

**IN THE SUPREME COURT OF OHIO**

**DENNIS STINER**, Administrator of the Estate of Logan James Stiner,  
Plaintiff-Appellant,  
v.  
**AMAZON.COM, INC.**, et al.,  
Defendants-Appellees.

Case No. 2019-0488  
On appeal from the Lorain County Court of Appeals, Ninth Appellate District  
Court of Appeals Case No. 17 CA 011215

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**Supplement to Merit Brief of Defendants-Appellees  
Amazon.com, Inc., Amazon Fulfillment Services, Inc., Amazon Web Services, Inc., and Amazon Services, L.L.C.**

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Joyce D. Edelman, Esq. (0023111)  
(Counsel of Record)  
Kathleen M. Trafford (0021753)  
L. Bradfield Hughes (0070997)  
PORTER WRIGHT MORRIS & ARTHUR LLP  
41 South High Street  
Columbus Ohio 43215  
Telephone: (614) 227-2000  
Fax: (614) 227-2100  
jedelman@porterwright.com  
ktrafford@porterwright.com  
bhughes@porterwright.com

Julie L. Hussey, Esq.  
(PHV 14793-2019)  
PERKINS COIE LLP  
11988 El Camino Real, Suite 350  
San Diego, CA 92130  
Telephone: (858) 720-5700  
Fax: (858) 720-5850  
jhussey@perkinscoie.com

*Counsel for Defendants-Appellees  
Amazon.com, Inc., Amazon Fulfillment Services, Inc., Amazon Web Services, Inc., and Amazon Services, L.L.C.*

Brian K. Balsler (0037869)  
(Counsel of Record)  
BRIAN K. BALSER CO., LPA  
5311 Meadow Lane Court, Suite 1  
Elyria, Ohio 44035  
Telephone: (440) 934-0044  
brian@balslerlaw.com

Drew Legando (0084209)  
Edward S. Jerse (0013155)  
MERRIMAN LEGANDO WILLIAMS & KLING, LLC  
1360 West 9th Street, Suite 200  
Cleveland, Ohio 44113  
Telephone: (216) 522-9000  
Fax: (216) 522-9007  
drew@merrimanlegal.com  
edjerse@merrimanlegal.com

*Counsel for Appellant Dennis Stiner,  
Administrator of the Estate of Logan James Stiner*

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Respectfully submitted,

/s/ Joyce D. Edelman

Joyce D. Edelman, Esq. (0023111)

(Counsel of Record)

Kathleen M. Trafford (0021753)

L. Bradfield Hughes (0070997)

PORTER WRIGHT MORRIS & ARTHUR LLP

41 South High Street

Columbus Ohio 43215

Telephone: (614) 227-2000

Fax: (614) 227-2100

jedelman@porterwright.com

ktrafford@porterwright.com

bhughes@porterwright.com

Julie L. Hussey, Esq. (PHV 14793-2019)

PERKINS COIE LLP

11988 El Camino Real, Suite 350

San Diego, CA 92130

Telephone: (858) 720-5700

Fax: (858) 720-5850

jhussey@perkinscoie.com

*Counsel for Defendants-Appellees*

*Amazon.com, Inc., Amazon Fulfillment*

*Services, Inc., Amazon Web Services,*

*Inc., and Amazon Services, L.L.C.*

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

DENNIS STINER, Administrator of the )  
Estate of Logan James Stiner, ) Case No.: 15CV185837  
 )  
Plaintiff, ) Judge John R. Miraldi  
 )  
v. ) Magistrate Stephen Vanek  
 )  
AMAZON.COM, INC., et al., )  
 )  
Defendants. )

State of Washington )  
 ) ss.  
County of King )

Damon Jones, being first duly sworn upon oath, deposes and states:

**I. Introduction and Background**

1. I am employed by Amazon.com, Inc. and have worked for the company for the past 11 years. I currently work in the Kindle division, but before that was the Senior Manager of Amazon's product safety team. In that position, which I held for approximately 4.5 years, I was responsible for overseeing various safety processes for the Amazon marketplace.

**EXHIBIT  
B**

2. The facts stated in this affidavit are based on my personal knowledge and my review of business records of Amazon, which Amazon creates and maintains in the ordinary course of its business.

3. I understand that this lawsuit involves the death in May 2014 of a young man named Logan Stiner, which plaintiff claims was caused by caffeine powder given to him by a classmate, Kelsey Kidd. I also understand that Ms. Kidd bought the caffeine powder on the Amazon.com Marketplace in February 2014 from a third-party seller known as Tenkoris.

## II. The Amazon.com Marketplace

4. Amazon.com is the name of the company commonly known as "Amazon," which operates a website at [www.amazon.com](http://www.amazon.com). The company and the website were founded in Seattle in the mid-1990s as an online bookseller. For ease of reference, I will refer to the company as "Amazon" and the website as "Amazon.com."

5. Despite its distant roots as an online bookseller, Amazon.com is not an online store like Bestbuy.com or Target.com. Those websites are online venues to buy from a single merchant. Amazon.com, rather, is an online marketplace where millions of third-party sellers list products for sale, setting their own prices and describing their own products. The Marketplace is a service that Amazon provides for sellers to offer products and buyers to purchase them. It is akin to an online mall where independent merchants display their products to people perusing the website.

6. In 2014, which is when Kelsey Kidd purchased caffeine powder, more than two million third-party sellers sold more than two billion items on the Amazon.com Marketplace. Third-party sales made up more than forty percent of total sales that year, and now account for more than half.

7. The marketplace offers several benefits for buyers and sellers. It greatly increases consumer choice by giving buyers access to countless sellers who may not have the means to establish physical or online stores. It gives sellers access to millions of potential buyers. The marketplace reduces transactional costs for buyers and sellers alike.

8. Amazon.com is an information service and system designed so that multiple users across the world can access the servers and browse the marketplace at the same time. When users visit Amazon.com, they can navigate to product detail pages by clicking on product links and by searching for particular products through a search bar. Users can also post reviews on the product detail page, and can read the reviews posted by other users.

9. The marketplace is operated by Amazon.com, Inc. I understand that the plaintiff in this lawsuit has also named three other Amazon entities: Amazon Fulfillment Services, Inc.; Amazon Web Services, Inc.; and Amazon Services, LLC. These entities do not operate the marketplace.

10. Amazon provides several other e-commerce services besides the marketplace. For instance, it provides payment processing so that buyers and sellers have a uniform means of payment regardless of which seller a buyer purchases from. When the buyer purchases from a third-party seller, Amazon processes the payment from the buyer's designated form of payment and remits to the seller the funds collected on its behalf, less the fees the seller agrees to in its services agreement with Amazon (known as the *Selling on Amazon Service Terms* in the *Business Solutions Agreement*, discussed below). Amazon provides payment services independent of the marketplace. Many websites not affiliated with Amazon use Amazon Payments to process payment. This service protects customer data and allows customers to purchase items in a safe environment.

### III. Sales by Third Parties on the Marketplace

11. Tenkoris was one of the millions of third-party sellers on the marketplace and is the seller of the caffeine powder that Kelsey Kidd purchased.

12. To become sellers on the marketplace, third-party sellers like Tenkoris must assent to the *Amazon Services Business Solutions Agreement* (“*Business Solutions Agreement*” or “*Agreement*”). Amazon transacts most business online, so it does not obtain a physical signature on the *Business Solutions Agreement*. It ensures that third-party sellers agree to the *Agreement* by requiring assent as a step in the seller account set-up process. If a seller does not assent to the *Agreement*, it cannot set up an account and cannot offer anything for sale on the marketplace.

13. I understand that the plaintiff attached a copy of this *Agreement* to the second amended complaint, so I will refer to that copy rather than attaching a new copy here.

14. The *Business Solutions Agreement* makes clear that Amazon provides a service and the third parties are the sellers. Specifically, the *Selling on Amazon Service Terms* in the Agreement describe “a Service that allows you to list products for sale directly on the Amazon Site.” The *Terms* require the seller to “ensure that you are the seller of all products made available for listing for sale” on the marketplace. [S-2.1] They require the seller to “source, sell, fulfill, ship and deliver your Seller-Fulfilled Products”; package and ship the products; retrieve order information at least once per day; provide Amazon information about shipment and order status; include an order-specific packing slip in the shipments; and “identify yourself as the seller of the product on all packing slips or other information included with Your Products and as the Person to which a customer may return the applicable product.” [S-2.1] They also require the seller to provide Amazon the “customer return and refund policies for display on the Amazon Site.” [S-2.2]

15. Amazon provides the online storefront on the marketplace, but third-party sellers are responsible for all aspects of the sale.

