

ANGELA VIDAL, ESQ., #035591997
201 Strykers Road
Suite 19-155
Phillipsburg, New Jersey 08865
(908)884-1841 telephone
(908)213-9272 facsimile
Attorney for Plaintiff, Kinect Design, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KINEKT DESIGN, LLC,	:	CIVIL CASE NO.
	:	
Plaintiff,	:	<u>COMPLAINT</u>
	:	
vs.	:	
	:	
AMAZON.COM, INC., AMAZON	:	
SERVICES, LLC and XYZ	:	
CORPORATIONS 1-10,	:	
	:	
Defendants.	:	
	:	

Plaintiff, Kinect Design, LLC, a New Jersey limited liability corporation, by and through its attorney, by way of Complaint against the Defendants, Amazon.com, Inc., Amazon Services, LLC and XYZ Corporations 1-10, says as follows:

PARTIES

1. Plaintiff, Kinect Design, LLC (hereinafter referred to as “Kinect” or the “Plaintiff”) is a limited liability company of the State of New Jersey with its principal place of business located at 184 South Livingston Avenue, Suite 9-239, Livingston, New Jersey 07039.

2. Defendant, Amazon.com, Inc. (hereinafter referred to as “Defendant”), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 410 Terry Avenue North, Seattle, Washington 98109.

3. Defendant, Amazon Services, LLC (hereinafter also referred to as the “Defendant”), is a limited liability company of the State of Nevada, with its principal place of business located at 410 Terry Avenue North, Seattle, Washington 98109.

4. Upon information and belief, Defendants, XYZ Corporations 1-10 are additional limited liability companies, corporations and/or other entities owned, operated and/or controlled by Defendants, whose identities, actual names and locations are presently unknown (Amazon.com, Inc., Amazon Services, LLC and XYZ Corporations 1-10 are collectively referred to as the “Defendants”).

JURISDICTION AND VENUE

5. This is an action for trademark infringement under 15 U.S.C. §1114, false advertising and false designation of origin under 15 U.S.C. §1125, trademark dilution under 15 U.S.C. §1117, violation of the New Jersey Trade Practices Act, N.J.S.A. 56:4-1, et seq., false advertising and deceptive trade practices in violation of, N.J.S.A. 56:8-1, et seq., and various claims arising under the common law of New Jersey.

6. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121, 28 U.S.C. §1331 and 28 U.S.C. §1338. The Court has supplemental jurisdiction over the state law claims under 28 U.S.C. §1367 because the state law claims form part of the same case or controversy, are integrally related to the federal claims and arise from a common set of operative facts.

7. This Court has personal jurisdiction over the Defendants because Defendants, through their Internet website, direct their business activities towards New Jersey, conduct business with consumers in New Jersey, sell and distribute their various products in New Jersey and engage in electronic commerce activities in New Jersey. Defendants therefore have continuous, systematic

and routine contacts with New Jersey and, by advertising, selling and distributing their products in New Jersey, Defendants have purposefully availed themselves of the privilege of doing business in the State of New Jersey and in this judicial district.

8. Venue is proper in this judicial district under 28 U.S.C. §1391, as a substantial part of the events giving rise to the claims occurred in this district, Defendants conduct infringing activities and cause harm within this district and the property that is the subject of this action, the trademarks, are situated in this district.

**KINEKT’S PRODUCT, TRADEMARKS AND OTHER
INTELLECTUAL PROPERTY RIGHTS**

9. Kinekt is an inventor and designer of interesting and innovative consumer products whose first product was a piece of jewelry known as the “Gear Ring.” The Gear Ring is a kinetic ring containing micro-precision gears that turn when the outer rims are spun, and is constructed using only high-quality matte stainless steel. Kinekt launched its Gear Ring to the public on February 1, 2010.

10. Plaintiff has been using the “Kinekt” and “Gear Ring” marks continuously in interstate commerce since at least as early as February 2010 in connection with the advertising, marketing, promotion and sale of Gear Ring jewelry products, and the marks have never been assigned or licensed to any third party.

11. On June 12, 2011, the United States Patent and Trademark Office duly and legally issued trademark Registration Number 4157820 to Plaintiff for the mark “Gear Ring” (hereinafter referred to as the “Gear Ring Trademark”). A copy of the Gear Ring Trademark is attached hereto as “Exhibit A”.

12. On May 1, 2012, the United States Patent and Trademark Office also duly and legally issued trademark Registration Number 4134362 to Plaintiff for the mark “Kinect” (hereinafter referred to as the “Kinect Trademark”). A copy of the Kinect Trademark is attached hereto as “Exhibit B.”

13. The “Gear Ring” and “Kinect” Registrations constitute prima facie evidence of the validity of the Gear Ring and Kinect marks, of Plaintiff’s ownership of those marks and of Plaintiff’s exclusive right to use the “Gear Ring” and “Kinect” marks.

14. Since 2010, Plaintiff has used the Gear Ring and Kinect marks to identify its goods and to distinguish them from the goods made, sold or offered by others by, among other things, prominently displaying the marks on its products, on its Internet website and on advertising materials promoting its goods. The marks indicate to the public that goods and services provided under the Gear Ring and Kinect marks originate with, and are provided exclusively by, Plaintiff.

15. Plaintiff has extensively marketed and promoted the “Kinect Gear Ring” for many years, utilizing various electronic and print media, in order to build the goodwill and reputation of the Kinect and Gear Ring marks in the United States and around the world.

