasing  
8 their sales income by using her Mark in PPC Campaigns.  
9 Defendant intentionally and unlawfully exploited  
10 Plaintiff's mark and consumer goodwill for its own  
11 benefit.

12 18. Additionally Defendant also has allowed two  
13 unauthorized sellers listed her product with much higher  
14 price to drive traffic to their store at Amazon by using  
15 her Mark. See Exhibit F. Plaintiff has clearly explained  
16 how they aim not to sell the product but divert the  
17 traffic to the irrelevant stores using her Mark and  
18 requested to remove the unauthorized seller listings.  
19 Defendant did not take an action and allowed the  
20 unauthorized online sellers use her Mark, branding  
21 efforts and her copyrighted text and images to drive  
22 traffic to their stores.

23 19. Defendant's unresponsiveness and continuing violations  
24 of Plaintiff's Trademark Rights has also caused online  
25 encouragement of the competitive products bidding and  
26 using her Mark in their advertising campaigns (See  
27 Exhibit G) and use her Mark extensively to promote their  
28

1 products in the articles (See Exhibit H) which had  
2 increased her financial lost exponentially over two years  
3 besides dilution of her mark and creating confusion among  
4 her prospectus customers.

5 20. Plaintiff's average sales were dropped over several  
6 years despite her increased branding efforts and positive  
7 customer reviews. Every time Plaintiff spent any effort,  
8 the competitors' products received traffic and some of  
9 the prospective sales. Thus Plaintiff's Branding efforts  
10 became counter productive.

11  
12 **Facts Baiden Trademark**

13 21. The Baiden Mitten is very well known Mark in online  
14 community. There are many articles, blog entry's, images,  
15 video clips, websites that are about the Mark. It is  
16 established before the registration with the United  
17 States Patents and Trademark Office. If the Mark related  
18 keywords search conducted in the major search engines,  
19 there are thousands of hits. It has been in Commercial  
20 use over 8 years.

21  
22 **Defendant's Wrongful Conduct**

23 22. Defendant's entire concept in creating the online  
24 advertising was based on to attract the targeted traffic  
25 that searches for Mark and divert it to their landing  
26 page that promotes Plaintiff's competitors products. In  
27 so doing, Defendant seeks to trade off the good will and  
28



1 worldwide online recognition of Baiden without  
2 acknowledging ownership of Plaintiff.

3 23. Likewise, Defendant makes extensive use of the Mark by  
4 allowing of the free advertising of a competitive product  
5 under her product at the Defendant's platform  
6 disregarding Plaintiff's rights.

7 24. Defendant's use of Mark in advertising campaigns could  
8 lead the general public to understand that Mark refer  
9 primarily to a genus of goods or services, thereby  
10 rendering the Mark generic and destroying their origin-  
11 identifying function.

12 25. Defendant's willful actions (1) have the likelihood of  
13 affecting interstate commerce by deceiving or diverting  
14 the public off the Mark throughout the nation; (2)  
15 constitute a false designation of the defendant's goods  
16 or services by passing them off as being associated with  
17 the Mark; (3) suggest and encourage a non-existent  
18 connection with Mark; (4) suggest or/and encourage that  
19 the Mark has sponsored, licensed or approved of  
20 defendant's listed goods, services, or businesses; and/or  
21 (5) could cause the Mark to become generic in the eyes of  
22 the general public and destroy the origin-identifying  
23 function of the Mark.

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**FIRST CAUSE OF ACTION**

**(Federal Trademark Infringement)**

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2  
3 26. Plaintiff realleges and incorporates by reference  
4 herein the allegations contained in paragraphs 1 through  
5 18 of the Complaint Defendant's aforementioned acts  
6 constitute trademark infringement in violation of the  
7 Lanham Act, 15 U.S.C. § 1114.

8 27. Defendant's actions constitute trademark infringement  
9 in violation of section 32(a) of the Lanham Act, 15  
10 U.S.C. § 1114. As a proximate result of defendants'  
11 actions, Plaintiff has suffered and will continue to  
12 suffer great damage to its business, goodwill,  
13 reputation, profits and the strength of its trademark.  
14 The foregoing acts of infringement have been and continue  
15 to be deliberate, willful since the Plaintiff has  
16 contacted the Defendant to cease the violations.

17  
18 **SECOND CAUSE OF ACTION**

19 **(Federal Unfair Competition, False Designation of Origin,  
20 Passing Off and False Advertising)**

21 28. Plaintiff is entitled to a permanent injunction  
22 against Defendant, as well as all other remedies  
23 available under the Lanham Act, including, but not  
24 limited to, compensatory damages; treble damages;  
25 disgorgement of profits; and costs and court's fees.