16. The seller decides what to sell and sources the product from the manufacturer or upstream distributor. Amazon has no relationship with the manufacturer or entities in the seller's distribution channel. The *Terms* state that the seller will "source, sell, fulfill, ship and deliver your Seller-Fulfilled Products." [S-2.1]

17. The *Terms* state that the seller is "responsible for any non-conformity or defect in, or any public or private recall of, any of Your Products." [S-3.1]

18. The seller provides the product description displayed to the user via the product detail page on the Amazon marketplace. According to the *Terms*, sellers must provide "accurate and complete Required Product Information for each product that you make available to be listed for sale through the Amazon Site and promptly update such information as necessary to ensure it at all times remains accurate and complete." [S-1.1]

19. The seller sets the price.

20. The seller is responsible for ensuring the product is properly packaged and complies with all applicable laws. The *Terms* state that the seller must "ensure that Your Materials, Your Products (including packaging) and your offer and subsequent sale of any of the same 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." [S-1.1] (Amazon does have some restrictions; for example, sellers cannot sell guns on the site. The *Terms* forbid sellers to "provide any information for, or otherwise seek to list for sale on the Amazon Site, any Excluded Products ..." [S-1.1])



21. The seller offers any warranty. Amazon does not warrant third-party products sold on the marketplace.

22. Unless the seller participates in the Fulfillment by Amazon program, the seller holds its own inventory. The seller decides the means and price of shipping, packages the product for shipment, and ships the product to the buyer.

23. The Fulfillment by Amazon program is a logistics and storage service that Amazon provides to third-party sellers for a fee. Amazon rents out space in its fulfillment centers to subscribed third-party sellers and provides shipping services. The third-party seller is still the seller. The *Terms* state that sellers who uses the Fulfillment by Amazon service will “source and sell your Amazon-Fulfilled Products.” [S-2.1]

24. Kelsey Kidd’s caffeine powder purchase was fulfilled by Tenkoris, meaning that Tenkoris kept the caffeine powder in its own inventory and shipped it directly to Kidd. Amazon did not fulfill her order.

25. Buyers are told about third-party sales in the *Conditions of Use*, which each buyer (including Kelsey Kidd) must agree to in order to set up an account. The buyer assents to the *Conditions of Use* again in the ordering process.

26. The *Conditions of Use* make clear that third-party sellers sell products on the marketplace, and that those sellers, not Amazon, are responsible for the products: “Parties other than Amazon operate stores, provide services, or sell product lines through the Amazon Services. In addition, we provide links to the sites of affiliated companies and certain other businesses. We are not responsible for examining or evaluating, and we do not warrant the offerings of, any of these businesses or individuals or the content of their Web sites. Amazon does not assume any

responsibility or liability for the actions, product, and content of all these and any other third parties. You should carefully review their privacy statements and other conditions of use.”

27. The *Conditions of Use* disclaim all express or implied warranties in prominent, all-caps text. Any warranty is provided by the individual sellers. The terms described in this paragraph and the preceding paragraph were in the *Conditions of Use* before 2014, when Kelsey Kidd placed her order. The current edition of the *Conditions of Use* can be found at the bottom of the Amazon.com homepage.

28. The marketplace also identifies the seller to the buyer throughout the product viewing and ordering process. The seller is identified in the “sold by” line next to the price and shipping information on the product detail page. The order confirmation page also identifies the seller before the user clicks the “place your order” button.

#### **IV. Kelsey Kidd’s purchase of caffeine powder from Tenkoris**

29. Tenkoris was the seller of the caffeine powder that Kidd purchased.


30. I understand that the plaintiff attached an order document as exhibit 2 to his second amended complaint. The document is a printout from Kelsey Kidd’s purchase order showing her purchase of caffeine powder. The purchase order identifies TheBulkSource as the seller in three places, shown in red boxes:

Shipment #1: Ordered from TheBulkSource

Problem with this order?

1 package via USPS

For information about this order, please contact TheBulkSource (TheBulkSource order #2023378364)  
Learn more about TheBulkSource's return and replacement policy

| Shipping Address:   | Items Ordered  | Price   |
|---|--|---------|
| Kelsey Kidd<br>132 MERCURY DR<br>ELYRIA, OH 44035-8924<br>United States | <br>1 of 500G 1 1 Lbs. Caffeine Powder 100% USP<br>Pharma Grade Pure Powder Foil Sealed for freshness.<br><u>Ultra Pure Powder.</u><br>Sold by: TheBulkSource ( : : )<br>Condition: New | \$14.99 |

32. TheBulkSource is a storefront name that Tenkoris selected and used for its caffeine powder product. Third-party sellers choose their own storefront names.

33. Although Kelsey Kidd accessed the Marketplace through the Amazon.com website, she purchased the product from Tenkoris by ordering it from the product listing created by Tenkoris.

34. Third-party sellers, including Tenkoris, create their own product listing, which contains information about the product input by the seller. It also lists the price, which is set by the seller, and images of the product uploaded by the seller.

35. Tenkoris wrote the product description on the product detail page that Kidd navigated to and ordered from. Amazon developed none of the product description. Amazon simply published Tenkoris's content.

36. As the seller, Tenkoris was the entity responsible for preparing, packaging, and labeling the caffeine powder.

37. Tenkoris or others upstream of it in the distribution chain decided on the warnings, instructions, labeling, and packaging, and also sourced and stored the Hard Rhino. Amazon had no role in any of these decisions.

38. Amazon did not package or label the caffeine powder that Kidd purchased. Amazon also did not design, manufacture, formulate, produce, create, construct, assemble, rebuild, supply, adulterate, misbrand, distribute, lease, prepare, blend, sell, hold, offer for sale, receive, deliver, offer to deliver, or control the Hard Rhino. Nor did Amazon make any representations or conceal any information about the Hard Rhino, or have any input into dosage recommendations.

39. Tenkoris decided the price that Kidd paid.

40. Tenkoris decided the method and price for shipping, and the product return policy.

41. Tenkoris held the caffeine powder that Kidd purchased in its inventory. Amazon never had possession of it.

42. Tenkoris shipped the caffeine powder direct to Kelsey Kidd. Amazon never touched it.

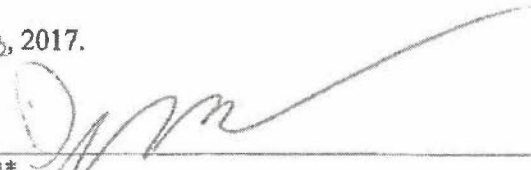
43. When Tenkoris sold the Hard Rhino to Kidd in 2014, the FDA had not restricted pure caffeine powder and had not taken a public position that it was dangerous.

44. Amazon promptly removed caffeine powder listings from the Marketplace in July 2014 in response to the Food and Drug Administration's publication on its website of a "Consumer Advice on Pure Powdered Caffeine." This publication can be viewed at the FDA's website at

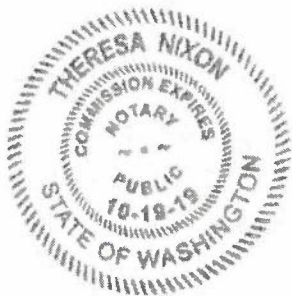
<https://www.fda.gov/food/recallsoutbreaksemergencies/safetyalertsadvisories/ucm405787.htm>

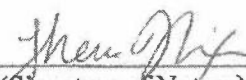
44. The FDA sent warning letters in August 2015 to five sellers of pure caffeine powder relating to labeling deficiencies. Tenkoris was not among them.

DATED at Seattle, Washington, February 28, 2017.

  
\_\_\_\_\_  
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SUBSCRIBED AND SWORN to before me this 28 day of Feb. 2017.



  
\_\_\_\_\_  
(Signature of Notary)

Theresa Nixon  
\_\_\_\_\_

NOTARY PUBLIC in and for the State  
of WASHINGTON,  
My Appointment Expires: 10-19-2019

Amazon Services Business Solutions Agreement

General Terms

Welcome to Amazon Services Business Solutions, a suite of optional merchant services including the following services: Selling on Amazon, Amazon WebStore, and Fulfillment by Amazon.

BY REGISTERING FOR OR USING THE SERVICE(S), 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 IN THE COUNTRY FOR WHICH YOU REGISTER ("YOUR ELECTED COUNTRY") FOR EACH SERVICE FOR WHICH YOU REGISTER.