16. Plaintiff adheres to strict quality standards in the manufacture of its jewelry, and prides itself on the uniqueness of its product, the superiority of materials used in its manufacturing and the attention to detail in its construction.

17. As a result, Plaintiff’s marks have attained widespread and favorable public recognition, and the public has come to associate the Gear Ring and Kinect marks with excellent workmanship and jewelry of the highest quality.

18. In addition, as a result of Plaintiff’s longstanding use and promotional efforts, as well as the quality of its products, the Kinect and Gear Ring marks have become distinctive marks

that symbolize substantial goodwill, and the public relies on these marks to identify and distinguish Plaintiff's jewelry.

19. The Gear Ring and Kinect marks therefore have significant value and the goodwill associated with them represents a valuable business asset.

20. Because of the uniqueness of Plaintiff's product, and to ensure the integrity of the materials used and construction of the Gear Ring, Plaintiff sells the Kinect Gear Ring exclusively through its Internet website and through telephone orders. It is critical to Plaintiff's business to maintain the integrity of its top-notch goods and customer service and, as a result, no third party has ever been given authority or license to sell, re-sell, wholesale, manufacture or distribute Kinect Gear Ring products, and the Kinect Gear Ring is not available in any retail stores or on any third-party websites.

21. In particular, Plaintiff does not sell the Kinect Gear Ring on Defendants' website, Amazon.com, nor do Defendants or any third parties have the right to sell Kinect Gear Ring products on Amazon.com.

22. Plaintiff has expended a significant amount of time, money and other resources to develop, produce, advertise and otherwise promote the Kinect Gear Ring, and has taken any and all steps necessary to protect its rights and interests in and to the Gear Ring, both in this country and internationally.

23. In addition to the registered trademarks for "Kinect" and "Gear Ring", Plaintiff has also obtained numerous other intellectual property rights' protections for its products, including a design patent and a utility patent for the Gear Ring. In particular, Plaintiff holds United States Design Patent Number D639,199 (Ornamental gear ring) and United States Utility Patent Number US20120090356 (Rotational education entertainment and therapeutic device) from the

United States Patent and Trademark Office for the Gear Ring. Copies of the patents are attached hereto as “Exhibit C.” Plaintiff also holds patents for the Gear Ring from several other countries as well.

24. Plaintiff has also submitted the “Gear Ring” registered trademark to the United States Customs and Border Protection (“CBP”), Intellectual Property Rights Branch, and was assigned CBP Recordation Number TMK-12-00687 effective July 6, 2012. The “Kinect” registered trademark has also been submitted for Customs and Border Patrol protection under CBP Recordation Number TMK 12-00693.

25. Plaintiff also obtained a registered copyright, Registration Number TX0007566733, through the United States Copyright Office for all the content contained on the Kinectdesign.com website, which includes various images of the Kinect Gear Ring.

26. The Kinect and Gear Ring marks have also been submitted pursuant to the WIPO Madrid Protocol.

27. Plaintiff has therefore pursued each and every legal avenue available to it to protect its intellectual property rights both domestically and internationally.

28. Although Plaintiff has expended a significant amount of resources to protect its invention and business goodwill, others have attempted to capitalize on the success of Plaintiff’s product and unlawfully use the Kinect and Gear Ring marks in connection with the sale of competing and/or counterfeit products.

FACTS COMMON TO ALL COUNTS

29. Defendants own and operate the online retail store located at Amazon.com where Internet users can purchase a host of products including, but not limited to, books, DVDs, CDs, software, electronics, apparel, food, toys and other items, including jewelry.

30. The Amazon.com website contains a feature through which Internet users can search for specific items by entering those items in a search bar. The users enter these search queries and receive listings of items for sale on Amazon.com that match these queries.

31. The results generated by Defendants' search system are based on the search terms utilized. The search feature allows for individual words to be searched, strings of words, generic terms and/or brand names, among other things.

32. Depending upon the search terms that are entered, Defendants' website will generate a list of "results" based on those search terms. The results are the various products available for purchase on Amazon.com that match those search terms.

33. Plaintiff discovered that Defendants have designed their search system to return results for products other than the Kinect Gear Ring when the following search terms, among others, are entered: Kinect, Gear Ring, Kinect Gear Ring, Kinect Ring, Kinect Gear Ring for Men, Kinect Gear Ring for Women, Kinect Design and Kinect Design Gear Ring.

34. Even though Defendants do not sell and have never sold Plaintiff's products or been given authority to use Plaintiff's marks as searchable terms on their website, Defendants have essentially programmed their search system to recognize Plaintiff's marks as searchable terms and to return listings of unrelated, competing items, instead of advising users that Plaintiff's products are not available for sale on Defendants' website.

35. Therefore, when any of the above search terms are entered into Defendants' website search bar, the results return a number of competing, unrelated products. A screen shot from Defendants' website with the search terms and results listings is attached as "Exhibit D."

36. The results consist of prominently displayed rings that are very similar to the Kinect Gear Ring, and some which appear identical to the Kinect Gear Ring, but none of which are actually a Kinect Gear Ring.

37. Plaintiff does not sell its products on Defendants' website, nor has it authorized Defendant or any third party to sell its products on Defendants' website. All the results returned when Plaintiff's trademarks are entered into the search bar are, therefore, competing products.

