

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

SHIRO HOUSE, *et al.*,

Defendants.

Civil Action No.

21-cv-406

(Judge Ranjan)

DECLARATION OF STANLEY D. FERENCE iii

I, Stanley D. Ference III, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the Commonwealth of Pennsylvania and the United States District Court for the Western District of Pennsylvania. I am one of the attorneys for Plaintiff. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:

2. Amazon provided to Plaintiff only the email addresses for Defendants.

3. I accessed Amazon.ca and viewed a product listing page with my location set as the United States. The product listing stated “[t]his item cannot be shipped to your selected delivery location. Please choose a different delivery location.” **Exhibit 1** attached hereto is a true and correct copy of a screenshot of the product listing.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the article Jon Emont, *Amazon’s Heavy Recruitment of Chinese Sellers Puts Consumers at Risk*, Wall St. J. 1-2 (Nov. 11, 2019).

5. Attached hereto as **Exhibit 3** is a true and correct copy of an Amicus motion for reconsideration or clarification filed in *Rubik’s Brand, Ltd. v. The Partnerships and Unincorporated Associations Identified on Schedule A, et al.*, No. 1:20-cv-5338 (N.D. Ill.), which contains detailed

explanations of the agreements involved in and steps required to set up an e-commerce store through Amazon.com.

6. Attached hereto as **Exhibit 4** is the Court's order in *Rubik's Brand, Ltd. v. The Partnerships and Unincorporated Associations Identified on Schedule A, et al.*, No. 1:20-cv- 5338 (N.D. Ill. Mar. 29, 2021), clarifying that "[t]he Judgment Order applies only to two parties the plaintiff and defendant Yoyolyand otherwise has no precedential effect."

7. Attached hereto as **Exhibit 5** is the Court's order in *Tommy Hilfiger Licensing LLC v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 20-cv-7477 [DE 46] (N.D. Ill. Mar. 24, 2021), denying defendant's motion to dismiss for lack of personal jurisdiction.

8. Attached hereto as **Exhibit 6** is the Court's order in *Zinka Entertainment v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 21-cv-916 [DE 65] (N.D. Ill. June 1, 2021) (Kocoras, J.), staying a defendant's motion to dismiss for lack of personal jurisdiction and granting jurisdictional discovery.

9. Attached hereto as **Exhibit 7** is the court's order in *Talisman Designs LLC v. Dasani*, No. 20-1084 (W.D. Pa. Oct. 13, 2020) (Schwab, J.), denying defendants' motion to set aside the Clerk's entry of default.

10. A true and correct copy of excerpts of the April 6, 2021, show cause hearing transcript in *Doggie Dental, Inc. v. CDOoffice*, No. 20-cv-271 (W.D. Pa.) is attached hereto as **Exhibit 8**.

11. Defendants HGS76DH and TINI-STORE are all represented by the same counsel and their counsel, Mr. Jesun from the Guangdong Yilong Law Firm, contacted our office on April 14, 2021 to begin settlement negotiations. Neither any Defendant nor Mr. Jesun requested an extension of time to file an answer.

12. After serving the defendants by email, a copy of the notice and link to the lawsuit documents were also sent to Mr. Jesun by email on April 19, 2021.

13. A true and correct copy of Jesun's motion, plaintiff's response and Judge Shah's order in *Wham-O Holding, Ltd., et al. v. The Partnerships and Unincorporated Associations Identified on Schedule "A", et al.*, 20-cv-3761 (N.D. Ill. Oct. 16, 2020) (Shah, J.), is attached as **Exhibit 9**.

14. A true and correct copy of Jesun's motion, plaintiff's response and Judge Bucko's order in *Wham-O Holding, Ltd., et al. v. The Partnerships and Unincorporated Associations Identified on Schedule "A", et al.*, 20-cv-5622 (N.D. Ill. Nov. 18, 2020) (Bucklo, J) is attached as **Exhibit 10**

15. At my request, Lex Machina searched for cases filed by the Greer Burns & Crain firm, which files similar lawsuits in the Northern District of Illinois, resulting in 1,100 cases. At my request, Lex Machina also searched for cases filed by the law firm of Stephen M. Gaffigan, which files similar cases in the Southern District of Florida, resulting in 1,004 cases. At my request, Lex Machina also searched for cases filed by the Epstein Drangel firm, which files similar cases in the Southern District of New York, resulting in 414 cases.

16. I have used Lex Machina to identify those cases after March 1, 2021, in which Judges Feinerman and Tharp have entered temporary restraining orders against sellers on online marketplaces. Judge Feinerman has entered twelve (12) such orders and Judge Tharp has entered six (6) such orders. Neither Judge has denied such an order on the basis of lack of personal jurisdiction or otherwise.

17. The Amazon.com addresses shown in **Exhibit B** to Plaintiff's Opposition are those addresses appearing on Defendants' Amazon.com page (*see Exhibit A* to Plaintiff's Opposition) are self-reported to Amazon.com.

18. I have used Google Maps to search the addresses provided by Defendants to Amazon. No results matched the provided addresses; several provided partial matches; however, these were generally to districts or towns. A true and correct copy of the screenshot of each search result is attached hereto in **Exhibit 11**.

19. I have used a Chinese map service, Baidu.com, to search the addresses provided by Defendants to Amazon. Baidu.com's map service cannot match locations with the addresses provided. A true and correct copy of the screenshot of each search result is attached hereto in **Exhibit 11**.

20. I have used Google Maps to search the addresses provided by Defendants in their Motions to Set Aside Clerk's Default. No results matched the provided addresses; several provided partial matches, however, these were generally to districts or towns. A true and correct copy of the screenshot of each search result is attached hereto in **Exhibit 11**.

21. I have used a Chinese map service, Baidu.com, to search the addresses provided by the Defendants in their Motions to Set Aside Clerk's Default and on their Amazon.com webpages. Baidu.com's map service cannot match locations with the addresses provided. A true and correct copy of the screenshot of each search result is attached hereto in **Exhibit 11**.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Pittsburgh, Pennsylvania
June 11, 2021

/Stanley D. Ference III/
Stanley D. Ference III

EXHIBIT 1

Size Information



How To Care For Your Mask

- Wash before wearing for the first time.
- Hand wash cold, hang to dry.
- Do not bleach, press, iron, or steam.
- Wash after every wear.
- Replace disposable filter with each use.

Roll over image to zoom in

Weddingstar 3 Pack Adult 3-Ply Washable Cloth Face Mask Reusable with Filter Pocket - Neutrals

4.5 stars ~ 3,721 ratings | 25 answered questions
Amazon's Choice for "face masks"

List Price: \$36.79
 Price: **\$17.99** (\$6.00 / count)
 You Save: \$20.80 (54%)

Size: **Adult Mask** **Kids Mask**
 Color Name: **Neutrals**



Size: **Adult Mask**
 Brand: **WEDDINGSTAR**

\$17.99
 This item cannot be shipped to your selected delivery location. Please choose a different delivery location.

Deliver to United States
In Stock.
 Quantity: 1

[Add to Cart](#) [Buy Now](#)

Secure transaction
 Sold by Weddingstar CA and Fulfilled by Amazon.

Add gift options

[Add to Wish List](#)

Share [Email](#) [Facebook](#) [Twitter](#) [Pinterest](#)



EXHIBIT 2

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<https://www.wsj.com/articles/amazons-heavy-recruitment-of-chinese-sellers-puts-consumers-at-risk-11573489075>

Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk

The e-commerce platform has included banned, unsafe, mislabeled products. One reason: It wooed China's manufacturers to sell directly to the U.S.

By *Jon Emont*

Nov. 11, 2019 11:17 am ET

It looked like Amazon.com Inc.'s yearslong quest to build a shopping business in China was a bust in July when it folded a big part of its local business.

In fact, Amazon's China business is bigger than ever. That is because it has aggressively recruited Chinese manufacturers and merchants to sell to consumers outside the country. And these sellers, in turn, represent a high proportion of problem listings found on the site, according to a Wall Street Journal investigation.

The Journal earlier this year uncovered 10,870 items for sale between May and August that have been declared unsafe by federal agencies, are deceptively labeled, lacked federally-required warnings, or are banned by federal regulators. Amazon said it investigated the items, and some listings were taken down after the Journal's reporting.

Of 1,934 sellers whose addresses could be determined, 54% were based in China, according to a Journal analysis of data from research firm Marketplace Pulse.

Amazon's China recruiting is one reason why its platform increasingly resembles an unruly online flea market. A new product listing is uploaded to Amazon from China every 2/100th of a second, according to slides its officials showed at a December conference in the industrial port city of Ningbo.

Chinese factories are squeezing profit margins for middlemen who sell on Amazon's third-party platform. Some U.S. sellers fear the next step will be to cut them out entirely.

Tony Sagar began noticing the China effect around 2015. His company, Down Under Bedding in Mississauga, Ontario, had sold goose-down duvets on Amazon since 2014—these days, for \$699 for a queen-size version. Then Chinese competitors hit, listing goose-down duvets for

sometimes a sixth his price. He bought one and had it tested: Inside was inexpensive duck down.

The Journal in October bought a duvet from the same Amazon seller claiming “100% Fill With Goose Down” and had it tested. The result matched Mr. Sagar’s: duck feathers.

“They’re claiming they’re selling a \$500-\$700 duvet based on false specifications, so people say, ‘\$120, it’s a good deal!’ ” Mr. Sagar said. “Amazon is making a direct push for these factories in China.”

AMAZON’S UNRULY MARKETPLACE

- • Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products
 - • VIDEO: How Scammers in China Manipulate Amazon
 - • Amazon Sells Clothes From Factories Other Retailers Blacklist
-

In response to this article, an Amazon spokesm an said,

“Bad actors make up a tiny fraction of activity in our store and, like honest sellers, can come from every corner of the world. Regardless of where they are based, we work hard to stop bad actors before they can impact the shopping or selling experience in our store.”

Amazon said it took enforcement action on the duvet seller and that its products were no longer for sale on the site. The seller’s listings appeared to be gone from Amazon’s U.S. site as of last week.

Mr. Sagar’s discovery came as Amazon was expanding a campaign it started around 2013 urging Chinese businesses to sell directly to consumers abroad. An Amazon sales director, Alicia Liu, at a 2017 conference told Chinese business people she was leading a team in China, drawing on her previous experience cutting out middlemen in Walmart Inc. ’s supply chain.

“We help factories directly open accounts on Amazon and sell to U.S. consumers directly,” a video shows her telling them. “This is our value.”

A wave of Chinese merchants have joined Amazon’s millions of third-party sellers worldwide, who collectively represent more than half of Amazon’s physical gross merchandise sales.

Among the 10,000 most-reviewed accounts on Amazon’s U.S. site whose locations could be determined in October, about 38% were in China, Marketplace Pulse calculates, compared with 25% three years ago.

The Amazon spokesman said 38% “is a significant exaggeration of the real percentage of the top ten thousand” and that the methodology is flawed, citing what it said were problems with the

way in which the analysis used seller review counts to estimate the percentage. Marketplace Pulse said it stood by its analysis.

Site control

How Amazon exercises control of its site has come under scrutiny from some in Congress, where some lawmakers are calling for more regulation of the company. That is part of a growing backlash in Washington over how tech companies run their platforms.

Amazon's third-party marketplace, which connects merchants and buyers around the world, is crucial to the company's growth. At the same time, even though it has become a source of fake or dangerous goods, Amazon has denied it is liable for what's sold there, saying in court cases that it neither makes nor sells the products in question.

In its annual Securities and Exchange Commission filing this year, Amazon disclosed for the first time that counterfeits and fraudulent products are a risk factor. It said Amazon may be "unable to prevent sellers in our stores or through other stores from selling unlawful, counterfeit, pirated, or stolen goods," among other issues.

Amazon said it recruits sellers in many countries and that these merchants are central to its goal of offering customers good selection at good prices. Amazon said it requires products to comply with applicable laws and regulations. It said that in 2018 it blocked more than three billion suspect listings for various forms of abuse.

Consumers and businesses with safety and intellectual-property grievances have found it hard to hold Chinese sellers accountable—in part because Amazon doesn't require its sellers to provide their locations to the public on its U.S. site.

The Journal identified sellers as being in China from their pages on Amazon's site in Mexico, where regulations require sellers to list their locations on Amazon—a method Marketplace Pulse also uses.

New sellers from China are hurting merchants that have built Amazon businesses offering products they import from Chinese factories, said Amazon seller Bernie Thompson. His Plugable Technologies in Redmond, Wash., lists electronics products made in China. Since about five years ago, Chinese manufacturers selling on Amazon have priced him out of some product categories, he said—some of them his own suppliers and others who game Amazon's rating system, he said.

"Amazon is trying to disintermediate everyone they can, and get products as directly as possible to consumers," he said. "In a way, they're a perfect partner for China Incorporated to engage with to take them around the world."

The Amazon spokesman said: “Independent retailers in the U.S. are enjoying record sales in our store.” Amazon said more than 75% of the 10,000 top sellers by gross sales in its U.S. store were America-based as of 2018 and that the company spends more recruiting U.S. sellers than sellers from any other location.

Global recruiting

In China over the past six years, Amazon has made its site more accessible to Chinese speakers, created special programs that address Chinese sellers’ logistical needs and sent a stream of employees to recruit suppliers.



Amazon ‘is the most cost-effective way to sell into the United States,’ says businessman Zhao Weiming. A factory in southern China produces his Lagunamoon-branded products. PHOTO: BILLY H.C.KWOK FOR THE WALL STREET JOURNAL

At the 2017 conference, Ms. Liu, who said she had spent over a decade purchasing for Walmart, told Chinese sellers that when she joined the industry in 2004, around 90% of her suppliers were trading companies and that by 2017, around 80% were the factories themselves. Ms. Liu said the same logic applied to Amazon, the video shows.

“Let’s cut out the middleman,” said Geoffrey Stewart, an Amazon employee in Shenzhen, at an April trade event in Hong Kong in a video the Journal viewed. “We think that will enhance margins for our manufacturing partners and it will delight customers.”

Amazon said Ms. Liu’s and Mr. Stewart’s comments didn’t mean Amazon was less committed to helping sellers everywhere. Ms. Liu, who no longer works at Amazon, didn’t respond to LinkedIn messages, and the Journal couldn’t determine where she now works. Amazon said Mr. Stewart wasn’t available for comment. Walmart declined to comment on Ms. Liu’s assertions.

Amazon seller Zhao Weiming said the site “is the most cost-effective way to sell into the United States.” The Guangzhou businessman experimented several years ago listing gadgets on Amazon before settling on cosmetics and essential oils, he said, establishing factories

to produce them under the name Lagunamoon. He said his company earns \$50 million a year on Amazon.

Listings for some popular Lagunamoon essential oils claimed they were U.S. Food and Drug Administration approved, until the Journal raised the matter with Amazon and Mr. Zhao in early November. An FDA spokesman said essential oils wouldn't meet the agency's definition of an approved product, although it was possible some component—a dye, say—might be approved.

Mr. Zhao said FDA requirements are complex and he didn't want to use tens of thousands of words to explain.

Amazon said it was investigating the case and would take proper action. It said sellers are prohibited from listing products that improperly claim to be FDA cleared or FDA approved, or improperly include the FDA logo. At least one Lagunamoon essential-oil listing that cited FDA approval had that claim removed after inquiries from the Journal.

Concerns at Amazon about Chinese listings arose several years ago in its China team, which noticed that as local sellers flocked to the platform, it saw increasing patterns of fraud, counterfeits and unsafe products, said former Amazon employees in China.

Washington state's attorney general's office said Amazon agreed to pay \$700,000 as part of a legally binding agreement after an investigation revealed dozens of products marketed toward children had excessive lead and cadmium. The products were made in China, the office said, some sold by China-based third parties. Amazon didn't admit wrongdoing.

"Customer safety is Amazon's top priority," said the Amazon spokesman. "We work closely with our selling partners to verify that the school supplies and children's jewelry in our store are safe."

Bogus brushes

Cheap Chinese counterfeits drove Kevin Williams, a Utah seller of water-powered cleaning brushes on Amazon, to lay off six employees this year—most of his U.S. staff, he said. He and his co-founder developed their patented Brush Hero product, made in the U.S. and U.K., in 2015 after finding it difficult to clean their vehicles, selling them on Amazon for \$34.99.

Poorly made copies began appearing in 2018 on Amazon, eventually listing for as low as \$9.99, some claiming to be the Brush Hero brand, he said. Buyers, unaware they were fake, trashed Mr. Williams's products on his Amazon page, he said. When he complained to Amazon, he said, it told him to order the alleged counterfeits and test them. Amazon removed brushes he proved counterfeit, he said, but it could take weeks for them to arrive for testing, and new counterfeits kept popping up.



Kevin Williams, co-owner of Brush Hero, at his distribution warehouse in Salt Lake City, Utah on November 8, 2019. PHOTO: LINDSAY D'ADDATO FOR THE WALL STREET JOURNAL

He dropped prices to \$19.99, which “pulled out the rug from us from a cash-flow perspective” he said. A retailer declined to give him a large contract. “He said, ‘What the heck, your Amazon reviews are terrible,’ ” said Mr. Williams, who calls his company “walking dead.”

Amazon said that it acted on infringement cases where Brush Hero provided adequate information and that it has introduced programs for sellers to fight counterfeits, including one called Project Zero that uses automation to scan Amazon stores and remove suspected counterfeits.

Counterfeits and inauthentic reviews “have all gone through the roof with the rise of Chinese sellers,” said Chris McCabe, an investigator for Amazon until 2012, now a consultant helping Amazon sellers counter illicit competition.

Inauthentic reviews for listings from China can trick Amazon’s algorithm into boosting products, people outside Amazon familiar with the activities said. A search for “travel pillows” in August presented products with names such as MLVOC offered by sellers whose names matched those of Amazon accounts registered in southern China.

The Journal ordered MLVOC-brand pillows from sellers named Corki and Kingstyle Supplies, and got gift cards offering a free pillow if the buyer emailed an address—the same address for both sellers. A “Gift card team” responded, asking the buyer to give a five-star review for which it promised an Amazon gift card. Of one MLVOC pillow’s roughly 2,000 reviews, about 86% have five stars.

Amazon policy forbids making inducements for positive reviews. Amazon said it investigated and took action, eventually reinstating Kingstyle and Corki. Amazon said in some cases it will reinstate seller accounts after violations if the sellers provide corrective action plans, though the accounts would be blocked after further infractions.

SHARE YOUR THOUGHTS

Do you care what country your Amazon seller is in? Join the conversation below.

In response to a query sent to the email address given by Corki and Kingstyle, a respondent

wrote: “I can’t share the company information.” The sellers didn’t respond to requests for comment sent through Amazon’s platform.

Travel-pillow seller Teri Mittelstadt, co-founder of HiGear Design Inc. in California, said counterfeits and review manipulation from China have hurt sales. Her patented Travelrest pillows, which attach to airline seats to prevent slipping, were among the top-selling travel pillows on Amazon for seven years starting in 2008, she said, but now rank in the 20s or lower.

“The person who gets hurt the most is the consumer who buys the product. They think they are buying a product with all these great reviews,” she said.

Amazon said Travelrest’s sales on Amazon have steadily grown year-to-year since 2015. Ms. Mittelstadt said her sales growth has slowed significantly over the past two years and that this year her sales are down on Amazon’s U.S. site.

Strategy shift

Starting in the mid-2000s, Amazon’s attempt to build an online retail business in China was thwarted by local competitors like Alibaba. Early this decade, it began experimenting with the new strategy, and employees “realized that global selling is much bigger” than selling in China, a former Amazon manager said.

At a Shenzhen trade fair in early 2013, no one had heard of Amazon, said Steven Chen, who says Amazon dispatched him to recruit Chinese sellers. He left Amazon in 2015 and operates an e-commerce consulting business.

Amazon employees distributed Chinese-language tutorials on opening Amazon accounts to prospective new sellers, people familiar with the company’s strategy said. Interns in Beijing phoned vendors on Chinese e-commerce sites to invite them to join Amazon.

Chinese sellers’ products often took weeks to ship across the Pacific and arrive at buyers’ addresses. So Amazon offered a logistics system, “Dragonboat,” which for a fee brought goods made in China and elsewhere to Amazon fulfillment centers in the U.S.

American buyers could receive purchases within 48 hours in Amazon boxes, said a former high-level Amazon China employee and a Chinese seller who used the service.

By 2015, Amazon's website was functional for sellers in Mandarin. Its team responsible for signing up and assisting Chinese sellers expanded to 120 people in 2016, said the former high-level employee. Other employees built relationships with businesses such as Chinese logistics-services providers and translator services, asking them to encourage clients to establish Amazon accounts.

It is often hard to tell that an Amazon seller is based in China, as is the case with the Amazon page of Lagunamoon, the essential-oil and cosmetics provider. It shows no indication the products are Chinese and gives no store address. Lagunamoon's Mr. Zhao said that is because the U.S. doesn't require it.

Amazon seller Molson Hart in Texas is suing 73 sellers, many located in China, in Texas federal court, for trademark infringement on products like his Brain Flakes interlocking plastic disk set. He has been selling the Chinese-made toys on Amazon since 2014, and counterfeits started appearing in 2015, he said.

After he filed suit, he couldn't hunt down the Chinese companies. "I know who did it," he said, "but I can't serve them."

Amazon said it has worked closely with brands to support criminal referrals against counterfeiters in China and anticipates working with brands to jointly pursue litigation in the U.S. and China.

Amazon buyer Irvin R. Love Jr. of Georgia bought a hoverboard on Amazon in November 2015 that caught fire and burned down his home, according to a suit he filed February 2018 against Amazon, the seller and others, in Georgia federal court. In an amended complaint this year he alleged that Amazon was negligent for not removing the hoverboard from its website before Mr. Love's purchase. Amazon argued in a legal filing that it doesn't owe damages because it didn't design, manufacture or sell the hoverboard.

Mr. Love also sued the seller, Panda Town, which his lawyer, Darren Penn, said appeared to be a Chinese company, based on sales information. Mr. Penn said that he can't locate the seller and that Amazon declined to provide its location.

Cross-border e-commerce has made it harder to police unsafe products entering the U.S., he said. "When you had the traditional importer and customs and brokers—and all those procedures are followed—you provide a couple of layers of protection that you don't when you're talking about an internet market." The case is in discovery, and Mr. Penn declined to make Mr. Love available for comment.

Amazon said it has provided information about the seller to the plaintiff, consistent with its policy on such matters. Panda Town doesn't appear to list on Amazon anymore, and the Journal couldn't locate a company by that name.

‘Not normal’

Product safety on Amazon and other online marketplaces isn’t assured, because Amazon doesn’t require all third-party sellers to test products to prove they are compliant with regulations, said Sebastien Breteau, chief executive of QIMA, an inspection, certification and audit company that is an Amazon vetted service provider.

“It’s not normal that a factory with 200 people manufacturing baby monitors in Dongguan can ship products directly to consumers in Minnesota or in Europe through a marketplace,” he said. “The day the regulator makes them responsible, then we’ll have proper compliance programs.”

Amazon said sellers create their own product listings and are required to comply with all relevant laws and regulations when listing items for sale in Amazon stores.

Mr. Thompson, the electronics seller, said Chinese factories have steadily pushed him out of lower-end goods such as USB cables, pricing at less than he can. The Chinese sellers often boost their product rankings by arranging large purchases of their own products and leaving positive reviews for themselves, he said—a tactic he said he learned about while attending an independent Amazon-seller event featuring a China-based sales consultant in Hong Kong several years ago.

He now counts on selling higher-end products like \$199 docking stations for displays and charging electronic devices, he said, but “there really isn’t much upper end left for us.”

Amazon said competition is a part of business and some more-mature product categories can be particularly competitive. The spokesman said its goal is to quickly remove abusive reviews and that over the past month “over 99% of the reviews read by customers were authentic.”

Chinese sellers were seen as too valuable to give up, despite warning signs, a former Seattle-based Amazon employee said. “There were crazy things, hundreds of listings created every hour,” the person said, adding that when U.S. vendors complained, staff told them, “We don’t control third-party selection. It’s not us, it’s an open-end platform.”

Goose-down test

Mr. Sagar, the goose-down-duvet seller, said an employee posing as a customer last year contacted Rosecose, the Chinese seller of the down duvet on Amazon, offering proof its product was deceptively listed. A Rosecose representative apologized and said its suppliers could be to blame, offering to refund the lab-test costs, according to messages the Journal viewed.

The employee last year also sent an email to Amazon with the test results showing the duck down, he said. Rosecose kept listing duvets, Mr. Sagar said.

The Journal bought a duvet on Amazon from Rosecose in October and sent its own test results to Amazon late in the month. Early this month, Rosecose was still selling duvets on Amazon as “100% Fill With Goose Down,” including a king-size option listing for \$129.99.

The Wall Street Journal verified Rosecose was based in China by visiting its page on Amazon’s Mexican site, which listed its location. Rosecose didn’t respond to inquiries sent through Amazon and no one picked up calls to a phone number associated with the brand.

Amazon said it took down Rosecose listings Nov. 4. They appeared to be gone from the U.S. site early last week, but some still appeared on Amazon’s Canada site until after the Journal pointed them out to the company.

—*Shane Shifflett, Stella Yifan Xie and Lekai Liu contributed to this article.*

—*Illustration by Jessica Kuronen/WSJ*

Write to Jon Emont at jonathan.emont@wsj.com

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EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RUBIK’S BRAND, LTD.,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,

Defendants.

Case No. 20-cv-05338

Judge John J. Tharp, Jr.

Magistrate Judge Jeffrey I. Cummings

**MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE,
CLARIFICATION OF THIS COURT’S OPINION AND ORDER**

Pursuant to Fed. R. Civ. P. 59, Levi Strauss & Co., H-D U.S.A., LLC, Entertainment One UK Ltd., Chrome Hearts LLC, and Deckers Outdoor Corporation (“Amici”) respectfully submit this motion for reconsideration or, in the alternative, clarification of this Court’s Opinion and Order (“Order”) entered on March 4, 2021. [73]. Reconsideration or clarification of this Court’s Order is appropriate for at least the following reasons.

1. The legal record provided by Plaintiff Rubik’s Cube Ltd. (“Plaintiff”) and Defendant Yoyoly (“Defendant”) was materially deficient because it failed to address multiple relevant Seventh Circuit cases regarding personal jurisdiction over “interactive website” operators. In this case, a specific jurisdiction analysis under Seventh Circuit jurisprudence requires the court to evaluate: (1) defendant’s actions targeting the jurisdiction leading up to any offer for sale (*i.e.* “defendant reaching out”); and (2) whether the product offered for sale is related to the litigation. In *Hemi Group* and *Curry*, the Seventh Circuit found specific jurisdiction proper where the defendant operated an e-commerce store that offered for sale a product into the district and the

product related to the litigation.¹ Conversely, the Seventh Circuit found specific jurisdiction lacking in *be2* and *Mobile Anesthesiologists* where neither defendant offered for sale any product into the district² and in *Advanced Tactical* and *Matlin* where the product offered for sale was unrelated to the litigation.³ In this case, the only purpose for Defendant's e-commerce store on the U.S. facing Amazon.com portal was to sell products to United States consumers, including an allegedly infringing product that is the basis for the lawsuit. An Amazon.com e-commerce store is not merely an "interactive website" like a dating portal (*be2*) or informational website (*Mobile Anesthesiologists*) (see Point 2 below). Moreover, the sales (or lack thereof) that follow from a defendant setting up an e-commerce store offering for sale a product into the jurisdiction (*i.e.* "Illinois residents reaching back") are not dispositive or even material to the analysis under Seventh Circuit law. The sales to Illinois residents in *Curry* and *Hemi* merely provided further confirmation regarding the defendants' already established intention to conduct business in the district.

2. The factual record provided by the parties was materially deficient, thus preventing this Court from analyzing personal jurisdiction over an Amazon.com e-commerce store under Seventh Circuit jurisprudence. Specifically, the record is missing facts regarding several of the Defendant's own actions inherent with opening an Amazon.com e-commerce store. These actions establish Defendant's purposeful targeting of the United States, including Illinois, and go well

¹ *Illinois v. Hemi Grp. LLC*, 622 F.3d 754 (7th Cir. 2009); *Curry v. Revolution Labs., LLC*, 949 F.3d 385 (7th Cir. 2020)

² *be2 LLC v. Ivanov*, 642 F.3d 555 (7th Cir. 2011); *Mobile Anesthesiologists Chi., LLC v. Anesthesia Assocs. of Houston Metroplex, P.A.*, 623 F.3d 440 (7th Cir. 2010).

³ *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796 (7th Cir. 2014); *Matlin v. Spin Master Corp.*, 921 F.3d 701 (7th Cir. 2019),

beyond “maintaining a website.” Such facts would show that Defendant was required to select the United States, including Illinois, from a list of regions in which the Amazon.com e-commerce store is electing to do business. Defendant also set up a storefront through which U.S. customers, including Illinois customers, could purchase allegedly infringing products in U.S. dollars and maintained logistics for shipping those products to Illinois. Additionally, Defendant was required to review and agree to the Amazon Services Business Solutions Agreement that included agreeing that they will ensure “your offer and subsequent sale of [Your Products] on any Amazon site comply with all applicable Laws.” Finally, by offering a product for sale on Amazon.com to Illinois, the e-commerce store operator contractually agreed to accept orders from Illinois residents and fulfill orders as soon as the “place your order” button was clicked since money is instantly exchanged. Any suggestion that Defendant could affirmatively set up an Amazon.com e-commerce store targeting the United States and Illinois, offer for sale an allegedly infringing product on that store, accept money and then unilaterally decide whether to accept and fulfill an order based on the buyer is both factually inaccurate and in violation of basic contract law and Defendant’s agreement with Amazon.

3. The only function of an Amazon.com⁴ e-commerce store is to sell products to consumers in the United States, including Illinois. If it was determined that personal jurisdiction did not exist in Illinois, then there must be personal jurisdiction over the Amazon.com e-commerce store under Fed. R. Civ. P. 4(k)(2) since the store targeted the United States. The Order does not address personal jurisdiction under Fed. R. Civ. P. 4(k)(2) even though it was argued in the Motion. Owners of United States trademarks must have access to federal courts in the United States to enforce their United States trademark rights and protect consumers in the United States.

⁴ For example, an Amazon store targeting Canada would use Amazon.ca and choose to not offer shipping to the United States. Gaudio Declaration at ¶ 3.

Defendants cannot insulate themselves from harm that they cause in the United States, including Illinois, by simply locating themselves within the borders of China or any other country and explicitly offering to sell and ship products to the United States, including Illinois.

As further explained below, Amici respectfully request that this Court reconsider or, alternatively, clarify its Order. It is clear that the factual and legal record provided by the parties was deficient and did not provide the Court with what was needed for the Court to conduct a meaningful review of whether personal jurisdiction was proper. Reconsideration of the Order in light of the additional evidence that was not made part of the record by the parties is proper. Alternatively, Amici request that the Court clarify that its Order was based on the specific factual record provided by the parties in this case.

MEMORANDUM

I. BACKGROUND ON AMAZON.COM E-COMMERCE STORE OPERATORS

Defendant is an e-commerce store on Amazon.com (“Amazon”). Amazon has aggressively recruited Chinese manufacturers and merchants to sell to consumers outside the country. Jon Emont, *Amazon’s Heavy Recruitment of Chinese Sellers Puts Consumers at Risk*, Wall St. J. 1-2 (Nov. 11, 2019). Gaudio Declaration at ¶ 2. According to a 2019 investigation by the Wall Street Journal, “[o]f 1,934 sellers whose addresses could be determined, 50% were based in China.” *Id.* “Amazon has made its site more accessible to Chinese speakers, created special programs that address Chinese sellers’ logistical needs and sent a stream of employees to recruit suppliers.” *Id.* As a result of Amazon’s recruitment effort of Chinese sellers, Amazon sellers have said that Amazon “is the most cost-effective way to sell into the United States.” *Id.*

When setting up a storefront on the U.S. facing Amazon.com, a Chinese seller clicks on the option “I want to open overseas online store” and it is able to choose between registering in

various regions, including North America. Declaration of Lijia Chen (“Chen Declaration”) at ¶ 4. If a seller uses the selling services offered in Amazon’s United States store, the seller agrees to the Amazon Services Business Solutions Agreement. *Id.* at ¶ 5. Article S-2.1 of the Amazon Services Business Solutions Agreement provides that the seller will:

[S]ource, offer, sell and fulfill Your Seller-Fulfilled Products, and source and, offer and sell your Amazon-Fulfilled Products, in each in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities.

Id. at ¶¶ 5-6. The seller also agrees to “fulfill Your Products throughout the Elected Country.” *Id.* Sellers create shipping settings, where the seller must affirmatively select the regions to which they will ship products and exclude the regions to which they will not ship. *Id.* at ¶¶ 7-12. Sellers can only cancel transactions “as permitted pursuant to your terms and conditions appearing on the applicable Amazon Site at the time of the applicable order or as may be required under this Agreement.” *Id.* at ¶¶ 5-6. Finally, sellers on Amazon agree that they will ensure “your offer and subsequent sale of [Your Products] on any Amazon site comply with all applicable Laws.” *Id.* at ¶ 5. In contrast, for example, an Amazon store targeting Canada would choose Amazon.ca and can choose to not offer shipping to the United States. Gaudio Declaration at ¶ 3.