As used in this Agreement, "we," "us," and "Amazon" means the Amazon Contracting Party or any of its affiliates, and "you" means the applicant (if registering as an individual), or the business employing the applicant (if registering as a business). Capitalized terms have the meanings listed in the Definitions below. If there is any conflict between these General Terms and the applicable Service Terms, the Service Terms will govern.

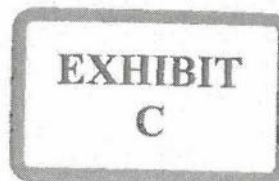
1. Enrollment.

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, Your 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. We may at any time cease providing the Services or any of them at our sole discretion and without notice.

2. Service Fee Payments.

Fee details are described fully in the applicable Service Terms. You are responsible for all of your expenses in connection with this Agreement, unless this Agreement or the applicable Service Terms provide otherwise. To use a Service, you must provide us with valid credit card information from a credit card acceptable by Amazon ("Your Credit Card") as well as valid bank account information for a bank account in your name that is located within Your Elected Country or any other country shown as supported by our standard functionality and enabled for Your Account (which functionality 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 the Service and will update all of the preceding information as necessary to ensure that it at all times remains accurate and complete. 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 your credit card issuer, and to charge Your Credit Card or debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). At Amazon's option, all payments to you will be remitted to Your Bank Account, Your Credit Card or through an Automated Clearing House ("ACH") or similar system. For any amounts you owe us, we may

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(a) charge Your Credit Card, (b) offset any amounts that are payable by you to us (in reimbursement or otherwise) against any payments we may make to you, (c) invoice you for amounts due to us under this Agreement, in which case you will pay the invoiced amounts upon receipt, (d) reverse any credits to Your Bank Account, or (e) seek such payment or reimbursement from you by any other lawful means. 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. If we discover erroneous or duplicate transactions, then we reserve the right to seek reimbursement from you by deducting from future payments owed to you, charging Your Credit Card, or seeking such reimbursement from you by any other lawful means.

If we conclude that your actions and/or performance in connection with the Agreement may result in customer disputes, chargebacks or other claims, then we may, in our sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to you under this Agreement for the shorter of: (a) a period of ninety (90) days following the initial date of suspension; or (b) completion of any investigation(s) regarding your actions and/or performance in connection with the Agreement.

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 the Amazon Site or the Services are 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 the Service(s) and continue until terminated by us or you as provided below (the "Term"). We may terminate or suspend this Agreement or any Service immediately by notice to you for any reason at any time. You may terminate this Agreement or any Service or the Promotion Site for any reason at any time by the means then specified by Amazon therefor. Termination or suspension of a Service will not terminate or suspend any other Service unless explicitly provided. Upon termination, all rights and obligations of the parties under this Agreement will terminate, except that Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16 and 18 will survive termination. Any terms that expressly survive according to the applicable Service Terms will also survive termination.

### 4. License.

You grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of Your Materials, 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,

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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 Trademarks (provided you are unable to do so using standard functionality made available to you via the Amazon Site or Services); 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.

You represent and warrant to us that: (a) if you are a business, you are duly organized, validly existing and in good standing under the Laws of the country in which your business is registered and that you are registering for the Service(s) within such country; (b) if Your Elected Country is Japan and you are registering for the Fulfillment by Amazon Service, your principal place of business (or, if you are registering as an individual, your primary place of residence) is located within Japan and you will not conduct any operations relating to the Fulfillment by Amazon Service from outside such country; (c) you have all requisite right, power and authority to enter into this Agreement and perform your obligations and grant the rights, licenses and authorizations you grant hereunder; and (d) you and all of your subcontractors, agents and suppliers will comply with all applicable Laws in your performance of your obligations and exercise of your rights under this Agreement.

#### 6. Indemnification.

You release us and agree to indemnify, defend and hold harmless us (and our officers, directors, employees, and agents) against any claim, loss, damage, settlement, cost, expense or other liability (including, without limitation, attorneys' fees) (each, a "Claim") arising from or related to: (a) your actual or alleged breach of any obligations in this Agreement; (b) any sales channels owned or operated by you, Your Products (including the offer, sale, fulfillment (except with respect to those of Your Products that are fulfilled using the Fulfillment by Amazon Service, if any), refund, 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 or property damage related thereto; or (c) Your Taxes. You will use counsel reasonably satisfactory to us to defend each indemnified Claim. If at any time we reasonably determine that any indemnified Claim might adversely affect us, we may take control of the defense at our expense. You may not consent to the entry of any judgment or enter into any settlement of a Claim without our prior written consent, which may not be unreasonably withheld.

#### 7. Disclaimer & General Release.

a. THE AMAZON SITE 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 SITE AND THE SERVICES AND SELLER CENTRAL AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE AND OUR AFFILIATES WAIVE AND DISCLAIM: (1) ANY

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REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, THE SERVICES OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT; (2) IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE; AND (3) 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 SITE 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 OF YOU RELEASE 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 SUCH 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 Sales Proceeds from Your Transactions through either the WebStore Service or the Fulfillment by Amazon Service exceed the 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 commercial general, umbrella and/or excess liability insurance with the Insurance Limits per occurrence/aggregate covering liabilities caused by or occurring in conjunction with the

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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 and payment of any and all of Your Taxes. You agree to and will comply with the Tax Policies and the representations contained therein.

#### 11. Confidentiality.

During the course of your use of the Services, you may receive information relating to us or to the Services including, but not limited to Amazon Transaction Information, that is not known to the general public ("Confidential Information"). You agree that: (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 individual, company, or other third party, and (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. 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.

#### 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.

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. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section. 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 shall be construed to give to any person other than the parties hereto 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 hereof are intended to be and are for the sole and exclusive benefit of Amazon, you, and relying customers or sellers.

#### 14. Use of Amazon Transaction Information.

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You will not, and will cause your affiliates not to, directly or indirectly: (a) disclose or convey any Amazon Transaction Information (except you may disclose this information as necessary for you to perform your obligations under this Agreement and provided that you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information); (b) use any Amazon Transaction Information for any marketing or promotional purposes whatsoever, or otherwise in any way inconsistent with our or your privacy policies or applicable Law; (c) contact a Person that has ordered Your Product that has not yet been delivered with the intent to collect any amounts in connection therewith or to influence such Person to make an alternative purchase; (d) disparage us, our affiliates, or any of their or our respective products or services; or (e) target communications of any kind on the basis of the intended recipient being an Amazon Site user. The terms of this Section 14 do not prevent you from using other information that you acquire without reference to Amazon Transaction Information for any purpose, even if such information is identical to Amazon Transaction Information, provided that you do not target communications on the basis of the intended recipient being an Amazon Site user.

#### 15. 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 the Amazon Site or Services (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.

#### 16. Modification.

We may amend any of the terms and conditions contained in this Agreement (including the Service Terms and Program Policies) at any time and at our sole discretion. Any changes will be effective upon the posting of such changes on Seller Central or on the Amazon Site, and you are responsible for reviewing these locations and informing yourself of all applicable changes or notices. All notice of changes to the Agreement will be posted for at least 30 days. Changes to Program Policies may be made without notice to you. You should refer regularly to Seller Central to understand the current Agreement and Program Policies and to be sure that the items you offer for sale can be sold via the Service. **YOUR CONTINUED USE OF A SERVICE AFTER AMAZON'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. IF YOU DO NOT AGREE TO ANY CHANGES TO THIS AGREEMENT, YOU MUST TERMINATE THIS AGREEMENT AS PROVIDED ABOVE.**

#### 17. Password Security.

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Any password we provide to you may be used only during the Term to access Seller Central (or other tools we provide) to use the Service, 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.

#### 16. 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. Any dispute with Amazon or its affiliates relating in any way to this Agreement or your use of the Services shall be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts. You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. 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. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to enforce such provision or any other provision of this Agreement subsequently.

Amazon retains the right to immediately halt any transaction, 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 the applicable Program Policies.

Because Amazon is not the agent of either you or the customer 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.

We will send all notices and other communications regarding this Agreement to you at the e-mail addresses you designated for notifications and updates in your program application or within Seller Central, or by any other means then specified by Amazon. You may change your e-mail addresses by logging in to your account and clicking on "Change Account Info." You will update your e-mail addresses (as well as your legal name, address and phone number) as often as necessary to ensure that they are accurate. You must send all notices and other communications relating to Amazon to our Merchant Services Team by using the [Contact Us](#) form.