38. When any of the above search terms are entered into Defendants' website search bar, in addition to returning a list of competing, unrelated products, Defendants have also programmed their search system to return suggestions for other "related searches." These related searches are hyperlinks to search results for queries containing, in whole or in part, and in addition to other terms, Plaintiff's trademarks. Defendants are therefore suggesting that users enter variations of Plaintiff's marks in order to return results for unrelated, competing products.

39. For example, when a search for "Kinect Gear Ring" is typed into the search bar of Defendants' website, a list of similar, competing products is returned, as well as a list of Related Searches. The Related Searches lists gear ring, kinect and kinect gear ring for men. A screen shot from Defendants' website with the search and related searches is attached hereto as "Exhibit E."

40. When any of the Related Searches terms are clicked on, a new results page appears which again contains a list of unrelated, competing products available for purchase, none of which are Plaintiff's products.

40. In addition, when a user types the words "Kinect" or "gear" on Defendants' website, a drop-down screen appears offering suggested search terms, all of which include Plaintiff's trademarks. The suggested search terms for "Kinect" include Kinect gear ring, Kinect gear ring

for men, Kinect ring, Kinect design gear ring and similar terms. The suggested search terms for “gear” include gear ring, gear ring kinect, gear ring kinect design and gear ring spinner. Screen shots from Defendants’ website with the suggested search terms is attached hereto as “Exhibit F.”

41. When a user clicks on one of the suggested search terms, competing, unrelated products are offered for sale, none of which are Plaintiff’s products.

42. In addition, Defendants have created a dedicated landing page where Internet users are directed when certain of Plaintiff’s trademarked terms are searched, either on Defendants’ website or on a separate search engine. The very top of this page is entitled “Kinect Gear Ring on Amazon.com” and immediately below this title, Defendants have stated that Amazon.com has a “large collection of Kinect Gear Ring products” and that “below we’ve selected a subset of Kinect Gear Ring products.” Again, the products that follow are all unrelated, competing products. A screen shot of this page is attached as “Exhibit G.”

43. Defendants are neither authorized to sell nor do they actually sell Plaintiff’s products, so that any search results returned when Plaintiff’s trademarked terms are entered into Defendants’ search bar necessarily return unrelated and competing products.

44. Plaintiff has not granted to Defendants the right to use either of Plaintiff’s trademarks and Defendants have no right to use either of these trademarks on their website or advertise Plaintiff’s products for sale, particularly since Defendants have no right or intention to sell Plaintiff’s products on their website.

45. Defendants have purposefully designed their search function to return listings of competing and unrelated products when a customer searches for Plaintiff’s product or uses either of Plaintiff’s trademarks to search for its product. When these listings of competing, unrelated

products are returned by the search system, Defendants also falsely state that they do carry Kinect Gear Ring products and that the listings that follow are “sub-sets of Kinect Gear Ring products.”

46. Defendants have therefore used, and are continuing to use, Plaintiff’s trademarks in order to sell competing products and without Plaintiff’s authorization or consent.

47. Defendants have engaged in this conduct with the intent to pass-off the competing products as Plaintiff’s products. Defendants intend to mislead, deceive or confuse consumers as to the origin of goods and trade on Plaintiff’s reputation and goodwill.

48. Defendants are essentially encouraging consumers to buy competing, unrelated products that are returned by the searches by implying that those products are either related to, associated with, manufactured by or endorsed by Plaintiff.

49. By falsely advertising that the Kinect Gear Ring is available for purchase on their website, and that the listings of unrelated, competing products are “sub-sets” of Plaintiff’s product, Defendants are capitalizing on the goodwill of Plaintiff’s product and trademarks in order to “bait” prospective customers searching specifically for a Kinect Gear Ring to Defendants’ website, where Defendants can then “switch” the product falsely being advertised for sale to other products marketed and sold by Defendants.

50. Defendants’ actions therefore constitute a classic “bait and switch” scheme, whereby Defendants falsely claim to have a superior product for sale in order to sell a different product.

51. Upon information and belief, Defendants have also inserted meta tag keywords on their website which include Plaintiff’s trademarks in order to direct users to their website when users search for Plaintiff’s products on third-party search engines such as Bing, Yahoo and other search engines. Alternatively, upon information and belief, Defendants have entered into

financial arrangements with these search engine providers to direct searches of Plaintiff's trademarked terms to a list of search results that prominently lists Defendants' website.

52. For example, when an Internet user enters "Kinect Gear Ring" into the Bing search bar, the first page of results contains two separate listings with links to Defendants' website, suggesting to the user that Plaintiff's products can be purchased on Defendants' website. The same occurs on the Yahoo search engine. A screen shot of the search results from Bing and Yahoo is attached as "Exhibit G."

53. However, when a user clicks on one of the links, the user is directed to a page on Defendants' website listing only competing, unrelated products. This page nevertheless still indicates that there is a "large selection of Kinect Gear Ring products" for sale on Amazon.com.

55. Defendants have constructive knowledge of Plaintiff's trademarks by virtue of their being prominently displayed on Plaintiff's website, advertising and promotional materials and Plaintiff's products themselves.

56. Defendants also have actual knowledge of Plaintiff's trademarks since they were specifically advised of such by Plaintiff on at least three separate occasions.