II. ARGUMENT

1. Personal Jurisdiction Is Proper Over Defendant Because It Directed Its Activities to the Illinois Market and the Cause of Action Relates to Those Activities.

Without the benefit of an evidentiary hearing, Plaintiff bears only the burden of making a *prima facie* case⁵ for personal jurisdiction; all of Plaintiff’s asserted facts should be accepted as true and any factual determinations should be resolved in its favor. *See Curry v. Revolution Labs.*,

⁵ If necessary, Plaintiff is entitled to discovery. *See Black & Decker, Inc. v. Shanghai Xing Te Hao Indus. Co.*, 2003 LEXIS 10127, at *12 (N.D. Ill. June 13, 2003) (“[C]ourts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff’s claim is clearly frivolous.”).

LLC, 949 F.3d 385, 392-93 (7th Cir. 2020). “The question is whether the Court may exercise specific personal jurisdiction, which applies when a defendant has directed its activities at the forum state, and when the cause of action relates to those activities.” *See Volkswagen AG v. Iman365-usa*, No. 18-cv-06611, 2020 U.S. Dist. LEXIS 34218, at *7-8 (N.D. Ill. Feb. 28, 2020) citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The defendant's conduct must be purposefully directed at the forum state, such that the defendant would anticipate being haled into court here. *Id.* (citing *Walden v. Fiore*, 571 U.S. 277, 284-85, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014)).

In *Illinois v. Hemi Grp. LLC*, the Seventh Circuit explained that, “Hemi stood ready and willing to do business with Illinois residents.” 622 F.3d 754, 757-58 (7th Cir. 2009). “It is Hemi reaching out to residents of Illinois, and not the residents reaching back, that creates the sufficient minimum contacts with Illinois that justify exercising personal jurisdiction over Hemi in Illinois.” *Id.* at 758. As such, specific jurisdiction is proper where a company “h[olds] itself out as open to do business with every state” and is “ready and willing to do business with [that state’s] residents.” *Id.* Following *Hemi*, the Seventh Circuit in *Curry v. Revolution Labs., LLC* determined that personal jurisdiction was proper over non-resident e-commerce store operators, including Amazon stores:

We are satisfied that Revolution has formed sufficient minimum contacts with Illinois. Like Hemi, Revolution sells its products only online through its website and third-party websites. Revolution's interactive website for the sale of its products requires the customer to select a shipping address. Illinois is among the “ship-to” options from which the customer must choose. Illinois residents purchasing Revolution's products also receive an email from Revolution thanking them for their business, confirming their order, and listing the Illinois shipping address.

Revolution's own actions in establishing these commercial contacts with Illinois fairly can be described as purposeful. Preparing to engage in commercial activity, Revolution created an interactive website and explicitly provided that Illinois residents could purchase its products through that website. It further arranged for the sale of its products through third-party websites. After the sales, Revolution

sent written confirmation to the Illinois customers acknowledging their sale and including their Illinois shipping address, and, finally, Revolution shipped Diesel Test to its customers who were in Illinois.

949 F.3d at 399. Under this precedent, Illinois courts have consistently exercised personal jurisdiction over non-resident e-commerce store operators. *See, e.g., Tommy Hilfiger Licensing LLC et. al. v. The P'ships, et al.*, No. 20-cv-7477 (N.D. Ill. March 24, 2021) (Dkt. No. 46) (unpublished) (“Hilfiger has offered evidence tending to show that [defendant], though not physically located in Illinois or even in the United States, operated an interactive website through which it purposefully offered products for sale to consumers, including consumers located in Illinois, who would then select an address where the products should be shipped, including Illinois as one of the options. This is enough to amount to [defendant] having purposefully availed itself of doing business in Illinois.”); *Mori Lee v. Partnerships*, No. 19-cv-7555 (N.D. Ill. May 14, 2020) (Dkt. No. 60) (unpublished);⁶ *Volkswagen AG v. iman365-usa*, No. 18-cv-06611, 2020 U.S. Dist. LEXIS 34218, at *11 (N.D. Ill. Feb. 28, 2020); *Conair Corp., et al. v. Chen Xin, et al.*, No. 16-cv-09693 (N.D. Ill. Mar. 22, 2017); *Monster Energy Company v. Chen Wensheng, et al.*, 136 F. Supp. 3d 897, 909 (N.D. Ill. 2015); *Christian Dior Couture, S.A. v. Lei Liu et al.*, 2015 U.S. Dist. LEXIS 158225, at *6 (N.D. Ill. Nov. 17, 2015). The Order notes that “[i]t is true that other district courts have come out differently on this question...” [73] at p. 8. However, the Order does not acknowledge that many Courts in this District have found jurisdiction to be proper over e-commerce stores offering to sell infringing products to the United States, including Illinois. In fact, Amici are not aware of any contrary decisions in this District.

⁶ The Court in *Mercis B.V. v. The Partnerships, et al.*, No. 20-cv-06422 (N.D. Ill. Mar. 1, 2021) (Feinerman, J.) found that there was personal jurisdiction following the rationale of *Mori Lee* and denied a motion to dismiss.

a. Defendant Directed Its Activities to the Illinois Market.

- i. *Defendant's Creation and Maintenance of an E-Commerce Store Through Which Customers Could Purchase Infringing Products Is Sufficient to Support Personal Jurisdiction.*

Here, Defendant “stood ready and willing to do business with Illinois residents” by creating and operating its interactive e-commerce store through which the allegedly infringing products could be purchased. *Hemi Grp*, 622 F.3d at 758; *Curry*, 949 F.3d at 399. Defendant chose to operate a store on Amazon.com, as opposed to platforms targeting other countries such as Amazon.de, Amazon.ca or Amazon.co.uk. For example, if Defendant wanted to target Canada, and not the United States, they would use Amazon.ca and not offer shipping to the United States. Gaudio Declaration at ¶ 3. Defendant affirmatively selected the United States from a list of regions to do business with, stood ready to accept payment from Illinois residents, and offered to ship counterfeit products to Illinois. *Hemi Grp*, 622 F.3d at 758; *Curry*, 949 F.3d at 399. By offering a product for sale on Amazon.com to Illinois, Defendant contractually agreed to accept orders from Illinois residents and fulfill orders as soon as the “place your order” button was clicked since money is instantly exchanged. Chen Declaration at ¶¶ 5-6. Once an Amazon.com customer clicks “place your order,” the customer pays money for the product and receives a confirmation email with their shipping address. Therefore, Defendant’s reaching out and expressly electing to do business with the residents of all fifty states, including Illinois, the sixth most populous state, establishes personal jurisdiction. *Hemi Grp*, 622 F.3d at 758; *uBid, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 428 (7th Cir. 2010); *see also, Monster Energy Co.*, 136 F. Supp. 3d at 909 (“defendants’ offers to sell counterfeit Monster Energy Products on their Internet stores constitute tortious activity committed in Illinois sufficient to establish personal jurisdiction”); *Christian Dior Couture, S.A.*, 2015 U.S. Dist. LEXIS 158225 at *6 (same).

ii. *Defendant Did Not Meet Its Burden to Contest Plaintiff's Prima Facie Case of Personal Jurisdiction.*

Defendant's Motion [49] was not supported by any evidence and the supporting Memorandum [50] did not contain any case law.⁷ *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991) ("perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived"). Without corroboration, Defendant stated that it "searched the sales records of related products, and found no products were sold to Illinois, and the defendant's sales of related products were zero." [50] at p. 3. Plaintiff submitted a declaration [55] in support of personal jurisdiction showing that Plaintiff made a virtual test purchase, but Defendant did not submit a declaration to support any of its statements. *Medallion Prods. v. McAlister*, No. 06-cv-2597, 2008 U.S. Dist. LEXIS 80550, at *8 (N.D. Ill. Oct. 9, 2008) ("As it must, the court has disregarded any unsupported factual statements"). Even though Defendant did not submit an affidavit, at best, there is a factual conflict in evidence that must be resolved in Plaintiff's favor since there was no evidentiary hearing. *Curry*, 949 F.3d at 392-93. Alternatively, jurisdictional discovery was appropriate to determine what was sold or not sold, as requested by Plaintiff in its Response [54]. *See supra* n.6. The Court did not address Plaintiff's request for jurisdictional discovery.

Further, Defendant "believes that before clicking the 'plan [sic] your order' button, the plaintiff could not verify and prove whether the relevant products could be sold or offered to be sold to Illinois," and "if someone has clicked the 'plan your order,' the seller may not actually ship the goods to Illinois, the plaintiff should place an order and actually be able to determine the

⁷ Further, the Motion was filed by an individual named "Guo Fei," who was not a named Defendant in the case. Only registered Chinese companies can set up an Amazon storefront in China that sells to the United States. It appears that Defendant YoYoly is attempting to represent itself on a *pro se* basis, which is not permitted for a registered business entity. *See United States v. Hagerman*, 545 F.3d 579, 581-82 (7th Cir. 2008) (individuals are permitted to proceed *pro se*, but not business entities).

jurisdiction after receiving the goods.” [50] at p. 3; [63] at p. 2. However, Defendant’s unsworn “belief” is incorrect: “customers . . . are not simply typing their credit card numbers in a web form and hoping they get something in return”; the defendant “itself set the system up this way.” *Curry*, 949 F.3d at 385 (quoting *uBid, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 428 (7th Cir. 2010)).

Any suggestion that Defendant could affirmatively setup an Amazon.com e-commerce store targeting the United States and Illinois, offer for sale an allegedly infringing product on that store, accept money and then unilaterally decide whether to accept and fulfill an order based on the buyer is both factually inaccurate and in violation of the Amazon Services Business Solutions Agreement. *See* Chen Declaration at ¶¶ 5-6. In a similar case involving an eBay store, the court in *Volkswagen AG v. iman365-usa* explained:

The Defendant’s argument that “the Court lacks personal jurisdiction over them [because] sellers on eBay cannot target individuals in any state and have no control over who wins the eBay auction[,]” Def.’s Resp. Br. At 11, omits key facts that, under Seventh Circuit law, dictate a finding of purposeful availment. Specifically, this argument “ignores several of [the Defendant’s] own actions that led up to and followed the sales[]”—namely, that the Defendant operated a commercial, interactive online store through which U.S. customers could purchase its products, thus holding itself out as open to do business with every state, including Illinois. *See Ill. V. Hemi Grp. LLC*, 622 F.3d 754, 758 (7th Cir. 2010) (finding that online purchases were not unilateral actions by customers—which generally would not satisfy the “minimum contact” requirement—where the defendant operated a commercial website open to business with the forum state).

2020 U.S. Dist. LEXIS 34218, at *8-9; *see also, Valtech, LLC v. 18th Ave. Toys Ltd.*, 2015 U.S. Dist. LEXIS 17138, at *12 (N.D. Ill. Feb. 12, 2015). As such, Defendant’s intentional actions to target Illinois residents go well-beyond simply “maintaining” or “operating an interactive website accessible in the forum state.” [73] at p. 6.

b. Product Offered for Sale Is the Subject of the Litigation.

Defendant was selling, offering for sale, and advertising a product using counterfeit versions of Plaintiff’s federally registered Rubik’s trademarks and Rubik’s copyrights to residents

of the United States, including residents of Illinois. *See* [54-1]. These actions are the subject of Plaintiff's trademark and copyright infringement claims, so Defendant's contacts with Illinois are clearly related to the claims in this suit. *See Curry*, 949 F.3d at 401 ("The gravamen of his case is that Revolution's advertisement and sale of its product in the national market caused confusion and consequently deprived Mr. Curry of the value of his trademark in those states, *including Illinois*, where the product was sold . . . The defendant's activity in the state is the very activity that allegedly caused the confusion at the heart of this litigation").

2. Seventh Circuit Cases Relied On in the Opinion Are Distinguishable Because Those Websites Did Not Offer for Sale Product to Illinois or the Product Offered for Sale Was Unrelated to the Litigation.

All of the "interactive websites" in the Seventh Circuit decisions relied on in the Order are distinguishable because they either did not affirmatively offer to sell and ship any tangible products to Illinois (*be2* and *Mobile Anesthesiologists*) and/or the products offered for sale to Illinois residents did not relate to the cause of action (*Advanced Tactical* and *Matlin*). Moreover, specific citations to Seventh Circuit cases in the Order are taken out of context from factually distinguishable cases.

In *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, the Court found that specific jurisdiction must rest on the litigation-specific conduct of the defendant in the proposed forum state. 751 F.3d 796, 801 (7th Cir. 2014). Based on this finding, the Court found that the sales to Indiana residents were not linked to the litigation because the goods sold on the website were non-infringing and were unrelated to the lawsuit. *Id.* Conversely, in this case, jurisdiction is based on Defendant's offer for sale of allegedly infringing products to Illinois residents, which is inextricably linked to Plaintiff's trademark infringement and counterfeiting claims.

Matlin v. Spin Master Corp., 921 F.3d 701, 704 (7th Cir. 2019), is distinguishable because *Matlin* involved a breach of contract with a Virginia-based company as opposed to “the type of case where the defendants sold and shipped a defective product into Illinois that injured residents there.” *Id.* at 707. Additionally, in *Matlin*, the plaintiff’s purchase of the product occurred after the motion to dismiss was filed and was unrelated to the subject matter of the lawsuit. *Id.* Conversely, in this case, jurisdiction is based on Defendant’s actions which include affirmatively creating U.S. facing e-commerce stores that are offering to sell and ship allegedly infringing products to the United States, including Illinois. This conduct is inextricably linked to Plaintiff’s trademark infringement and counterfeiting claims.

The Court in *Matlin v. Spin Master Corp.* also distinguished the defendant’s scale of contact with Illinois from the defendant’s systematic conduct through repeated sales to Illinois in *Hemi*, but quoted language regarding the “stream of commerce” theory of personal jurisdiction. 921 F.3d. at 706. Cases including a standard stream-of-commerce analysis usually involve entities who cannot necessarily predict or control where downstream their products will land; intervening actors like distributors may take the products to unforeseeable markets. Here, Defendants affirmatively create e-commerce stores, then offer to sell and ship allegedly infringing products into the U.S., including Illinois, which indicates Defendants stand ready and willing to do business with Illinois residents.

The Order also appears to predicate personal jurisdiction based solely on sales of allegedly infringing products to buyers in Illinois (“a “miniscule’ number of transactions won’t do”). [73] at p. 6. However, such a proposition is contrary to Seventh Circuit authority since it focuses on “the residents reaching back” and not Defendants’ own actions in setting up an e-commerce store reaching out to do business in Illinois. *Hemi Grp.*, 622 F.3d at 758; *see also, Virgin Enters.*, 2014

U.S. Dist. LEXIS 98437, at *12 (“*Hemi [Group]* also shows that the precise dollar value of Defendants’ sales to Illinois customers—either as an absolute number or as a percentage of total sales—is not dispositive for purposes of determining whether specific personal jurisdiction exists.”); *Dental Arts Lab.*, 2010 U.S. Dist. LEXIS 124029, at *7 (“As long as one tortious act is committed in Illinois, the courts of the state, and thus this Court, may exercise personal jurisdiction over Defendant.”). It also conflates the requirements for general and specific jurisdiction. *Cf. Daimler AG v. Bauman*, 134 S.Ct. 746, 762 n.20 (2014) (“General jurisdiction . . . calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide”). Focusing on Defendant’s actions in setting up the Amazon.com e-commerce store, instead of just sales, makes sense as there is no way for a brand owner to know how many products were sold into the jurisdiction until after a case is filed and some discovery is conducted.

Specifically, the Order relies on *be2 LLC* and *Matlin* to suggest that some number of sales are necessary to establish personal jurisdiction. [73] at pp. 6-7. However, in *be2 LLC*, the Court found that the “record before us does not show that [defendant] deliberately targeted or exploited the Illinois market” and suggests that “the 20 Chicagoans who created free profiles on be2.net may have done so unilaterally by stumbling across the website.” *be2 LLC*, 642 F.3d at 559. Conversely, courts have expressly declined to classify actions such as Defendant’s as “utterly fortuitous” or “unilateral”: Defendant “aimed their alleged tortious products to residents in all fifty states and ‘made [their] services available to anyone by way of [their] website[s]....’” *Valtech, LLC*, 2015 U.S. Dist. LEXIS 17138, at *12. The Order also cites language in *Matlin* stating that “a single incident conjured up by the plaintiffs’ attorney for the exclusive purpose of establishing jurisdiction over the defendants” is not sufficient for personal jurisdiction. [73] at p. 7. However, and as explained above, in *Matlin*, the plaintiff’s purchase of the product occurred after the motion

to dismiss was filed and was unrelated to the subject matter of the lawsuit. *Matlin*, 921 F.3d at 707. In this case, Defendant's offer for sale to an Illinois resident of allegedly infringing product occurred before the lawsuit and is the subject of the lawsuit. *See Monster Energy Co.*, 136 F. Supp. at 907-08 ("Defendants do not provide any evidence to suggest that they were induced by fraud to post images of counterfeit Monster Energy Products and invite potential Illinois buyers to place orders and buy counterfeit products.").

Finally, the defendant in *Mobile Anesthesiologists Chi., LLC v. Anesthesia Assocs. of Houston Metroplex, P.A.* was an entity that operated only in Texas whose sole member had never attempted to or conducted business in Illinois, but had an informational website about its business. 623 F.3d at 444. Here, Defendant affirmatively offered to ship infringing products to Illinois.

3. Defendant's Conduct Was Purposefully Directed at the Forum State Such that Defendant Would Anticipate Being Haled Into Court Here.

Under both the Illinois Long Arm Statute and Fed. R. Civ. P. 4(k)(2), notions of fair play and substantial justice are satisfied. Illinois has a strong interest in protecting Illinois consumers from being duped into purchasing allegedly infringing products. Furthermore, modern transportation and communications have made it less burdensome for a party to defend itself in a State where he derives economic benefits. *Burger King*, 471 U.S. at 474. Finally, fair play means that off-shore e-commerce store operators that decide to offer for sale and sell products to consumers in the United States, including Illinois, must come to the United States and stand accountable. *Christian Dior Couture, S.A.*, 2015 U.S. Dist. LEXIS 158225 at *13. Defendant "certainly should not be surprised by the jurisdictional consequences of [its] actions" given that it had sufficient resources to purposefully avail itself of the Illinois market. *Id.* at *14. The Defendant cannot "have its cake and eat it, too" by getting "the benefit of a nationwide business model with none of the exposure." *Hemi*, 622 F.3d at 760.

4. Alternatively, Personal Jurisdiction Is Proper in This Court Pursuant to Fed. R. Civ. P. 4(k)(2).

There can be no question that Defendant's Amazon.com e-commerce store targeted the United States. As such, should this Court determine that personal jurisdiction is not proper under Fed. R. Civ. P. 4(k)(1) based on the Illinois long arm statute, personal jurisdiction is proper in this Court pursuant to Fed. R. Civ. P. 4(k)(2) ("Rule 4(k)(2)"). Rule 4(k)(2) was not addressed in the Court's Order even though it was argued. [54] at p 13. Rule 4(k)(2) provides for personal jurisdiction through nationwide service of process over any defendant provided that: (1) the plaintiff's claims are based on federal law; (2) no state court could exercise jurisdiction over the defendants; (3) the exercise of jurisdiction is consistent with the laws of the United States; and (4) the exercise of jurisdiction is consistent with the Constitution. *Cent. States, Southeast and Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 940 (7th Cir. 2000); *Plixer Int'l v. Scrutinizer GmbH*, 905 F.3d 1, 5 (1st Cir. 2018). Rule 4(k)(2) extends federal jurisdiction over non-resident defendants having sufficient contacts with the United States as a whole, but having insufficient contact with any single state to support jurisdiction. Fed. R. Civ. P. 4(k)(2) advisory committee's note (citing *Omni Capital Int. 'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 111 (1987)). The first element of Rule 4(k)(2) is satisfied here because Plaintiff's claims arise under federal trademark law. Likewise, the second element is satisfied because Defendant has not named a suitable forum state. *See Robert Bosch LLC v. Trico Prods. Corp.*, 2013 U.S. Dist. LEXIS 103311, at *6 (N.D. Ill. July 24, 2013). The third and fourth elements of the Rule 4(k)(2) analysis require the same minimum contacts due process analysis conducted under Rule 4(k)(1)(A), the only difference being that the relevant forum is the United States as a whole, not an individual State. *Id.* at *5. As such, the third and fourth elements are satisfied here for the same reasons that satisfy the minimum contacts analysis required by Rule 4(k)(1)(A).

Dated this 24th day of March 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March 2021, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send a “Notice of E-Filing” to the attorneys of record in this case.

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LLC, and Deckers Outdoor Corporation*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RUBIK'S BRAND, LTD.,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,

Defendants.

Case No. 20-cv-05338

Judge John J. Tharp, Jr.

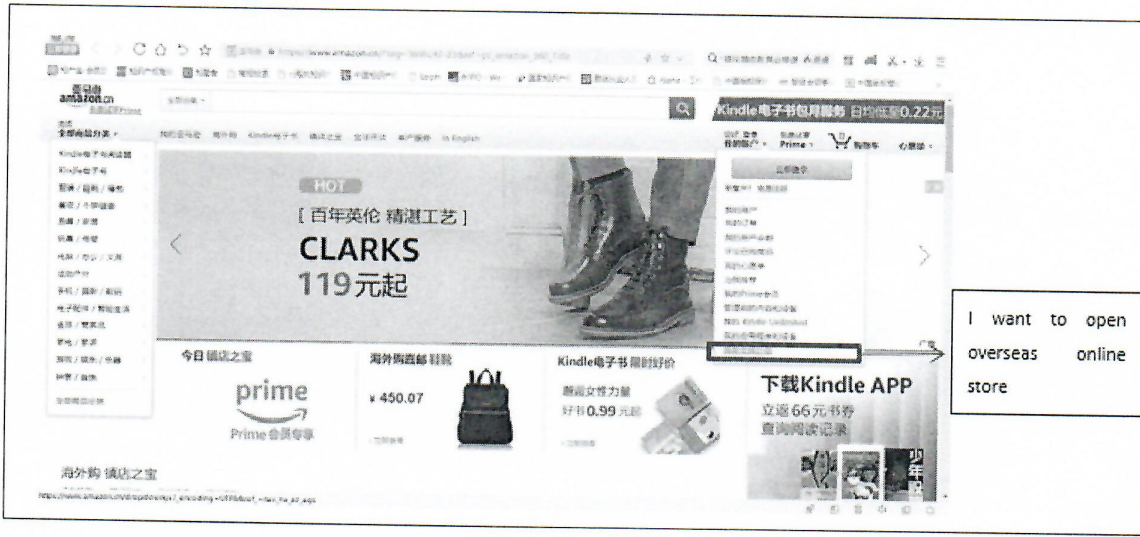
Magistrate Judge Jeffrey I. Cummings

Declaration of Lijia Chen

DECLARATION OF LIJIA CHEN

I, Lijia Chen, declare and state as follows:

1. This declaration is based upon my personal knowledge of the facts stated herein or on business records that were made at the time or in the regular course of business. If called as a witness, I could and would testify to the statements made herein.
2. I am a trademark attorney at the law office Beijing NTD Law Office, located in Beijing, China. I graduated from Renmin University of China with an LLM degree in 2013, and from Southwest University of Political Science and Law with a Bachelor of Laws in 2010. I have extensive experience in counseling clients on a full range of trademark and copyright law issues, including anti-counterfeiting matters, advising on unfair competition, trade secret, advertising, social media, and e-commerce law, and litigating intellectual property cases. I reside in Beijing, China, and I am fluent in both Chinese and English.
3. I created an online seller account at Amazon.com (“Amazon”). Attached hereto as **Exhibit 1** are true and correct copies of screenshots I took illustrating the registration process for an Amazon seller account.
4. To begin account set up, I clicked on the hyperlink “I want to open overseas online store” (translated). *See* Figure 1 below, Exhibit 1 at p. 2. I was navigated to a page showing options for registration of an Amazon account in various regions, including North America.



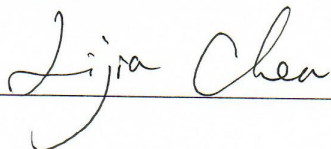
5. When creating the account, I agreed with the Amazon Services Business Solutions Agreement. **Exhibit 2** attached hereto is a true and correct copy of the Amazon Services Business Solutions Agreement. According to the Agreement, “[t]he version of this Agreement in English is the definitive legal version. A translation into Chinese is available for your ease of reference.”
6. Article S-2.1 of the Amazon Services Business Solutions Agreement provides that the seller will “source, offer, sell and fulfill Your Seller-Fulfilled Products, and source and offer and sell your Amazon-Fulfilled Products, in each in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities.”
7. I accessed an article on Amazon’s Seller Central on “Configuring shipping rates and restrictions.” **Exhibit 3** is a true and correct copy of this article.
8. The article in Exhibit 3 describes how to use “Shipping settings to set the default shipping service levels you will use for orders you ship to buyers.” Specifically, from the “Account

Information” page for the Amazon account, I can click on “Shipping Settings” from the “Shipping and Returns Information” section. I can use the “Shipping settings” feature to customize the regions I ship to and the service levels I support for each region. I can choose from seven regions to ship to, and I can select from two pre-defined shipping service levels.

9. After navigating to a “Shipping Model” section and clicking “Edit,” in “Select the Regions and Service Levels You Support” page, I can check or uncheck the boxes to enable or disable regions and service levels.
10. After completing the above, I would be able to view my “Shipping Rates” table. If I had selected the “Continental U.S.” region, it would appear in this table.
11. The above process can be completed as a default shipping service levels for all orders that will be shipped. Additionally, shipping options for specific products can be set by editing the details for one product at a time.
12. When discussing “shipping regions, shipping service levels, and service level agreements,” Amazon provided the warning “[i]f you cannot commit to the delivery in the SLA for a given region and category of service, then do not enable that region and category of service.”
Exhibit 3 at p. 8.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

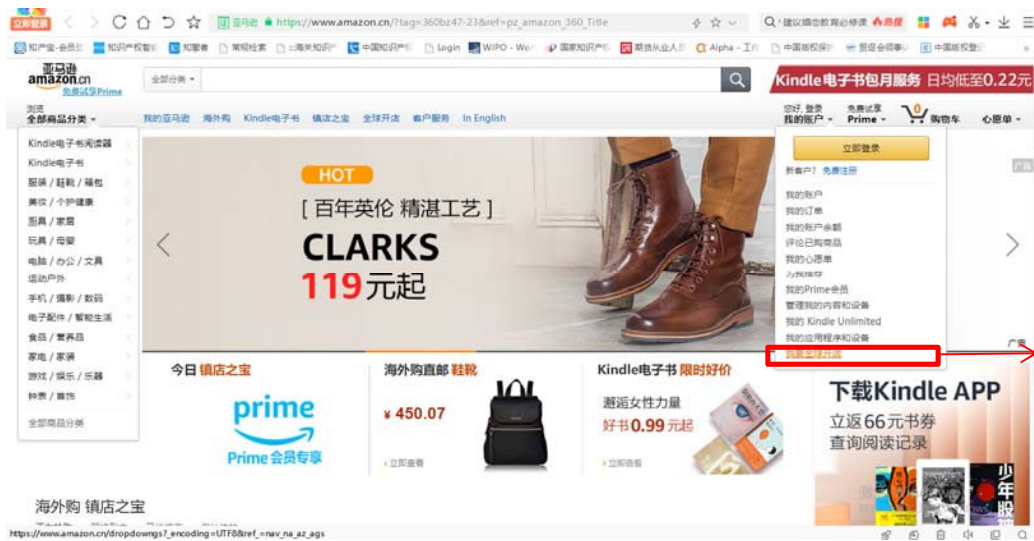
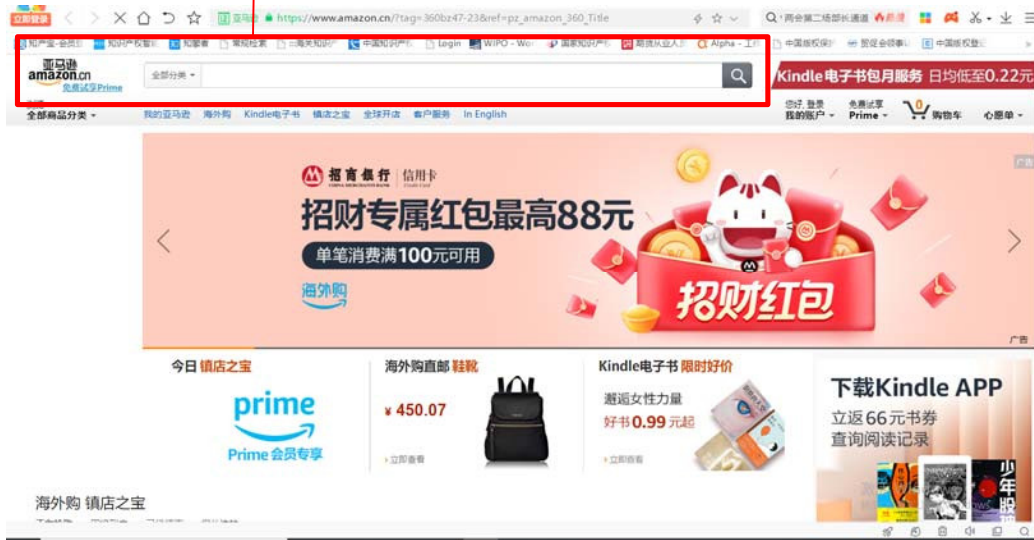
Executed this the 24th day of March 2021 at Beijing, China.



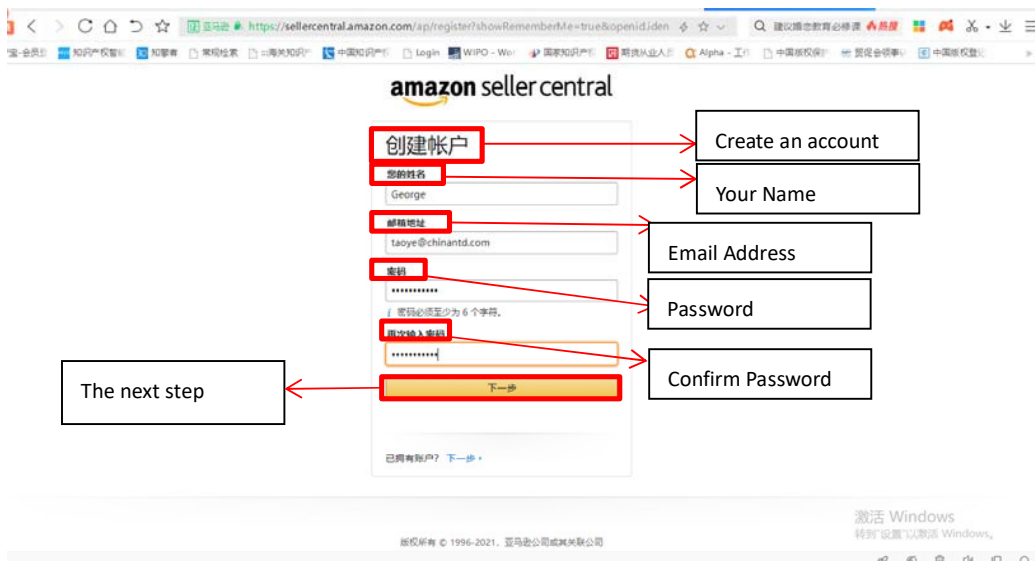
Lijia Chen

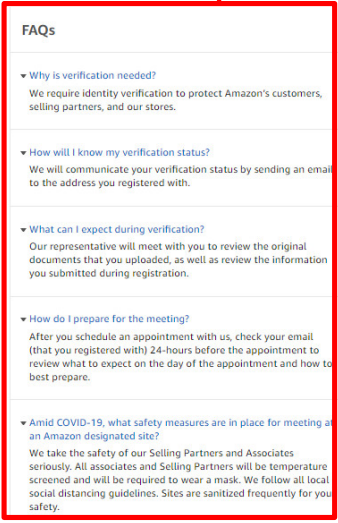
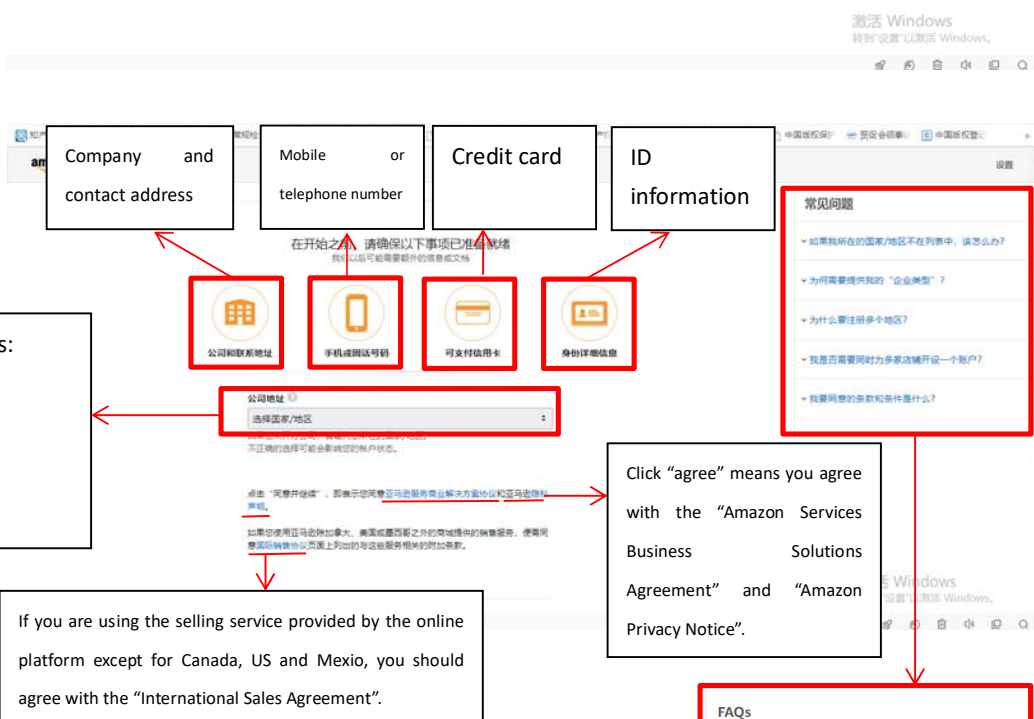
Exhibit 1

Amazon home page

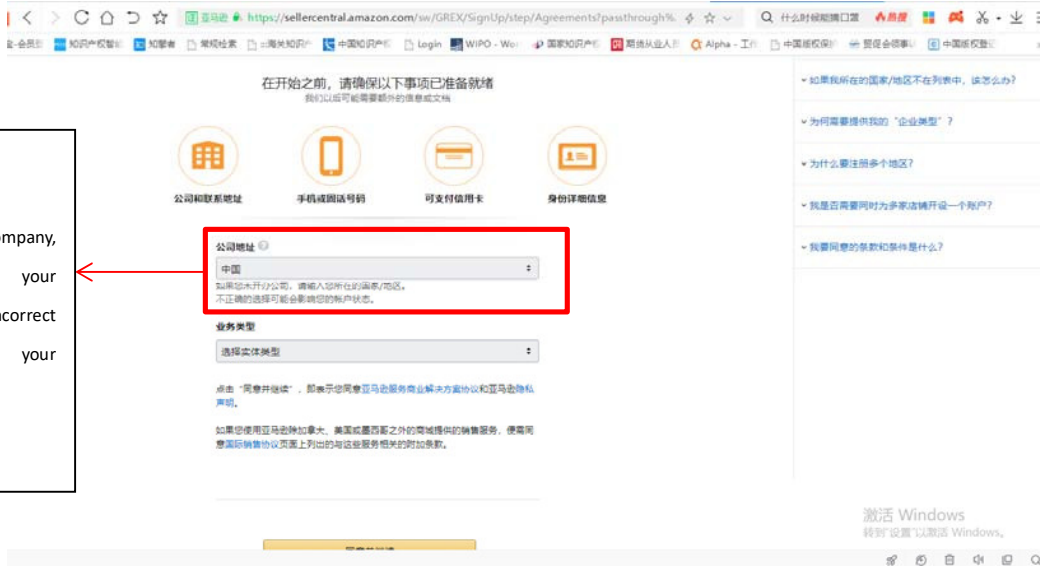


I want to open overseas online store





Company address:
China
If you do not have a company, please choose your countries/regions, incorrect choice might affect your account status.