This Agreement incorporates and you hereby accept the applicable Service Terms and the applicable Program Policies, which Amazon may modify from time to time. In the event of any conflicts between the Program Policies and this Agreement, the Program Policies will prevail. If any provision of this Agreement shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and conditions and shall not affect the validity and enforceability of any remaining provisions. If Your Elected Country is Canada, then it is the express wish of the parties that this Agreement and the

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applicable Service Terms and Program Policies have been drafted in English. (The following is a French translation of the preceding sentence: Dans l'hypothèse où votre Pays d'Élection est le Canada, il est de la volonté expresse des parties que le présent contrat et/ou tous les documents qui s'y rattachent soient rédigés en Anglais) This Agreement represents the entire agreement between the parties with respect to the Services and related subject matter described herein 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 such entity.

**"Amazon Associated Properties"** means any website or other online point of presence, other than the Amazon Site, through which the Amazon Site, any webstore site, and/or products or services available on any of them, are syndicated, offered, merchandised, advertised or described.

**"Amazon Contracting Party"** means the applicable one of the following:

- Amazon Services LLC (if Your Elected Country is the United States),
- Amazon Services International, Inc (if Your Elected Country is Canada, or Japan (except with respect to the Fulfillment by Amazon Service)),
- Amazon Japan Logistics K.K. (if Your Elected Country is Japan, for the Fulfillment by Amazon Service).

**"Amazon Transaction Information"** means, collectively, Order Information, and any other data or information acquired by you or your affiliates from Amazon or its affiliates, or otherwise as a result of the Agreement, the transactions contemplated hereby or the parties' performance hereunder.

**"Amazon Site"** means that website, the primary home page of which is identified by the applicable one of the following (and any successor or replacement of such website(s)):

- the URL [www.amazon.com](http://www.amazon.com) and any Promotion Site that we make available from time to time (if Your Elected Country is the United States),
- the URL [www.amazon.ca](http://www.amazon.ca) (if Your Elected Country is Canada),
- the URL [www.amazon.co.jp](http://www.amazon.co.jp) (if Your Elected Country is Japan).

**"Amazon Transaction Information"** means, collectively, Order Information, and any other data or information acquired by you or your affiliates from Amazon or its affiliates, or otherwise as a result of the Agreement, the transactions contemplated hereby or the parties' performance hereunder.

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"BMVD Product" means any book, magazine or other publication, sound recording, video recording, and/or other media product in any format, including any subscription therefor.

"Content" means copyrightable works under applicable Law.

"Excluded Products" means the products or items set forth in the Excluded Products List.

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

- the state or Federal court in King County, Washington (if Your Elected Country is Canada or the United States),
- Tokyo District Court or Tokyo Summary Court depending upon the amount of the claim made (if Your Elected Country is Japan).

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

- the laws of the State of Washington, United States (if Your Elected Country is Canada or the United States),
- the laws of Japan (if Your Elected Country is Japan).

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

- One Million Canadian Dollars (\$1,000,000) (if Your Elected Country is Canada),
- One Hundred Million Japanese Yen (¥100,000,000) (if Your Elected Country is Japan),
- One Million U.S. Dollars (\$1,000,000) (if Your Elected Country is the United States).

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

- Ten Thousand Canadian Dollars (\$10,000) (if Your Elected Country is Canada),
- One Million Japanese Yen (¥1,000,000) (if Your Elected Country is Japan),
- Ten Thousand U.S. Dollars (\$10,000) (if Your 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 hereafter 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 Your Elected Country is the United States),
- Canadian Dollars (if Your Elected Country is Canada),
- Japanese Yen (if Your Elected Country is Japan).

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"Order Information" means, with respect to any of Your Products sold through the Amazon Site or a WebStore Site, the following information: the name of the customer, customer email address, the name of the recipient, the shipping address, the quantity to be shipped, and any special comments included by Amazon in its discretion.

"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 terms, conditions, policies, guidelines, rules and other information on the Amazon Site or on Seller Central, including those shown on the "Policies and Agreements" section of Seller Central or elsewhere in the "Help" section of Seller Central (and, for purposes of the Fulfillment by Amazon Service, specifically including the FBA Guidelines). All Program Policies applicable to WebStore by Amazon also apply to Amazon WebStore, unless otherwise specifically stated.

"Promotion Site" means that ecommerce website, the primary home page of which is identified by the URL [www.sellername.amazonwebstore.com](http://www.sellername.amazonwebstore.com), in which "sellername" is a name representing you that we elect to include in such URL.

"Sales Proceeds" means the gross sales proceeds from any of Your Transactions, including all shipping and handling, gift wrap and other charges with respect thereto, including taxes and customs duties only to the extent specified in the applicable Tax Policies.

"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 the Amazon Site and/or a WebStore Site.

"Service" means each of the following services that Amazon makes available in Your Blessed Country: Selling on Amazon; Amazon WebStore; and Fulfillment by Amazon.

"Service Terms" means the service terms specific to each Service set forth herein and made a part of this Agreement upon the date you elect to register for the applicable Service and any subsequent modifications we are permitted to 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.

"WebStore Service" has the meaning described in the WebStore Service Terms.

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"WebStore Site" has the meaning described in the WebStore Service Terms.

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

"Your Product" means any product that is made available for listing for sale, offered for sale, or sold by you through the WebStore Service or the Selling on Amazon Service, and/or fulfilled or otherwise processed through the Fulfillment by Amazon Service.

"Your Sales Channels" means any website operated by or on behalf of you (including a WebStore Site) that is primarily branded the same as any 'storefront' on the Amazon Site or your WebStore Site and any successor or replacement of any of the foregoing.

"Your Taxes" means any and all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred or required to be collected or paid for any reason in connection with any advertisement, offer or sale of products by you on or through or in connection with the Services, or otherwise in connection with any action, inaction or omission of you or its affiliates or their respective employees, agents, contractors or representatives. Also, if Your Elected Country is the United States or Canada, as it is used in the Fulfillment by Amazon Service Terms, this defined term also means any of the types of taxes mentioned above that are imposed on or collectible by Amazon or any of its affiliates in connection with or as a result of the (a) the storage of inventory, packaging, Your Products and other materials owned by you and stored by Amazon; or (b) the fulfillment, shipping, gift wrapping or other actions by Amazon 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 the Amazon Site or any WebStore Site.

## **Selling on Amazon Service Terms**

The Selling on Amazon Service ("Selling on Amazon") is a Service that allows you to list products for sale directly on the Amazon Site (which, if Your Elected Country is the United States, includes a Promotion Site that we may make available from time to time during the Term and on which certain of Your Products may be listed for sale).

These Selling on Amazon Service Terms are part of the Amazon Services Business Solutions Agreement ("Business Solutions Agreement"), but, unless specifically provided otherwise, concern and apply only to your participation in Selling on Amazon. **BY REGISTERING FOR OR USING SELLING ON AMAZON, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE BUSINESS SOLUTIONS**

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**AGREEMENT AND 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 ON A NON-CONSIGNMENT BASIS FOR PURCHASE THROUGH THE AMAZON SITE CHECKOUT PROCESS (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 PRODUCTS ON THE AMAZON SITE PURSUANT TO A SEPARATE AGREEMENT, THE SALE OF YOUR PRODUCTS ON THE AMAZON SITE IS GOVERNED BY THE TERMS OF THAT AGREEMENT AND NOT BY THESE SELLING ON AMAZON SERVICE TERMS. Unless defined in these Selling on Amazon Service Terms (including the Selling on Amazon Definitions) all capitalized terms have the meanings given them in the Business Solutions Agreement. Please note that these Service Terms supersede and replace the Merchants@ Amazon Pro-Merchant Service Participation Agreement (or any predecessor version of this agreement).

**S-1 Your Product Listings and Orders**

**S-1.1 Products and Product Information.** You will, in accordance with applicable Program Policies, provide in the format we require accurate and complete Required Product Information for each product that you make available to be listed for sale through the Amazon Site and promptly update such 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 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 list for sale on the Amazon Site, any Excluded Products; or provide any URL Marks for use, or request that any URL Marks be used, on the Amazon Site.

**S-1.2 Product Listing; Merchandising; Order Processing.** We will list Your Products for sale on the Amazon Site on the Selling on Amazon Launch Date, and conduct merchandising and promote Your Products as determined by us (including via the Amazon Associated Properties or any other functions, features, advertising, or programs on or in connection with the Amazon Site). We may use mechanisms that rate, or allow shoppers to rate, Your Products and/or your performance as a seller and Amazon may make these ratings and feedback publicly available. We will provide Order Information to you for each sale of Your Products through the Amazon Site. We will also collect all Sales Proceeds for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Service Terms.