57. Specifically, in October 2012, a third party had been advertising counterfeit gear ring products for sale on Defendants' website. Plaintiff initiated a complaint with Defendants, pursuant to which Plaintiff provided Defendants with proof of its patents, trademarks and copyright, as well as an injunction that had been entered by the United States District Court for the District of New Jersey in a prior infringement action which directed that all shopping and online marketplace websites, among other websites, that received actual notice of the injunction immediately remove all listings for "gear ring" products and references to the "Gear Ring" mark upon request by Plaintiff.

58. Defendants investigated Plaintiff's complaint and ultimately removed all the infringing advertisements from Amazon.com. Defendants have therefore known for at least a year, if not earlier, that the Kinect Gear Ring was protected by patents, trademarks and copyright.

58. Defendants received additional notification in July 2013, and at that time, Defendants were also clearly denied permission to sell Plaintiff's product on their website and/or use Plaintiff's trademarks.

59. In particular, one of Defendants' representatives who, upon information and belief, is in charge of Defendants' Jewelry Department, contacted Plaintiff via e-mail in July 2013 and inquired whether the Kinect Gear Ring could be sold on Amazon.com.

60. Plaintiff explicitly told Defendants that it was not interested in having its product sold on Amazon.com because it preferred to be the exclusive seller and distributor of the Kinect Gear Ring in order to maintain quality control.

61. Plaintiff also advised that it had had issues with intellectual property rights' infringement by Defendants in the past and had had numerous conversations with Defendants' Legal Department regarding such.

62. In its initial response to Defendants' e-mail, Plaintiff also attached another copy of the above-referenced injunction.

63. Defendants therefore knew, without question, not only that "Kinect" and "Gear Ring" were trademarked, but also that there was at least one court order in place prohibiting infringement of the trademarks.

64. Despite knowing of the existence of the trademarks, the fact that Plaintiff did not consent to its product being sold on Amazon.com or its marks being used on Amazon.com, and

the existence of a court order prohibiting use of Plaintiff's marks, Defendants nevertheless engaged in all the aforementioned infringing activity.

65. On or about September 11, 2013, Plaintiff initiated another infringement complaint with Defendants as a result of their infringing use of the Kinect and Gear Ring trademarks, and their false advertisement that they sell a "large collection of Kinect Gear Ring products". Receiving no response, Plaintiff sent another complaint one month later.

66. In connection with its complaint, Plaintiff provided Defendants with copies of both trademarks, as well as the injunction previously provided.

67. Defendants were thereafter sent a formal Cease and Desist letter on or about October 12, 2013. No response was received to this letter either and Defendants' activities remain unchanged.

68. Soon after, Plaintiff learned that Defendants' infringing and unlawful activities were actually causing customer confusion.

69. On December 2, 2013, Plaintiff received an e-mail from a potential customer that had heard about the Kinect Gear Ring. The customer asked a few questions, among which was about Plaintiff's exchange policy. Plaintiff explained that there was an Exchange Form on Plaintiff's website, and that the customer simply had to enter "Kinect Gear Ring" in any Internet search bar and click on the link to Plaintiff's website.

70. The customer responded to Plaintiff's e-mail and stated that she had actually searched for the Kinect Gear Ring on the Internet and found the Kinect website, "however, there were other rings like yours, with the Kinect name, being sold on other websites." The customer asked if those rings were really Plaintiff's rings or if they were counterfeits.

71. Plaintiff asked that the customer send Plaintiff a link to the website where the customer saw the similar rings, and the customer provided Plaintiff with a link to Amazon.com. A screen print of the page on Amazon.com where the link directs is attached hereto as “Exhibit H.”

72. The customer explained that the page stated “Kinect Gear Ring on Amazon.com. Your shopping list of Kinect Gear Ring on Amazon.com. At Amazon.com, we not only have a large collection of kinect gear ring products, but also a comprehensive set of reviews from our customers. Below we’ve selected a subset of kinect gear ring products and the corresponding reviews to help you do better research...”

COUNT I

Trademark Infringement

73. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 72 above and incorporates them as if fully set forth at length herein.

74. The Kinect and Gear Ring registered marks are owned actively and exclusively by Plaintiff, and Plaintiff has continuously used the Kinect and Gear Ring marks in commerce since at least as early as February 2010.

75. Defendants, without authorization or consent, have used the registered Kinect and Gear Ring marks in commerce and in connection with the sale, offer for sale, distribution, marketing and advertising of competing products for their own financial gain.

76. Defendants’ use of the registered Kinect and Gear Ring marks has been undertaken with full knowledge of Plaintiff’s rights in and to the marks, and with the willful and deliberate intent to trade on the goodwill associated with Plaintiff’s marks.

77. Defendants' unauthorized use of the registered Kinect and Gear Ring marks is likely to cause and actually is causing, confusion, mistake and deception among consumers as to the availability of the Kinect Gear Ring on Defendants' website, and confusion, mistake and deception as to whether the products sold on Defendants' website originate from Plaintiff or whether Plaintiff has authorized, approved or otherwise associated itself with the products sold on Defendants' website.

78. Defendants have therefore infringed upon Plaintiff's trademark rights in violation of 15 U.S.C. §1114.

79. Defendants' infringement and unauthorized use of Plaintiff's trademarks has resulted in Defendants unfairly, illegally and improperly benefitting from Plaintiff's name and goodwill.

80. Defendants' infringement and unauthorized use of the Kinect and Gear Ring marks have caused damage to Plaintiff's business, reputation, goodwill and trademark rights, interfered and damaged Plaintiff's existing and potential business relations, and caused Plaintiff to lose profits and sales it would have made but for Defendants' conduct.