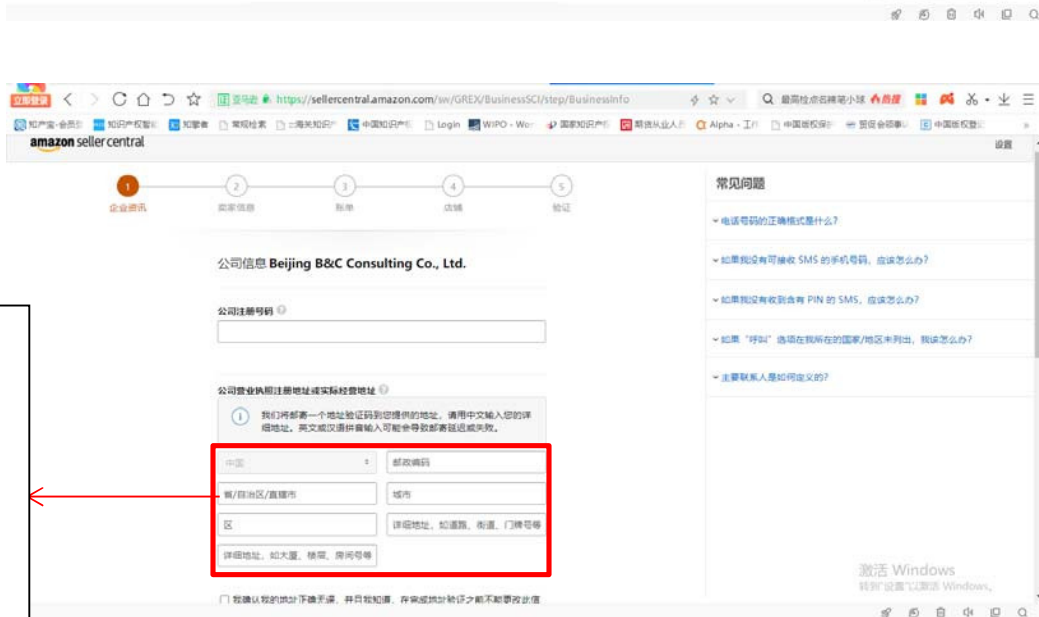
Business type:
Selecting Entity Type
State-owned company
Listed company
Private company
Charity



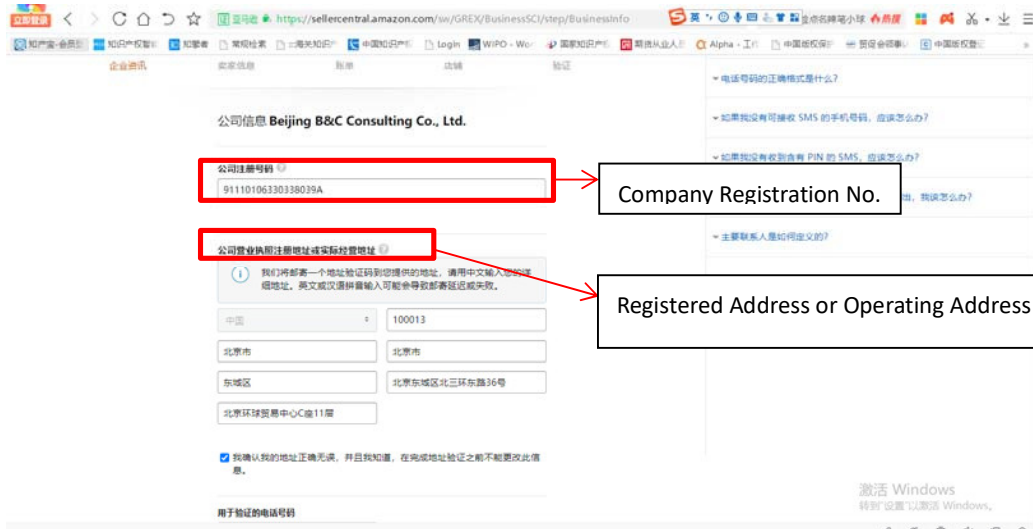
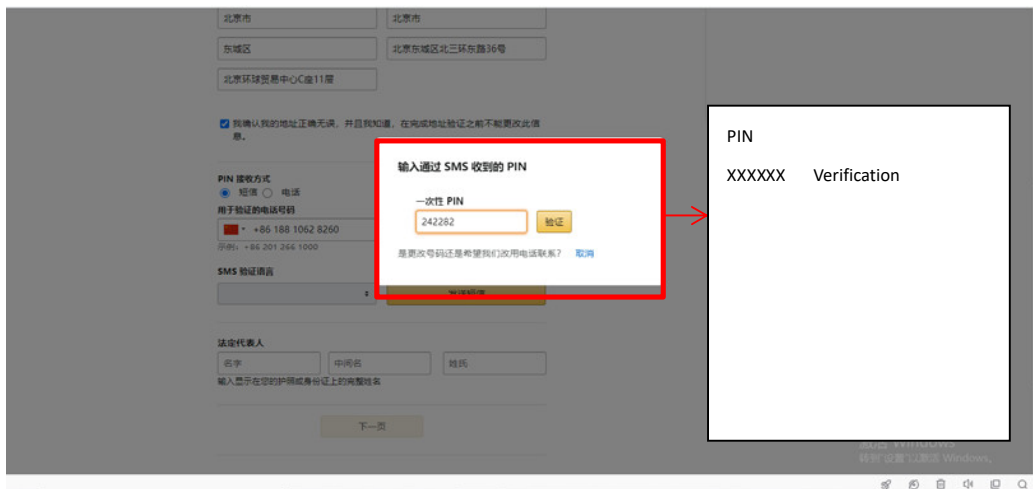
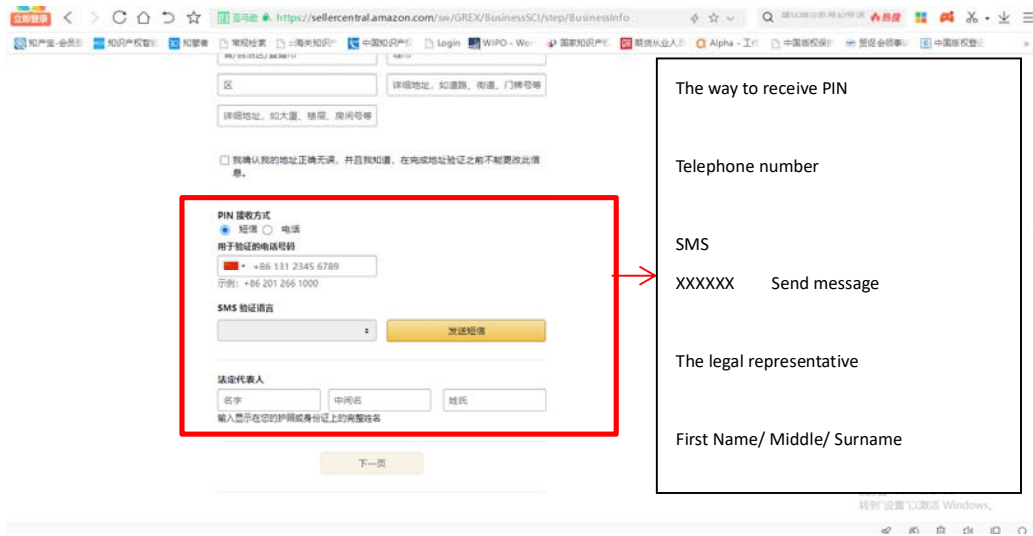
Note: We found that Chinese sellers can only be registered with enterprises and charity, but if we choose company address in other counties i.e. the USA or Korean, we still can be registered with natural person.

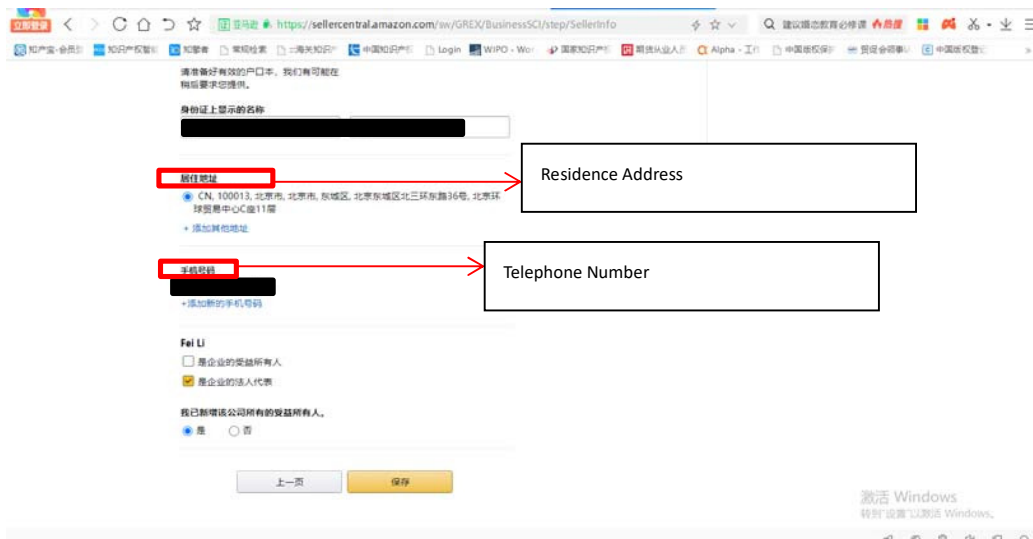
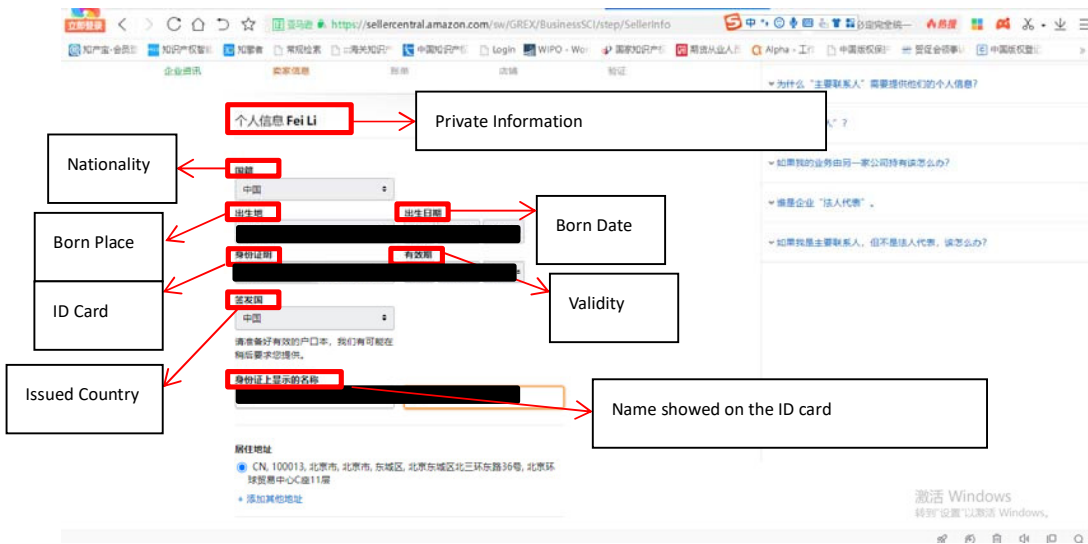
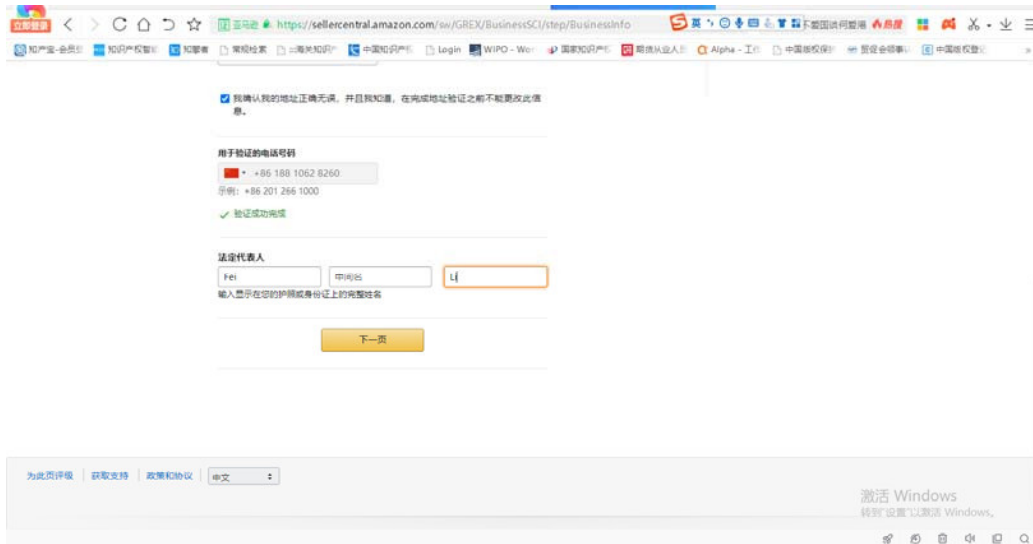


The registered company name

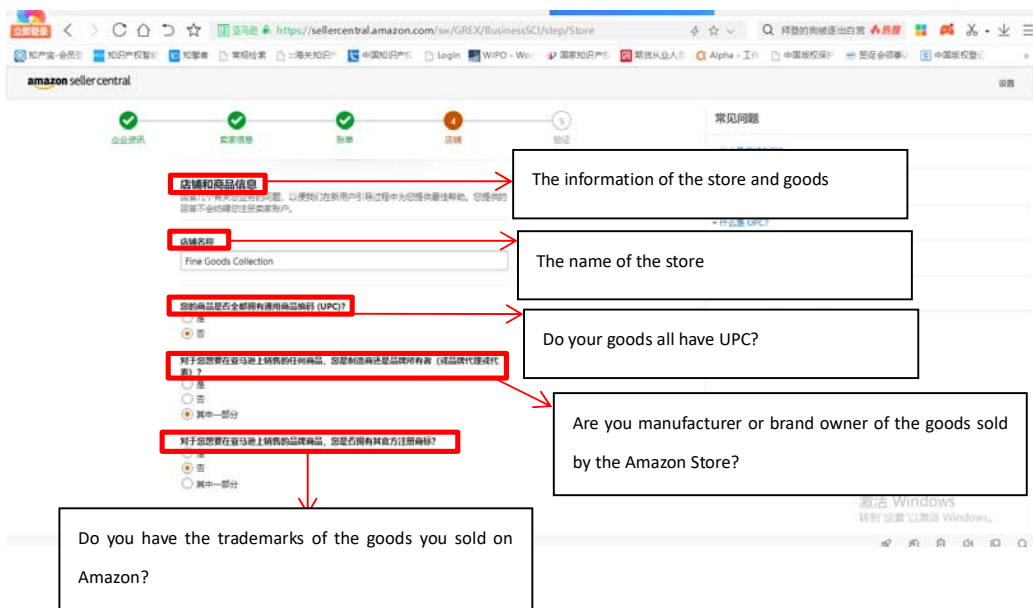
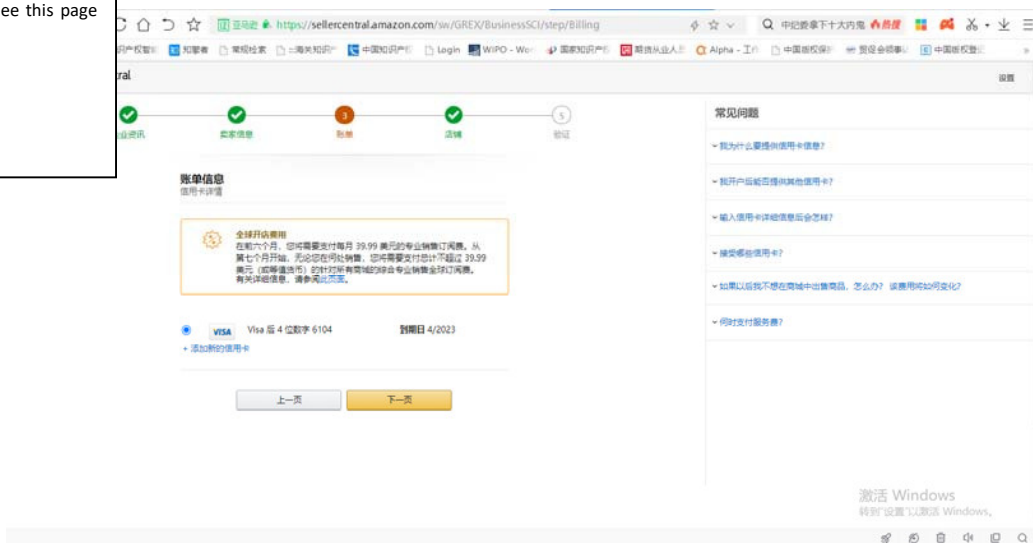
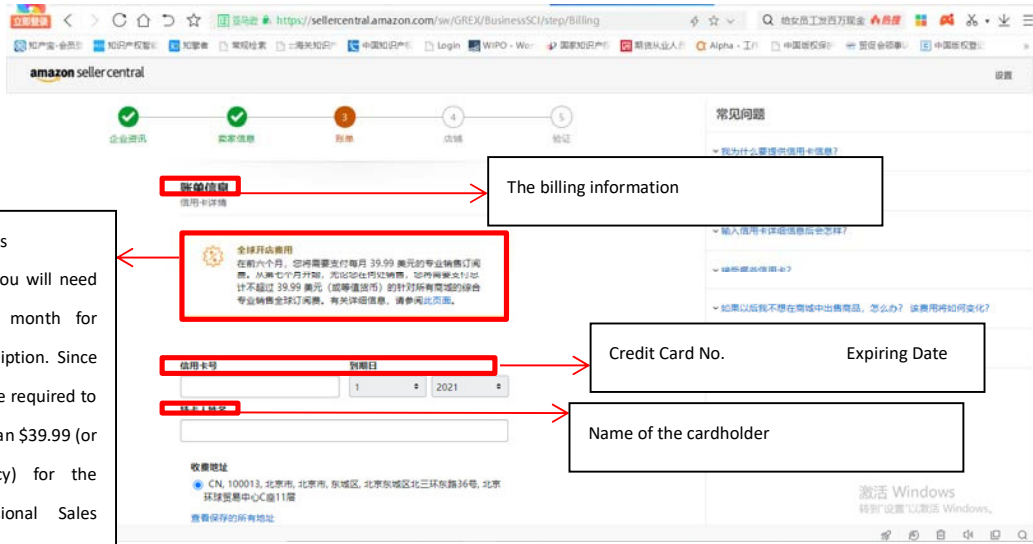


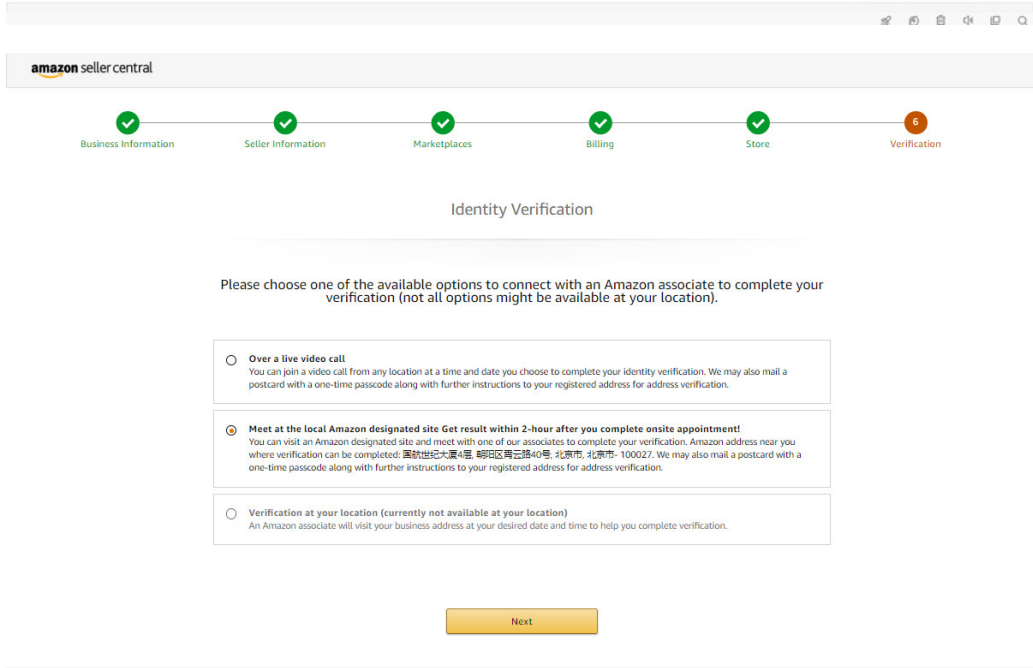
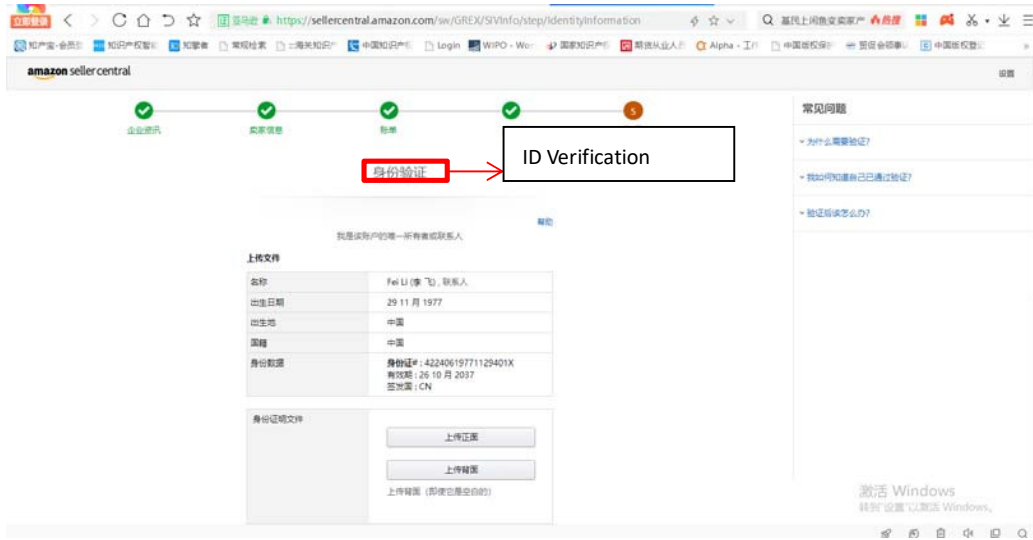
China post code
Province City
District Address





Global store opening costs
 In the first six months, you will need to pay a \$39.99 per month for professional sales subscription. Since the 7th month, you will be required to pay a total of no more than \$39.99 (or the equivalent currency) for the Comprehensive Professional Sales Global Subscription for all malls, no matter where you sell. See this page for more information.





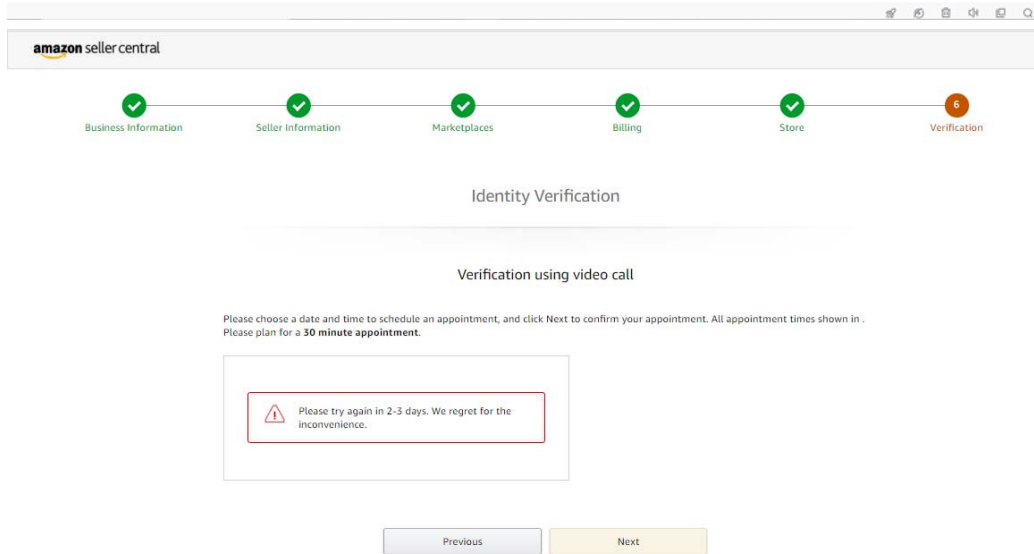
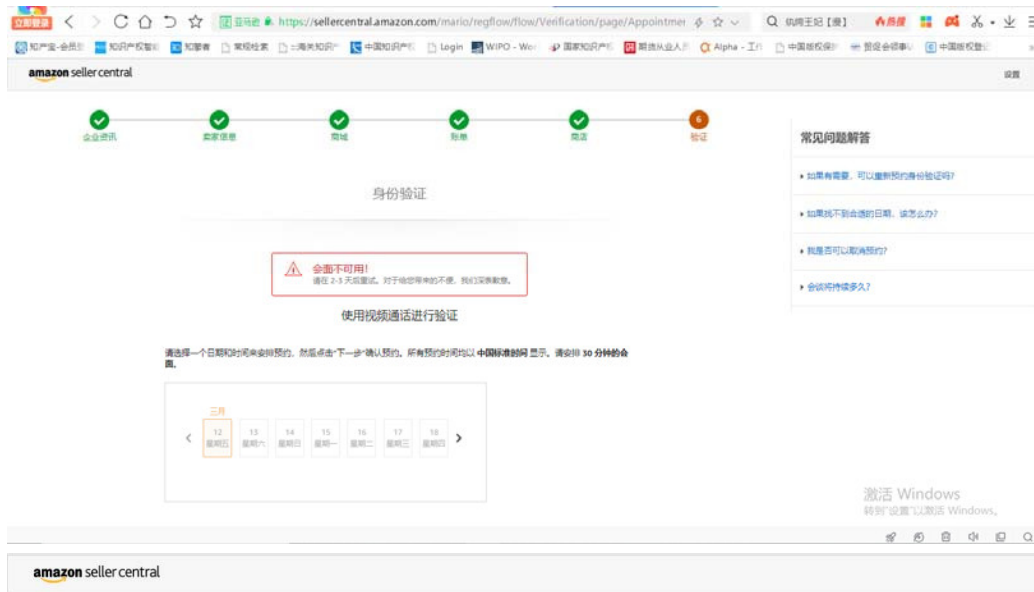


Exhibit 2

This article applies to selling in: **United States**

[Help](#) / [Policies, agreements, and guidelines](#) / Amazon Services Business Solutions Agreement

Amazon Services Business Solutions Agreement

The version of this Agreement in English is the definitive legal version. A translation into [Chinese](#) is available for your ease of reference.

General Terms

Welcome to **Amazon Services Business Solutions**, a suite of optional services for sellers including: [Selling on Amazon](#), [Fulfillment by Amazon](#), [Amazon Advertising](#), [Transaction Processing Services](#), and the [Selling Partner API](#).

THIS AMAZON SERVICES BUSINESS SOLUTIONS AGREEMENT (THE "AGREEMENT") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY FOR EACH COUNTRY FOR WHICH YOU REGISTER OR ELECT TO USE A SERVICE (IN EACH CASE, THE "ELECTED COUNTRY").

As used in this Agreement, "we," "us," and "Amazon" means the applicable Amazon Contracting Party and any of its applicable Affiliates, and "you" means the applicant (if registering for or using a Service as an individual), or the business employing the applicant (if registering for or using a Service as a business) and any of its Affiliates. Capitalized terms have the meanings given to them in this Agreement. If there is any conflict between these General Terms and

the applicable Service Terms and Program Policies, the General Terms will govern and the applicable Service Terms will prevail over the Program Policies.

1. Enrollment.

To begin the enrollment process, you must complete the registration process for one or more of the Services. Use of the Services is limited to parties that can lawfully enter into and form contracts under applicable Law (for example, the Elected Country may not allow minors to use the Services). As part of the application, you must provide us with your (or your business') legal name, address, phone number and e-mail address, as well as any other information we may request. Any personal data you provide to us will be handled in accordance with Amazon's [Privacy Notice](#).

2. Service Fee Payments; Receipt of Sales Proceeds.

Fee details are described in the applicable Service Terms and Program Policies. You are responsible for all of your expenses in connection with this Agreement. To use a Service, you must provide us with valid credit card information from a credit card or credit cards acceptable by Amazon ("**Your Credit Card**") as well as valid bank account information for a bank account or bank accounts acceptable by Amazon (conditions for acceptance may be modified or discontinued by us at any time without notice) ("**Your Bank Account**"). You will use only a name you are authorized to use in connection with a Service and will update all of the information you provide to us in connection with the Services as necessary to ensure that it at all times remains accurate, complete, and valid. You authorize us (and will provide us documentation evidencing your authorization upon our request) to verify your information (including any updated information), to obtain credit reports about you from time to time, to obtain credit authorizations from the issuer of Your Credit Card, and to charge Your Credit Card or debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). All payments to you will be remitted to Your Bank Account through a banking network or by other means specified by us.