**S-1.3 Shipping and Handling Charges.** For those of Your Products sold on or through the Amazon Site that are not fulfilled using Fulfillment by Amazon, you will determine shipping and handling charges via and subject to our standard functionality and categorizations and further subject to any shipping and handling charge Program Policies, except that, with respect to BMVD Products (to the extent we make available functionality to list such products), we will determine the shipping and handling charges (and in either case you will accept the charges as

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payment in full for your shipping and handling of such products). For those of Your Products that are fulfilled using Fulfillment by Amazon, Amazon will determine what the shipping fees will be and will display and charge them accordingly in accordance with the Fulfillment by Amazon Service Terms.

**S-1.4 Credit Card Fraud.** We will bear the risk of credit card fraud (i.e. fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, and you will bear all other risk of fraud or loss; provided, that we will not bear the risk of credit card fraud in connection with any Seller-Fulfilled Product that is not fulfilled strictly in accordance with the Order Information and Shipment Information. We may in our sole discretion withhold for investigation, refuse to process, restrict shipping destinations for, stop and/or cancel any of Your Transactions. You will stop and/or cancel orders of Your Products if we ask you to do so (provided that if you have transferred Your Products to the applicable carrier or shipper, you will use commercially reasonable efforts to stop and/or cancel delivery by such carrier or shipper). You will refund any customer (in accordance with Section S-2.2) that has been charged for an order that we stop or cancel.

## **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 (if applicable to you) you will: (a) source, sell, fulfill, ship and deliver your Seller-Fulfilled Products, and source and sell your Amazon-Fulfilled Products, in each case in accordance with the terms of the applicable Order Information, these Service Terms and the Agreement, and all terms provided by you and displayed on the Amazon Site at the time of the order and be solely responsible for and bear all risk for such activities; (b) package each of Your Products in a commercially reasonable manner and ship each of Your Products on or before its Estimated Ship Date; (c) retrieve Order Information at least once each business day; (d) not cancel any of Your Transactions except as may be permitted pursuant to your terms and conditions appearing on the Amazon Site at the time of the applicable order (which terms and conditions will be in accordance with this Agreement) or as may be required under this Agreement; (e) ship Your Products throughout Your Elected Country (except to the extent prohibited by Law or this Agreement); (f) provide to Amazon information regarding shipment 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) notwithstanding any other provision of these Service Terms, ensure that you are the seller of all products made available for listing for sale hereunder; (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 the product on all packing slips or other information included 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 shipments of Your Products (except that to the extent we have not yet enabled functionality for your account that allows payment to be processed on the basis of when shipment occurs, then you will send customers emails confirming shipment of Your Products in a format and manner reasonably acceptable to us). For those of Your Products that are fulfilled using Fulfillment by Amazon, if any, the Fulfillment by Amazon Service Terms will apply to the storage, fulfillment and delivery of such Amazon-Fulfilled Products.

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**S-2.2 Returns and Refunds.** For all of Your Products (except those fulfilled using Fulfillment by Amazon, if any) you will provide us with your customer return and refund policies for display on the Amazon Site and accept and process returns, adjustment and refunds relating to Your Products in accordance with these Service Terms and the posted policies at the time of the applicable order. If you notify us of any changes to these policies, we will use commercially reasonable efforts to post the changes. No change will be effective as to Your Products until we post the change on the Amazon Site. In any event, at a minimum, your return and refund policies will be at least as favorable as the then-current Amazon Refund Policies. You will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid by you to customers in connection with Your Transactions, using a functionality we enable for your account. This functionality may be modified or discontinued by us at any time without notice and is subject to the Program Policies and the terms of this Business Solutions Agreement. You will route all such payments through Amazon. We will provide any such payments to the customer (which may be in the same payment form originally used to purchase Your Product), and you will reimburse us for all amounts so paid. If you list Amazon-Fulfilled Products for sale on the Amazon Site, you acknowledge and agree that the Amazon Refund Policies published at the time of the applicable order apply to such Amazon-Fulfilled Products and that you will comply with such policies. You will provide refunds and adjustments (that you are obligated to provide under applicable return and refund policies or as required by Law) promptly, but in no case later than thirty (30) days following the close of the sale.

### **S-3 Problems with Your Products.**

**S-3.1 Delivery Errors and Nonconformities; Recalls.** You are responsible for: any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment and delivery 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 will apply to non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment and delivery of those of Your Products. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Products.

**S-3.2 A-to-z Guarantee and Chargebacks.** If we inform you that we have received a claim under the "A-to-z Guarantee" offered on the Amazon Site, or any chargeback or other dispute, concerning one of Your Transactions, you will deliver to us within five (5) business days after request by us: (a) proof of delivery of Your Product(s) (as applicable); (b) the applicable Amazon order identification number; and (c) a description of Your Product(s) (as applicable). If you fail to comply with the prior sentence, or if the claim, chargeback, or dispute is not caused by: (y) credit card fraud for which we are responsible under Section S-1.4; or (z) our failure to make your Order Information available as the same was received by us or resulting from address verification, then you will promptly reimburse us in accordance with the Service Fee Payments section of the Agreement for the amount of the customer purchase (including the Purchase Price,

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all associated shipping and handling charges and all taxes, but excluding any associated Referral Fees retained and not subject to refund by Amazon) and all associated credit card association, bank or other payment processing, re-presentment and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by us or our affiliates. If Your Elected Country is Japan and we receive a claim under the "A-to-z Guarantee" concerning one of Your Transactions and we determine that we are responsible for that claim then we will purchase the returned products from the customer.

#### **8-4 Parity with Your Sales Channels.**

Subject to this Section 8-4, you are free to determine which of Your Products you wish to list for sale on the Amazon Site. You will maintain parity between the products you offer through Your Sales Channels and the products you list on the Amazon Site by ensuring that at the Selling on Amazon Launch Date and thereafter: (a) the Purchase Price and every other term of offer and/or sale of Your Product (including associated shipping and handling charges, Shipment Information, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable return and refund policies) is at least as favorable to Amazon users as the most favorable terms upon which a product is offered and/or sold via Your Sales Channels (excluding consideration of Excluded Offers); (b) customer service for Your Products is at least as responsive and available and offers at least the same level of support as the most favorable customer services offered in connection with any of Your Sales Channels (this requirement does not apply to customer service for payment-related issues on Your Transactions, which we will provide); and (c) the Content, product information and other information under Section 5-1.1 regarding Your Products that you provide to us is of at least the same level of quality as the highest quality information displayed or used in Your Sales Channels. If you become aware of any non-compliance with (a) above, you will promptly compensate adversely affected customers by making appropriate refunds to them in accordance with Section 5-2.2. For Amazon-Fulfilled Products, we acknowledge that if the shipping and handling charges associated with the sale and delivery of any of Your Products listed for sale on the Amazon Site are included in (and not separately stated) the purchase price listed for Your Product on the Amazon Site (collectively a "Shipping Inclusive Purchase Price"), then the parity obligation in (a) above will be satisfied if the Shipping Inclusive Purchase Price and each other term of offer and/or sale for the product on the Amazon Site are at least as favorable to Amazon Site users as the purchase price and each other term of offer and/or sale for the product (including any and all separately stated shipping and handling charges) pursuant to which the product is offered and/or sold via any of your sales channels other than the Amazon Site.

#### **8-5 Compensation.**

You will pay us: (a) the applicable Referral Fees; (b) any applicable Variable Closing Fee; and (c) the non-refundable Selling on Amazon Subscription Fee in advance for each month (or for each transaction, if applicable) during the term of this Agreement. "Selling on Amazon Subscription Fee" means the fee specified as such on the Selling on Amazon Fee Schedule at the time such fee is payable. With respect to each of Your Transactions: (x) "Sales Proceeds" has the meaning set out in the Business Solutions Agreement; (y) "Variable Closing Fee"

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means the applicable fee, if any, as specified on the Variable Closing Fee Schedule; and (z) "Referral Fee" means the applicable percentage of the Sales Proceeds from Your Transaction through the Amazon Site specified on the Selling on Amazon Fee Schedule 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 each of the following two cases: (i) in the case of Your Transactions that consist solely of products fulfilled using Fulfillment by Amazon, and (ii) in the case of Your Transactions that consist solely of Media Products.