26 ///

27 ///

1 29. Plaintiff realleges and incorporates by reference  
2 herein the allegations contained in paragraphs 1 through  
3 18 of the Complaint.

4 30. Baiden, as used by plaintiff and its license in  
5 connection with providing goods and services relating to  
6 Mark are distinctive and have become associated with  
7 plaintiff and thus exclusively identify plaintiff's  
8 business, products, and services.

9 31. Because of Defendant's wrongful use of the Mark and  
10 its appropriation of the Mark as a thematic marketing  
11 concept for its products, consumers are deceptively led  
12 to believe that the Defendant's products originate with  
13 or is sponsored or otherwise approved by the Mark, in  
14 violation of section 43(a) of the Lanham Act, 15 U.S.C. §  
15 1125(a), or alternatively, will cause patrons to believe  
16 that the Mark is generic, thus destroying the goodwill  
17 and value plaintiff has built with the Mark.

18 32. The foregoing acts and conduct by Defendant constitute  
19 false designation of origin, passing off and false  
20 advertising in connection with products and services  
21 distributed in interstate commerce, in violation of  
22 section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23 33. The Defendant's act of allowing the unauthorized  
24 sellers listings and a review merely advertising and  
25 reviewing the competitor's product under her and listing  
26 constitutes of contributory and vicarious liability for  
27 trademark infringement.

**THIRD CAUSE OF ACTION**

**(Tortious Interference with Plaintiff's Prospective and Actual Business Relations, and Interference With An Economic Advantage)**

34. Defendant uses improper methods with PPC campaigns which fall outside the boundaries of fair competition, and allowing advertising under her listing to a competitive product disrupt or divert the business relationships of existing or prospectus customers. Through Defendants' tortious acts, Plaintiff has experienced interruption of its ongoing business activities, has been denied valuable business opportunities, and has suffered irreparable damage to its business reputation and goodwill.

35. Plaintiff is entitled to a permanent injunction against Defendant, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages; treble damages; disgorgement of profits; and costs and attorney's fees.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

(1) That Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendant who receive actual notice of the

1 court's order by personal service or otherwise, be permanently  
2 enjoined from:

3 (a) Using any of the Mark or any variation of the  
4 word with the Mark specifically including, but not limited to,  
5 any term that includes "Baiden" or a misspelling of the Mark in  
6 connection with the promotion, marketing, advertising, public  
7 relations or any other strategy;

8 (b) Diluting, blurring, passing off or falsely  
9 designating the origin of Mark or any related Marks;

10 (c) Doing any other act or thing likely to induce  
11 the belief that Amazon.com website services or  
12 products are in any way connected with, sponsored,  
13 affiliated, licensed, or endorsed by plaintiff;

14 (d) Using any of the Mark for goods or services,  
15 or on the internet, or as domain names, email addresses, meta  
16 tags, invisible data, or otherwise engaging in acts or conduct  
17 that would cause confusion as to the source, sponsorship or  
18 affiliation of Defendant with the Mark;

19 (2) That Defendant, in accordance with 15 U.S.C. §  
20 1116(a), be directed to file with this court and serve upon  
21 Plaintiff within thirty days after service of the permanent  
22 injunction a report in writing under oath, setting forth in  
23 detail the manner and form in which Defendant has complied with  
24 the permanent injunction;

25 (3) that Plaintiff's recover its actual damages  
26 sustained as a result of Defendant's wrongful actions;

27 ///

1 (4) that Plaintiff recover Defendant's profits made as  
2 a result of Defendant's wrongful actions;

3 (5) That Plaintiff recover three times Defendant's  
4 profits made as a result of Defendant's wrongful actions or  
5 three times Plaintiff's damages, whichever is greater; The copy  
6 of the estimation of the Plaintiff's Damages is attached hereto  
7 as Exhibit I.

8 (6) That this case be deemed an exceptional case under  
9 15 U.S.C. §§ 1117(a) and (b) and that Defendant be deemed liable  
10 for and ordered to reimburse Plaintiff for its reasonable  
11 attorneys' fees;

12 (7) That Plaintiff be awarded exemplary damages for  
13 Defendant's willful and intentional acts;

14 (8) That Plaintiff recover its costs of court; and

15 (9) That Plaintiff recover such further relief to  
16 which it may be entitled.

17 Dated: 6/15/2016  
18

19 Ayse Sen, Plaintiff  
20

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