If we determine that your actions or performance may result in returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties, then we may in our sole discretion withhold any payments to you for as long as we determine any related risks to Amazon or third parties persist. For

any amounts that we determine you owe us, we may (a) charge Your Credit Card or any other payment instrument you provide to us; (b) offset any amounts that are payable by you to us (in reimbursement or otherwise) against any payments we may make to you or amounts we may owe you; (c) invoice you for amounts due to us, in which case you will pay the invoiced amounts upon receipt; (d) reverse any credits to Your Bank Account; or (e) collect payment or reimbursement from you by any other lawful means. If we determine that your account has been used to engage in deceptive, fraudulent, or illegal activity, or to repeatedly violate our Program Policies, then we may in our sole discretion permanently withhold any payments to you. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in the Local Currency, and all payments contemplated by this Agreement will be made in the Local Currency.

In addition, we may require that you pay other amounts to secure the performance of your obligations under this Agreement or to mitigate the risk of returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties. These amounts may be refundable or nonrefundable in the manner we determine, and failure to comply with terms of this Agreement, including any applicable Program Policies, may result in their forfeiture.

As a security measure, we may, but are not required to, impose transaction limits on some or all customers and sellers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because an Amazon Site or Service is unavailable following the commencement of a transaction.

3. Term and Termination.

The term of this Agreement will start on the date of your completed registration for use of a Service and continue until terminated by us or you as provided below. You may at any time terminate your use of any Service immediately on notice to us via Seller Central, email, the Contact Us form, or similar means. We may terminate your use of any Services or terminate this Agreement for convenience with 30 days' advance notice. We may suspend or terminate your use of any

Services immediately if we determine that (a) you have materially breached the Agreement and failed to cure within 7 days of a cure notice unless your breach exposes us to liability toward a third party, in which case we are entitled to reduce, or waive, the aforementioned cure period at our reasonable discretion; (b) your account has been, or our controls identify that it may be used for deceptive or fraudulent, or illegal activity; or (c) your use of the Services has harmed, or our controls identify that it might harm, other sellers, customers, or Amazon's legitimate interests. We will promptly notify you of any such termination or suspension via email or similar means including Seller Central, indicating the reason and any options to appeal, except where we have reason to believe that providing this information will hinder the investigation or prevention of deceptive, fraudulent, or illegal activity, or will enable you to circumvent our safeguards. On termination of this Agreement, all related rights and obligations under this Agreement immediately terminate, except that (d) you will remain responsible for performing all of your obligations in connection with transactions entered into before termination and for any liabilities that accrued before or as a result of termination, and (e) Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, and 18 of these General Terms survive.

4. License.

You grant us a royalty-free, non-exclusive, worldwide right and license for the duration of your original and derivative intellectual property rights to use any and all of Your Materials for the Services or other Amazon product or service, and to sublicense the foregoing rights to our Affiliates and operators of Amazon Associated Properties; provided, however, that we will not alter any of Your Trademarks from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of Your Materials (provided you are unable to do so using standard functionality made available to you via the applicable Amazon Site or Service); provided further, however, that nothing in this Agreement will prevent or impair our right to use Your Materials without your consent to the extent that such use is allowable without a license from you or your Affiliates under applicable Law (e.g., fair use under United States copyright law, referential use under trademark law, or valid license from a third party).

5. Representations.

Each party represents and warrants that: (a) if it is a business, it is duly organized, validly existing and in good standing under the Laws of the country in which the business is registered and that you are registering for the Service(s) within such country; (b) it has all requisite right, power, and authority to enter into this Agreement, perform its obligations, and grant the rights, licenses, and authorizations in this Agreement; (c) any information provided or made available by one party to the other party or its Affiliates is at all times accurate and complete; (d) it is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority; and (e) it will comply with all applicable Laws in performance of its obligations and exercise of its rights under this Agreement.

6. Indemnification.

6.1 Your indemnification obligations. You will defend, indemnify, and hold harmless Amazon, and our officers, directors, employees, and agents, against any third-party claim, loss, damage, settlement, cost, expense, or other liability (including, without limitation, attorneys' fees) (each, a "Claim") arising from or related to (a) your non-compliance with applicable Laws; (b) Your Products, including the offer, sale, fulfillment (except to the extent attributable to the FBA service), refund, cancellation, return, or adjustments thereof, Your Materials, any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing, and any personal injury, death (to the extent the injury or death is not caused by Amazon), or property damage related thereto; (c) Your Taxes and duties or the collection, payment, or failure to collect or pay Your Taxes or duties, or the failure to meet tax registration obligations or duties; or (d) actual or alleged breach of any representations you have made.

6.2 Amazon's indemnification obligations. Amazon will defend, indemnify, and hold harmless you and your officers, directors, employees, and agents against any third-party Claim arising from or related to: (a) Amazon's non-compliance with applicable Laws; or (b) allegations that the operation of an Amazon Site infringes or misappropriates that third party's intellectual property rights.

6.3 Process. If any indemnified Claim might adversely affect us, we

may, to the extent permitted by applicable Law, voluntarily intervene in the proceedings at our expense. No party may consent to the entry of any judgment or enter into any settlement of an indemnified Claim without the prior written consent of the other party, which may not be unreasonably withheld; except that a party may settle any claim that is exclusively directed at and exclusively affects that party.

7. Disclaimer & General Release.

a. THE AMAZON SITES AND THE SERVICES, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON OR PROVIDED IN CONNECTION WITH THE SERVICES, ARE PROVIDED "AS-IS." AS A USER OF THE SERVICES, YOU USE THE AMAZON SITES, THE SERVICES, AND SELLER CENTRAL AT YOUR OWN RISK. EXCEPT THOSE SET FORTH IN SECTION 5 ABOVE, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE AND OUR AFFILIATES DISCLAIM: (i) ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, THE SERVICES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT; (ii) IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (iii) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM OUR NEGLIGENCE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE AMAZON SITES AND THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE, TIMELY, SECURE, UNINTERRUPTED, OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING BUT NOT LIMITED TO SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION, OR SETTLEMENT OF ANY TRANSACTIONS.

b. BECAUSE AMAZON IS NOT INVOLVED IN TRANSACTIONS BETWEEN CUSTOMERS AND SELLERS OR OTHER PARTICIPANT DEALINGS, IF A DISPUTE ARISES BETWEEN ONE OR MORE PARTICIPANTS, EACH PARTICIPANT RELEASES AMAZON (AND ITS AGENTS AND EMPLOYEES) FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

8. Limitation of Liability.

We WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHER THEORY), OR OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER, RECOVERY, OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA OR PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU TO AMAZON IN CONNECTION WITH THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM.

9. Insurance.

If the gross proceeds from Your Transactions exceed the applicable Insurance Threshold during each month over any period of three (3) consecutive months, or otherwise if requested by us, then within thirty (30) days thereafter, you will maintain at your expense throughout the remainder of the Term for each applicable Elected Country commercial general, umbrella or excess liability insurance with the Insurance Limits per occurrence and in aggregate covering liabilities caused by or occurring in conjunction with the operation of your business, including products, products/completed operations and bodily injury, with policy(ies) naming Amazon and its assignees as additional insureds. At our request, you will provide to us certificates of insurance for the coverage to the following address: c/o Amazon, P.O. Box 81226, Seattle, WA 98108-1226, Attention: Risk Management.

10. Tax Matters.

As between the parties, you will be responsible for the collection, reporting, and payment of any and all of Your Taxes, except to the extent that (i) Amazon automatically calculates, collects, or remits taxes on your behalf according to applicable law; or (ii) Amazon expressly agrees to receive taxes or other transaction-based charges on your behalf in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the [Tax Policies](#). All fees and payments payable by you to Amazon under this Agreement or the applicable Service Terms are exclusive of any applicable taxes, deductions or withholding

(including but not limited to cross-border withholding taxes), and you will be responsible for paying Amazon any of Your Taxes imposed on such fees and any deduction or withholding required on any payment.

11. Confidentiality and Personal Data.

During the course of your use of the Services, you may receive Confidential Information. You agree that for the term of the Agreement and 5 years after termination: (a) all Confidential Information will remain Amazon's exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your participation in the Services; (c) you will not otherwise disclose Confidential Information to any other Person except as required to comply with the Law; (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure that is not expressly permitted in this Agreement; and (e) you will retain Confidential Information only for so long as its use is necessary for participation in the Services or to fulfill your statutory obligations (e.g. tax) and in all cases will delete such information upon termination or as soon as no longer required for the fulfillment of statutory obligations. The foregoing sentence does not restrict your right to share Confidential Information with a governmental entity that has jurisdiction over you, provided that you limit the disclosure to the minimum necessary and explicitly indicate the confidential nature of the shared information to the governmental entity. You may not issue any press release or make any public statement related to the Services, or use our name, trademarks, or logo, in any way (including in promotional material) without our advance written permission, or misrepresent or embellish the relationship between us in any way. You may only use the "Available at Amazon" badge as defined in and according to the [Trademark Usage Guidelines](#) available in Seller Central; you may not use our name, trademarks, or logos in any way (including in promotional material) not covered by the Trademark Usage Guidelines without our advance written permission.

Generally, you may not use customer personal data in any way inconsistent with applicable Law. You must keep customer personal data confidential at all times (the above 5 years' term limit does not apply to customer personal data).

12. Force Majeure.

We will not be liable for any delay or failure to perform any of our

obligations under this Agreement by reasons, events or other matters beyond our reasonable control.

13. Relationship of Parties.

Subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States), you and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions, and provisions in this Agreement are intended to be and are for the sole and exclusive benefit of Amazon, you, and customers. As between you and us, you will be solely responsible for all obligations associated with the use of any third party service or feature that you permit us to use on your behalf, including compliance with any applicable terms of use. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section.

14. Suggestions and Other Information.

If you or any of your Affiliates elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with or related to any Amazon Site or Service (including any related Technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history, and posted content. If we make suggestions on using the Services, you are responsible for any actions you take based on our suggestions.

15. Modification.

15.1. We will provide at least 15 days' advance notice in accordance

with Section 18 for changes to the Agreement.

15.2 However, we may change or modify the Agreement at any time with immediate effect (a) for legal, regulatory, fraud and abuse prevention, or security reasons; (b) to change existing features or add additional features to the Services (where this does not materially adversely affect your use of the Services); or (c) to restrict products or activities that we deem unsafe, inappropriate, or offensive. We will notify you about any change or modification in accordance with Section 18.

15.3 Your continued use of the Services after the effective date of any change to this Agreement in accordance with this Section 15 will constitute your acceptance of that change. If any change is unacceptable to you, you agree not to use the Services and to end the Agreement as described in Section 3.

16. Password Security.

Any password we provide to you may be used only during the Term to access Seller Central (or other tools we provide, as applicable) to use the Services, electronically accept Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account in accordance with this Agreement) and are solely responsible for any use of or action taken under your password. If your password is compromised, you must immediately change your password.

17. Export.

You will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any commodities, software or technology to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations, US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority.

18. Miscellaneous.

The Governing Laws will govern this Agreement, without reference to rules governing choice of laws or the Convention on Contracts for

the International Sale of Goods. If the Elected Country is the United States, Canada, or Mexico, **Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to this Agreement or your use of the Services will be resolved by binding arbitration as described in this paragraph, rather than in court**, except that (i) you may assert claims in a small claims court that is a Governing Court if your claims qualify and (ii) you or we may bring suit in the Governing Courts, submitting to the jurisdiction of the Governing Courts and waiving our respective rights to any other jurisdiction, to enjoin infringement or other misuse of intellectual property rights. **There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would.** Before you may begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, CSC Services of Nevada, Inc., 112 N Curry Street, Carson City, NV 89703. The arbitration will be conducted by the American Arbitration Association (AAA) under its commercial rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. The expedited procedures of the AAA's rules will apply only in cases seeking exclusively monetary relief under \$50,000, and in such cases the hearing will be scheduled to take place within 90 days of the arbitrator's appointment. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person at a mutually agreed location. **Amazon and you each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **Amazon and you each waive any right to a jury trial.**

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Any attempt to assign or otherwise transfer in violation of this section is void; provided, however, that upon notice to Amazon, you may assign or transfer this Agreement, in whole or in part, to any of your Affiliates as long as you remain liable for your obligations that arose prior to the

effective date of the assignment or transfer under this Agreement. You agree that we may assign or transfer our rights and obligations under this Agreement: (a) in connection with a merger, consolidation, acquisition or sale of all or substantially all of our assets or similar transaction; or (b) to any Affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for Amazon as the party to this Agreement. Subject to that restriction, this Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and assigns. We may perform any of our obligations or exercise any of our rights under this Agreement through one or more of our Affiliates. Amazon retains the right to immediately halt any of Your Transactions, prevent or restrict access to the Services or take any other action to restrict access to or availability of any inaccurate listing, any inappropriately categorized items, any unlawful items, or any items otherwise prohibited by applicable Program Policies. Because Amazon is not your agent (except for the limited purpose set out in the Transaction Processing Service Terms (if the Elected Country for a Service is the United States)), or the customer's agent for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.

Amazon will provide notice to you under this Agreement by posting changes to Seller Central or to the applicable Amazon Services site to which the changes relate (such as the Developer Site accessible through your account), by sending you an email notification, or by similar means. You must send all notices and other communications relating to Amazon to our Selling Partner Support team via Seller Central, email, the Contact Us form, or similar means. We may also communicate with you electronically and in other media, and you consent to such communications. You may change your e-mail addresses and certain other information in Seller Central, as applicable. You will ensure that all of your information is up to date and accurate at all times.

If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions and will not affect the validity and enforceability of any remaining provisions. If the Elected Country is Canada, then it is the express wish of the parties that this Agreement and the applicable Service Terms and Program Policies have been drafted in English. (The following is a French translation of the preceding sentence: Si le pays de service est le Canada, les

parties conviennent que la présente autorisation et tous les termes et conditions applicables s'y rattachant soient rédigés en anglais.) We may make available translations to this Agreement and the applicable Service Terms and Program Policies, but the English version will control. This Agreement represents the entire agreement between the parties with respect to the Services and related subject matter and supersedes any previous or contemporaneous oral or written agreements and understandings.

Definitions

As used in this Agreement, the following terms have the following meanings:

"Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with that entity.

"Amazon Associated Properties" means any website or other online point of presence, mobile application, service or feature, other than an Amazon Site, through which any Amazon Site, or products or services available on any of them, are syndicated, offered, merchandised, advertised, or described.

"Amazon Contracting Party" means the party outlined below.

- If the Elected Country is Canada:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services International, Inc.
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon.com.ca, Inc.
Amazon Advertising	Amazon Services International, Inc.

- If the Elected Country is Mexico:

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Service	Amazon Contracting Party
Selling on Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Fulfillment by Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Amazon Advertising	Servicios Comerciales Amazon México S. de R.L. de C.V.

- If the Elected Country is the United States:

Service	Amazon Contracting Party
Selling on Amazon	Amazon.com Services LLC
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon.com Services LLC
Amazon Advertising	Amazon.com Services LLC
Transaction Processing Services	Amazon Payments, Inc., Amazon Capital Services, Inc., or Amazon.com Services LLC, according to the Transaction Processing Services Terms

If you register for or use the Selling Partner API, the Amazon Contracting Party is the Contracting Party that provides the applicable Service you use in connection with the Selling Partner API.

"Amazon Site" means, as applicable, the CA Amazon Site, the MX Amazon Site, or the US Amazon Site.

"CA Amazon Site" means the website, the primary home page of which is identified by the url www.amazon.ca, and any successor or replacement of such website.

"Confidential Information" means information relating to us, to the Services, or Amazon customers that is not known to the general public including, but not limited to, any information identifying or unique to specific customers; reports, insights, and other information about the Services; data derived from the Services except for data (other than customer personal data) arising from the sale of your products comprising of products sold, prices, sales, volumes and time of the transaction; and technical or operational specifications relating to the Services. For the purposes of this Agreement, customer personal data constitutes Confidential Information at all times.

"Content" means copyrightable works under applicable Law and content protected by database rights under applicable Law.

"Excluded Products" means the items described on the applicable [Restricted Products pages](#) in Seller Central, any other applicable Program Policy, or any other information made available to you by Amazon.

"Governing Courts" means the applicable one of the following:

- the state or Federal court in King County, Washington (if the Elected Country is Canada, Mexico, or the United States),

"Governing Laws" means the applicable one of the following:

- the laws of the State of Washington, United States together with the Federal Arbitration Act and other applicable federal law (if the Elected Country is Canada, Mexico, or the United States),

"Insurance Limits" means the applicable one of the following:

- One Million Canadian Dollars (\$1,000,000) (if the Elected Country is Canada),
- Ten Million Mexican Pesos (\$10,000,000) (if the Elected Country is Mexico),
- One Million U.S. Dollars (\$1,000,000) (if the Elected Country is the United States).

"Insurance Threshold" means the applicable one of the following:

- Ten Thousand Canadian Dollars (\$10,000) (if the Elected Country is Canada),

- One Hundred Thousand Mexican Pesos (\$100,000) (if the Elected Country is Mexico),
- Ten Thousand U.S. Dollars (\$10,000) (if the Elected Country is the United States).

"Intellectual Property Right" means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

"Law" means any law, ordinance, rule, regulation, order, license, permit, judgment, decision, or other requirement, now or in the future in effect, of any governmental authority (e.g., on a federal, state, or provincial level, as applicable) of competent jurisdiction.

"Local Currency" means the applicable one of the following:

- U.S. Dollars (if the Elected Country is the United States),
- Canadian Dollars (if the Elected Country is Canada),
- Mexican Pesos (if the Elected Country is Mexico),

"MX Amazon Site" means the website, the primary home page of which is identified by the url www.amazon.com.mx, and any successor or replacement of such website.

"Optional Coverage Plans" means warranties, extended service plans and related offerings, in each case as determined by us, that you offer.

"Order Information" means, with respect to any of Your Products ordered through an Amazon Site, the order information and shipping information that we provide or make available to you.

"Person" means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division, or other cognizable entity, whether or not having distinct legal existence.

"Program Policies" means all policies and program terms provided on the [Program Policies](#) page.

"Sales Proceeds" means the gross proceeds from any of Your

Transactions, including (a) all shipping and handling, gift wrap and other charges; (b) taxes and customs duties to the extent specified in the applicable [Tax Policies](#); and (c) in the case of invoiced orders, any amounts that customers fail to pay to us or our Affiliates on or before the applicable invoice due date.

"Seller Central" means the online portal and tools made available by Amazon to you, for your use in managing your orders, inventory, and presence on a particular Amazon Site or any other online point of presence.

"Service" means each of the following services: Selling on Amazon, Fulfillment by Amazon, Amazon Advertising (including Amazon Sponsored Products), the Selling Partner APIs, and, if the Elected Country for a Service is the United States, the Transaction Processing Services, together in each case with any related services and materials we make available.

"Service Terms" means the service terms applicable to each Service, which are made part of this Agreement upon the date you elect to register for or use the applicable Service, and any subsequent modifications we make to those terms.

"Technology" means any: (a) ideas, procedures, processes, systems, methods of operation, concepts, principles, and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials; and (c) software, hardware, code, technology, or other functional item.

"Trademark" means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia, or any other source or business identifier, protected or protectable under any Laws.

"US Amazon Site" means that website, the primary home page of which is identified by the URL www.amazon.com, and any successor or replacement of such website.

"Your Materials" means all Technology, Your Trademarks, Content, Your Product information, data, materials, and other items or information provided or made available by you or your Affiliates to

Amazon or its Affiliates.

"Your Personnel" means any third party warranting, administering or otherwise involved in the offer, sale, performance, or fulfillment of Your Products, including any of your employees, representatives, agents, contractors, or subcontractors.

"Your Product" means any product or service (including Optional Coverage Plans) that you: (a) have offered through the Selling on Amazon Service; (b) have made available for advertising through the Amazon Advertising Service; or (c) have fulfilled or otherwise processed through the Fulfillment by Amazon Service.

"Your Sales Channels" means all sales channels and other means through which you or any of your Affiliates offers products or services, other than physical stores.

"Your Taxes" means any and all sales, goods and services, use, excise, premium, import, export, value added, consumption, and other taxes, regulatory fees, levies (specifically including environmental levies), or charges and duties assessed, incurred, or required to be collected or paid for any reason (a) in connection with any advertisement, offer or sale of products or services by you on or through or in connection with the Services; (b) in connection with any products or services provided for which Your Products are, directly or indirectly, involved as a form of payment or exchange; or (c) otherwise in connection with any action, inaction, or omission of you or your Affiliates, or any Persons providing products or services, or your or their respective employees, agents, contractors, or representatives, for which Your Products are, directly or indirectly, involved as a form of payment or exchange. Also, if the Elected Country is the United States, Mexico, or Canada as it is used in the Fulfillment by Amazon Service Terms, this defined term also means any of the types of taxes, duties, levies, or fees mentioned above that are imposed on or collectible by Amazon or any of its Affiliates in connection with or as a result of fulfillment services including the storage of inventory or packaging of Your Products and other materials owned by you and stored by Amazon, shipping, gift wrapping, or other actions by Amazon in relation to Your Products pursuant to the Fulfillment by Amazon Service Terms.

"Your Trademarks" means Trademarks of yours that you provide to us: (a) in non-text form for branding purposes; and (b) separate from (and not embedded or otherwise incorporated in) any product

specific information or materials.

"Your Transaction" means any sale of Your Product(s) through an Amazon Site.

Selling on Amazon Service Terms

The Selling on Amazon Service ("**Selling on Amazon**") is a Service that allows you to offer certain products and services directly on the Amazon Sites.

These Selling on Amazon Service Terms are part of the Agreement, but, unless specifically provided otherwise, concern and apply only to your participation in Selling on Amazon. BY REGISTERING FOR OR USING THE SELLING ON AMAZON SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE [AGREEMENT](#), INCLUDING THESE SELLING ON AMAZON SERVICE TERMS. NOTWITHSTANDING THE PREVIOUS SENTENCE, IF YOU HAVE ENTERED INTO A SEPARATE AGREEMENT THAT PERMITS YOU TO OFFER YOUR PRODUCTS THROUGH A PARTICULAR AMAZON SITE (E.G., A MERCHANTS@AMAZON.COM PROGRAM AGREEMENT, MERCHANTS @AMAZON.CO.JP PROGRAM AGREEMENT OR ANY PREDECESSOR OF THOSE AGREEMENTS), THEN TO THE EXTENT THAT YOU CONTINUE TO LIST AND SELL YOUR PRODUCTS ON THAT AMAZON SITE PURSUANT TO SUCH SEPARATE AGREEMENT, TRANSACTIONS OF YOUR PRODUCTS ON THAT AMAZON SITE AND ANY TAX SERVICES WE MAKE AVAILABLE UNDER THAT AGREEMENT ARE GOVERNED BY THE TERMS OF THAT AGREEMENT AND NOT BY THESE SELLING ON AMAZON SERVICE TERMS.

S-1 Your Product Listings and Orders.

S-1.1 Products and Product Information. You will provide accurate and complete Required Product Information for each product or service that you offer through any Amazon Site and promptly update that information as necessary to ensure it at all times remains accurate and complete. You will also ensure that Your Materials, Your Products (including packaging) and your offer and subsequent sale of any of the same on any Amazon Site comply with all applicable Laws (including all minimum age, marking and labeling requirements) and do not contain any sexually explicit (except to the extent expressly permitted under our applicable Program Policies), defamatory or obscene materials. You may not provide any

information for, or otherwise seek to offer any Excluded Products on any Amazon Sites; or provide any URL Marks for use, or request that any URL Marks be used, on any Amazon Site. If you offer a product for sale on an Amazon Site that requires a warning under California Health & Safety Code Section 25249.6 (a "Proposition 65 Warning") you (a) will provide us with such warning in the manner specified in our Program Policies, (b) agree that our display of a Proposition 65 Warning on a product detail page is confirmation of our receipt of that warning, and (c) will only revise or remove a Proposition 65 Warning for a product when the prior warning is no longer legally required.

S-1.2 Product Listing; Merchandising; Order Processing. We will enable you to list Your Products on a particular Amazon Site, and conduct merchandising and promote Your Products in accordance with the Agreement (including via the Amazon Associated Properties or any other functions, features, advertising, or programs on or in connection with the applicable Amazon Site). We may use mechanisms that rate, or allow shoppers to rate, Your Products and your performance as a seller and Amazon may make these ratings and feedback publicly available. We will provide Order Information to you for each order of Your Products through the applicable Amazon Site. We will also receive all Sales Proceeds on your behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms. We may permit certain customers to place invoiced orders for Your Products, in which case remittance of Sales Proceeds may be delayed according to each customer's invoicing terms. You will accept and fulfill invoiced orders in the same manner as you accept and fulfill non-invoiced orders, except as otherwise provided in this Agreement.

S-1.3 Shipping and Handling Charges. For Your Products ordered by customers on or through an Amazon Site that are not fulfilled using Fulfillment by Amazon, you will determine the shipping and handling charges subject to our Program Policies and standard functionality (including any category-based shipping and handling charges we determine, such as for products offered by sellers on the Individual selling plan and BMVD Products generally). When we determine the shipping and handling charges, you will accept them as payment in full for your shipping and handling. Please refer to the Fulfillment by Amazon Service Terms for Your Products that are fulfilled using Fulfillment by Amazon.

S-1.4 Credit Card Fraud and Unpaid Invoices. We will bear the risk of (a) credit card fraud (i.e., a fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, and (b) late payments or defaults by customers in connection with invoiced orders for Your Products, except, in each case, in connection with Seller-Fulfilled Products that are not fulfilled strictly in accordance with the Order Information and Shipment Information. You will bear all other risk of fraud or loss.

S-2 Sale and Fulfillment; Refunds and Returns.

S-2.1 Sale and Fulfillment. Other than as described in the Fulfillment by Amazon Service Terms for each Amazon Site for which you decide to register or use the Selling on Amazon Service, you will: (a) source, offer, sell and fulfill your Seller-Fulfilled Products, and source and, offer and sell your Amazon-Fulfilled Products, in each case in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities; (b) package each of Your Products in a commercially reasonable manner complying with all applicable packaging and labeling requirements and ship each of Your Products on or before its Expected Ship Date; (c) retrieve Order Information at least once each business day; (d) only cancel Your Transactions as permitted pursuant to your terms and conditions appearing on the applicable Amazon Site at the time of the applicable order or as may be required under this Agreement; (e) fulfill Your Products throughout the Elected Country (except to the extent prohibited by Law or this Agreement); (f) provide to Amazon information regarding fulfillment and order status and tracking (to the extent available), in each case as requested by us using the processes designated by us, and we may make any of this information publicly available; (g) comply with all Street Date instructions; (h) ensure that you are the seller of each of Your Products; (i) include an order-specific packing slip, and, if applicable, any tax invoices, within each shipment of Your Products; (j) identify yourself as the seller of each of Your Products on all packing slips or other information included or provided in connection with Your Products and as the Person to which a customer may return the applicable product; and (k) not send customers emails confirming orders or fulfillment of Your Products. If any of Your Products are fulfilled using Fulfillment by Amazon, the Fulfillment by Amazon Service Terms for the applicable

Amazon Site will apply to the storage, fulfillment, and delivery of such Amazon-Fulfilled Products.

S-2.2 Cancellations, Returns, and Refunds. The Amazon Refund Policies for the applicable Amazon Site will apply to Your Products. Subject to Section F-6, for any of Your Products fulfilled using Fulfillment by Amazon, you will promptly accept, calculate, and process cancellations, returns, refunds, and adjustments in accordance with this Agreement and the Amazon Refund Policies for the applicable Amazon Site, using functionality we enable for your account. Without limiting your obligations, we may in our sole discretion accept, calculate, and process cancellations, returns, refunds, and adjustments for the benefit of customers. You will route any payments to customers in connection with Your Transactions through Amazon. We will make any payments to customers in the manner we determine, and you will reimburse us for all amounts we pay.

S-3 Problems with Your Products.

S-3.1 Delivery Errors and Nonconformities; Recalls. You are responsible for any non-performance, non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by: (a) credit card fraud for which we are responsible under Section S-1.4; or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon, if any, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfillment of those of Your Products. You are also responsible for any non-conformity or defect in, any public or private recall of, or safety alert of any of Your Products or other products provided in connection with Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls, or safety alerts of Your Products or other products provided in connection with Your Products.

S-3.2 A-to-z Guarantee and Chargebacks. If we inform you that we have received or initiated a claim under the "A-to-z Guarantee" offered on a particular Amazon Site or other dispute relating to the offer, sale or fulfillment of Your Products (other than a chargeback), concerning one of Your Transactions, you will have 30 days to

appeal our decision of the claim. If we find that a claim, chargeback, or dispute is your responsibility, you (a) will not take recourse against the customer, and (b) are responsible for reimbursing us in accordance with the [Service Fee Payments section of this Agreement](#) for the amount paid by the customer (including taxes and shipping and handling charges, but excluding any Referral Fees that we retained as defined in Section S-4), and all other fees and expenses associated with the original transaction (such as credit card, bank, payment processing, re-presentment, or penalty fees) and any related chargebacks or refunds, to the extent payable by us.

S-4 Compensation.

You will pay us: (a) the applicable Referral Fees; (b) any applicable Variable Closing Fee; (c) the non-refundable Selling on Amazon Subscription Fee in advance each month; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). "Selling on Amazon Subscription Fee" means the fee specified as such on the Selling on Amazon [Fee Schedule](#) for the applicable Amazon Site at the time such fee is payable. With respect to each of Your Transactions: (i) "Sales Proceeds" has the meaning set out in this Agreement; (ii) "Variable Closing Fee" means the applicable fee, if any, as specified on the [Variable Closing Fee Schedule](#) for the applicable Amazon Site; and (iii) "Referral Fee" means the applicable fee based on the Sales Proceeds from Your Transaction through the applicable Amazon Site specified on the Selling on Amazon [Fee Schedule](#) for that Amazon Site at the time of Your Transaction, based on the categorization by Amazon of the type of product that is the subject of Your Transaction; provided, however, that Sales Proceeds will not include any shipping charges set by us in the case of Your Transactions that consist solely of products fulfilled using Fulfillment by Amazon.

S-5 Remittance of Sales Proceeds & Refunds.

Except as otherwise stated in this Agreement, we will remit to you your available balance on a bi-weekly (14 day) (or at our option, more frequent) basis, which may vary for each Elected Country. For each remittance, your available balance is equal to any Sales Proceeds not previously remitted to you as of the applicable Remittance Calculation Date (which you will accept as payment in full for Your Transactions), less: (a) the Referral Fees; (b) the applicable Variable Closing Fee; (c) any Selling on Amazon Subscription Fees; (d) any other applicable fees described in this

Agreement (including any applicable Program Policies); (e) any amounts we require you to maintain in your account balance pursuant to this Agreement (including payments withheld pursuant to [Section 2 of the General Terms](#), [Section S-1.4](#), and applicable Program Policies); and (f) any taxes that Amazon automatically calculates, collects and remits to a tax authority according to applicable law, as specified in the Tax Policies.

We may establish a reserve on your account based on our assessment of risks to Amazon or third parties posed by your actions or performance, and we may modify the amount of the reserve from time to time at our sole discretion.

When you either initially provide or later change Your Bank Account information, the Remittance Calculation Date may be deferred by up to 14 days. For sellers that registered after October 30, 2011 and are on the Individual selling plan, the remittance amount will not include Sales Proceeds from the 14-day period before the date of remittance. If you refund money to a customer in connection with one of Your Transactions, and the refund is routed through us (or our Affiliate), on the next available Remittance Calculation Date we will refund to you the amount of the Referral Fee paid by you to us attributable to the amount of the customer refund (including refunded taxes and customs duties only to the extent specified in the applicable [Tax Policies](#)), less the Refund Administration Fee for each of Your Products refunded that is not a BMVD Product, which amount we may retain as an administrative fee; provided, however, that in the case of a complete refund of Sales Proceeds for a Media Product, we will refund to you the full amount of any Variable Closing Fee paid by you to us (and in the case of a partial refund of Sales Proceeds for a Media Product, we will not refund to you any portion of any Variable Closing Fee paid by you to us). We will remit any amounts to be refunded by us pursuant to this subsection from time to time together with the next remittance to be made by us to you. **"Refund Administration Fee"** means the applicable fee described on the [Refund Administration Fee Schedule](#) for the applicable Amazon Site.

Net Sales Proceeds from non-invoiced orders will be credited to your available balance when they are received by us or our Affiliates. Sales Proceeds from invoiced orders will be credited to your available balance: (a) if you have elected in advance to pay a fee to accelerate remittance of Sales Proceeds from invoiced orders, on the day all of Your Products included in an invoiced orders are shipped; or (b)

otherwise, no later than the seventh day following the date that an invoiced order becomes due.

S-6 Amazon’s Websites and Services.

Amazon has the right to determine, the design, content, functionality, availability and appropriateness of its websites, selection, and any product or listing in the Amazon Stores, and all aspects of each Service, including your use of the same. Amazon may assign any of these rights or delegate any of its responsibilities.

S-7 Continuing Guarantees

Guarantees. We require the following continuing guarantees from you.

S-7.1 Pesticides. If any of Your Products is a “pesticide” being offered or sold in the United States or other product regulated under the US Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) or its implementing regulations, then you provide to us the following continuing guaranty that: (a) you are a resident of the United States; and (b) with respect to each such product, the pesticides and other FIFRA regulated products comprising each sale, shipment, or other delivery made previously or hereafter are: (i) lawfully registered with the US Environmental Protection Agency at the time of sale, shipment, or delivery, or fully qualified for a specific exemption from the FIFRA registration requirements at the time of sale, shipment, or delivery, (ii) compliant with all requirements of FIFRA and its implementing regulations at the time of sale, shipment, or delivery, and (iii) provided by you in the original, unbroken packaging.