81. Defendants' repeated and continuous violation of Plaintiff's trademarks, despite notice of the infringement, is willful and intentional and therefore, this constitutes an exceptional case.

82. Defendants' unlawful actions have caused and will continue to cause irreparable and immediate harm to Plaintiff for which Plaintiff has no adequate remedy at law. Plaintiff will continue to suffer irreparable injury unless Defendants are restrained by this Court from continuing their infringement and unauthorized use of Plaintiff's mark, or marks that are confusingly similar to Plaintiff's marks.

COUNT II

False Advertising/False Designation of Origin

83. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 82 above and incorporates them as if fully set forth at length herein.

84. Defendants have intentionally designed the search results on their website to return unrelated and competing products when any one of several search terms identifying Plaintiff's products, including terms containing Plaintiff's trademarked terms, are entered by users. These results are confusing and misleading users regarding the origin, sponsorship and/or association of Defendants' products with Plaintiff's, not only because entering search terms consisting of Plaintiff's trademarks return unrelated and competing products, but also because Defendants suggest other searches containing additional trademarked terms associated with Plaintiff's products in order to promote sales of other competing, unrelated products.

85. Defendants have also created a dedicated landing page on their website where users are directed when certain of Plaintiff's trademarked terms are entered on third-party search engines. This landing page clearly indicates that the Kinect Gear Ring is available on Amazon.com, even though it is not, and is therefore confusing and misleading users as to whether Defendants are authorized to sell or actually do sell Plaintiff's products, and whether the competing products on Defendants' website are manufactured, affiliated with or endorsed by Plaintiff.

85. Defendants have also either inserted meta tags or entered into financial arrangements with search engine providers so that users who conduct searches for Plaintiff's products through independent search engines are directed to Defendants' website, where competing, unrelated products are being sold. This use of meta tags and/or the financial arrangements are confusing

and misleading users as to whether the competing products on Defendants' website are manufactured, affiliated with or endorsed by Plaintiff, and whether Defendants are authorized to sell or actually do sell Plaintiff's products.

86. Defendants have also placed the following statement at the top of some, or all, of the search results pages when a user has searched for a Kinect Gear Ring or otherwise searched Plaintiff's marks: "Amazon.com has a large collection of Kinect Gear Ring products. Below we've selected a subset of Kinect Gear Ring products..." The products that follow are all unrelated, competing products.

87. Defendants, therefore, without authorization and in connection with the promotion and sale of goods in commerce, have made false and misleading representations of fact, false and misleading descriptions of fact and false designations of origin, which are likely to cause, and actually are causing, confusion or mistake among customers as to the origin, sponsorship and/or approval of goods in violation of 15 U.S.C. §1125.

88. Defendants' use in commerce of such false representations of fact, false descriptions of fact and false designations of origin are actually causing confusion in consumers as to the connection of Defendants' products with Plaintiff, the origin of Defendants' goods and whether Plaintiff's products are available for purchase from Defendants' website.

89. Defendants have also utilized such false representations of fact, false descriptions of fact and false designations of origin in order to engage in classic "bait and switch" practices, the sole purpose of which is to confuse and mislead consumers into believing they are able to purchase Plaintiff's superior quality product from Defendants' website, but instead selling them other, competing products.

90. Defendants' false representations, descriptions and designations have resulted in Defendants unfairly, illegally and improperly benefitting from Plaintiff's name and goodwill.

91. Defendants' false representations, descriptions and designations have caused damage to Plaintiff's business, reputation, goodwill and trademark rights, interfered and damaged Plaintiff's existing and potential business relations, and caused Plaintiff to lose profits and sales it would have made but for Defendants' conduct.

92. Defendants' repeated and continuous violation of Plaintiff's trademark rights, despite notice of the infringement, is willful and intentional and therefore, this constitutes an exceptional case.

93. Defendants' unlawful actions have caused and will continue to cause irreparable and immediate harm to Plaintiff for which Plaintiff has no adequate remedy at law.

94. Unless Defendants are ordered to refrain from their false representations, descriptions and/or designations, Defendants will continue to engage in untrue and misleading advertising, thus necessitating a multitude of legal proceedings.

95. Furthermore, if Defendants are not restraining from their continued false advertising and bait and switch practices, Plaintiff will suffer irreversible damage to its reputation and goodwill.

COUNT III

Trademark Dilution

97. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 96 and incorporates them as if fully set forth at length herein.

98. The Kinect and Gear Ring marks have become famous within the meaning of 15 U.S.C. §1125(c) since they are widely recognized by the general consuming public.

99. Specifically, Plaintiff's trademarks have become famous as a result of their uniqueness and distinctiveness, the extensive use of the marks by Plaintiff worldwide, the continuous, worldwide and varied marketing and promotion of the marks, the volume of sales both nationally and internationally, the constant attempts to copy and/or improve upon Plaintiff's product and the constant attempts by other entities to trade upon the goodwill and renown of the Kinect and Gear Ring names.

100. The Kinect and Gear Ring marks became famous prior to the time Defendants began trading upon the goodwill associated with the marks and, in fact, if the marks were not famous and distinctive, Defendants would have never attempted to trade upon the goodwill and reputation associated with the marks.