#### **S-6 Remittance of Sales Proceeds & Refunds.**

Except as otherwise stated in this Agreement (including without limitation Section 2 of the Business Solutions Agreement), we will remit to you on a bi-weekly (14 day) (or at our option, more frequent) basis any Sales Proceeds collected by us or our affiliates but not previously remitted to you as of the date that is two (2) business days prior to the date of remittance (the "Remittance Calculation Date") (which you will accept as payment in full for the sale and shipping and handling of Your Products), less: (a) the Referral Fees due for such sums; (b) the applicable Variable Closing Fee, if any, due for such sums; and (c) any Selling on Amazon Subscription Fees due. When you either initially provide or later change Your Bank Account Information, we may delay any remittance of sums due to you by up to 14 days. You will not have the ability to initiate or cause payments to be remitted to you. If you refund money to a customer in connection with one of Your Transactions, and the refund is routed through us (or our affiliate), 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 product 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.

#### **S-7 Control of Site.**

Notwithstanding any provision of this Agreement, we will have the right in our sole discretion to determine the content, appearance, design, functionality and all other aspects of the Amazon Site and the Selling on Amazon Service (including the right to re-design, modify, remove and alter the content, appearance, design, functionality, and other aspects of, and prevent or restrict access to, the Amazon Site and the Selling on Amazon Service and any element, aspect, portion or feature thereof (including any product listings), from time to time) and to delay or suspend listing of, or to refuse to list, or to de-list, or to require you not to list, any or all products in our sole discretion.

#### **S-8 Effect of Termination.**

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Upon termination of these Selling on Amazon Service Terms, all rights and obligations of the Parties under these Service Terms will be extinguished, except that the rights and obligations of the Parties with respect to Your Transactions occurring during the Term will survive the termination or expiration of the Term.

#### 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 Amazon Site and applicable to products sold via the Amazon Site by an affiliate of the Amazon Contracting Party.

"Estimated 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.

"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 the Amazon Site but that we do not honor or support (but only until such time as we honor or support the same); 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 Your Elected Country is either Canada or the United States, have affirmatively elected and opted-in to participate in your and/or one of its affiliates' membership-based customer loyalty or customer incentive programs.

"Media Product" means any book, magazine or other publication, sound recording, video recording, software product, computer game, videogame, and/or other media product in any format, including any subscription therefor, sold through the 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).

"Refund Administration Fee" means the applicable one of the following:

- the lesser of Five Canadian Dollars (\$5) or twenty percent of the applicable Referral Fee (if your Elected Country is Canada),
- the lesser of Five Hundred Japanese Yen (¥500) or ten percent of the applicable Referral Fee (if your Elected Country is Japan),
- the lesser of Five U.S. Dollars (\$5) or twenty percent of the applicable Referral Fee (if Your Elected Country is the United States).

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"Remittance Calculation Date" is defined in Section B-6.

"Required Product Information" means, with respect to each of Your Products, the following (except to the extent expressly not required under Program Policies): (a) description; (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 therefor); (h) any text, disclaimers, warnings, notices, labels or other content required by applicable Law to be displayed in connection with the offer, merchandising, advertising or sale of the 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).

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

"Selling on Amazon Launch Date" means the date on which we first list one of Your Products for sale on the Amazon Site.

"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 thereof (e.g., dot com, dotcom, net, or com).

"Your Transaction" is defined in the Business Solutions Agreement; however, as used in these Service Terms, it shall mean any and all such transactions through Selling on Amazon only.

## WebStore Service Terms

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Amazon WebStore (which, for purposes of this Agreement, includes WebStore by Amazon, unless specifically stated otherwise) (the "WebStore Service") provides access to and use of an e-commerce website through which you can offer and sell Your Products (a "WebStore Site"). The WebStore Service is not currently available in Canada or Japan.

These WebStore Service Terms are part of the Amazon Services Business Solutions Agreement ("Business Solutions Agreement"), and, unless specifically provided otherwise, concern and apply only to your participation in the WebStore Service. BY REGISTERING FOR OR USING THE WEBSTORE SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE BUSINESS SOLUTIONS AGREEMENT AND THESE WEBSTORE SERVICE TERMS. Unless defined in these WebStore Service Terms (including the WebStore Definitions), all capitalized terms have the meanings given them in the Business Solutions Agreement.

#### W-1 Listing and Promotion.

Each sale of Your Products through your WebStore Site is a sale by you. You will determine what is for sale on your WebStore Site, but you may not list any product on the WebStore Site that is an Excluded Product. You will ensure that you list all of Your Products in accordance with the applicable Program Policies.

#### W-2 Information.

You will, in accordance with applicable Program Policies, provide in the format we require accurate and complete WebStore Required Product Information and all other information requested by us to process payments for you and to otherwise operate your WebStore Site. You will update such information as necessary to ensure it at all times remains accurate and complete. If you provide us with any images of Your Product, you will, unless we otherwise agree, first remove any logos, text or other marking included on the image except for any logos, text or other marking that actually appears on the product. You will either: (a) upload to us the "shipping confirmation files" as required by us, including all shipment notification, shipping status and order tracking information requested by us from time to time, and any other information as requested by us to process payments based on Your Product shipment status; provided, that if you are using Fulfillment by Amazon to fulfill any of your customer orders, the terms set forth in the Fulfillment by Amazon Service Terms will apply with respect to such orders; or (b) use the Manage Your Orders tool in Seller Central to manage and upload the required "shipping confirmation files" from Seller Central. We may provide this shipment and payment related information to users of the WebStore Site. We will make available certain information and reports relating to Your Transactions as we determine and have no obligation to make available any other information. We retain the right to use mechanisms that rate, or allow users to rate, your performance as a seller, and to post such ratings and feedback on the WebStore Site and/or Amazon Site or otherwise make it publicly available. Any use on your WebStore Site of content displayed on or links to the Amazon Site will be subject to the terms of the Amazon Associates Operating Agreement.

#### W-3 Your Product Transactions.

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1 The State of Ohio, )  
2 County of Lorain. )SS:

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IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

DENNIS STINER, Administrator of )  
the Estate of Logan Stiner, )  
Plaintiffs, ) Case No. 15CV185837  
vs. ) JUDGE JOHN MIRALDI  
AMAZON, et al., )  
Defendants. )

\* \* \*

Deposition of Kelsey A. Kidd, called by the  
Plaintiffs as upon cross-examination, taken before  
Angela S. Riley, a Registered Professional/Merit  
Reporter and Notary Public within and for the State of  
Ohio, at Balser Law Offices, 5311 Meadow Lane Ct., Suite  
1, Elyria, Ohio, 44035, on May 25, 2016, commencing at  
or about 10:00 a.m., pursuant to notice and/or agreement  
of counsel.

\* \* \*

10:16:20AM 1 A. Yes.

10:16:21AM 2 Q. And who was your date for prom?

10:16:23AM 3 A. Pierce Young.

10:16:24AM 4 Q. I'm sorry?

10:16:24AM 5 A. Pierce Young.

10:16:30AM 6 Q. Prior to February 27th of 2014, had you purchased

10:16:34AM 7 products from Amazon before this, the date that the

10:16:40AM 8 caffeine powder was purchased?

10:16:43AM 9 MR. HAUDE: It was February.

10:16:47AM 10 MR. BALSER: I'm sorry. What did you say?

10:16:50AM 11 MR. HAUDE: I said it was February.

10:16:51AM 12 MR. BALSER: Oh, I'm sorry. February.

10:16:52AM 13 Thank you. Withdraw that question.

10:16:53AM 14 Q. Prior to February of 2014, had you purchased

10:16:56AM 15 other products from Amazon?

10:16:57AM 16 A. I do not know.

10:17:00AM 17 Q. Okay. On February 27th, 2014, you went to the

10:17:06AM 18 Amazon website, correct?

10:17:10AM 19 A. Yes.

10:17:12AM 20 Q. Okay. What prompted you to buy the caffeine

10:17:16AM 21 powder on the Amazon website?

10:17:18AM 22 A. I was looking for a new pre-workout, and that

10:17:23AM 23 eventually led me to the caffeine product.

10:17:28AM 24 Q. Just so I'm clear. You were on the Amazon

10:17:31AM 25 website, and you were looking for a pre-workout?

10:57:27AM 1 Correct?

10:57:27AM 2 A. Yes.

10:57:27AM 3 MR. HAUDE: Objection.

10:57:29AM 4 Q. As you sit here today you just don't remember the  
10:57:31AM 5 circumstances surrounding that. Is that fair?

10:57:34AM 6 A. Yes.

10:57:35AM 7 Q. How much of the caffeine powder did you give  
10:57:41AM 8 Logan?

10:57:41AM 9 A. I don't remember.

10:57:46AM 10 Q. Do you remember what you used to fill up the  
10:57:48AM 11 baggie?

10:57:48AM 12 My understanding is you gave it to him in a  
10:57:51AM 13 Ziploc bag. Is that correct?

10:57:52AM 14 A. Yes.