Selling on Amazon Definitions

"Amazon-Fulfilled Products" means any of Your Products that are fulfilled using the Fulfillment by Amazon Service.

"Amazon Refund Policies" means the [return and refund policies](#) published on the applicable Amazon Site and applicable to products and services offered via that Amazon Site.

"BMVD Product" means any book, magazine or other publication, sound recording, video recording, and/or other media product in

any format, including any subscription, in each case excluding any software product, computer game, and/or video game.

"Excluded Offer" means any discount, rebate, promotional offer, or other term of offer and/or sale that you: (a) have attempted to make available through a particular Amazon Site but that we do not honor or support (but only until such time as we honor or support the same on such Amazon Site); or (b) make available solely to third parties that either (i) purchase products solely for resale and who are not end users of such products (i.e., wholesale purchasers), or (ii) if the Elected Country is Canada, Mexico, or the United States, have affirmatively elected and opted-in to participate in your or one of your Affiliates' membership-based customer loyalty or customer incentive programs.

"Expected Ship Date" means, with respect to any of Your Products, either: (a) the end of the shipping availability period (which begins as of the date on which the relevant order is placed by the customer), or the shipping availability date, as applicable, specified by you in the relevant inventory/product data feed for Your Product; or (b) if you do not specify shipping availability information in such inventory/product data feed or that Your Product is in a product category that Amazon designates as requiring shipment within two (2) business days, two (2) business days after the date on which the relevant order is placed by the customer.

"Media Product" means any book, magazine or other publication, sound recording, video recording, software product, computer game, videogame, or other media product in any format, including any related subscription, offered through an Amazon Site.

"Purchase Price" means the total amount payable or paid for Your Product (including taxes and shipping and handling charges only to the extent specified in the applicable [Tax Policies](#)).

"Remittance Calculation Date" is the date that is two (2) business days prior to the date of remittance (the **"Remittance Calculation Date"**).

"Required Product Information" means, with respect to each of Your Products in connection with a particular Amazon Site, the following (except to the extent expressly not required under the applicable Program Policies): (a) description, including as applicable,

location-specific availability and options, scheduling guidelines and service cancellation policies; (b) SKU and UPC/EAN/JAN numbers, and other identifying information as Amazon may reasonably request; (c) information regarding in-stock status and availability, shipping limitations or requirements, and Shipment Information (in each case, in accordance with any categorizations prescribed by Amazon from time to time); (d) categorization within each Amazon product category and browse structure as prescribed by Amazon from time to time; (e) digitized image that accurately depicts only Your Product, complies with all Amazon image guidelines, and does not include any additional logos, text or other markings; (f) Purchase Price; (g) shipping and handling charge (in accordance with our standard functionality); (h) any text, disclaimers, warnings, notices, labels, warranties, or other content required by applicable Law to be displayed in connection with the offer, merchandising, advertising, or sale of Your Product; (i) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (j) brand; (k) model; (l) product dimensions; (m) weight; (n) a delimited list of technical specifications; (o) SKU and UPC/EAN/JAN numbers (and other identifying information as we may reasonably request) for accessories related to Your Product that is available in our catalog; (p) the state or country Your Product ships from; and (q) any other information reasonably requested by us (e.g., the condition of used or refurbished products; and invoices and other documentation demonstrating the safety and authenticity of Your Products).

"Seller-Fulfilled Products" means any of Your Products that are not fulfilled using the Fulfillment by Amazon Service.

"Shipment Information" means, with respect to any of Your Products, the estimated or promised shipment and delivery date.

"Street Date" means the date(s), if any, specified by the manufacturer, distributor, and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly, or such product should not be delivered or otherwise made available to customers.

"URL Marks" means any Trademark, or any other logo, name, phrase, identifier, or character string, that contains or incorporates any top level domain (e.g., .com, .edu, .ca, .fr, .jp) or any variation of a top level domain (e.g., dot com, dotcom, net, or com).

"**Your Transaction**" is defined in the General Terms of this Agreement; however, as used in these Selling on Amazon Service Terms, it means any and all such transactions through Selling on Amazon only.

Fulfillment by Amazon Service Terms

Fulfillment by Amazon ("**FBA**") provides fulfillment and associated services for Your Products.

These FBA Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in FBA. BY REGISTERING FOR OR USING FBA, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE [AGREEMENT](#), INCLUDING THESE FBA SERVICE TERMS. You expressly agree that Amazon may engage its Affiliate(s) or a third party in order to complete one or more of the fulfillment and associated services outlined below.

Fulfillment Services

F-1 Your Products

Once you are accepted into FBA, you must apply to register each product you offer that you wish to include in the FBA program. We may refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies. You may at any time withdraw registration of any of Your Products from FBA.

F-2 Product and Shipping Information

You will, in accordance with applicable Program Policies, provide accurate and complete information about Your Products registered in FBA, and will provide Fulfillment Requests for any Units fulfilled using FBA that are not sold through an Amazon Site ("**Multi-Channel Fulfillment Units**"). You will promptly update any information about Your Products in accordance with our requirements and as necessary so that the information is at all times accurate and complete.

F-3 Shipping to Amazon

F-3.1 Except as otherwise provided in [Section F-3.4](#) and [Section F-5](#),

FBA is limited to Units that are shipped to and from fulfillment centers located within the applicable Elected Country, to be delivered to customers in the same Elected Country only. You will ship Units to us in accordance with applicable Program Policies. You will be responsible for all costs incurred to ship the Units to the shipping destination (including costs of freight and transit insurance) and Amazon will not pay any shipping costs. You are responsible for payment of all customs, duties, taxes, and other charges. In the case of any improperly packaged or labeled Unit, we may return the Unit to you at your expense (pursuant to Section F-7) or re-package or re-label the Unit and charge you an administrative fee.

F-3.2 You will not deliver to us any Unsuitable Unit; we may reject any shipment of Your Products.

F-3.3 We may, at our option, allow you to ship Units at your expense (as described in Section F-9.2) to fulfillment centers using discounted shipping rates that we may make available to you for certain carriers. In such event, you will use the processes and supply the information that we require for you to obtain such discounted rates. You also must comply with standard operating procedures, weight and size restrictions, and other shipping requirements of the applicable carriers. If we provide you with the estimated shipping costs prior to shipment, you acknowledge and agree that actual shipping costs may vary from such estimates. In addition, if the weight of the Unit, as determined by the applicable carrier, differs from that submitted by you to us for purposes of determining the estimated shipping costs, then: (a) you may be charged more than the estimated shipping costs if the carrier determines that such Unit weighs more than as submitted by you; or (b) you may be charged the full amount of the estimated shipping costs even if the carrier determines the weight to be less than that submitted by you. You will not use carrier account information (e.g., carrier account number, amount of shipping rates, etc.) for any purpose, nor disclose such information to any third party, and you will protect such information as Amazon's confidential information in accordance with Section 11 of the General Terms of this Agreement. As between you, us, and the applicable carrier, you will be the shipper of record, and we will make payment to the carrier with respect to the shipment of all Units using such discounted rates. Title and risk of loss for any Unit shipped using discounted rates provided by us under this Section will remain with you, and our provision of such shipping rates will not create any liability or responsibility for us with respect

to any delay, damage, or loss incurred during shipment. You authorize the applicable carrier to provide us with all shipment tracking information.

F-3.4 If you ship Units from outside the applicable Elected Country to fulfillment centers, you will list yourself as the importer/consignee and nominate a customs broker. If Amazon is listed on any import documentation, Amazon reserves the right to refuse to accept the Units covered by the import documents and any costs assessed against or incurred by Amazon will be collected from Your Bank Account, deducted from amounts payable to you, or by other method at our election.

F-4 Storage

We will provide storage services as described in these FBA Service Terms once we confirm receipt of delivery. We will keep electronic records that track inventory of Units by identifying the number of Units stored in any fulfillment center. We will not be required to physically mark or segregate Units from other inventory units (e.g., products with the same Amazon standard identification number) owned by us, our Affiliates or third parties in the applicable fulfillment center(s). If we elect to commingle Units with such other inventory units, both parties agree that our records will be sufficient to identify which products are Units. We may move Units among facilities. If there is a loss of or damage to any Units while they are being stored, we will, compensate you in accordance with the [FBA Guidelines](#), and you will, at our request, provide us a valid tax invoice for the compensation paid to you. If we compensate you for a Unit, we will be entitled to dispose of the Unit pursuant to [Section F-7](#). At all other times, you will be solely responsible for any loss of, or damage to, any Units. Our confirmed receipt of delivery does not: (a) indicate or imply that any Unit has been delivered free of loss or damage, or that any loss or damage to any Unit later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that we actually received the number of Units of Your Product(s) specified by you for such shipment; or (c) waive, limit, or reduce any of our rights under this Agreement. We reserve the right to change scheduling restrictions and volume limitations on the delivery and storage of your inventory in fulfillment centers in accordance with Section 15 of the General Terms, and you will comply with any of these restrictions or limitations.

F-5 Fulfillment

As part of our fulfillment services, we will ship Units from our inventory of Your Products to the shipping addresses in the Elected Country included in valid customer orders, or submitted by you as part of a Fulfillment Request. We may ship Units together with products purchased from other merchants, including any of our Affiliates. We also may ship Units separately that are included in a single Fulfillment Request. If you participate in our export fulfillment services, we will also ship Your Products that we determine to be eligible (each, a "**Foreign-Eligible Product**") to Foreign Addresses within countries we determine to be eligible for foreign shipments, subject to the additional terms on foreign shipments in the applicable [FBA Guidelines](#).

F-6 Customer Returns

F-6.1 You will be responsible for and will accept and process returns of, and provide refunds and adjustments for, any Multi-Channel Fulfillment Units in accordance with the Agreement (including the applicable Program Policies).

F-6.2 We will receive and process returns of any Amazon Fulfillment Units that were shipped to addresses within the Elected Country in accordance with the terms of your Seller Agreement, these FBA Service Terms, and the Program Policies. Any Sellable Units that are also Amazon Fulfillment Units and that are properly returned will be placed back into the inventory of Your Products in the FBA Program. We may fulfill customer orders for Your Products with any returned Amazon Fulfillment Units. Except as provided in [Section F-7](#), you will retake title of all Units that are returned by customers.

F-6.3 Subject to [Section F-7](#), we will, at your direction, either return or dispose of any Unit that is returned to us by a customer and that we determine is an Unsuitable Unit.

F-6.4 If Amazon receives a customer return of a Multi-Channel Fulfillment Unit, you will direct us to return or dispose of the Unit at your own cost failing which we may dispose of the Unit as provided in [Section F-7](#).

F-7 Returns to You and Disposal

F-7.1 You may, at any time, request that Units be returned to you or that we dispose of Units.

F-7.2 We may with notice return Units to you, including upon termination of these FBA Service Terms. Returned Units will be sent to your designated shipping address. However, if (a) the designated shipping address we have for you is outdated or incorrect, (b) you have not provided or, upon our request, confirmed a designated shipping address in the Elected Country, or (c) we cannot make arrangements for you to pay for the return shipment, then the Unit(s) will be deemed abandoned and we may elect to dispose of them as appropriate based on the inventory (e.g., by selling, recycling, donating, or destroying it) and retain any proceeds we may receive from the disposal.

We may dispose of any Unsuitable Unit (and you will be deemed to have consented to our action): (d) immediately if we determine that (i) the Unit creates a safety, health, or liability risk to Amazon, our personnel, or any third party; (ii) you have engaged in fraudulent or illegal activity; or (iii) we have cause to terminate your use of Services with immediate effect pursuant to Section 3 and are exposed to liability towards a third party; (e) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days after we notify you that the Unit has been recalled; or (f) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days (or as otherwise specified in the applicable Program Policies) after we notify you that its removal is required, for instance because your use of FBA is suspended or terminated or your seller account is suspended, terminated or closed. In addition, you will reimburse us for expenses we incur in connection with any Unsuitable Units.

F-7.3 You may, at any time, request that we dispose of Units. In this case, we may dispose of these Units as appropriate based on the inventory (e.g., by selling, recycling, donating, or destroying it) and retain any proceeds we may receive from the disposal. Title to each disposed Unit will transfer to us (or a third party we select such as a charity) at no cost, free and clear of any liens, claims, security interests or other encumbrances to the extent required to dispose of the Unit, and we may retain any proceeds, we may receive from the disposal.

F-7.4 You will promptly notify us of any recalls or potential recalls, or safety alerts of any of Your Products and cooperate and assist us in connection with any recalls or safety alerts, including by initiating the procedures for returning items to you under our standard processes. You will be responsible for all costs and expenses you, we

or any of our or your Affiliates incur in connection with any recall or potential recall or safety alerts of any of Your Products (including the costs to return, store, repair, liquidate, or deliver to you or any vendor any of these products).

F-8 Customer Service

F-8.1 For Multi-Channel Fulfillment Units we will have no customer service obligations other than to pass any inquiries to your attention at the contact you provide, and to make available a reasonable amount of information regarding the status of the fulfillment of Your Products if you request it and if and to the extent we possess the requested information. You will ensure that all of your policies and messaging to your customers regarding shipping of Your Products and other fulfillment-related matters, reflect our policies and requirements, including with regard to shipping methods, returns, and customer service; and, you will conspicuously display on your website(s), in emails or in other media or communications any specific disclosures, messaging, notices, and policies we require.

F-8.2 We will be responsible for all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon Fulfillment Units. We will determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and we will require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies). We will promptly notify you when you are responsible for a customer refund. You may appeal if you disagree with our finding within thirty (30) days after our notification, in addition to your right to request that Units be returned to you under Section F-7.1. Except as provided in this Section F-8 regarding any Amazon Fulfillment Units, customer service will be handled in accordance with your Seller Agreement.

F-8.3 In situations relating to Amazon Fulfillment Units where the wrong item was delivered or the item was damaged or lost or is missing, unless we determine that the basis for such request is caused by you or any of your employees, agents, or contractors, we will, at our option: (a) for any Amazon Fulfillment Unit, (i) ship a replacement Unit to the customer and reimburse you in accordance with the [FBA Guidelines](#) for the replacement Unit, or (ii) process a refund to the customer and reimburse you in accordance with the FBA Guidelines for the Unit; or (b) for any Multi-Channel Fulfillment

Unit, reimburse you in accordance with the FBA Guidelines for the Unit (and you will, at our request, provide us a valid tax invoice for the compensation paid to you). Any customer refund will be processed in accordance with the Selling on Amazon and the Transaction Processing Service Terms (if the Elected Country for a Service is the United States). Notwithstanding the Selling on Amazon Service Terms, we will be entitled to retain the applicable fees payable to us under the Selling on Amazon Service Terms and these FBA Service Terms, respectively. Except as expressly provided in this Section F-8.3, you will be responsible for all costs associated with any replacement or return.

F-8.4 If we provide a replacement Unit or refund as described in [Section F-8.3](#) to a customer and that customer returns the original Unit to us, we will be entitled to dispose of the Unit pursuant to [Section F-7](#), or, if it is a Sellable Unit, we may, at our option, place such Unit back into your inventory in accordance with [Section F-6](#). If we do put a Unit back into your inventory, you will reimburse us for the applicable Replacement Value (as described in the FBA Guidelines) of the returned Unit. Any replacement Unit shipped by us under these FBA Service Terms will be deemed to be, and will be treated in the same manner as, an order and sale of such Unit from you to the customer via the applicable Amazon Site or Service in accordance with, and subject to, the terms and conditions of this Agreement and your Seller Agreement.

F-9 Compensation for Fulfillment Services

F-9.1 Handling and Storage Fees. You will pay us the applicable fees described in the applicable Fulfillment by Amazon [Fee Schedule](#). You will be charged the Storage Fees beginning on the day (up to midnight) that the Unit arrives at a fulfillment center and is available for fulfillment by Amazon (or in the case of any Unsuitable Unit, the arrival day (up to midnight)), until the earlier of: (a) the day (up to midnight) we receive a valid customer order for such product or a request from you to return or dispose of the Unit; or (b) the day (up to midnight) we actually ship the Unit to your designated return location or dispose of the Unit.

F-9.2 Shipping and Gift Wrap. For any Amazon Fulfillment Units we will determine the amounts charged to the customer for shipping and gift wrap services for the Units that we fulfill through the FBA Program. As between you and us, these charges will be your charges to the customer, and we will report them to you. We will charge you

(and you will pay us) a fee equal to the amount of such charges to the customer. In the case of shipments of Units sold through the Amazon Site that qualify for the "Free Shipping" promotion, the amounts charged to the customer for shipping the Selling on Amazon Units that Amazon fulfills will first be charged to the customer and will next be deducted from the total charges to the customer as your promotion and Amazon will not charge you the fee described above. If you ship Units to us using the shipping rates that we may make available pursuant to Section F-3.3, you will reimburse us for the actual amounts charged to us by the applicable carrier for such shipments.

F-9.3 Proceeds. We may as appropriate keep part of or all proceeds of any Units that we are entitled to dispose of pursuant to F-7 above, or to which title transfers, including returned, damaged, or abandoned Units. You will have no security interest, lien, or other claim to the proceeds that we receive in connection with the sale, fulfillment, and/or shipment of these Units.

F-10 Indemnity

In addition to your obligations under Section 6 of the General Terms of this Agreement, you also agree to indemnify, defend, and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives, and agents against any Claim that arises from or relates to: (a) the Units (whether or not title has transferred to us, and including any Unit that we identify as yours pursuant to Section F-4), including any personal injury, death, or property damage; (b) any of Your Taxes or the collection, payment, or failure to collect or pay Your Taxes; and, if applicable (c) any sales, use, value added, personal property, gross receipts, excise, franchise, business, or other taxes or fees, or any customs, duties, or similar assessments (including penalties, fines, or interest on any of the foregoing) imposed by any government or other taxing authority in connection with the shipment of Foreign-Eligible Products to Foreign Addresses (collectively, "**Foreign Shipment Taxes**").

F-11 Release

You, on behalf of yourself and any successors, subsidiaries, Affiliates, officers, directors, shareholders, employees, assigns, and any other person or entity claiming by, through, under, or in concert with them (collectively, the "**Releasing Parties**"), irrevocably acknowledge full and complete satisfaction of and unconditionally and irrevocably

release and forever fully discharge Amazon and each of our Affiliates, and any and all of our and their predecessors, successors, and Affiliates, past and present, as well as each of our and their partners, officers, directors, shareholders, agents, employees, representatives, attorneys, and assigns, past and present, and each of them and all Persons acting by, through, under, or in concert with any of them (collectively, the "**Released Parties**"), from any and all claims, obligations, demands, causes of action, suits, damages, losses, debts, or rights of any kind or nature, whether known or unknown, suspected or unsuspected, absolute or contingent, accrued or unaccrued, determined or speculative (collectively, "**Losses**") which the Releasing Parties now own or hold or at any time have owned or held or in the future may hold or own against the Released Parties, or any of them, arising out of, resulting from, or in any way related to the shipment, export, or delivery of Your Products to Foreign Addresses, including any tax registration or collection obligations. You, on behalf of yourself and all other Releasing Parties, recognize that you, and each of them, may have some Losses, whether in tort, product liability, contract, warranty, or otherwise, against the Released Parties of which you, or any of them, are totally unaware and unsuspecting, or which may arise or accrue after the date you register for or use FBA, which the Releasing Parties are giving up by agreeing to these FBA Service Terms. It is your intention in agreeing to these FBA Service Terms that these FBA Service Terms will deprive the Releasing Parties of each and all such Losses and prevent the Releasing Party from asserting any such Losses against the Released Parties, or any of them. In addition to the foregoing, you acknowledge, on behalf of yourself and all other Releasing Parties that you are familiar with Section 1542 of the Civil Code of the State of California, as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

You, on behalf of yourself and all other Releasing Parties, expressly waive and relinquish any rights that you had or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the law of any other jurisdiction, to the full extent that you may lawfully waive all such rights pertaining to the subject matter of these FBA Service Terms.

F-12 Disclaimer

IN ADDITION TO THE DISCLAIMER IN SECTION 7 OF THE GENERAL TERMS OF THIS AGREEMENT, WE DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE OR OTHERWISE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE, OR SHIPMENT OF YOUR PRODUCTS BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS.

F-13 Effect of Termination

Your termination rights are set forth in Section 3 of this Agreement. Following any termination of the Agreement or these FBA Service Terms in connection with a particular Elected Country, we will, as directed by you, return to you or dispose of the Units held in that Elected Country as provided in Section F-7. If you fail to direct us to return or dispose of the Units within thirty (30) days (or as otherwise specified in the applicable Program Policies) after termination, then we may elect to return and/or dispose of the Units in whole or in part, as provided in Section F-7, and you agree to such actions. Upon any termination of these FBA Service Terms in connection with a particular Elected Country, all rights and obligations of the parties under these FBA Service Terms in connection with such Elected Country will be extinguished, except that the rights and obligations of the parties under Sections F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-11, F-12, and F-13 with respect to Units received or stored by Amazon as of the date of termination will survive the termination.

F-14 Tax Matters

You understand and acknowledge that storing Units at fulfillment centers may create tax nexus for you in any country, state, province, or other localities in which your Units are stored, and you will be solely responsible for any taxes owed as a result of such storage. If any Foreign Shipment Taxes or Your Taxes are assessed against us as a result of performing services for you in connection with the FBA Program or otherwise pursuant to these FBA Service Terms, you will be responsible for such Foreign Shipment Taxes and Your Taxes and you will indemnify and hold Amazon harmless from such Foreign Shipment Taxes and Your Taxes as provided in Section F-10 of these FBA Service Terms.

F-15 Additional Representation

In addition to your representations and warranties in [Section 5](#) of the General Terms of this Agreement, you represent and warrant to us that: (a) you have valid legal title to all Units and all necessary rights to distribute the Units and to perform under these FBA Service Terms; (b) you will deliver all Units to us in new condition (or in such condition otherwise described by you in the applicable Your Product listing) and in a merchantable condition; (c) all Units and their packaging will comply with all applicable marking, labeling, and other requirements required by Law; (d) no Unit is or will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (e) you and all of your subcontractors, agents, and suppliers involved in producing or delivering Units will strictly adhere to all applicable Laws of the Elected Country, its territories, and all other countries where Units are produced or delivered, regarding the operation of their facilities and their business and labor practices, including working conditions, wages, hours, and minimum ages of workers; and (f) that all Foreign-Eligible Products (i) can be lawfully exported from Canada, Mexico, or the United States, as applicable, without any license or other authorization; and (ii) can be lawfully imported into, and comply with all applicable Laws of, any eligible country.

FBA Definitions

"Amazon Fulfillment Units" means Units fulfilled using FBA that are sold through an Amazon Site. For avoidance of doubt, if you have successfully registered for or used both the FBA and Selling on Amazon Services, then the term "Amazon Fulfillment Units" and the defined term "Amazon Fulfilled Products" in the Selling on Amazon Service Terms both refer to the same items.

"FBA Excluded Product" means any Unit that is an Excluded Product or is otherwise prohibited by the applicable [Program Policies](#).

"Foreign Address" means (a) if the Elected Country is the United States, any mailing address that is not (i) within the fifty states of the United States or Puerto Rico, or (ii) an APO/FPO address; and (b) if the Elected Country is not the United States, any mailing address that is not within the Elected Country.

"Fulfillment Request" means a request that you submit to us (in accordance with the standard methods for submission prescribed by us) to fulfill one or more Multi-Channel Fulfillment Units.

"**Multi-Channel Fulfillment Units**" has the meaning in Section F-2.

"**Sellable Unit**" means a Unit that is not an Unsuitable Unit.

"**Seller Agreement**" means the Selling on Amazon Service Terms, the Merchants@ Program Agreement, the Marketplace Participation Agreement, any successor to any of these agreements, or any other similar agreement (as determined by Amazon) between you and us that permits you to offer products and services via a particular Amazon Site.

"**Shipping Information**" means with respect to any purchased Unit(s), the following information: the name of the recipient, the shipping address, the quantity of Units to be shipped, and any other shipping-related information we may reasonably request.

"**Unit**" means a unit of Your Product that you deliver to Amazon in connection with the FBA Program.

"**Unsuitable Unit**" means a Unit: (a) that is defective, damaged, unfit for a particular purpose, or lacking required label(s); (b) the labels for which were not properly registered with Amazon before shipment or do not match the product that was registered; (c) that is an FBA Excluded Product or does not comply with the Agreement (including applicable Service Terms and Program Policies); (d) that Amazon determines is unsellable or unfulfillable; or (e) that Amazon determines is otherwise unsuitable.

Amazon Advertising Service Terms

The Amazon Advertising Service Terms govern your use of Amazon Advertising, a Service that allows you to advertise your products. The Amazon Advertising Service Terms apply to your use of the Ad Services.

Your use of the Ad Services (as defined in the Amazon Advertising Agreement) is governed by the Amazon Advertising Agreement. You accept the Amazon Advertising Agreement, which may be updated from time to time by Amazon in accordance with its terms. The Amazon Advertising Agreement is available at <https://advertising.amazon.com/terms>. In the event of any conflict between the General Terms or Program Policies and the Amazon Advertising Agreement with respect to the Ad Services, the Amazon

Advertising Agreement will prevail to the extent of the conflict. If the Amazon Advertising Agreement is deemed unlawful, void, or for any reason unenforceable, then the General Terms will govern your access to and use of the Ad Services.

Transaction Processing Service Terms

BY REGISTERING FOR OR USING ANY SERVICE OTHER THAN AMAZON ADVERTISING FOR WHICH THE ELECTED COUNTRY IS THE UNITED STATES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THESE TRANSACTION PROCESSING SERVICE TERMS FOR THAT SERVICE.

NOTWITHSTANDING THE FOREGOING, IF A SEPARATE AGREEMENT GOVERNS THE OFFER, SALE OR FULFILLMENT OF YOUR PRODUCTS ON THE US AMAZON SITE, THE TERMS OF THAT AGREEMENT WILL CONTINUE TO GOVERN THE PROCESSING OF YOUR TRANSACTIONS TO THE EXTENT DESCRIBED IN THAT AGREEMENT.

P-1 Payments Processing Agency Appointment

For non-invoiced orders, you authorize Amazon Payments, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf, remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. For invoiced orders, you authorize: (a) Amazon Capital Services, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, and receiving and holding Sales Proceeds on your behalf; and (b) Amazon.com Services LLC to act as your agent for purposes of remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. Amazon Payments, Inc., Amazon Capital Services, Inc., and Amazon.com Services LLC are each an **"Amazon Payments Agent"**. The applicable Amazon Payments Agents provide the services described in these Transaction Processing Service Terms and the related services described in Sections S-1.4, S-2.2, S-5, and F-8.3 of the Agreement (collectively, the **"Transaction Processing Services"**).

When a buyer instructs us to pay you, you agree that the buyer

authorizes and orders us to commit the buyer's payment (less any applicable fees or other amounts we may collect under this Agreement) to you. You agree that buyers satisfy their obligations to you for Your Transactions when we receive the Sales Proceeds. We will remit funds to you in accordance with this Agreement.

P-2 Remittance

Subject to Section 2 of the General Terms of this Agreement, the applicable Amazon Payments Agents will remit funds to you in accordance with Section S-5 of the Agreement and these Transaction Processing Service Terms. Each applicable Amazon Payments Agent's obligation to remit funds collected or received by it or otherwise credited to your available balance in connection with Your Transactions is limited to funds in your available balance that have become available in accordance with this Agreement less amounts owed to Amazon and any taxes that Amazon automatically calculates, collects and remits to a tax authority according to applicable law, as specified in the Tax Policies, subject to chargeback or reversal or withheld for anticipated claims in accordance with this Agreement. Without limiting Amazon's rights to collect any amounts you owe, the applicable Amazon Payments Agent's receipt of Sales Proceeds or crediting of Sales Proceeds to your available balance discharges your obligation to pay applicable fees and other amounts under this Agreement to the extent the Sales Proceeds received or credited equal or exceed the fees and other amounts you owe and the Sales Proceeds are applied to the payment of those fees and amounts.

P-3 Your Funds

Your Sales Proceeds will be held in an account with the applicable Amazon Payments Agent (a "**Seller Account**") and will represent an unsecured claim against that Amazon Payments Agent. Your Sales Proceeds are not insured by the Federal Deposit Insurance Corporation, nor do you have any right or entitlement to collect Sales Proceeds directly from any customer. Prior to disbursing funds to you, an Amazon Payments Agent may combine Sales Proceeds held with the funds of other users of the Services, invest them, or use them for other purposes permitted by applicable Laws. You will not receive interest or any other earnings on any Sale Proceeds. To the extent required by applicable Laws, an Amazon Payments Agent will not use any funds held on your behalf for its corporate purposes, will not voluntarily make such funds available to its

creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit its creditors to attach such funds.

P-4 Verification

We may at any time require you to provide any financial, business or personal information we request to verify your identity. You authorize us to obtain from time to time consumer credit reports to establish or update your Seller Account or in the event of a dispute relating to this Agreement or the activity under your Seller Account. You agree to update all Seller Account information promptly upon any change. The [Amazon Payments Privacy Notice](#) applies to transactions processed by Amazon Payments, Inc.

P-5 Dormant Accounts

If there is no activity (as determined by us) in connection with your Seller Account for the period of time set forth in applicable unclaimed property laws and we hold Sales Proceeds on your behalf, we will notify you by means designated by us and provide you the option of keeping your Seller Account open and maintaining the Sales Proceeds in your Seller Account. If you do not respond to our notice(s) within the time period we specify, we will send the Sales Proceeds in your Seller Account to your state of residency, as determined by us based on the information in your Seller Account. If we are unable to determine your state of residency or your Seller Account is associated with a foreign country, your funds may be sent to the State of Delaware.

Selling Partner API Terms

API-1 Description of the Selling Partner APIs

The "Selling Partner APIs" enable your systems to interface with certain features or functionality we make available to you. These Selling Partner API Terms concern and apply only to your use of the Selling Partner APIs unless specifically provided otherwise. Under the Selling Partner API Terms, you may authorize parties who (a) develop Applications to support you using the Selling Partner APIs or the API Materials, (b) have registered with us as Developers, and (c) who have agreed to the Marketplace Developer Agreement ("Developers") to access Confidential Information and Your Materials via the Selling Partner APIs provided, in each case, that where

Confidential Information is disclosed to Developers, you shall remain liable for the acts or omissions of such Developers as if such acts or omissions were your own. If you wish to use the Selling Partner APIs directly or develop software or a website that interfaces with the Selling Partner APIs or the API Materials (an "Application"), you must register as a Developer.

We may make available Selling Partner APIs (including the Marketplace Web Services APIs) and software, data, text, audio, video, images, or other content we make available in connection with the Selling Partner APIs, including related documentation, software libraries, and other supporting materials, regardless of format (collectively the "API Materials") that permit your systems to interface with certain features or functionality available to you. You may authorize Developers to access Confidential Information and Your Materials via the Selling Partner APIs solely for the purpose of supporting your business on Amazon and provided, in each case, that where Confidential Information is disclosed to Developers, you shall remain liable for the acts or omissions of such Developers as if such act or omissions were your own. All terms and conditions applicable to the Selling Partner APIs and the API Materials in this Agreement are solely between you and us. API Materials that are public or open source software ("Public Software") may be provided to you under a separate license, in which case, notwithstanding any other provision of this Agreement, that license will govern your use of those API Materials. For the avoidance of doubt, except to the extent expressly prohibited by the license governing any API Materials that are Public Software, all of the non-license provisions of this Agreement will apply.

API-2 License and Related Requirements

API-2.1 Generally.

We grant you a limited, revocable, non-exclusive, non-sublicenseable, nontransferable license during the term of the Agreement to allow Developers to access and use Confidential Information and Your Materials through the Selling Partner APIs and the API Materials solely in support of your use of the Services covered by this Agreement. As between you and us, we or our licensors own all right, title, and interest in and to the Confidential Information, the Selling Partner APIs, the API Materials, any technical and operational specifications, security protocols and other documentation or policies provided or made available by us with

respect to the Selling Partner APIs or the API Materials (the "Selling Partner API Specifications"), and our internal data center facilities, servers, networking equipment, and host software systems that are within our or their reasonable control and are used to provide the Selling Partner APIs or the API Materials (the "Amazon Network").

API-2.2 License Restrictions.

You may authorize Developers to access Confidential Information and Your Materials through the Selling Partner APIs and the API Materials only through APIs documented and communicated by us in accordance with any applicable Selling Partner API Specifications. You may not authorize any other party to do any of the following with the Confidential Information, the Selling Partner APIs and the API Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public Software in any manner that requires, pursuant to the license applicable to such Public Software, that the Confidential Information, the Selling Partner APIs and the API Materials be disclosed, licensed, distributed, or otherwise made available to anyone; (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them; (g) access or use them in a way intended to avoid incurring any applicable fees or exceeding usage limits or quotas; (h) access or use them for any purpose unrelated to your use of Services; or (i) access or use them for fraudulent or illegal activities or activities that violate our policies or are otherwise harmful to us or any third parties. The limitations regarding Data Use in Section 11 above apply to any information you disclose or receive by the direct or indirect use of the Selling Partner APIs.