101. Defendants are using Plaintiff's actual trademarks in order to sell the unrelated, competing products on their website. Defendants are using Plaintiff's actual trademarks in order to "bait" consumers onto their website and then "switch" the consumers into buying an unrelated, competing product.

102. By using the Kinect and Gear Ring marks, Defendants intended to create an apparent association between the products available for sale on their website and Plaintiff's products.

103. The consuming public in general recognizes the Kinect and Gear Ring marks and associates those marks with unique, high-quality rings constructed with superior workmanship and a reputation for stellar customer service.

104. Plaintiff has been engaged in the exclusive use of the Kinect and Gear Ring marks in commerce for four (4) years.

105. As a result of the acquired distinctiveness of Plaintiff's marks, the fact that Plaintiff has been making exclusive use of the marks for 4 years, the degree of customer recognition of Plaintiff's marks arising out of Plaintiff's extensive use and promotion of those marks, the intention of Defendants in adopting and using the marks, and the association in the minds of consumers that results from Defendants' use of Plaintiff's marks, Defendants' use of the Kinect and Gear Ring marks has caused, and is continuing to cause, dilution by blurring of Plaintiff's marks.

106. In addition, because the products sold by Defendants using Plaintiff's marks appear to be of inferior quality, with less attention to detail, Defendants' use of the Kinect and Gear Ring marks to sell these products has caused, and is continuing to cause, dilution by tarnishment of Plaintiff's marks.

107. Defendants' dilution of Plaintiff's marks has damaged the value of Plaintiff's trademarks, as well as Plaintiff's business, reputation and goodwill. Defendants' dilution has also interfered and damaged Plaintiff's existing and potential business relations, and caused Plaintiff to lose profits and sales it would have made but for Defendants' conduct.

108. Defendants' repeated and continuous dilution of Plaintiff's trademarks, despite notice to cease, is willful and intentional and therefore, this constitutes an exceptional case.

109. Defendants' unlawful actions have caused and will continue to cause irreparable and immediate harm to Plaintiff for which Plaintiff has no adequate remedy at law. Plaintiff will continue to suffer irreparable injury unless Defendants are restrained by this Court from continuing their dilution of Plaintiff's marks.

COUNT IV

Statutory Unfair Competition

110. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 109 above and incorporates them as if fully set forth at length herein.

111. All of Defendants' above-referenced activities constitute an appropriation of Plaintiff's name, brand, trademark, reputation and goodwill for their own commercial use in violation of N.J.S.A. 56:4-1.

112. All of Defendants' above-referenced activities constitute unlawful, unfair and/or fraudulent business practices in violation of N.J.S.A. 56:4-1, et seq.

113. As a direct result of their wrongful acts, Defendants have realized revenue and profits that they otherwise would not have obtained and to which they were not entitled.

114. Defendants' unlawful actions have caused, and are continuing to cause, damage to Plaintiff including, but not limited to loss of customers and profits, dilution of goodwill, confusion and interference with existing and potential customers, damage to Plaintiff's reputation and diminution in the value of Plaintiff's registered trademarks.

115. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' unfair competition if Defendants are not enjoined from such conduct.

COUNT V

Statutory False Advertising/Deceptive Trade Practices

116. Plaintiff's repeat and reallege the allegations contained in paragraphs 1 through 115 above and incorporate them as if fully set forth at length herein.

117. Defendants' use of the Kinekt and Gear Ring trademarks in connection with the advertisement and sale of unrelated and competing products is unconscionable, false, fraudulent and deceptive, and made with the intention that consumers rely on such misrepresentations and purchase unrelated, competing products from Defendants' website

118. Defendants' use of the Kinect and Gear Ring trademarks as part of their advertisement and sale of unrelated and competing products constitutes an unconscionable commercial practice, deception, fraud, false pretenses, false promises and/or misrepresentations in connection with the sale or advertisement of merchandise in violation of N.J.S.A. 56:8-2.

119. Defendants' unlawful fraud and deception has caused and is continuing to cause unquantifiable damages to Plaintiff.

120. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' false advertising and deceptive trade practices if Defendants are not enjoined from such conduct.

COUNT VI

Common Law Unfair Competition

121. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 120 above and incorporates them as if fully set forth at length herein.

122. Defendants have engaged in fraudulent, misleading and unlawful conduct in using Plaintiff's trademarks in order to direct traffic to their website and the unrelated, competing products sold on their website.

123. Defendants have also engaged in fraudulent, misleading and unlawful conduct by engaging in bait and switch practices whereby they lure consumers to their website by advertising the Kinect Gear Ring, then present consumers with other, unrelated and competing products.

124. Defendants have committed these acts willfully and with conscious disregard of Plaintiff's rights.

125. Defendants have therefore engaged in unfair competition in violation of the common law of the State of New Jersey.

126. Defendants' unlawful fraud and deception has caused and is continuing to cause unquantifiable damages to Plaintiff.

127. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' unfair competition if Defendants are not preliminarily and permanently enjoined from such conduct.

COUNT VII

Interference With Prospective Economic Advantage

128. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 127 above and incorporates them as if fully set forth at length herein.

129. Plaintiff has expended a significant amount of time, money and other resources in developing, patenting, trademarking, copyrighting, advertising and marketing the Kinect Gear Ring and expects to gain a significant economic advantage from its efforts.

130. Defendants have interfered with this economic advantage by using Plaintiff's trademarks to sell, offer to sell, distribute, market and advertise unrelated, competing products.