10:57:53AM 15 Q. And that is similar to what basically you use for  
10:57:56AM 16 sandwiches and different things like that for lunch. Is  
10:58:01AM 17 that a fair statement?

10:58:01AM 18 A. Yes.

10:58:01AM 19 Q. Did you fill the bag all the way up?

10:58:03AM 20 A. No, but I don't remember how much exactly I put  
10:58:06AM 21 in it.

10:58:07AM 22 Q. How did you go about measuring what you put in,  
10:58:10AM 23 if you measured it?

10:58:12AM 24 A. I don't remember.

10:58:14AM 25 Q. Did you, did you use a cup? Did you use a spoon?

10:58:17AM 1 How did you take it from the bag it came in to putting  
10:58:20AM 2 it in the baggie you gave Logan?  
10:58:22AM 3 A. I just poured it from the bag into the other one.  
10:58:26AM 4 Q. Okay. You zipped it up, correct, and then you  
10:58:32AM 5 took it to school the next day. Is that a fair  
10:58:35AM 6 statement? Did you give it to him at school?  
10:58:38AM 7 A. Yes.  
10:58:39AM 8 Q. I don't want to rehash, my understanding is you  
10:58:41AM 9 don't recall if anybody else was around at the time?  
10:58:44AM 10 A. Yeah, I don't remember.  
10:58:52AM 11 Q. Okay. Do you recall in terms of any instructions  
10:58:54AM 12 that you gave Logan, specifically as to the dosage to  
10:58:58AM 13 use?  
10:58:59AM 14 A. I don't remember.  
10:59:14AM 15 Q. It is my understanding based on the texts that  
10:59:16AM 16 you sent back and forth between you and Logan was that  
10:59:20AM 17 you told Logan you took a fourth. Is that correct? Is  
10:59:25AM 18 that a fourth of a teaspoon?  
10:59:27AM 19 MR. HAUDE: Objection.  
10:59:28AM 20 A. As I remember, yes.  
10:59:29AM 21 Q. I'm sorry?  
10:59:29AM 22 A. As I remember, yes.  
10:59:31AM 23 Q. And do you know how many grams would have been in  
10:59:33AM 24 a fourth of a teaspoon of Hard Rhino?  
10:59:36AM 25 A. I have no idea.

11:30:46AM 1 pre-workout, you received a list of responsive products  
11:30:53AM 2 to your search term of pre-workout. Correct?

11:30:58AM 3 MR. BALSER: Objection; misstatement of  
11:31:01AM 4 testimony.

11:31:02AM 5 A. Yes.

11:31:03AM 6 Q. Okay. And those, that list of potential options  
11:31:09AM 7 was generated as a result of the search term you put in,  
11:31:14AM 8 which was pre-workout?

11:31:17AM 9 A. So when I clicked in pre-workout, that's what  
11:31:21AM 10 popped up.

11:31:22AM 11 Q. That's what popped up.

11:31:23AM 12 A. (Indicating) This.

11:31:24AM 13 Q. This being Hard Rhino Pure Caffeine Powder, along  
11:31:29AM 14 with other options, as well?

11:31:30AM 15 A. But what happened was I clicked on a product, and  
11:31:35AM 16 know where it says like similar product or products that  
11:31:38AM 17 you may like, it was under there.

11:31:40AM 18 Q. Okay. So when you typed in pre-workout, did you  
11:31:43AM 19 get one option or a number of options?

11:31:46AM 20 A. A number.

11:31:52AM 21 Q. And one of those options was Hard Rhino Pure  
11:31:56AM 22 Caffeine Powder?

11:31:59AM 23 A. Straight from when I clicked enter from  
11:32:02AM 24 pre-workout?

11:32:03AM 25 Q. Yeah.

11:32:04AM 1 A. It was underneath another product.

11:32:04AM 2 Q. Okay.

11:32:07AM 3 A. Like, I clicked on one, so it brought to me to  
11:32:11AM 4 where I could order it. And underneath, you know, the  
11:32:13AM 5 bar, the bottom where you could like scroll through, it  
11:32:16AM 6 was under there.

11:32:17AM 7 Q. So the product that you clicked on was not Hard  
11:32:21AM 8 Rhino, but Hard Rhino appeared on the other comparable  
11:32:24AM 9 product section below?

11:32:26AM 10 A. Yes.

11:32:27AM 11 Q. Do you know what the product that popped up that  
11:32:30AM 12 you clicked on was?

11:32:31AM 13 A. I don't remember.

11:32:39AM 14 Q. All right. The bottom line, though, is in  
11:32:42AM 15 response to your pre-workout search term, you were given  
11:32:48AM 16 access to a number of different options that fell into  
11:32:51AM 17 the category of pre-workout.

11:32:53AM 18 A. Yes.

11:32:55AM 19 Q. All right. And Amazon didn't tell you or suggest  
11:32:57AM 20 to you which one of those options you should purchase,  
11:33:01AM 21 that decision was up to you?

11:33:03AM 22 A. Yes.

11:33:04AM 23 Q. All right. And you made the selection of Hard  
11:33:08AM 24 Rhino as opposed to the other options?

11:33:10AM 25 A. Yes.

11:33:11AM 1 Q. Is there anything that Amazon did to steer you  
11:33:16AM 2 towards one of those options as opposed to any of the  
11:33:19AM 3 other options, or was that totally up to you which one  
11:33:23AM 4 to choose?

11:33:25AM 5 MR. STADLER: Object. You can answer.

11:33:26AM 6 MR. BALSER: Objection to the form.

11:33:30AM 7 A. Can you rephrase that, please?

11:33:31AM 8 Q. Sure. Out of all the options that popped up in  
11:33:34AM 9 response to your pre-workout search terms, is there  
11:33:36AM 10 anything that Amazon did that said, that directed you to  
11:33:40AM 11 one of those options, or did they just simply present  
11:33:44AM 12 you with your options, and you chose?

11:33:47AM 13 A. I chose.

11:33:48AM 14 Q. Okay. And you made your choice not based on  
11:33:50AM 15 anything that Amazon told you, but rather your reading  
11:33:54AM 16 of the product and your own personal decision. Is that  
11:33:57AM 17 correct?

11:33:57AM 18 MR. BALSER: Objection; misstates the  
11:33:59AM 19 testimony.

11:34:01AM 20 A. Yes.

11:34:05AM 21 Q. And I ask you that because the questions, some of  
11:34:10AM 22 the questions that you were previously asked used the  
11:34:13AM 23 word, Mr. Balser used the word, that Amazon suggested to  
11:34:18AM 24 you Hard Rhino Pure Caffeine Powder, and that is not  
11:34:22AM 25 what happened. Amazon presented you with a number of

12:13:38PM 1 A. Not that I recall, no.

12:13:40PM 2 Q. Okay. Am I correct that Logan Stiner never saw  
12:13:43PM 3 the package and the warning that was on the package.  
12:13:48PM 4 Correct?

12:13:48PM 5 A. He did not see the package.

12:13:55PM 6 Q. And you have no knowledge that he visited Amazon.  
12:13:58PM 7 He didn't even know you got it from Amazon. Correct?

12:14:02PM 8 MR. BALSER: Objection.

12:14:02PM 9 A. That he didn't know I got it from Amazon.

12:14:06PM 10 Q. So you have no information that he would have  
12:14:08PM 11 looked on Amazon as we sit here today. Fair?

12:14:11PM 12 A. That he could would not have gone on Amazon.

12:14:14PM 13 Q. You have no information that he did, in fact, go  
12:14:16PM 14 on Amazon to research this product. That is not  
12:14:19PM 15 something that you are aware of. Correct?

12:14:21PM 16 A. Yeah, not something I'm aware of.

12:14:26PM 17 Q. Do you have any knowledge that Mr. Stiner did  
12:14:31PM 18 anything in terms of researching this product other than  
12:14:34PM 19 what he received from you?

12:14:35PM 20 MR. BALSER: Objection.

12:14:37PM 21 A. I don't know.

12:14:49PM 22 Q. Do you have any personal knowledge whether  
12:14:52PM 23 Mr. Stiner actually took the caffeine powder that you  
12:14:55PM 24 gave him?

12:14:56PM 25 A. I do not know.



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1 spots, were those spots blank also?

2 A. I don't know.

3 Q. Okay. Do you know what a verified seller is for

4 Amazon that's on their customer reviews?

5 A. I don't know.

6 Q. Also, would you turn to page 5 of Exhibit 4 that

7 Amazon's counsel provided to you?

8 A. To 4 or 5?

9 Q. 5. I just want to clarify. You would not have

10 actually read this page at the time that you purchased

11 it, because on the bottom right hand side it says, "Be

12 careful. Some kid actually died from this in May."