API-2.3 No License for Direct Access.

For the avoidance of doubt, these Selling Partner API Terms do not provide you a license to directly access or use the Selling Partner APIs, or install, copy, use, or distribute API Materials. Direct use of the Selling Partner APIs may only be licensed to Developers.

API-2.4 Account Identifiers and Credentials.

You must use the account IDs and any unique public key/private key pair issued by us to provide access to your data via the Selling Partner APIs ("Account Identifiers and Credentials") in accordance

with these Selling Partner API Terms to authorize Developers to access the Selling Partner APIs on your behalf. You may only authorize access to Confidential Information and Your Materials via the Selling Partner APIs in the way that we prescribe. Your Account Identifiers and Credentials are for your personal use only and you must maintain their secrecy and security. You are solely responsible for all activities that occur using your Account Identifiers and Credentials, regardless of whether the activities are undertaken by you or a third party (including your employees, contractors, or agents). You will provide us with notice immediately if you believe an unauthorized third party may be using your Account Identifiers and Credentials or if your Account Identifiers and Credentials are lost or stolen. We are not responsible for unauthorized use of your Account Identifiers and Credentials.

API-2.5 Security of Your Materials and Confidential Information.

You are solely responsible for authorizing others to access the Selling Partner APIs on your behalf and taking your own steps to maintain appropriate security, protection, and backup of the Confidential Information and Your Materials processed pursuant to your access to the Selling Partner APIs and the API Materials, including any Confidential Information you have disclosed to Developers in accordance with this Agreement. We are not responsible for any unauthorized access to, alteration of, or deletion, destruction, damage, loss, or failure to store any of the Confidential Information or Your Materials in connection with the Selling Partner APIs (including as a result of your or any third party's errors, acts, or omissions). If you believe (acting reasonably) that a personal data breach has occurred in relation to any customer personal data in your possession or otherwise under your control (including in the possession of a Developer), you shall immediately notify Amazon of such personal data breach (in sufficient detail) for information purposes, and promptly take any actions (or require a Developer take such actions, if relevant) as applicable to you under data privacy Laws.

API-3 Termination

API-3.1 Termination of Your Access to the Selling Partner APIs and the API Materials.

Without limiting the parties' rights and obligations under this Agreement, the Amazon Marketplace Developer Agreement, or the

Amazon Marketplace API License Agreement, we may limit, suspend, or terminate your access to the Selling Partner APIs and the API Materials for convenience with 30 days' notice. We may terminate immediately if (a) we determine that you have materially breached this Agreement and failed to cure within 7 days of a cure notice; (b) you or your account have been engaged in deceptive, fraudulent, or illegal activity; or (c) your use of the Selling Partner APIs and the API Materials may harm our customers.

Upon any suspension or termination of your access to the Selling Partner APIs and the API Materials, you will immediately cease authorizing others to use the Selling Partner APIs and the API Materials. Upon any termination of your access to the Selling Partner APIs and the API Materials, you will also immediately destroy all API Materials. Upon any suspension or termination of your access to the Selling Partner APIs and the API Materials, we may cause your Account Identifiers and Credentials to cease to be recognized by the Amazon Network for the purposes of the Selling Partner APIs and the API Materials.

API-4 Modifications to the Selling Partner APIs and the API Materials

We may change or discontinue the Selling Partner APIs or the API Materials (including by changing or removing features or functionality of the Selling Partner APIs or the API Materials) from time to time. For any material changes that will negatively affect your business, we will provide notice under Section 18.

API-5 Disclaimers

THE SELLING PARTNER APIS AND THE API MATERIALS ARE PROVIDED "AS IS". WE AND OUR AFFILIATE COMPANIES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SELLING PARTNER APIS OR THE API MATERIALS, INCLUDING ANY WARRANTY THAT THE SELLING PARTNER APIS OR THE API MATERIALS WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS OR DATA YOU ACCESS, USE, STORE, RETRIEVE, OR TRANSMIT IN CONNECTION WITH THE SELLING PARTNER APIS, INCLUDING YOUR MATERIALS, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATE COMPANIES AND LICENSORS DISCLAIM ALL

WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATE COMPANIES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) THE INABILITY TO USE THE SELLING PARTNER APIS OR THE API MATERIALS FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; OR (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SELLING PARTNER APIS OR THE API MATERIALS.

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Exhibit 3



[Help](#) / [Account settings](#) / [Shipping overview](#) / [Shipping account settings](#) /
Configure shipping rates and restrictions

Configure shipping rates and restrictions

Use your **Shipping settings** to set the default shipping service levels you will use for orders you ship to buyers. We require standard shipping for all sellers. All other service levels are optional.

 Go to [Shipping settings](#).

You can set shipping options for specific products by going to **Manage Inventory** and editing the details for products one at a time. Sellers with Professional selling plans can set shipping options for multiple offers at once. See [Override shipping settings using a text file template](#).

Shipping service levels

Standard:

- All sellers must offer standard shipping.
- The default transit time is 4 – 15 business days.
- If you qualify for reduced shipping times, you will also have the option to select a transit time of 3 – 5 business days. See [Modify handling time](#).

Expedited:

- The default transit time is 2 – 6 business days.
- If you qualify for reduced shipping times, you will also have the option to select a transit time of 1 – 3 business days. See [Modify handling time](#).

Two Day:

- Not all sellers are eligible to offer Two-Day Shipping.
- Find out how you can [Qualify for Two-Day Shipping](#).

FEEDBACK ×

One Day.

One-Day Delivery is not available as a U.S. domestic shipping option for seller-fulfilled orders on Amazon. One-Day Delivery is available for Fulfillment by Amazon orders.

International:

The transit time for international orders is 3 – 6 weeks.

International Expedited:

The transit time for international orders is 3 – 7 business days.

Use your **Shipping Settings** to set your default service levels, shipping regions, and shipping rates.

 Go to [Shipping settings](#).

Book, Music, Video, and DVD (BMVD) service levels and shipping regions may vary.

You can set your own shipping rates for non-BMVD Products using a **Per-Item/Weight-based** or **Price Banded** model. For more information, see [Set shipping rates](#).

View your Shipping settings

To view your shipping settings, complete the following steps:

1. From your seller account, select **Settings**, and then select **Shipping Settings**.
2. Select an option:
 - To update your "Ships From" location, in the **Ships From Location** section, click **Edit**. Learn more about [Ships From Location](#).
 - To change or edit your shipping model, click the **Change Shipping Model** button. Learn more about [shipping models](#).
 - If you have enabled your account for BMVD Products, in the **Shipping Settings for Books, Music, Video, DVD** section, click **Edit**. Learn more about [shipping BMVD products](#).

Note: Amazon sets the shipping rates for BMVD products; you

cannot change or override them. If you have enabled your account to list BMVD products, your BMVD shipping settings will be below your non-BMVD settings. You can only edit your default shipping service levels for your BMVD products. For more information about shipping settings for BMVD products, including shipping rates, see [Change Your Default BMVD Shipping Options](#). The sections below apply to your non-BMVD shipping options only.

You can select one of the following methods for calculating shipping rates:

Per-item/weight-based shipping

If you offer per-item/weight-based shipping, set a charge for each shipment and either a per-pound charge or a per-item charge for handling. When a customer buys your products, Amazon applies your per-shipment charge, and then calculates the appropriate per-pound or per-item charge for each item in the order.

Price-banded shipping

If you offer price-banded shipping, create rates that vary by the product price range, such as \$0 to \$25, \$25.01 to \$50, \$50 and up. Each price band has its own shipping rates. When a customer buys your products, Amazon reviews the total order amount (excluding tax), identifies the band for the total price, and applies your shipping charge for the price band.

Set your shipping model by following these steps:

1. From the **Settings** drop-down menu, select **Shipping Settings**.
2. In the **Shipping Model** section, click **Change Shipping Model**.
3. Select the model you want to use, and click **Continue**.

Sellers that offer price-banded shipping or per-item/weight-based shipping can enable **Free Economy Shipping**. You must delivery Free Economy Shipping orders within 5-8 business days (1 day for handling and 4-7 days for shipping). Free Economy Shipping is available for continental U.S. street and P.O. box addresses.

Note: You will not be able to adjust the shipping charge for Free Economy Shipping.

To enable Free Economy Shipping, follow these steps:

1. Go to **Settings**, and select **Shipping Settings**.
2. Click **Edit** on the top right of the **Shipping Rates** section.
3. Check the address types you'd like to offer, and click **Continue**.

These options are also available for offering free shipping:

- Set your shipping price to \$0 for any other ship option (such as Standard).
- Upload a [shipping override file](#). You can also use the shipping override file to set up free shipping for specific products instead of applying it to your entire inventory.
- Use the price-banded model and create a price band (such as \$35 and up) with the shipping charge set to \$0.
- Use Fulfillment by Amazon (FBA). FBA orders are eligible for free shipping.

For more information about these methods, see [Set shipping rates](#).

Use your **Shipping Settings** to customize the geographic regions you ship to and the service levels for each region. When you offer a shipping option, you agree to meet a Service Level Agreement (SLA). The SLA is your promise that the order will arrive within the standard number of days for that shipping method. For more information, see [Shipping Regions and Service Level Agreements](#).

Whether you modify your current model or change models, you must indicate your regions and service levels:

1. From the **Account Info** page, go to the **Shipping and Returns Information** section and select **Shipping Settings**.
2. In the "Shipping Model" section, click **Edit**.
3. On the **Select the Regions and Service Levels You Support** page, check or uncheck the boxes to enable or disable regions and service levels.
4. Click **Continue**.

Per-item/weight-based shipping is the default shipping model. The default per-shipment charge for standard shipping is \$4.49, and the default per-weight charge is \$0.50 per pound.

The regions you enable for at least one service level (including P.O.

Boxes and APO and FPO destinations) appear in the **Shipping Rates** table. If a region does not show in this table, you did not check the box to support shipping to that region in the previous step.

1. On the **Set Your Shipping Rates** page, in the **Rate Components** column, select whether you want to add a **per-weight** or a **per-Item** charge for each supported service level.
2. In the rate text boxes, type the amounts you want to charge for shipping.
3. Click **Continue**, and then click **Confirm**.

Changes will not take effect for at least 4 hours. You have 1 hour to make changes before they are locked in.

Overview

You can use the Shipping settings feature to view and edit your shipping rates and your shipping restrictions, including your *shipping regions* (such as Continental U.S. or Canada) and your *service levels* (such as Standard or Expedited service). The setting you choose for each region must meet a *Service Level Agreement (SLA)*, which is your promise to deliver your products to customers within a certain number of days after the time you send the order out for shipment.

By default, your account has a set of these shipping rates and restrictions. If you want to use these default settings, you can leave them the way they are. Otherwise, you can use the Shipping settings feature to customize your shipping settings to meet the needs of your business.

Note:

The shipping settings you choose appear automatically on the shipping settings Help pages that customers see when they view your custom Help pages. See [Your Information & Policies page](#) for more information.

You use the Shipping settings feature to set permission levels for users on your account, so that some users can just view the Shipping settings, while others can view and edit these settings.

Note: The Shipping settings feature appears on the **Settings** link if you have the user permission to use this feature. You can change user permissions on the Settings link, under **User Permissions**. Only the primary account holder for your account (and not Amazon Payments) can grant permission to use this feature. To gain access to this feature, contact the primary account holder for your account. (The primary account holder is the person who initially registered with Amazon Payments.)

The default shipping settings

Amazon Payments provides a set of default shipping settings that you can then customize. The default settings are as follows:

- Shipping Methodology: Item-based shipping
- Shipping Rate: \$4.49 per-shipment + \$0.50 per-pound
- Shipping Regions: Continental U.S., Hawaii and Alaska, U.S. Protectorates, and APO and FPO addresses
- P.O. Box Enabled: Yes, for all three regions

You can change these settings using the Shipping settings feature.

Methods for calculating shipping rates

You use the Shipping settings feature to select the method you use to calculate your shipping rates. You can calculate shipping rates for item-based or price-tier shipping:

- **Item-based shipping** - If you offer item-based shipping, you can set a flat per shipment charge and either a per-pound charge or a flat per product charge for handling. When customers purchase your products, Amazon Payments applies a single per-shipment charge, and then uses your shipping settings to calculate the appropriate per pound or per-product charge for each product in the order.
- **Price-tier shipping** - If you offer price-tier shipping, you create ranges of prices, such as \$0 to \$25, \$25.01 to \$50, and \$50 and up. Each price tier has its own shipping rates. When customers purchase your products, Amazon Payments reviews the total order (excluding tax) and identifies the tier to use to calculate the shipping charge.

Shipping regions, shipping service levels, and service level agreements

You can use the Shipping settings feature to customize the regions (geographic areas) you ship to and the service levels you support for each region. You can ship to seven regions (see SLA table below), and you can select from two pre-defined shipping service levels: Standard and Expedited.

Note:

If you offer a particular service level, you are committing to meet the delivery service level agreement (SLA) associated with the shipping service level. For example, the SLA for Standard shipping in the Continental U.S. is 3-7 days. If a customer places an order with you and wants Standard shipping, you are responsible for delivering the order within 3-7 business days from when the order ships. (This doesn't mean that you deliver it yourself; it means that you pick a responsible delivery method that can guarantee the delivery, and that you have methods in place to track the delivery and deal with delays.) If you cannot commit to the delivery in the SLA for a given region and category of service, then do not enable that region and category of service.

The delivery SLA for each region is as follows:

Shipping region	Standard shipping	Expedited shipping
Continental U.S.	3-7 days	1-3 days
Alaska / Hawaii	3-7 days	1-4 days
U.S. Protectorates (American Samoa, Guam, Marshall Islands, Federated States of Micronesia, Northern Mariana Islands, Palau, Puerto Rico, and the Virgin Islands)	4-8 days	2-4 days
Canada	5-10 days	2-4 days
Europe (Albania, United Kingdom,	10-20	2-4 days

Germany, France, Netherlands, Italy, Switzerland, Spain, Sweden, Turkey, Ireland, Denmark, Norway, Belgium, Portugal, Greece, Finland, Austria, Iceland, Poland, Croatia, Slovenia, Russia, Czech Republic, Cyprus, Luxembourg, Hungary, Malta, Estonia, Latvia, Romania, Bulgaria, Ukraine, Bosnia-Herzegovina, Lithuania, Slovakia, Monaco, Macedonia, Greenland, Gibraltar, Liechtenstein, Metropolitan France, Faroe Islands, Georgia, Andorra, Belarus, Yugoslavia, Vatican City State (Holy See), San Marino, Svalbard and Jan Mayen Is., Serbia, Montenegro, and Kosovo)	days	
Asia (Japan, Australia, South Korea, Hong Kong, New Zealand, Taiwan, Singapore, Malaysia, Thailand, China, Philippines, India, Indonesia, Sri Lanka, Vietnam, Macau, Brunei, Darussalam, French Polynesia, Fiji, Papua New Guinea, New Caledonia, Nepal, Bangladesh, Vanuatu, Lao People's Democratic Rep., Cambodia, Mongolia, Maldives, Cook Islands, Bhutan, Samoa, Solomon Islands, Tonga, Myanmar, Kiribati, Niue, Tuvalu, Nauru, Christmas Island, East Timor)	10-16 days	2-5 days
Outside US, Europe, CA and Asia (Central and South America, Mexico, South Africa and all other countries)	10-20 days	2-5 days

Note:
The information in your shipping settings appears to customers when they view your My Info & Policies pages.

Latency

When you change your Shipping settings, the changes take effect four hours after you click **Save Changes**. You can make changes to the shipping settings within the first hour after you click **Save**

Changes, and the changes will all take effect at the same time. If you wait longer than an hour to make changes, then you cannot make changes to what will take effect. This latency gives you an hour to change your mind, but after an hour, your changes are "locked in" and will take effect after an additional three hours pass.

Here's an example of how this works:

- At 12 noon, you click **Save Changes** after changing the shipping rates. The changes take effect at 4:00 p.m.
- At 12:30 p.m., you make another change to the shipping rates. The change still will take effect at 4:00 p.m.
- At 1:00, your changes are "locked in." At this point, you can no longer make changes, and you cannot stop the shipping settings from taking effect at 4:00 p.m.
- At 1:05, you make yet another change. When you click **Save Changes**, then the changes will take effect at 5:05.
- At 4:00 p.m., your first set of changes takes effect.
- At 5:05 p.m., your second set of changes takes effect.

Note: While this latency period gives you a one-hour window to adjust the shipping settings or to change your mind, after the one-hour window, your changes to the shipping settings are "locked in" and you cannot change them or stop them.

The total delivery time

The total delivery time is the time it takes you to handle (process) the order, plus the time it takes your delivery service to get the order to customer.

Handling time + Transit time = Delivery time

View your shipping settings

1. On the **Settings** link, click **Shipping Settings**.

The Current Shipping Rates and Settings page appears:

Using item-based shipping settings

You use the shipping settings feature to configure your item-based shipping settings.

Note:
 Item-based shipping is the default type of shipping. However, the default per-shipment charge is \$0.00, and the default per-item charge is \$0.00 per pound. If you do not change your shipping settings, then there will be **no** shipping cost charges.

How item-based shipping works

When you use item-based shipping, Amazon Payments charges the customer a single per-shipment charge, and then uses your shipping settings to calculate the appropriate per-pound or per-product charge for each product in the order.

For example, suppose you use a per-shipment charge of \$4.49 and a per-pound charge of \$0.50/lb. A customer purchases two products from you, a 100 lb. television and a 5 lb. DVD player. Amazon Payments calculates the total shipping charge to the customer as follows:

Product	Qty	Weight (lbs.)	Flat rate per shipment	Per-pound charge
Television	1	100	\$4.49	\$0.50
DVD Player	1	5	\$4.49	\$0.50

Therefore, for this shipment, Amazon calculates the shipping charges as follows:

Shipping charges	\$4.49	+	\$50.00	+	\$2.50	=	\$56.99
	<i>(Per-shipment charge)</i>		<i>(100 x \$0.50, weight charge for the TV)</i>		<i>(5 x \$0.50, weight charge for the DVD player)</i>		<i>(\$4.49 + \$50.00 + 2.50)</i>

Or, suppose you set a per-shipment charge at \$3.99 and per-product charge at \$0.99. A customer orders two products from you, a sapphire pendant and a diamond tiara. Amazon Payments calculates the total shipping charge to the customer as follows:

Product	Qty	Weight (lbs.)	Flat rate per shipment	Per-pound charge
Pendant	1	n/a	\$3.99	\$0.99
Tiara	1	n/a	\$3.99	\$0.99

Therefore, for this shipment, we calculate the shipping charges as follows:

Shipping charges	\$3.99	+	\$0.99	+	\$0.99	=	\$5.97
	<i>(Per-shipment charge)</i>		<i>(Per-item charge for the pendant)</i>		<i>(Per-item charge for the tiara)</i>		<i>(\$3.99 + \$0.99 + \$0.99)</i>

Note:
 Your shipping rates and restrictions automatically appear on your shipping Help pages when customers view the Your Information & Policies page. You can edit the information on your Help pages so customers can make better purchase decisions. See [Your Information & Policies page](#) for more information about customizing your Help pages.

Add a region and rate to your item-based shipping settings

1. On the **Settings** link, click **Shipping Settings**.
The Current Shipping Rates and Settings page appears.

2. Click **Edit Regions and Service Levels**.
The Select Regions and Service Levels page appears.

3. Click an empty region check box to select it.
4. Click **Continue**.

The Set Your Shipping Rates page appears. If you added a region with a default shipping charge (such as Expedited Continental U.S. Street), the charge is filled in for you.

5. In the shipping rate boxes, type the dollar amounts you want to charge for shipping.

The regions you enabled for at least one service level (including PO Boxes and APO/FPO destinations) appear in the summary table. If a region does not show up in this table, you do not support shipping to that region.

6. If you want, you can change the type of charge using the per Shipment drop-down box

7. After you make the changes you want, click **Continue**

The Confirm Your Settings page appears. Changes to your rates appear as bold and highlighted text.

8. Click **Confirm** to save your changes.

The Shipping settings page appears, showing that you updated your shipping rates. Note that the changes will not take effect for at least four more hours; you have one hour to make changes before they are final.

Setting and editing price tiers

You can use the Shipping settings feature to view and edit price-tier shipping settings. You can create up to ten unique sets of price tiers for each region.

How price-tier shipping works

For each price-tier you create, you must set shipping rates for the service levels in each enabled region. If you do not enable shipping service for a region, then that region will not have editable rate fields. All shipping rates must be greater than or equal to \$0.00. For example, here is a Shipping Price-tier table for the Continental U.S. region. This table shows three different price-tiers, with different values for Standard or Expedited shipping:

Price-tiers	Standard	Expedited
\$0.00 - 50.00	\$5.00	\$7.00

\$50.01 - 80.00	\$7.00	\$9.00
\$80.01 - up	\$12.00	\$15.00

Suppose a customer orders two products from you, a bracelet that costs \$24.99 and a watch that costs \$82.50, and the customer wants Expedited Shipping. Amazon Payments calculates the total shipping charge to the customer as follows:

\$24.99	+	\$82.50	=	\$107.49	+	\$15.00	=	\$122.49
<i>bracelet</i>		<i>watch</i>		<i>(total)</i>		<i>shipping charge</i>		

Note:

- Your shipping rates and restrictions automatically appear on your shipping Help pages when customers view Your Information & Policies pages. You can edit the information on your Help pages so customers can make better purchase decisions. See [Your Information & Policies page](#) for more information about customizing your Help pages.
- You must use the Shipping Settings feature to switch from the default item-based shipping to price-tier shipping before you can edit these rates
- The first time you set up price-tier shipping, only the upper bound limit for the lowest band is available, and it is pre-populated with "Up." When you type a value for the upper bound dollar value, the lower bound dollar value for the second band, \$0.01 above the upper bound dollar value for the first band, appears automatically.

Changing shipping methods

You switch between item-based and price-tier shipping using the Shipping settings feature.

Note:

- Changes to your shipping methods do not appear to customers until after the four-hour latency period.
- When you change to price-tier shipping for the first time, the

price-tiers are blank. You must enter new values for your price-tiers before you can use this method of calculating shipping charges.

- When you switch from one method to another, you lose the settings for the current method. That is, if you switch from price-tier to item-based shipping, then you lose your current set of price tiers.

Switch to price-tier shipping

1. On the **Settings** link, click **Shipping Settings**.

The Current Shipping Rates and Settings page appears.

2. Click **Change to price-tier shipping**.

The Set Regions page appears.

3. Make any changes you want to the regions you support, and then click **Continue**.

The Set Your Shipping Rates page appears.

4. To create the first new price tier, click **Add another band**.

A blank row appears below the first band.

5. Add the price-tier by typing a value into the upper bound dollar value for the first band in the list.

For example, you can type 14.99 in the first box to set the first price tier to \$0.00 through \$14.99.

6. Click in the **Rate box**, then type the rate charge.

For example, you can type 8.00.

7. If you want to add another price tier, click **Add another band again** and then enter the tier upper value and the rate.

The last tier must always use "Up" as the final value.

8. When you are done, click **Continue**

The Confirm Your Settings page appears. Changes to your rates appear as bold and highlighted text.

9. Click **Confirm**.

The Current Shipping Rates and Settings page appears, showing that

you updated your shipping rates.

Setting shipping user permissions

Only users with permission to use the Shipping Settings can change the shipping settings. You use the Permissions Manager to set permission levels for users on your account. There are three levels of permissions:

- **View and Edit:** Users with View and Edit permissions can create and modify shipping configurations.
- **View Only:** Users with View Only access can only view shipping configurations.
- **No access:** Users with No access have no access to this feature.

The primary account holder should carefully specify view and edit permissions for users so that unauthorized accounts cannot create or modify shipping terms.

Note: The Shipping settings feature only appears on the Settings link if you have permissions to use this feature. Only the primary account holder for your account (not Amazon Payments) can grant you permission to use this feature. Contact them to gain access to this feature. (The primary account holder is the person who initially registered with Amazon Payments.) You can change user permissions on the Settings link.

You can use **Shipping Settings** to view and edit price-banded shipping settings. You can create up to ten unique sets of price bands for each region and service level.


To add a new rate, follow these steps:

1. On the **Set Your Shipping Rates** page, delete the word Up and type the upper amount for the band (such as 100.00).
2. In the **Shipment Rate** box, type the amount you want to charge for shipping for orders that fall into the current band.
3. You can continue to add more rate bands by deleting Up and typing a new value and rate.
4. If you need a new band, click **Add more bands**.

- Your last band must always contain Up as the upper value.
 - You must enter a shipment rate for the last band.
5. When you have finished adding the rates you want, click **Continue**.
 6. Review your changes and click **Confirm**.

Changes will not take effect for at least 4 hours. You have 1 hour to make changes before Amazon finalizes them.

此页面对您是否有帮助? 是 否

Related articles 


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Amazon

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RUBIK'S BRAND, LTD.,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,

Defendants.

Case No. 20-cv-05338

Judge John J. Tharp, Jr.

Magistrate Judge Jeffrey I. Cummings

Declaration of Justin R. Gaudio

I, Justin R. Gaudio, of the City of Chicago, in the State of Illinois, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of Illinois and the United States District Court for the Northern District of Illinois. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:
2. **Exhibit 1** attached hereto is a true and correct copy of the article Jon Emont, *Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk*, Wall St. J. 1-2 (Nov. 11, 2019).
3. I accessed Amazon.ca and viewed a product listing page with my location set as the United States. The product listing stated "[t]his item cannot be shipped to your selected delivery location. Please choose a different delivery location." **Exhibit 2** attached hereto is a true and correct copy of a screenshot of the product listing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this the 24th day of March 2021 at Chicago, Illinois.

/s/ Justin R. Gaudio
Justin R. Gaudio
Counsel for Amici Levi Strauss & Co., H-D U.S.A.,
LLC, Entertainment One UK Ltd., Chrome Hearts
LLC, and Deckers Outdoor Corporation

Exhibit 1

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<https://www.wsj.com/articles/amazons-heavy-recruitment-of-chinese-sellers-puts-consumers-at-risk-11573489075>

Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk

The e-commerce platform has included banned, unsafe, mislabeled products. One reason: It wooed China's manufacturers to sell directly to the U.S.

By *Jon Emont*

Nov. 11, 2019 11:17 am ET

It looked like Amazon.com Inc.'s yearslong quest to build a shopping business in China was a bust in July when it folded a big part of its local business.

In fact, Amazon's China business is bigger than ever. That is because it has aggressively recruited Chinese manufacturers and merchants to sell to consumers outside the country. And these sellers, in turn, represent a high proportion of problem listings found on the site, according to a Wall Street Journal investigation.

The Journal earlier this year uncovered 10,870 items for sale between May and August that have been declared unsafe by federal agencies, are deceptively labeled, lacked federally-required warnings, or are banned by federal regulators. Amazon said it investigated the items, and some listings were taken down after the Journal's reporting.

Of 1,934 sellers whose addresses could be determined, 54% were based in China, according to a Journal analysis of data from research firm Marketplace Pulse.

Amazon's China recruiting is one reason why its platform increasingly resembles an unruly online flea market. A new product listing is uploaded to Amazon from China every 2/100th of a second, according to slides its officials showed at a December conference in the industrial port city of Ningbo.

Chinese factories are squeezing profit margins for middlemen who sell on Amazon's third-party platform. Some U.S. sellers fear the next step will be to cut them out entirely.

Tony Sagar began noticing the China effect around 2015. His company, Down Under Bedding in Mississauga, Ontario, had sold goose-down duvets on Amazon since 2014—these days, for \$699 for a queen-size version. Then Chinese competitors hit, listing goose-down duvets for

sometimes a sixth his price. He bought one and had it tested: Inside was inexpensive duck down.

The Journal in October bought a duvet from the same Amazon seller claiming “100% Fill With Goose Down” and had it tested. The result matched Mr. Sagar’s: duck feathers.

“They’re claiming they’re selling a \$500-\$700 duvet based on false specifications, so people say, ‘\$120, it’s a good deal!’ ” Mr. Sagar said. “Amazon is making a direct push for these factories in China.”

AMAZON’S UNRULY MARKETPLACE

- • Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products
 - • VIDEO: How Scammers in China Manipulate Amazon
 - • Amazon Sells Clothes From Factories Other Retailers Blacklist
-

In response to this article, an Amazon spokesm an said,

“Bad actors make up a tiny fraction of activity in our store and, like honest sellers, can come from every corner of the world. Regardless of where they are based, we work hard to stop bad actors before they can impact the shopping or selling experience in our store.”

Amazon said it took enforcement action on the duvet seller and that its products were no longer for sale on the site. The seller’s listings appeared to be gone from Amazon’s U.S. site as of last week.

Mr. Sagar’s discovery came as Amazon was expanding a campaign it started around 2013 urging Chinese businesses to sell directly to consumers abroad. An Amazon sales director, Alicia Liu, at a 2017 conference told Chinese business people she was leading a team in China, drawing on her previous experience cutting out middlemen in Walmart Inc. ’s supply chain.

“We help factories directly open accounts on Amazon and sell to U.S. consumers directly,” a video shows her telling them. “This is our value.”

A wave of Chinese merchants have joined Amazon’s millions of third-party sellers worldwide, who collectively represent more than half of Amazon’s physical gross merchandise sales.

Among the 10,000 most-reviewed accounts on Amazon’s U.S. site whose locations could be determined in October, about 38% were in China, Marketplace Pulse calculates, compared with 25% three years ago.

The Amazon spokesman said 38% “is a significant exaggeration of the real percentage of the top ten thousand” and that the methodology is flawed, citing what it said were problems with the

way in which the analysis used seller review counts to estimate the percentage. Marketplace Pulse said it stood by its analysis.

Site control

How Amazon exercises control of its site has come under scrutiny from some in Congress, where some lawmakers are calling for more regulation of the company. That is part of a growing backlash in Washington over how tech companies run their platforms.

Amazon's third-party marketplace, which connects merchants and buyers around the world, is crucial to the company's growth. At the same time, even though it has become a source of fake or dangerous goods, Amazon has denied it is liable for what's sold there, saying in court cases that it neither makes nor sells the products in question.

In its annual Securities and Exchange Commission filing this year, Amazon disclosed for the first time that counterfeits and fraudulent products are a risk factor. It said Amazon may be "unable to prevent sellers in our stores or through other stores from selling unlawful, counterfeit, pirated, or stolen goods," among other issues.

Amazon said it recruits sellers in many countries and that these merchants are central to its goal of offering customers good selection at good prices. Amazon said it requires products to comply with applicable laws and regulations. It said that in 2018 it blocked more than three billion suspect listings for various forms of abuse.

Consumers and businesses with safety and intellectual-property grievances have found it hard to hold Chinese sellers accountable—in part because Amazon doesn't require its sellers to provide their locations to the public on its U.S. site.

The Journal identified sellers as being in China from their pages on Amazon's site in Mexico, where regulations require sellers to list their locations on Amazon—a method Marketplace Pulse also uses.

New sellers from China are hurting merchants that have built Amazon businesses offering products they import from Chinese factories, said Amazon seller Bernie Thompson. His Plugable Technologies in Redmond, Wash., lists electronics products made in China. Since about five years ago, Chinese manufacturers selling on Amazon have priced him out of some product categories, he said—some of them his own suppliers and others who game Amazon's rating system, he said.

"Amazon is trying to disintermediate everyone they can, and get products as directly as possible to consumers," he said. "In a way, they're a perfect partner for China Incorporated to engage with to take them around the world."

The Amazon spokesman said: “Independent retailers in the U.S. are enjoying record sales in our store.” Amazon said more than 75% of the 10,000 top sellers by gross sales in its U.S. store were America-based as of 2018 and that the company spends more recruiting U.S. sellers than sellers from any other location.

Global recruiting

In China over the past six years, Amazon has made its site more accessible to Chinese speakers, created special programs that address Chinese sellers’ logistical needs and sent a stream of employees to recruit suppliers.



Amazon ‘is the most cost-effective way to sell into the United States,’ says businessman Zhao Weiming. A factory in southern China produces his Lagunamoon-branded products. PHOTO: BILLY H.C.KWOK FOR THE WALL STREET JOURNAL

At the 2017 conference, Ms. Liu, who said she had spent over a decade purchasing for Walmart, told Chinese sellers that when she joined the industry in 2004, around 90% of her suppliers were trading companies and that by 2017, around 80% were the factories themselves. Ms. Liu said the same logic applied to Amazon, the video shows.

“Let’s cut out the middleman,” said Geoffrey Stewart, an Amazon employee in Shenzhen, at an April trade event in Hong Kong in a video the Journal viewed. “We think that will enhance margins for our manufacturing partners and it will delight customers.”

Amazon said Ms. Liu’s and Mr. Stewart’s comments didn’t mean Amazon was less committed to helping sellers everywhere. Ms. Liu, who no longer works at Amazon, didn’t respond to LinkedIn messages, and the Journal couldn’t determine where she now works. Amazon said Mr. Stewart wasn’t available for comment. Walmart declined to comment on Ms. Liu’s assertions.