131. Defendants' use of Plaintiff's trademarks in order to sell unrelated, competing products and their interference with Plaintiff's prospective economic advantage has been done without justification or excuse.

132. If Defendants were not using Plaintiff's trademarks to advertise their competing products, all consumers wishing to purchase a Kinect Gear Ring would go to Plaintiff's website to do so. Additionally, if Defendants were not engaging in the above bait and switch practices, all consumers wishing to purchase a Kinect Gear Ring would do so from Plaintiff, the rightful

and true owner of the Kinect Gear Ring patents and trademarks, and Plaintiff would thereby gain all these customers and an economic advantage.

133. As a result of Defendants' interference with Plaintiff's prospective economic advantage, Plaintiff has suffered and will continue to suffer unquantifiable damages.

134. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' interference with prospective economic advantage if Defendants are not preliminarily and permanently enjoined from such conduct.

COUNT VIII

Unjust Enrichment

135. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 134 above and incorporates them as if fully set forth at length herein.

136. Defendants profit from the sale, offer for sale, distribution, marketing and advertising of unrelated, competing products, which products are sold by luring customers using Plaintiff's trademarks.

137. Defendants therefore receive a benefit from the unlawful use of Plaintiff's trademarks.

138. Defendants have been unjustly enriched as a result of their use of Plaintiff's trademarks, to the detriment of Plaintiff.

139. It would be unjust for Defendants to retain this benefit and Defendants should not be permitted to reap the benefits of this wrongful conduct.

140. As a result of Defendants' conduct, Plaintiff has suffered and will continue to suffer unquantifiable damages.

COUNT IX

Violation of Court Order

141. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 140 above and incorporates them as if fully set forth at length herein.

142. This Court has previously entered four (4) injunctions in Plaintiff's favor enjoining, among other things, trademark infringement by various websites.

143. Plaintiff provided two of these injunctions to Defendants and requested that Defendants comply with such.

144. The first injunction was provided to Defendants in October 2012 and the second was provided in July 2013. When Plaintiff provided the second injunction to Defendants, it specifically pointed out paragraph 5, which requires that "any Internet service providers, merchant account providers, online marketplace websites, shopping websites, shopping search engines, general search engines, third party processors and any other websites who receive actual notice of this Order...must, upon request of Kinect, immediately remove any and all listings of "gear ring" products, use of the Gear Ring® name or use of the Gear Ring® images, and that all such listings be de-indexed so that they no longer appear on any search and/or removed from any search results page."

145. Defendants failed and refused to comply with the Court Order and instead, continued marketing and advertising unrelated, competing products using the "Kinect" and "Gear Ring" trademarks.

140. As a result of Defendants' refusal to comply with prior Court Orders, Plaintiff has suffered and will continue to suffer unquantifiable damages.

COUNT X

Injunctive Relief

146. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 144 above and incorporates them as if fully set forth at length herein.

147. Defendants have engaged in trademark infringement, false advertising and false designation of origin, trademark dilution, unfair competition, deceptive trade practices and several other wrongful acts.

148. Defendants misappropriated Plaintiff's trademarks, without authorization or consent, for their own commercial benefit, and this conduct not only is likely to cause customer confusion, but actually is causing customer confusion.

149. Plaintiff's trademark rights are valid and enforceable, and this Court has entered a few orders enforcing such trademark rights.

150. Plaintiff is therefore likely to succeed on the merits of its claim.

151. Plaintiff has suffered, and likely will continue to suffer, irreparable harm as a result of Defendants' wrongful acts. Although Plaintiff has suffered monetary damages, it has also suffered harm for which there is no adequate remedy at law including, but not limited to, damage to Plaintiff's business reputation and goodwill, loss of control over its business reputation, damage to its trademark rights, dilution of its trademarks, diversion of its customers, loss of profits, loss of business opportunities and damage to existing and potential business relations.

152. The balance of equities tips in favor of Plaintiff and the issuance of injunctive relief. Plaintiff will continue to suffer irreparable harm if injunctive relief is not granted, while Defendants would suffer no legitimate harm if injunctive relief is granted since such restraints would only prevent Defendants from further misappropriation of Plaintiff's trademarks.

153. Injunctive relief in favor of Plaintiff would be in the public interest since the public interest benefits by protecting and enforcing the exclusive rights of a trademark holder, and preventing piracy of the time, energy and resources the trademark owner invested in the intellectual property. The public interest also benefits in protecting consumers from confusion and deception.

154. Injunctive relief is further necessary since Defendants' unlawful actions were willful and deliberate, and done with actual knowledge of Plaintiff's trademark rights.

COUNT X

Declaratory Judgment

155. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 154 above and incorporates them as if fully set forth at length herein.

156. This matter presents a real and actual controversy between the parties.

157. This dispute is based on several federal statutes, thereby conferring jurisdiction upon this Court.

158. Based on all the allegations in this Complaint, as well as Defendants' continuing violation of Plaintiff's rights, there is a present and actual need for a judicial declaration of the parties' rights and obligations.

159. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201, Plaintiff is entitled to, and hereby requests that the Court grant, a judgment declaring that:

- a) Plaintiff's "Kinect" and "Gear Ring" trademarks are valid and enforceable and are the exclusive property of Plaintiff;
- b) Plaintiff has a legally protectable interest in preventing Defendants' use of the "Kinect" and "Gear Ring" marks;

- c) Defendants' use of the "Kinect" and "Gear Ring" marks is violative of Plaintiff's statutory rights;
- d) Defendants' use of the "Kinect" and "Gear Ring" marks is misleading, deceptive and confusing to consumers;
- e) Defendants' infringement and violation of Plaintiff's rights was willful, deliberate and intentional;
- f) Defendants' use of the "Kinect" and "Gear Ring" marks is likely to cause the public to believe that Defendants are authorized to sell Plaintiff's products and/or that Plaintiff's products are actually sold on Defendants' website; and,
- g) Plaintiff has suffered monetary and other damages as a result of Defendants' unlawful use of the "Kinect" and "Gear Ring" marks.

PRAYER FOR RELIEF ON ALL COUNTS

WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

- a) A permanent injunction against Defendants, and all persons or entities acting in concert, privity or participation with Defendants, either directly or indirectly, who receive actual notice of the injunction, enjoining and restraining them from:
 - 1. Infringing, contributing to the infringement of, and/or inducing the infringement of Plaintiff's trademarks;
 - 2. Using, publishing, displaying, distributing or disseminating, or permitting, entering into or performing any agreement for the use, publication, display, distribution or dissemination of, the "Kinect" or "Gear Ring" trademarks;
 - 3. Advertising, marketing or offering to sell any product using the "Kinect" or "Gear Ring" names and/or using, referencing or mentioning the names "Kinect"

or “Gear Ring” in connection with the advertising, marketing, offer for sale or sale of any product;

4. Causing any search results to return any product that is unrelated or unaffiliated to Plaintiff’s products, when a user enters “Kinect”, “Gear Ring”, or any portion or combination thereof, either in whole or in part, into the search bar of Defendants’ websites;

5. Creating keyword meta tags which include the words “Kinect” and/or “Gear Ring”, or engaging in any other methods of redirecting online searchers utilizing independent search engines, such as Bing, Yahoo or Google, searching for Plaintiff’s products to Defendants’ websites; and,

6. Using any false or misleading advertisement or designation of origin which causes confusion or mistake among consumers or which makes consumers believe that the products sold on Defendants’ website are endorsed by, affiliated with, approved by and/or associated with Plaintiff.

b) An Order requiring Defendants to immediately and permanently remove, or cause to be removed, or order all others in concert, privity and participation with Defendants to remove, all uses of, references to, depictions of, offers for sale, advertisements and/or listings, or links to such, that imply that Defendants sell the Kinect Gear Ring on their website, or that use the “Kinect” or “Gear Ring” names, from any and all websites and/or URLs where such may appear, and that all such listings be de-indexed so that they no longer appear on any search and/or are removed from any search results page;

c) An Order requiring Defendants, and all persons or entities acting in concert, privity or participation with Defendants, either directly or indirectly, who receive actual notice of the

injunction, to immediately and permanently remove, upon request of Plaintiff, any and all future listings and/or links to their websites where the “Kinect” or “Gear Ring” names are being used;

d) An Order requiring Defendants, individually, to provide an accounting of all profits derived from any use of the “Kinect” and/or “Gear Ring” names, including, but not limited to, all profits derived from the sale of competing products which were sold as a result of a search or searches for “Kinect Gear Ring”, “Kinect”, “Gear Ring” and/or any other search using any, all or a portion of those terms, whether on Defendants’ website or a search engine, or derived from any other wrongful act of Defendants, and that Defendants pay such profits, trebled, to Plaintiff;

e) Alternatively, that Defendants be ordered to pay Plaintiff, and that Plaintiff be awarded, damages in the amount of Five Hundred Thousand Dollars (\$500,000.00);

f) An Order requiring Defendants to pay Plaintiff punitive damages as a result of Defendants’ willful, intentional and deliberate misconduct;

g) An Order requiring Defendants to pay Plaintiff its reasonable attorneys’ fees and costs pursuant to 15 U.S.C. §1117(a);

h) Declaratory relief as requested by Plaintiff; and,

i) Such other relief as the court deems just and proper.

Dated: December 6, 2013

Angela Vidal, Esq.
Attorney for Plaintiff, Kinect Design, LLC

/s Angela Vidal
By: Angela Vidal, Esq.
201 Strykers Road
Suite 19-155
Phillipsburg, New Jersey 08865
Telephone (908)884-1841
Facsimile (908)213-9272

JURY DEMAND

Plaintiff hereby demands a trial by jury of all matters that may be tried by a jury.

LOCAL CIVIL RULE 11.2 CERTIFICATION

I certify that, to the best of my knowledge, the matter in controversy is not the subject of any other pending or anticipated litigation in any court or arbitration proceeding, nor are there any non-parties known to Plaintiff that should be joined in this action. In addition, I recognize a continuing obligation during the course of this litigation to file and to serve on all other parties and with the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: December 30, 2013

Angela Vidal, Esq.
Attorney for Plaintiff, Kinect Design, LLC

/s Angela Vidal
By: Angela Vidal, Esq.

LOCAL CIVIL RULE 201.1 CERTIFICATION

I hereby certify that the above-captioned matter is not subject to compulsory arbitration in that declaratory and injunctive relief is sought.

Dated: December 30, 2013

Angela Vidal, Esq.
Attorney for Plaintiff, Kinect Design, LLC

/s Angela Vidal
By: Angela Vidal, Esq.