Amazon seller Zhao Weiming said the site “is the most cost-effective way to sell into the United States.” The Guangzhou businessman experimented several years ago listing gadgets on Amazon before settling on cosmetics and essential oils, he said, establishing factories

to produce them under the name Lagunamoon. He said his company earns \$50 million a year on Amazon.

Listings for some popular Lagunamoon essential oils claimed they were U.S. Food and Drug Administration approved, until the Journal raised the matter with Amazon and Mr. Zhao in early November. An FDA spokesman said essential oils wouldn't meet the agency's definition of an approved product, although it was possible some component—a dye, say—might be approved.

Mr. Zhao said FDA requirements are complex and he didn't want to use tens of thousands of words to explain.

Amazon said it was investigating the case and would take proper action. It said sellers are prohibited from listing products that improperly claim to be FDA cleared or FDA approved, or improperly include the FDA logo. At least one Lagunamoon essential-oil listing that cited FDA approval had that claim removed after inquiries from the Journal.

Concerns at Amazon about Chinese listings arose several years ago in its China team, which noticed that as local sellers flocked to the platform, it saw increasing patterns of fraud, counterfeits and unsafe products, said former Amazon employees in China.

Washington state's attorney general's office said Amazon agreed to pay \$700,000 as part of a legally binding agreement after an investigation revealed dozens of products marketed toward children had excessive lead and cadmium. The products were made in China, the office said, some sold by China-based third parties. Amazon didn't admit wrongdoing.

"Customer safety is Amazon's top priority," said the Amazon spokesman. "We work closely with our selling partners to verify that the school supplies and children's jewelry in our store are safe."

Bogus brushes

Cheap Chinese counterfeits drove Kevin Williams, a Utah seller of water-powered cleaning brushes on Amazon, to lay off six employees this year—most of his U.S. staff, he said. He and his co-founder developed their patented Brush Hero product, made in the U.S. and U.K., in 2015 after finding it difficult to clean their vehicles, selling them on Amazon for \$34.99.

Poorly made copies began appearing in 2018 on Amazon, eventually listing for as low as \$9.99, some claiming to be the Brush Hero brand, he said. Buyers, unaware they were fake, trashed Mr. Williams's products on his Amazon page, he said. When he complained to Amazon, he said, it told him to order the alleged counterfeits and test them. Amazon removed brushes he proved counterfeit, he said, but it could take weeks for them to arrive for testing, and new counterfeits kept popping up.



Kevin Williams, co-owner of Brush Hero, at his distribution warehouse in Salt Lake City, Utah on November 8, 2019. PHOTO: LINDSAY D'ADDATO FOR THE WALL STREET JOURNAL

He dropped prices to \$19.99, which “pulled out the rug from us from a cash-flow perspective” he said. A retailer declined to give him a large contract. “He said, ‘What the heck, your Amazon reviews are terrible,’ ” said Mr. Williams, who calls his company “walking dead.”

Amazon said that it acted on infringement cases where Brush Hero provided adequate information and that it has introduced programs for sellers to fight counterfeits, including one called Project Zero that uses automation to scan Amazon stores and remove suspected counterfeits.

Counterfeits and inauthentic reviews “have all gone through the roof with the rise of Chinese sellers,” said Chris McCabe, an investigator for Amazon until 2012, now a consultant helping Amazon sellers counter illicit competition.

Inauthentic reviews for listings from China can trick Amazon’s algorithm into boosting products, people outside Amazon familiar with the activities said. A search for “travel pillows” in August presented products with names such as MLVOC offered by sellers whose names matched those of Amazon accounts registered in southern China.

The Journal ordered MLVOC-brand pillows from sellers named Corki and Kingstyle Supplies, and got gift cards offering a free pillow if the buyer emailed an address—the same address for both sellers. A “Gift card team” responded, asking the buyer to give a five-star review for which it promised an Amazon gift card. Of one MLVOC pillow’s roughly 2,000 reviews, about 86% have five stars.

Amazon policy forbids making inducements for positive reviews. Amazon said it investigated and took action, eventually reinstating Kingstyle and Corki. Amazon said in some cases it will reinstate seller accounts after violations if the sellers provide corrective action plans, though the accounts would be blocked after further infractions.

SHARE YOUR THOUGHTS

Do you care what country your Amazon seller is in? Join the conversation below.

In response to a query sent to the email address given by Corki and Kingstyle, a respondent

wrote: “I can’t share the company information.” The sellers didn’t respond to requests for comment sent through Amazon’s platform.

Travel-pillow seller Teri Mittelstadt, co-founder of HiGear Design Inc. in California, said counterfeits and review manipulation from China have hurt sales. Her patented Travelrest pillows, which attach to airline seats to prevent slipping, were among the top-selling travel pillows on Amazon for seven years starting in 2008, she said, but now rank in the 20s or lower.

“The person who gets hurt the most is the consumer who buys the product. They think they are buying a product with all these great reviews,” she said.

Amazon said Travelrest’s sales on Amazon have steadily grown year-to-year since 2015. Ms. Mittelstadt said her sales growth has slowed significantly over the past two years and that this year her sales are down on Amazon’s U.S. site.

Strategy shift

Starting in the mid-2000s, Amazon’s attempt to build an online retail business in China was thwarted by local competitors like Alibaba. Early this decade, it began experimenting with the new strategy, and employees “realized that global selling is much bigger” than selling in China, a former Amazon manager said.

At a Shenzhen trade fair in early 2013, no one had heard of Amazon, said Steven Chen, who says Amazon dispatched him to recruit Chinese sellers. He left Amazon in 2015 and operates an e-commerce consulting business.

Amazon employees distributed Chinese-language tutorials on opening Amazon accounts to prospective new sellers, people familiar with the company’s strategy said. Interns in Beijing phoned vendors on Chinese e-commerce sites to invite them to join Amazon.

Chinese sellers’ products often took weeks to ship across the Pacific and arrive at buyers’ addresses. So Amazon offered a logistics system, “Dragonboat,” which for a fee brought goods made in China and elsewhere to Amazon fulfillment centers in the U.S.

American buyers could receive purchases within 48 hours in Amazon boxes, said a former high-level Amazon China employee and a Chinese seller who used the service.

By 2015, Amazon's website was functional for sellers in Mandarin. Its team responsible for signing up and assisting Chinese sellers expanded to 120 people in 2016, said the former high-level employee. Other employees built relationships with businesses such as Chinese logistics-services providers and translator services, asking them to encourage clients to establish Amazon accounts.

It is often hard to tell that an Amazon seller is based in China, as is the case with the Amazon page of Lagunamoon, the essential-oil and cosmetics provider. It shows no indication the products are Chinese and gives no store address. Lagunamoon's Mr. Zhao said that is because the U.S. doesn't require it.

Amazon seller Molson Hart in Texas is suing 73 sellers, many located in China, in Texas federal court, for trademark infringement on products like his Brain Flakes interlocking plastic disk set. He has been selling the Chinese-made toys on Amazon since 2014, and counterfeits started appearing in 2015, he said.

After he filed suit, he couldn't hunt down the Chinese companies. "I know who did it," he said, "but I can't serve them."

Amazon said it has worked closely with brands to support criminal referrals against counterfeiters in China and anticipates working with brands to jointly pursue litigation in the U.S. and China.

Amazon buyer Irvin R. Love Jr. of Georgia bought a hoverboard on Amazon in November 2015 that caught fire and burned down his home, according to a suit he filed February 2018 against Amazon, the seller and others, in Georgia federal court. In an amended complaint this year he alleged that Amazon was negligent for not removing the hoverboard from its website before Mr. Love's purchase. Amazon argued in a legal filing that it doesn't owe damages because it didn't design, manufacture or sell the hoverboard.

Mr. Love also sued the seller, Panda Town, which his lawyer, Darren Penn, said appeared to be a Chinese company, based on sales information. Mr. Penn said that he can't locate the seller and that Amazon declined to provide its location.

Cross-border e-commerce has made it harder to police unsafe products entering the U.S., he said. "When you had the traditional importer and customs and brokers—and all those procedures are followed—you provide a couple of layers of protection that you don't when you're talking about an internet market." The case is in discovery, and Mr. Penn declined to make Mr. Love available for comment.

Amazon said it has provided information about the seller to the plaintiff, consistent with its policy on such matters. Panda Town doesn't appear to list on Amazon anymore, and the Journal couldn't locate a company by that name.

‘Not normal’

Product safety on Amazon and other online marketplaces isn't assured, because Amazon doesn't require all third-party sellers to test products to prove they are compliant with regulations, said Sebastien Breteau, chief executive of QIMA, an inspection, certification and audit company that is an Amazon vetted service provider.

“It's not normal that a factory with 200 people manufacturing baby monitors in Dongguan can ship products directly to consumers in Minnesota or in Europe through a marketplace,” he said. “The day the regulator makes them responsible, then we'll have proper compliance programs.”

Amazon said sellers create their own product listings and are required to comply with all relevant laws and regulations when listing items for sale in Amazon stores.

Mr. Thompson, the electronics seller, said Chinese factories have steadily pushed him out of lower-end goods such as USB cables, pricing at less than he can. The Chinese sellers often boost their product rankings by arranging large purchases of their own products and leaving positive reviews for themselves, he said—a tactic he said he learned about while attending an independent Amazon-seller event featuring a China-based sales consultant in Hong Kong several years ago.

He now counts on selling higher-end products like \$199 docking stations for displays and charging electronic devices, he said, but “there really isn't much upper end left for us.”

Amazon said competition is a part of business and some more-mature product categories can be particularly competitive. The spokesman said its goal is to quickly remove abusive reviews and that over the past month “over 99% of the reviews read by customers were authentic.”

Chinese sellers were seen as too valuable to give up, despite warning signs, a former Seattle-based Amazon employee said. “There were crazy things, hundreds of listings created every hour,” the person said, adding that when U.S. vendors complained, staff told them, “We don't control third-party selection. It's not us, it's an open-end platform.”

Goose-down test

Mr. Sagar, the goose-down-duvet seller, said an employee posing as a customer last year contacted Rosecose, the Chinese seller of the down duvet on Amazon, offering proof its product was deceptively listed. A Rosecose representative apologized and said its suppliers could be to blame, offering to refund the lab-test costs, according to messages the Journal viewed.

The employee last year also sent an email to Amazon with the test results showing the duck down, he said. Rosecose kept listing duvets, Mr. Sagar said.

The Journal bought a duvet on Amazon from Rosecose in October and sent its own test results to Amazon late in the month. Early this month, Rosecose was still selling duvets on Amazon as “100% Fill With Goose Down,” including a king-size option listing for \$129.99.

The Wall Street Journal verified Rosecose was based in China by visiting its page on Amazon’s Mexican site, which listed its location. Rosecose didn’t respond to inquiries sent through Amazon and no one picked up calls to a phone number associated with the brand.

Amazon said it took down Rosecose listings Nov. 4. They appeared to be gone from the U.S. site early last week, but some still appeared on Amazon’s Canada site until after the Journal pointed them out to the company.

—*Shane Shifflett, Stella Yifan Xie and Lekai Liu contributed to this article.*

—*Illustration by Jessica Kuronen/WSJ*

Write to Jon Emont at jonathan.emont@wsj.com

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Exhibit 2



Roll over image to zoom in

Kids Face Mask (50 Individually Wrapped)
- Premium Designed Kids Masks with Comfortable Earloops and Adjustable Metal Nose Strip, 4-Ply Non-Medical Kids Disposable Face Mask
Brand: Viva Naturals
★★★★☆ 7,729 ratings
| 37 answered questions
Amazon's Choice for "kids masks"

Price: CDN\$ 24.95
Secure transaction
Returns Policy
Amazon Delivered

Color Name: Black
Size: Kids
Kids Adult
Size: Kids
Brand: Viva Naturals
Colour: Black

About this item
• At least 25% Thicker than the Average Face Mask – Unlike most cheap, flimsy 3-layered masks, our individually wrapped black non-medical masks for kids are designed with four high-quality layers that

CDN\$ 24.95
This item cannot be shipped to your selected delivery location. Please choose a different delivery location.
In Stock.
Quantity: 1
Add to Cart
Buy Now
Secure transaction
Sold by Viva Naturals and Fulfilled by Amazon.
Add gift options
Deliver to United States
Add to Wish List
Share [Facebook] [Twitter] [Pinterest]
Have one to sell?
Sell on Amazon



EXHIBIT 4

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

XYZ Corporation

Plaintiff,

v.

Case No.:
1:20-cv-05338
Honorable John J.
Tharp Jr.

The Partnerships and Unincorporated Associations
Identified on Schedule "A", et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, March 29, 2021:

MINUTE entry before the Honorable John J. Tharp, Jr: The motion for leave to file a motion for reconsideration, or in the alternative, clarification of court's order instant as amicus curiae [84] is denied and, accordingly the Clerk is directed to strike the amici's motion itself, docketed at [85] from the docket. Amici have not demonstrated that they have standing to bring a motion for reconsideration. They are not parties in this case and are not bound by or otherwise subject to the Judgment Order at issue. The mere fact that amici believe the Judgment to have been entered in error does not provide a basis for them to participate in this particular action. The Judgment Order applies only to two parties the plaintiff and defendant Yoyolyand otherwise has no precedential effect. Should amici face a challenge to personal jurisdiction over a defendant based on similar facts, this Judgment will not preclude them from making any argument, or presenting any evidence, they deem appropriate. Mailed notice(air,)

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EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

Tommy Hilfiger Licensing LLC, et al.

Plaintiff,

v.

Case No.: 1:20-cv-07477

Honorable Matthew F. Kennelly

calvinklein.us.org, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, March 24, 2021:

MINUTE entry before the Honorable Matthew F. Kennelly: Defendant HHB BABY Store has moved to dismiss the trademark infringement claims of plaintiffs Tommy Hilfiger Licensing LLC, Calvin Klein Trademark Trust, and Calvin Klein, Inc. (collectively, Hilfiger) for lack of personal jurisdiction and for insufficient service of process. (1) At this stage, Hilfiger must make a prima facie case for personal jurisdiction, and it is entitled to have disputed facts resolved in its favor. *See Curry v. Revolution Labs., LLC*, 949 F.3d 385, 392–93 (7th Cir. 2020). Hilfiger has offered evidence tending to show that HHB BABY, though not physically located in Illinois or even in the United States, operated an interactive website through which it purposefully offered products for sale to consumers, including consumers located in Illinois, who would then select an address where the products should be shipped, including Illinois as one of the options. This is enough to amount to HHB BABY having purposefully availed itself of doing business in Illinois. *See id.* at 399. Because Hilfiger's claims against HHB BABY are related to contacts of this type, personal jurisdiction exists over HHB BABY in a court located in Illinois. (2) Hilfiger has also established that electronic service of process on HHB BABY was proper, because it was authorized by the Court under Fed. R. Civ. P. 4(f)(3) and not prohibited by any international agreement, and was reasonably calculated to apprise HHB BABY of the lawsuit. In particular, the Hague Convention does not apply because HHB BABY's physical address was unknown and not published on its e-commerce store or available from AliExpress, the platform that hosts the website on which HHB BABY, evidently a Chinese entity, operates its store. Hilfiger also reasonably established a need for prompt action—specifically to obtain an injunction preventing ongoing infringement—that would have been defeated if service were undertaken via the Chinese Central Authority, which typically takes six months at a minimum. The fact that HHB BABY provided Hilfiger with a purported physical address after service was accomplished via e-mail pursuant to the Court's authorization is of no consequence and in fact tends to establish that the e-mail service—which HHB BABY obviously was aware of by that point—was reasonably calculated to provide it with notice of the lawsuit. For these reasons, the Court denies HHB BABY's motion to dismiss [40] and directs it to file an answer to the complaint by no later than April 21, 2021. (mk)

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EXHIBIT 6

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ZINKIA ENTERTAINMENT,)	
)	
)	
Plaintiff,)	
)	21 C 916
v.)	
)	Judge Charles P. Kocoras
)	
THE PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE "A,")	
)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiff Zinkia Entertainment’s Motion to Stay the Motion to Dismiss and for Leave to Conduct Jurisdictional Discovery (Dkt. #56). For the following reasons, the Court grants Zinkia’s Motion.

STATEMENT

This is a trademark infringement action by Plaintiff Zinkia against several Defendants concerning the “POCOYO PRODUCTS” trademarks. GKEN-97, bionogk, ssultier, LYJan, and ZooYi (“Defendants”) moved to dismiss for want of personal jurisdiction. *See* Dkt. #42. Zinkia argues in response that Defendants purposefully availed themselves of the United States and Illinois by selling products via Amazon to Illinois-based consumers. *See* Dkt. #50. Recognizing that a decision on the Motion to

Dismiss is fact sensitive, Zinkia seeks a stay of the Court's Motion to Dismiss decision pending jurisdictional discovery.

“The Court has broad discretion in delineating the proper scope of . . . jurisdictional discovery.” *Gilman Opco LLC v. Lanman Oil Co., Inc.*, 2014 WL 1284499, at *7 (N.D. Ill. 2014). “Generally, courts grant jurisdictional discovery if the plaintiff can show that the factual record is at least ambiguous or unclear on the jurisdiction issue. The standard is low, but a plaintiff's request will be denied if it is based only upon unsupported assertions of personal jurisdiction.” *Ticketreserve, Inc. v. viagogo, Inc.*, 656 F. Supp. 2d 775, 782 (N.D. Ill. 2009) (cleaned up).

Applying these principles, the Court finds that there is a genuine dispute about whether the Court can properly exercise personal jurisdiction over Defendants. Rather than being based only upon unsupported assertions, Zinkia makes the potentially winning argument that by using and selling on Amazon Defendants purposefully availed themselves of Illinois. Zinkia also makes the sensible point that Defendants submitted several new affidavits as part of the Motion to Dismiss briefing (Dkts. ##51-55) that Zinkia should have the opportunity to test via jurisdictional discovery. For example, Zinkia wants to know the answer to the following questions:

What other products, other than the products identified previously by ZINKIA, were the Defendants selling, and how many of the products are infringing? If the “allegedly infringing products” were not sold to anyone in Illinois, where have the products been sold to, and to whom exactly have they been sold to? Are there any marketing efforts related to Defendants' accused products and incorporating these products into established channels of commerce to consumers in the Northern District

of Illinois, the State of Illinois, and the United States? What stores, other than the defendant stores at issue, do the Defendants also operate? Are those stores selling products infringing ZINKIA's rights? What is the Defendants' overall revenue from sales of all products into the Northern District of Illinois, the State of Illinois, and the United States? Can those sales revenues be verified by Defendants' payment of taxes to the United States Internal Revenue Service or revenue service of any state or county in the United States?

Dkt. #56 at 3. Those are practical inquiries and will be critical as the Court approaches the question of whether personal jurisdiction is proper here. Of course, the Court is mindful that “[f]oreign nationals usually should not be subjected to extensive discovery in order to determine whether personal jurisdiction over them exists.” *C. States, S.E. and S.W. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 946 (7th Cir. 2000). But there is no sign that discovery would be extensive here. Not to mention that the Court finds Zinkia has at least made a “prima facie showing of personal jurisdiction. . .,” which is a sufficient for Zinkia's victory on this Motion. *Id.*

Defendants' Response (Dkt. # 63) is largely unpersuasive and does not alter the Court's holding.

Defendants initially argue that Zinkia could have obtained sales data from Amazon by seeking expedited discovery earlier in the litigation. This argument is an interesting what-if, but the bottom-line remains that Zinkia—and this Court—need discovery to assure that the exercise of personal jurisdiction is appropriate here. It would also be unfitting to punish Zinkia for not seeking expedited discovery when expedited discovery is the exception and not the rule under the Federal Rules of Civil

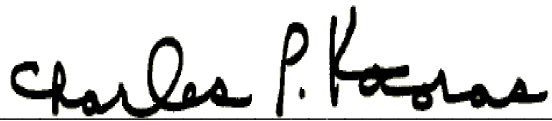
Procedure. *See St. Louis Group, Inc. v. Metals and Additives Corp., Inc.*, 275 F.R.D. 236, 242 (S.D. Tex. 2011) (“If it did, then expedited discovery would be the norm instead of the exception, and there would be no substantive purpose for Federal Rule 26(d)(1).”). The subsidiary warrant for Defendants’ argument—that motions to stay should not be allowed after motion to dismiss briefing has concluded—is roundly undercut by Defendants’ injection of brand-new affidavits that raise factual ambiguities.

Defendants’ remaining arguments also fall flat because they merely relitigate issues raised in the Motion to Dismiss, namely whether the exercise of personal jurisdiction is appropriate. The whole point of Zinkia’s Motion is that we need to know more to fairly decide that. So the Court grants Zinkia’s Motion, recognizing that at this stage we must “read the complaint liberally, in its entirety, and with every inference drawn in favor” of Zinkia. *C. States, S.E. and S.W. Areas Pension Fund v. Phencorp Reinsurance Co., Inc.*, 440 F.3d 870, 878 (7th Cir. 2006).

CONCLUSION

For the preceding reasons, the Court grants Zinkia’s Motion to Stay the Motion to Dismiss and for Leave to Conduct Jurisdictional Discovery. Telephonic status is set for 6/10/2021 at 10:30 a.m. It is so ordered.

Dated: 6/1/2021



Charles P. Kocoras
United States District Judge

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC.

Plaintiff,

20cv1084

ELECTRONICALLY FILED

v.

DASANI, ET AL,

Defendants.

Memorandum Order denying Motions to Set Aside Default (doc. 43 and doc. 51)

I. Introduction

This is an action for unfair competition, and trademark infringement under the Lanham Act, initiated on July 20, 2020, against numerous Defendants, who are Chinese corporations who were allegedly engaged in counterfeiting of the “Bacon Bin” kitchen product for storing and disposing of bacon grease, trademarked by Plaintiff, Talisman Designs, LLC. The civil case was filed by Plaintiff, a small business, against numerous Defendants, including AA Fashion, Cemic, Funarrow, LEEaccessry, Light-Ren, Qinai, Sanmubo Trade, Sundlight, and Urnanal (collectively the “AA Fashion Defendants”), and Defendant Lightshh, on the basis that they sold counterfeit products on Amazon in violation of the Lanham Act. Plaintiff also sought a Temporary Restraining Order, which this Court granted, and following a hearing on a subsequent motion for Preliminary Injunction, at which Defendants failed to attend, the Court entered an Order granting said Motion on August 3, 2020. The Court also granted Plaintiff’s Motion for Alternative Service permitting electronic service of process under Fed. R. Civ. P. 4(f)(3) (hereinafter the “Alternative Service Order”). ([Doc. 19](#)). On July 28, 2020, Talisman Designs electronically served all of the defendants listed on Schedule A with the Summons, Complaint, Requests for Admission, and the Temporary Restraining Order (“TRO”), including the AA Fashion Defendants and Defendant

Lightshh, in accordance with the Alternative Service Order. ([Doc. 29](#) and [Doc. 35](#)). The AA Fashion Defendants and Lightshh Defendant do not dispute that the Court authorized electronic service or that they each received the Summons, Complaint, Requests for Admission, and the TRO by email in accordance with the Alternative Service Order. The Clerk of Court entered Default as to all (remaining) Defendants, following alternate service and failure to answer or otherwise plead on August 28, 2020. On September 9, 2020, the AA Fashion Defendants filed the instant Motion to Set Aside Default Judgment ([doc. 43](#)) and Defendant Lightshh also filed a similar Motion ([doc. 51](#)), with Defendants arguing that this Court has no personal jurisdiction over Defendants, that service was improper as to AA Fashion Defendants, and that Defendants have valid defenses to this cause of action. For the following reasons, the Court denies Defendants' Motions because (1) personal jurisdiction exists in this Court, (2) service was proper, and (3) Defendants have wholly failed to set forth a meritorious defense.

II. Discussion

Pursuant to Fed. R. Civ. P. 55(c), a default may be lifted upon a showing of "good cause." There are four (4) factors to determine if good cause has been shown to set aside the entry of Default by the Clerk. These factors are: (1) prejudice to the plaintiff; (2) whether defendant has a prima facie meritorious defense; (3) whether defaulting defendant's conduct is excusable or culpable; and (4) effectiveness of alternative sanctions. *Gross v. Stereo Component Sys., Inc.*, 700 F.2d 120 (3d Cir. 1983). The second factor - - whether the defendant has a meritorious defense - - is considered a threshold question. *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192 (3d Cir. 1984). After all, it would be futile to set aside a default to afford a movant an additional opportunity to present a meritless defense. *Id.* That is the case before the Court in the instant matter.

The Court recognizes that the entry of defaults are generally disfavored. *Farnese v. Bagnaso*, 687 F.2d 761, 764 (3d Cir. 1982). And, while this Court finds that the factors of prejudice to Plaintiff, whether defaulting Defendants' conduct was excusable, and the effectiveness of alternative sanctions are somewhat neutral, there is futility in setting aside a default here because Defendants present meritless defenses.

A meritorious defense is one which, "if established at trial, would completely bar plaintiffs' recovery." *Momah v. Albert Einstein Medical Center*, 161 F.R.D. 304 (E.D. Pa. 1995) (citing *Foy v. Dicks*, 146 F.R.D. 113, 116 (E.D. Pa. 1993)). To satisfy this element, Defendants' answer and pleadings must contain specific facts that would allow them to advance a complete defense. *Id.* (citing *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194–96 (3d Cir.1984)); *Accu-Weather, Inc. v. Reuters, Ltd.*, 779 F.Supp. 801, 803 (M.D.Pa.1991). A court requires the defendant to raise specific facts beyond a general denial so that it has some basis for determining whether the defendant can make out a complete defense. *Id.* citing *\$55,518.05 in U.S. Currency*, 728 F.2d at 195.

As alleged in the Complaint, Defendants are part of a sophisticated group of businesses that intentionally use the nationwide market reach of Amazon and other on-line platforms to sell their Chinese-made counterfeit and knock-off items from China into the United States, including the Commonwealth of Pennsylvania. [Doc. 1 at paragraph 11](#). Contrary to the contentions of Defendants, each product (with exception of product of Defendant CEMIC which has not yet arrived) was received in Pennsylvania and was visually inspected to confirm that it was counterfeit. In other words, Defendants actually shipped product into Pennsylvania and even collected Pennsylvania sales tax on their sales.

The primary defense of Defendants is that this Court lacks personal jurisdiction over them. This defense is without merit. The three-part test to determine personal jurisdiction, as set forth in *Budget Blinds, Inc. v. White*, 536 F.3d 244, 260 (3d Cir. 2008), is as follows: (1) the nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and, (3) exercise of jurisdiction must be reasonable. All three parts of this test have been met in this case as to Defendants.

Commerce just like this over the internet, even specifically through Amazon, has been found to support a finding that a Court can properly exercise personal jurisdiction over a China-based infringer, even if the infringer has no physical presence in the United States. *Curry v. Revolution Labs, LLC*, 949 F.3d 385, 399 (7th Cir. 2020). The Court finds instructive the decisions of colleagues in the Western District of Pennsylvania, and its own prior decision, finding that sellers on Amazon, Aliexpress, and Ebay may not avoid personal jurisdiction by this Court on the basis that the Great Wall of China renders a district court without jurisdiction to protect brand owners from counterfeit products just like this. *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa. 2020)(Schwab, J.); *Doggie Dental Inc. v. Ahui*, No. 19-cv-1462 (W. D. Pa 2019)(Hornak, C.J.); *Gorge Designs v. Accessmail, et. al*, No. 19-cv-1454 (W. D. Pa. Stickman, J.); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W. D. Pa. October 11, 2019)(Hornak, C.J.).

Moreover, Defendants are also subject to personal jurisdiction pursuant Fed. R. Civ. P. 4(k)(2), which provides for personal jurisdiction through nationwide service of process over any

defendant provided that: (1) Plaintiff's claim are based upon federal law; (2) no state court could exercise jurisdiction over defendants; (3) the exercise of jurisdiction is consistent with the law of the United States; and (4) the exercise of jurisdiction is consistent with the Constitution. *Cent. States Southeast and Sw. Area Pension Fund v. Reimer Express World Cor.*, 230 F3d 934, 940 (7th Cir. 2000).¹ Here, because Defendant purposefully and knowingly offered for sale, sold and ultimately shipped product to United States residents, including Pennsylvania residents, Rule 4(k)(2) dictates that personal jurisdiction is proper. *Plixer Int'l v. Scrutinizer GmbH*, 905 F.3d 1, 5 (1st Cir. 2018).

Very recently, Defendant's counsel raised these defenses unsuccessfully in the United States District Court for the Southern District of New York in *Mattel, Inc. v. 2012SHININGROOM2012, et al.*, Civil Action No. 18-11648 (S.D.N.Y. Sept 25, 2020) (Doc. 100) (rejecting all defenses of China-based sellers and awarding damages and attorney fees). *See also Camelbak Products, LLC v Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 20-cv-01544 (N.D. Ill. Sept. 25, 2020) (Doc. 75) (Court denied Chinese defendants' pro se motions to dismiss based upon lack of personal jurisdiction, forum non conveniens and zero sales into jurisdiction). In the *Camelbak* case, which is pending in Illinois

¹ AA Fashion Defendants contend that service was improper. However, alternative service was permitted by this Court, and additionally, Plaintiff by affidavit set forth evidence that AA Fashion Defendants provided Amazon with United States addresses, which were fictitious. Also, the original contact by the AA Fashion Defendants supposed legal counsel led counsel to a law firm called "TIANYU Law Group PLLC" which lead to a generic website which stated that it was not a business entity registered in New York, contrary to what alleged defense counsel had represented. When Plaintiff's counsel sent by email on July 30, 2020, a link to the litigation website, after several failed attempts to connect, Plaintiff's counsel emailed Robin Cheng to determine what state he was licensed to practice law, and 11 days later, after default was entered, a response was delivered by Attorney Tianyu Ju of Glacier Law PLLC. The response was "We are licensed to practice in multiple jurisdictions." Importantly, no requests for extension were made by any defense counsel during that time.

(however, the standard for personal jurisdiction is the same as Pennsylvania), the docket sheet merely reflects the motion was denied for the reasons stated from the bench, but the transcript provides:

With regard to personal jurisdiction, the record reflects that each of these two defendants operates an interactive website through which it offered products for sale that consumers in Illinois who have selected an address for shipping including to Illinois is an option. It's less significant that any products were actually sold to Illinois than products were offered for sale in Illinois which the record reflects they were. So for this reason and the language of certain Supreme Court cases, the defendants purposely availed themselves of the privilege of doing business in Illinois. It's also sufficient under Illinois law which allows the exercise of personal jurisdiction up to the limits of due process. Transcript, p. 3, lines 13-25 (Declaration of Stanley D. Ference III ("Ference Dec."), Ex. 1).

Finally, as for Defendants contentions that they are entitled to assert the defense of the "First Sale Doctrine," this Court finds this defense is totally without merit. The "First Sale Doctrine" defense may be applicable where it is probable that the alleged infringing products might be genuine, instead of counterfeit. *Polymer Technology v. Mimran*, 975 F.2d 58, 61 (2d. Cir. 1992). Plaintiff has handily established, however, the unavailability of this defense in its Motion for TRO, because this doctrine is only applicable where Defendant buys and resells an authentic product. The products in this case are not even made in the same color as the genuine Bacon Bin product.

For all of these reasons, Defendants have failed to show that good cause exists to lift or set aside the Clerk's entry of Default in this case. Accordingly, the Motions to Set Aside Default ([doc. 43](#) and [doc. 51](#)) are DENIED.

SO ORDERED this 13th day of October, 2020.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ecf-registered counsel of record

EXHIBIT 8

1 and the original TRO went up on the website and were then
2 electronically served on the defendants based upon the
3 information that we got from our third party service
4 providers, including, in this case, Amazon, AliExpress and
5 ContextLogic doing business as wish.com.

6 We used that information to serve the defendants. As
7 per usual, some of them bounced. We went back and checked to
8 what we had done. We voluntarily dismissed defendants who we
9 could not serve and re-served the ones we could, and by March
10 26, 2021, confirmed everybody had been served according to the
11 alternative service order that Your Honor issued and we filed
12 our certificate of service indicating as such.

13 The next thing that happened, Your Honor, on the
14 docket was of course the rescheduling of the show cause
15 hearing. We received Your Honor's order indicating that the
16 show cause hearing had been rescheduled. That was posted on
17 the website. Again, following the exact same procedures. We
18 served each of the defendants using the alternative service
19 methods described. There were no bounces this time, and
20 again, April 1st, 2021, we filed our certificate of service
21 indicating that all defendants that were remaining in the case
22 had been served in accordance with the alternative service
23 order. That's what brings us to today, Your Honor.

24 THE COURT: Appreciate that, Mr. Malkin. Attorney
25 Cheng, did your client receive, your clients, and I don't mean

1 to diminish them by referring to them by number, but it
2 probably brings clarity to the transcript that's being made
3 and appreciated your reference to them in that way, so when I
4 refer to them by number, I don't mean to demean them or
5 diminish them. I'm just doing it for clarity, sir.

6 Do you have any dispute that your clients, defendants
7 38 and 105, did receive those communications as Mr. Malkin has
8 described them?

9 MR. CHENG: Your Honor, they did receive notice,
10 notification from the online platform, so in this case Amazon.
11 Amazon sent out message to those two defendants and links were
12 provided so that they can review the complaints and all
13 relevant documents.

14 Defendants do want to raise one issue here --

15 THE COURT: Sure.

16 MR. CHENG: -- is about serving, serving individuals
17 located outside of the United States. While the address for
18 the defendants is available, defendants do think that this
19 matter should proceed under the Hague service convention
20 instead of electronic service, electronic service on each
21 individual located outside of the United States.

22 THE COURT: Are your clients resident or situated or
23 domiciled in a foreign state that is a signatory to the Hague
24 Convention with the United States?

25 MR. CHENG: They are both located in China, and China

1 is a signatory to the Hague service convention.

2 THE COURT: Appreciate that, sir. Mr. Malkin,
3 Mr. Ference, do you have any thoughts on that point that
4 Attorney Cheng has raised?

5 MR. FERENCE: Sorry, Your Honor. We briefed this in
6 our initial paperwork. We don't believe that service by
7 e-mail is improper under the Hague Convention. I believe
8 Attorney Cheng's firm has also raised this in other cases, and
9 it has been rejected by those Courts in which it has been
10 raised.

11 As you see, it does provide notice. We don't know if
12 the e-mail addresses -- or, I'm sorry, if the street addresses
13 that are provided are in fact accurate, and we believe, given
14 the circumstances, that e-mail service is the most expeditious
15 way of serving the defendants outside of the United States,
16 particularly those in China, and that e-mail service is
17 appropriate under the Hague Convention.

18 The Chinese government has not objected to e-mail
19 service under the Hague Convention.

20 THE COURT: Let me ask you this, Mr. Ference: When
21 you say that last part that the government of China, do they
22 know about this case? I don't want to sound like a
23 smart-aleck, but are you saying that the Chinese government
24 knows about this, or are you saying more as a broader brush
25 policy matter that, as a general principle, the government of

1 China does not object to e-mail service in situations like we
2 have here?

3 MR. FERENCE: That is -- I'm referring in a broad
4 policy perspective, Your Honor. I have no idea as to whether
5 the Chinese government knows about this particular case.

6 THE COURT: Okay. Let me ask you this, Mr. Ference:
7 Going back to Mr. Cheng's observation, let's assume just for
8 purposes of my question the appropriate official of the
9 government of China said, wrote it down, publicly declared it,
10 that it is the official state policy of China that service in
11 a case just like this by electronic mail means is perfectly
12 acceptable and agreeable.

13 Does that resolve the matter in terms of Mr. Cheng's
14 two clients, or do they have the authority to say that's
15 interesting but not conclusive because we have the ability to
16 raise an objection also?

17 MR. FERENCE: Well, I think my understanding is
18 Mr. Cheng's point, and he's welcome to elaborate on this since
19 we are doing this orally and no paperwork has been filed on
20 it, is that the Chinese government, when they acceded to the
21 Hague Convention, not object to e-mail service, so in a broad
22 policy perspective, e-mail service is authorized.

23 Moreover, we don't know in fact whether or not any
24 address information that has been provided to the marketplace
25 is in fact accurate, so for courts that have considered this

1 have found that essentially any information regarding
2 addresses is unknown. You may recall --

3 THE COURT: Is your point, at least in the
4 circumstances of this case, e-mail service is actually better
5 in the sense of comporting with due process? That is, notice
6 and the opportunity to be heard because the e-mail address, as
7 a general matter and as a specific matter in this case, is
8 actually more accurate in realtime than an historic brick and
9 mortar street address?

10 MR. FERENCE: That's correct, Your Honor. The online
11 platforms and Amazon in particular require that all
12 communication be done by e-mail and that the party -- and that
13 a seller have a valid e-mail address on file with Amazon, so
14 that e-mail address is the method of communication for all
15 things related to the Amazon store, and in this case, using
16 that e-mail address for this lawsuit ensures that the
17 defendants do get timely notice.

18 As Mr. Malkin said, service was initially made on
19 March 25 and we heard from Mr. Cheng's firm on March 26, the
20 following day, and Mr. Cheng also said, in addition to the
21 notice that his defendants received from us, they also
22 received a communication directly from Amazon as well, so we
23 know in this situation that the defendants received timely
24 notification and service of the documents related to this
25 case.

1 THE COURT: I've pulled up the document that is on
2 the docket at ECF 11 which is the motion originally filed for
3 authorization of electronic service pursuant to Federal Rule
4 4(f)(3), and the core of the argument, as I understand it, is
5 the method of service that the Court has authorized here is
6 not barred or prohibited by an international agreement, and
7 for the reasons you've just summarized, you believe it
8 actually comports and comports more effectively with
9 constitutional notions of due process.

10 So your position is that the Hague Convention --
11 neither the Hague Convention nor any other international
12 agreement prohibits the method of service which has been
13 authorized here, and as a matter of actuality, among the
14 choices for effective service, that is, to meaningfully
15 provide a timely notice and opportunity to be heard, this is
16 among the better ways to go. Is that the guts of your
17 argument, sir?

18 MR. FERENCE: Yes, Your Honor, it is.

19 THE COURT: Mr. Cheng, sir, what do you think about
20 that?

21 MR. CHENG: Your Honor, first, as the Hague Service
22 Convention was signed in the '60s, e-mail service wasn't a
23 prevailing method at that time, so the analogy is --

24 THE COURT: We were still using carbon paper back
25 then.

1 MR. CHENG: First, I'll actually clarify that. Some
2 courts, some federal courts actually took a position that
3 Hague Service Convention is not needed, and some other courts
4 supported service to proceed under the Hague Service
5 Convention to individuals or entities located outside the
6 United States, so this issue is still currently being debated
7 in different courts.

8 This is also analogous to mail service. The common
9 understanding is if service by mail is not prohibited -- is
10 not allowed in a signatory country, then service by e-mail
11 shouldn't be allowed, because that's the closest analogy that
12 you have within the frame of the Hague Service Convention, and
13 the Chinese government, while signing the Hague Service
14 Convention, clearly declared that service by mail is not
15 permitted under -- like to the Chinese authority, that all
16 service of process from a foreign judicial system has to go
17 through the central authority which is the Department of
18 Justice in China and that would be distributed into like local
19 courts and be served to individuals or the entities.

20 So the argument --

21 THE COURT: Let me ask you this, Mr. Cheng. You
22 raise an interesting point. I'm not saying any of the other
23 ones any counsel has raised are not interesting, but that's
24 the most recent interesting point. I suspect, truth be told,
25 many people, perhaps even some on this call, do not know what

1 is in their physical mailbox on any given day, and in fact,
2 based on the stack of stuff I've seen in lobbies of apartment
3 buildings that I visited, it appears there's a lot of people
4 that don't know what's in their mailbox or next to it, but we
5 all, I suspect, have experiences in our lives where we have
6 been in the middle of a conversation with somebody, perhaps
7 being at a theater with them, sharing a meal, whether it's at
8 a restaurant or in the home and we all know what happens. We
9 hear a vibration somewhere and somebody picks their phone up
10 and looks at it.

11 Isn't, in the year 2021, if the law said to me,
12 Judge Hornak, draw an analogy. Isn't electronic service in
13 the hyper-connected world in which we live far more akin to
14 personal physical service than it is to postal mail? There
15 are people that don't even have a mailbox at their residence.
16 They have it at the post office. They maybe go down once a
17 week. They travel. They have the luxury of not being on the
18 road a lot. They like to be on the road. They don't have
19 their physical mail forwarded. It sits in a box.

20 But in their back pocket, in their -- I'm an old
21 person -- belt holster, somewhere else, they have their phone.
22 I happen to have an iPhone 8. Others have different things.
23 I see that in realtime, much like a person walking in and
24 handing me what I'm seeing on the phone.

25 I'm not being critical by saying we shouldn't draw an

1 analogy. That's often what lawyers use their great education
2 to do, to draw an analogy from past experience to a current
3 situation. Isn't in our world as it is today, particularly
4 with defendants who have, it's alleged and backed up by the
5 affidavits, that have as the core of their interaction with
6 the globe the use of this instantaneous electronic
7 communication?

8 If an analogy has to be had, why isn't the analogy
9 much closer to personal physical realtime service?

10 MR. CHENG: Because personal realtime service cannot
11 be done in this instance. If defendants are located in a
12 foreign country, that service of process by hand delivery is
13 just impossible, and I do agree with you that people use
14 e-mail service more and more often in the marketing world, and
15 that is one issue that's not covered by the current
16 international legal frame.

17 The judicial cooperation that the countries agreed
18 more than 50 years ago may not apply to the modern world, and
19 that's exactly why this needs to be addressed.

20 THE COURT: Are you saying, Mr. Cheng, if I went with
21 my analogy, the e-mails would be sent to the central authority
22 in China. I know you are not conceding that my analogy is the
23 better one, but if it was the better one, your point is it
24 still wouldn't go directly to defendants. It would go to the
25 central authority under the Hague Convention, because somebody

1 from the United States can't fly to Beijing or somewhere else,
2 get off the airplane, go to somebody's house in China and hand
3 them the papers and have it be good service?

4 MR. CHENG: That would cost a lot more than sending
5 through the central authority, I assume.

6 THE COURT: Okay. Let me ask you this: I'm not
7 cutting off the position that you've made the observation on a
8 few minutes ago about the Hague Convention, but do your
9 clients in this case, defendants 38 and 105, do they have an
10 objection, if the Court concludes that the entry of a
11 preliminary injunction is appropriate, do they object to that
12 injunction covering defendants 38 and 105?

13 MR. CHENG: Sorry, Your Honor. Can you repeat your
14 question?

15 THE COURT: Absolutely. Happy to. We'll keep the
16 service question open for the moment, but to sort of move
17 closer to the end and we can work backwards, if Mr. Malkin and
18 Mr. Ference convince the Court that I should convert the
19 temporary restraining order into a preliminary injunction, do
20 defendants 38 and 105 object to the preliminary injunction at
21 this time covering them?

22 MR. CHENG: Yes, Your Honor. Defendants do not think
23 they should be -- the temporary restraining order should be
24 converted into a preliminary injunction against them,
25 especially for defendant YeePee. If you want me to elaborate

1 would have an opportunity to respond with whatever additional
2 backup they believe is appropriate and, Mr. Cheng, if you are
3 the moving party, you of course would have automatically a
4 seven day period to file a reply in support of any motion you
5 file.

6 Ms. Cahill, that will be the second parallel order
7 we'll enter, if you want to work that up. I'll work on the
8 preliminary injunction order. It may issue this afternoon.
9 It may not issue until tomorrow morning.

10 Mr. Cheng, to the extent you interposed objections,
11 they are duly noted. No further exception is necessary. They
12 are on the record. I do believe that at this point at least,
13 but I think generally speaking, the service that's been
14 authorized by an order of this Court is not inconsistent with
15 the Hague Convention in these circumstances and is otherwise
16 fully authorized by the Federal Rules of Civil Procedure, and
17 I do believe in the face of a valid patent as to which there's
18 no record evidence of it being canceled or invalidated, the
19 issue of invalidity would not, in the Court's judgment, serve
20 to impair or limit the entry of the preliminary injunctive
21 relief the Court has just stated.

22 Mr. Malkin and Mr. Ference, are there any further
23 findings or any inaccuracy in the Court's findings and
24 conclusions that you believe otherwise need to be set forth on
25 the record?

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
9/28/2020 KE

WHAM-O HOLDING, LTD. and
INTERSPORT CORP. d/b/a WHAM-O,

Plaintiffs,

v.

SCHEDULE "A"

Defendants.

Civil Action No. 20-cv-03761

Judge Manish S. Shah

Magistrate Judge Jeffrey T. Gilbert

THOMAS G. BRUTON
CLERK U.S. DISTRICT COURT

Response to the Plaintiff's complaint

The defendants requested to suspend the trial of this case and requested to release the defendants' account. The reasons are as follows:

1. After the defendants' accounts were frozen, it took a long time to receive the plaintiff's email, so that the defendant did not have enough time to respond to the fact that it was frozen.
2. The plaintiffs requested to freeze all the amount in the defendant's account, which obviously exceeded the amount they might pay. In fact, the products sold by the defendants were purchased from regular suppliers, and the number of products involved in the case sold by the defendant was zero. Because the defendants were too far away from the court, it was difficult for the defendant to come to the court to respond to the case within the specified time.
3. The defendants are Chinese company, and they do not accept the service by announcement procedure because it is unfair to them. It is difficult for the defendants to know the progress of the case. The defendant tried to communicate with the plaintiff's lawyer, but The plaintiff's lawyer hardly reply to any information related to the case, but only threatens and demands unreasonably high compensation, The plaintiffs try to improperly demand the entire amount of the defendant's account by taking advantage of the objective conditions of the defendant's inability to appear in court.

Therefore, in order to protect the lawful rights and interests of the defendant, the defendant requested the court to suspend the trial of the case and release the defendant's account.

DATED: September 22, 2020

Respectfully submitted,

Jesun

Guangdong Yilong Law Firm
Room 1403, Wanhui Building, Longgang Street,
Longgang District, Shenzhen, Guangdong, China
+86-131-2045-1811
iplawyer01@foxmail.com

AGENT FOR DEFENDANTS

SCHEDULE "A"

Seller Name	Seller Origin	Company or individual	Address
CHICchen	A1I7VLW6LXSXD	Yu yao shi he li jia dian qi you xian gong si	Zhe jiang sheng yu yao shi li zhou jie dao su jia yuan cun lin feng 340 hao
Sinzelimin	A1JOL778W3NTWZ	Zhong ze li min (bei jing) zi chan guan li you xian gong si	Bei jing shi feng tai qu feng ti nan lu 1 hao yuan 11 chuang 1 ceng 113
♥ <input type="checkbox"/> MODAO ♥ <input type="checkbox"/> Prime? Day Clearance Sale!!!	A7L8HZ35GY308	Shen zhen shi chang jin sheng wang luo ke ji you xian gong si	Shen zhen shi nan shan qu xi li jie dao xin gao lu 366 da jie xin hua da sha A zuo 7F
Aimik	A2PJJLM4PFEXN8	Shen zhen shi ke dan di mao yi you xian gong si	shen zhen shi long hua qu LONG HUA JIE DAO YOU SONG LU FU KANG KE JI DA SHA YI LOU 101 FU KANG KE JI DA SHA YI LOU 101
TOPBIGGER <input type="checkbox"/> <input type="checkbox"/> Up to 70% Big Promotion Sale	A2N244KH7IE2IR	Shen zhen shi yue cong mao yi you xian gong si	Shen zhen shi long gang qu ji hua jie dao ji hua gong ye qu B2 dong 408
Bazahy	A2TV8SJ4LVFXZU	Han Sheng Wei	Zheng Dong Xin QU Di De Jie 1 HAO 1 Haolou 1CengFu Zheng Zhou Shi HENanSheng

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WHAM-O HOLDING, LTD. and
INTERSPORT CORP. d/b/a WHAM-O,

Plaintiffs,

v.

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE "A",

Defendants.

Case No.: 1:20-cv-03761

Judge Manish S. Shah

Magistrate Judge Jeffrey T. Gilbert

MOTION TO STRIKE

On September 22, 2020, an individual by the alleged name of "Jesun", with no surname, filed a response [49] on behalf of Defendants No. 379 "TopBigger Up to 70% Big Promotion Sale", Defendant No. 251 "CHICchen", Defendant No. 367 "Sinzelimin", Defendant No. 220 "MODAO Prime? Day Clearance Sale!!", Defendant No. 227 "Aimik", and Defendant No. 237 "Bazahy" (collectively "Jesun Defendants") to Plaintiffs' Complaint without filing an appearance pursuant to Local Rule 83.12 (a). Nor does the filing comply with Local Rule 83.15.

The filer called "Jesun" admits in [49] to acting as an "agent" for the above defendants as shown in the signature block of the pleading:

Jesun

Guangdong Yilong Law Firm
Room 1403, Wanhui Building, Longgang Street,
Longgang District, Shenzhen, Guangdong, China
+86-131-2045-1811
iplawyer01@foxmail.com

AGENT FOR DEFENDANTS

The docket in this matter also shows Jesun has not filed any appearance in the action as required by Local Rule 83.12, or secured local counsel as required by Local Rule 83.15. Nor has Jesun submitted any other document to this Court establishing that the filer is an attorney admitted to practice to the Trial Bar of this Court, admitted to any general bar of any state, or is otherwise authorized to practice law in the United States. In short, by filing [49], Jesun has engaged in the unauthorized practice of law and has failed to comply with Local Rules 83.12 and 83.15:

As a preliminary matter, the TAC must be dismissed because Ms. Rotheimer, in preparing the TAC, has engaged in the unauthorized practice of law. The Court has the inherent authority to impose sanctions for practicing law without a license, including striking pleadings. *See United States v. Johnson*, 327 F.3d 554, 560 (7th Cir. 2003) (federal court has inherent authority to impose sanctions for the unauthorized practice of law); *Robinson v. Belom*, No. 03 C 1, 2003 U.S. Dist. LEXIS 8633, 2003 WL 21183916, at *5 (N.D. Ill. May 19, 2003) (striking submissions prepared by non-attorney and ordering non-attorney to show cause in writing why he should not be held in contempt of court); *see also* N.D. Ill. **Local Rule 83.12(a)** ("only members in good standing of the general bar of this Court may . . . file pleadings, motions or other documents"). Accordingly, the TAC is stricken.

Rotheimer v. Kalata, No. 12-cv-1629, 2015 U.S. Dist. LEXIS 25249, at *5 (N.D. Ill. Mar. 3, 2015).

Accordingly, Plaintiffs respectfully request that [49] be stricken or that Jesun be ordered to comply with Local Rules 83.12, and 83.15.

DATED: October 9, 2020

Respectfully submitted,

/s/ Keith A. Vogt
Keith A. Vogt (Bar No. 6207971)
Keith Vogt, Ltd.
111 W Jackson BLVD, Suite 1700
Chicago, Illinois 60604
Telephone: 312-675-6079
E-mail: keith@vogtip.com

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was electronically filed on October 9, 2020 with the Clerk of the Court using the CM/ECF system, which will automatically send an email notification of such filing to all registered attorneys of record.

/s/ Keith A. Vogt
Keith A. Vogt

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

WHAM–O HOLDING, LTD., et al.

Plaintiff,

v.

Case No.:
1:20–cv–03761
Honorable Manish S.
Shah

The Partnerships and Unincorporated Associations
Identified on Schedule "A", et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, October 16, 2020:

MINUTE entry before the Honorable Manish S. Shah: Plaintiffs' motion to strike [58] is granted. The document filed by "Jesun" at docket entry 48 is not a proper pleading filed by an attorney of record for a party. It is stricken. Defendant D–Market's motion for an extension of time [60] is granted. D–Market has until 10/30/20 to respond to the complaint. Notices mailed. (psm,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
11/3/2020 KE

Wham-O Holding, Ltd.
Plaintiff,

Civil Action No.: 20-cv-05622
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

v.

SCHEDULE "A"

Defendant.

Motion for extention

The plaintiff hereby demand motion for extention for hearing judgment. Because the defendant does not use mail frequently to note the notice of TRO, he found the fact that the account was frozen only when he used the account to transfer money recently, and it took a period of time to find out the reasons for the freezing.

Additionally, The plaintiff deliberately did not reply to the defendant's message for a long time, and did not serve the notice of progress in accordance with due process.

Therefore, there is not enough time for the defendant to contact plaintiff to settle the case. In order to ensure that the defendant and the plaintiff have sufficient time for communication and substantive defense, We hereby apply for an extension.

DATED: October 30, 2020

Respectfully submitted,

Jesun

Guangdong Yilong Law Firm
Room 1403, Wanhui Building, Longgang Street,
Longgang District, Shenzhen, Guangdong, China
+86-131-2045-1811

iplawyer01@foxmail.com

Agent for defendant

SCHEDULE "A"

Seller Name	Operator	Address
LLYWEY	Lei ling Yu	Shen zhen shi long hua qu long hua jie dao dong huan yi lu gong he hua yuan 1dong 1003

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WHAM-O HOLDING, LTD. and
INTERSPORT CORP. d/b/a WHAM-O,

Plaintiffs,

v.

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE "A",

Defendants.

Civil Action No.: 1:20-cv-05622

Judge Elaine E. Bucklo

Magistrate Judge Beth W. Jantz

MOTION TO STRIKE

On October 30, 2020, an individual by the alleged name of "Jesun", with no surname, filed a Motion for Extension [35] on behalf of Defendant No. 590 "LLYWEY" (collectively "Jesun Defendant") to Plaintiffs' Complaint without filing an appearance pursuant to Local Rule 83.12 (a). Nor does the filing comply with Local Rule 83.15.

The filer called "Jesun" admits in [35] to acting as an "agent" for the above defendant as shown in the signature block of the pleading:

Respectfully submitted,

Jesun

Guangdong Yilong Law Firm
Room 1403, Wanhui Building, Longgang Street,
Longgang District, Shenzhen, Guangdong, China
+86-131-2045-1811
iplawyer01@foxmail.com
Agent for defendant

The docket in this matter also shows Jesun has not filed any appearance in the action as required by Local Rule 83.12, or secured local counsel as required by Local Rule 83.15. Nor has Jesun submitted any other document to this Court establishing that the filer is an attorney admitted to practice to the Trial Bar of this Court, admitted to any general bar of any state, or is otherwise

authorized to practice law in the United States. In short, by filing [35], Jesun has engaged in the unauthorized practice of law and has failed to comply with Local Rules 83.12 and 83.15:

As a preliminary matter, the TAC must be dismissed because Ms. Rotheimer, in preparing the TAC, has engaged in the unauthorized practice of law. The Court has the inherent authority to impose sanctions for practicing law without a license, including striking pleadings. *See United States v. Johnson*, 327 F.3d 554, 560 (7th Cir. 2003) (federal court has inherent authority to impose sanctions for the unauthorized practice of law); *Robinson v. Belom*, No. 03 C 1, 2003 U.S. Dist. LEXIS 8633, 2003 WL 21183916, at *5 (N.D. Ill. May 19, 2003) (striking submissions prepared by non-attorney and ordering non-attorney to show cause in writing why he should not be held in contempt of court); *see also* N.D. Ill. **Local Rule 83.12(a)** ("only members in good standing of the general bar of this Court may . . . file pleadings, motions or other documents"). Accordingly, the TAC is stricken.

Rotheimer v. Kalata, No. 12-cv-1629, 2015 U.S. Dist. LEXIS 25249, at *5 (N.D. Ill. Mar. 3, 2015).

Courts in this Judicial District have struck documents and pleadings not properly filed by an attorney of record. *See Wham-O Holding, Ltd., et al. v. The Partnerships and Unincorporated Associations Identified on Schedule "A", et al.*, 20-cv-3761 (N.D. Ill. Oct. 16, 2020) (J, Shah) (granted plaintiff's motion to strike because the document filed was "not a proper pleading filed by an attorney or record for a party"). *See Exhibit 1*; *see also CamelBak Products, LLC v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, 20-cv-1542 (N.D. Ill. Aug. 31, 2020) (J, Guzman) (struck and terminated defendant's motion because the document is filed by an individual "who has not entered an appearance and is neither a member of the general bar of this court nor has sought admittance *pro hac vice*, as required by Local Rule 83.12").

Accordingly, Plaintiffs respectfully request that [35] be stricken or that Jesun be ordered to comply with Local Rules 83.12 and 83.15.

DATED: November 4, 2020

Respectfully submitted,

/s/ Keith A. Vogt

Keith A. Vogt (Bar No. 6207971)

Keith Vogt, Ltd.

111 West Jackson Boulevard, Suite 1700

Chicago, Illinois 60604

Telephone: 312-675-6079

E-mail: keith@vogtip.com

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was electronically filed on November 4, 2020 with the Clerk of the Court using the CM/ECF system, which will automatically send an email notification of such filing to all registered attorneys of record.

/s/ Keith A. Vogt

Keith A. Vogt

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

WHAM–O Holding, Ltd., et al.

Plaintiff,

v.

Case No.:
1:20–cv–05622
Honorable Elaine E.
Bucklo

The Partnerships and Unincorporated Associations
Identified in Schedule "A", et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, November 18, 2020:

MINUTE entry before the Honorable Elaine E. Bucklo: Plaintiffs' motion to strike [36] is granted. Jesun's motion for extension [35] is stricken. Mailed notice. (mgh,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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EXHIBIT 11

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shenzhen 518116 CN

803, East B1, California Garden, No. 2, Luogang Road, Buji Street,
Longgang District, Shenzhen 518116 cn

罗岗路2号加州花园B1东803 龙岗区布吉街道深圳市 518116 cn



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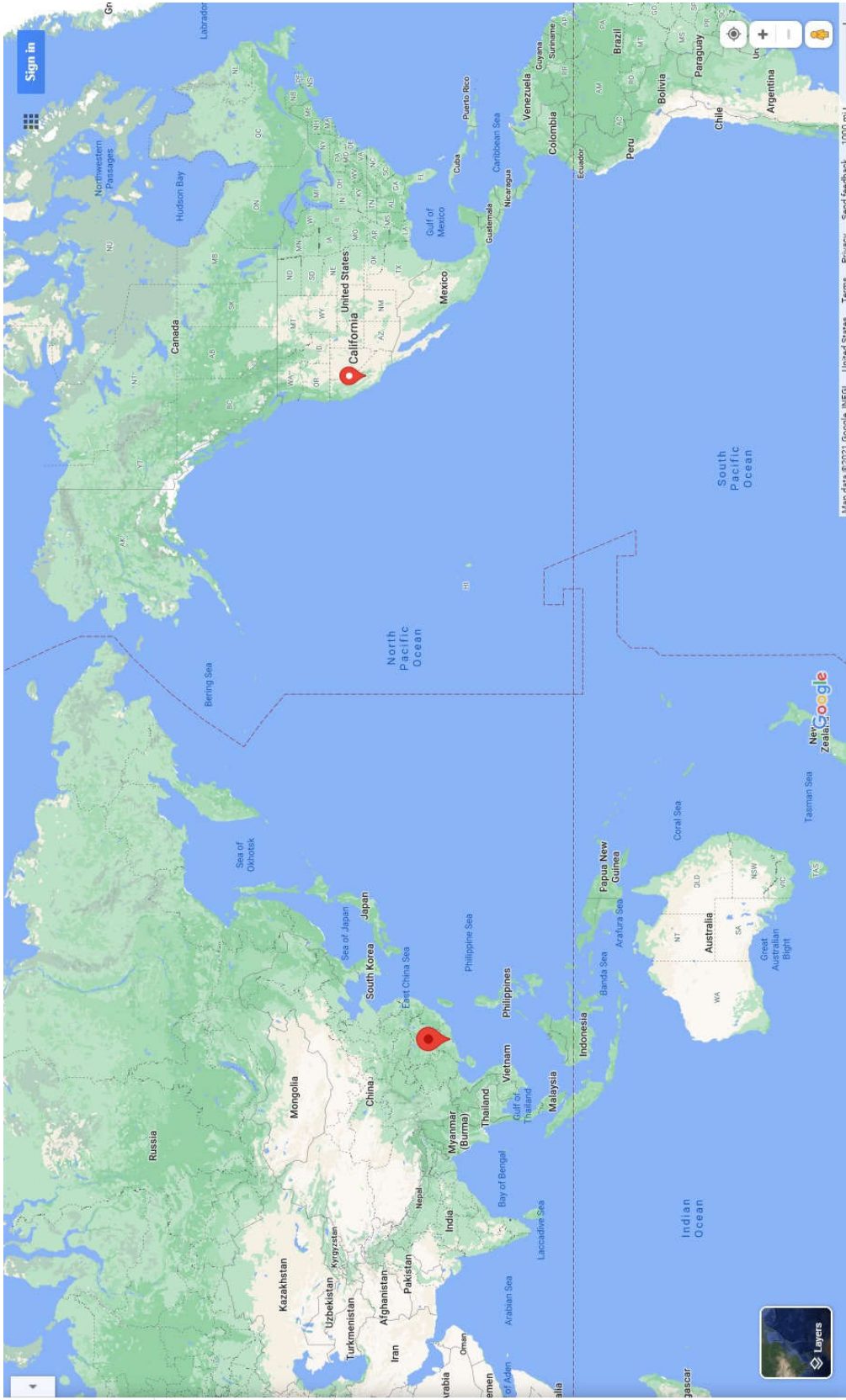
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803, East B1, California Garden, N

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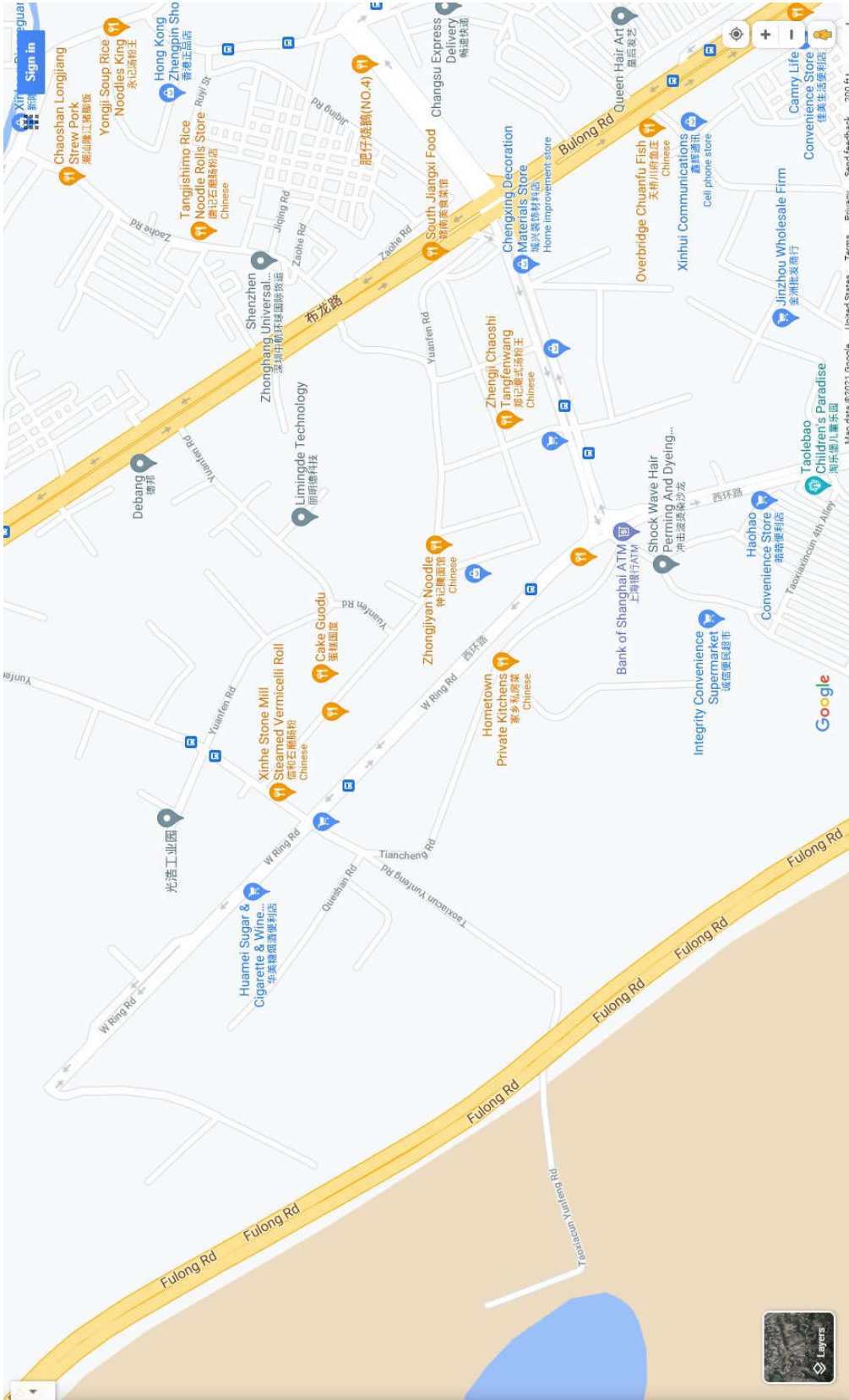
B1
No reviews
2 Luogang Rd
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Xi Huan Lu
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gong Si

Wuhan Ming jin yuan J lan Z hula ow u you X lan gong Si



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GUOJI

YIQI1DONG2DANYUAN10CENG10HAOBANGONGHAO(ZIMAOQUWU

HANPIA NQU) wuhanshi hubeisheng 430074 CN

Wuhan dong hu xi shu kai fa qu guang gu u dada o19ha o jinx in-gu o j i y iq i1dong2dan yuan10c eng10h ao bang on gh ao(z i ma o q u wuhan p lan q u) 武汉市 湖北省 430074 cn



146 / 5000



Wuhan dong hu xi shu kai fa qu guang gu u dada o19ha o jinx in-gu o j i y iq i1dong2dan yuan10c eng10h ao bang on gh ao(z i ma o q u wuhan p lan q u) Wuhan, Hubei Province 430074 cn



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- 在百度地图添加该地点
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