13 So it would have been impossible for you to have

14 read this, what has been marked as Exhibit 5 -- Exhibit

15 4 in the form that it is in, because there is already

16 reference to a death in May, and that would have been

17 when Logan passed away. Correct?

18 A. So you are saying the side conversation that pops

19 up on your computer and the reviews are different.

20 Q. They would almost have to be, right? It would be

21 impossible for this to be the actual document that you

22 looked at in the form that it was provided to you here

23 today, because on page 5, it says some kid actually died

24 from this in May.

25 MR. HAUDE: Objection; foundation.

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1 Q. Do you see where it says that on the bottom of

2 page 5 to the right?

3 A. Yes. Yes.

4 Q. Okay. And you purchased this, and you read the

5 reviews and made the decision to purchase this prior to

6 Logan passing away in May. Correct?

7 A. Yes.

8 Q. Do you know of anybody else who has passed away

9 in the month of May from caffeine powder?

10 A. I don't know.

11 MR. BALSER: And I just want to reiterate, I

12 really appreciate your time in coming in. It wasn't

13 easy. Thank you.

14 MR. HAUDE: One question, Kelsey, real

15 quick.

16 \* \* \*

17 RE-CROSS EXAMINATION OF KELSEY A. KIDD

18 BY MR. HAUDE:

19 Q. Right where you were at on Exhibit 4, there are

20 also a lot of comments that are dated, starting at the

21 top, December 22 of '12; February 9 of '13. And if you

22 keep going down, everything in the left column, which is

23 categorized Most Helpful Customers Reviews, all of the

24 dates in that column were many of the dates in that

25 column pre-dated Mr. Stiner's death. Correct?

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1 A. Yes.

2 Q. And, I mean, you are probably somewhat familiar

3 with these reviews in that they are a cumulative thing.

4 Do you know what I mean?

5 A. No.

6 Q. Meaning that some people add a review, and then

7 others keep adding them later and later and later up to

8 the present. Do you know that that's how it works?

9 A. No, I did not.

10 Q. Okay. Have you ever written a review for

11 anything?

12 A. No.

13 MR. HAUDE: All right. Okay. That's all

14 I have. Thanks.

15 MR. BALSER: I'm done, too.

16 MR. STADLER: We'll read.

17 THE VIDEOGRAPHER: This concludes the

18 deposition. Going off the record at 12:53.

19 (Video Deposition of Kelsey A. Kidd was

20 hereby concluded)

21 \* \* \*

22

23

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1 CERTIFICATE

2

3 The State of Ohio, )

4 ) SS:

5 County of Lorain. )

6

7 I, Angela S. Riley, Registered

8 Professional Reporter, Registered Merit Reporter and

9 Notary Public in and for the County of Lorain, State of

10 Ohio, do hereby certify that this is a correct

11 transcript of the deposition of Kelsey A. Kidd in this

12 case taken on 5-25-16 at the offices of the Balsar Law

13 Firm.

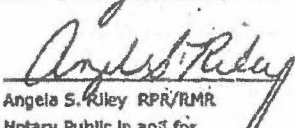
14 I further certify that this is a complete

15 transcript of the proceedings on that date.

16 IN WITNESS WHEREOF, I have subscribed my

17 name this 5<sup>th</sup> day of June, 2016.

18

19 

20 Angela S. Riley RPR/RMR

21 Notary Public in and for

22 The State of Ohio

23 My Commission Expires: 10-16-2017

24

25

**From:** Ken - Guardian Wholesale <ken@guardianwholesale.com>  
**Sent:** 7/24/2014 1:00:01 PM -0400  
**To:** James Stone <james@tenkoris.com>; Paul Chifor <paul.chifor@tenkoris.com>  
**Subject:** Fwd: [Case 226575141] Product listing

----- Forwarded message -----

**From:** Amazon Seller Support <merch.service05@amazon.com>  
**Date:** Thu, Jul 24, 2014 at 9:39 AM  
**Subject:** RE: [Case 226575141] Product listing  
**To:** "ken@guardianwholesale.com" <ken@guardianwholesale.com>

Hello,

Thank you for calling us today about your listing for ASIN: B00I4CAW8Q.

I'm glad I was able to explain why this product was removed from our Website.

This product has been identified as pure powdered caffeine, which has been cited by the Food and Drug Administration (FDA) in a safety alert. Amazon policy prohibits the sale or listing of products on Amazon.com and Amazon.ca that have been the subject of a prior regulatory action, such as FDA warning letters, safety alerts, or recalls. For reference, please see the following FDA Safety Alert:

<http://www.fda.gov/food/recallsoutbreaksemergencies/safetyalertsadvisories/ucm405787.htm>

Please don't hesitate to contact us again if you need help in the future.

We love our sellers! Let us know how we did:

Were you satisfied with the support provided?

Click here for yes:

<http://sellercentral.amazon.com/gp/case-dashboard/hmd-yes.html?p=awawthrr3735903130&c=226575141>

Click here for no:

<http://sellercentral.amazon.com/gp/case-dashboard/hmd-no.html?p=awawthrr3735903130&c=226575141>

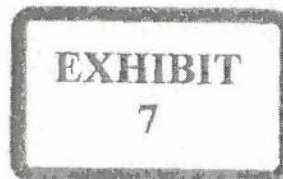
Thank you!

To view your case details, please click [http://sellercentral.amazon.com/gp/case-dashboard/view-case.html/ref=sc\\_cd\\_lobby\\_vc?caseID=226575141](http://sellercentral.amazon.com/gp/case-dashboard/view-case.html/ref=sc_cd_lobby_vc?caseID=226575141).

If you reply to this message, we won't get it. We want to help! So if you need to reach us, click <http://sellercentral.amazon.com/gp/help/>

Thank you for selling with Amazon,

Brigitte M.  
Amazon.com Seller Support



TENKORIS\_22397

---

**From:** Paul Chifor <paul.chifor@tenkoris.com>  
**Sent:** 7/24/2014 1:48:39 PM -0400  
**To:** Ken - Guardian Wholesale <ken@guardianwholesale.com>  
**Subject:** Re: [Case 226575141] Product listing

It seems that Amazon is putting in the same product restrictions as eBay since the FDA consumer warning on pure powdered caffeine.

I want to find out what their rules will be for a cut mix of caffeine, 50% or 10%. Might be worth looking into capsules as the other opportunity to sell it on amazon.

On Thu, Jul 24, 2014 at 10:09 AM, Ken - Guardian Wholesale <ken@guardianwholesale.com> wrote:

----- Forwarded message -----

**From:** Amazon Seller Support <merch.service05@amazon.com>  
**Date:** Thu, Jul 24, 2014 at 9:39 AM  
**Subject:** RE: [Case 226575141] Product listing  
**To:** "ken@guardianwholesale.com" <ken@guardianwholesale.com>

Hello,

Thank you for calling us today about your listing for ASIN: B00I4CAW8Q.

I'm glad I was able to explain why this product was removed from our Website.

This product has been identified as pure powdered caffeine, which has been cited by the Food and Drug Administration (FDA) in a safety alert. Amazon policy prohibits the sale or listing of products on Amazon.com and Amazon.ca that have been the subject of a prior regulatory action, such as FDA warning letters, safety alerts, or recalls. For reference, please see the following FDA Safety Alert:

<http://www.fda.gov/food/recallsoutbreaksemergencies/safetyalertsadvisories/ucm405787.htm>

Please don't hesitate to contact us again if you need help in the future.

We love our sellers! Let us know how we did:

Were you satisfied with the support provided?

Click here for yes:

<http://sellercentral.amazon.com/gp/case-dashboard/hmd-yes.html?p=awawthrr3735903130&c=226575141>

Click here for no:

<http://sellercentral.amazon.com/gp/case-dashboard/hmd-no.html?p=awawthrr3735903130&c=226575141>

Thank you!

To view your case details, please click [http://sellercentral.amazon.com/gp/case-dashboard/view-case.html/ref=sc\\_cd\\_lobby\\_vc?caseID=226575141](http://sellercentral.amazon.com/gp/case-dashboard/view-case.html/ref=sc_cd_lobby_vc?caseID=226575141).

TENKORIS\_22408

Shop by Department

Search



Hello, Kelsey Your Account

Try Prime

Cart

Wish List

Your Account Your Orders Order Summary

Order Placed: February 27, 2014
Amazon.com order number: 002-2663141-1315410
Seller's order number: 2023378364
Order Total: \$12.80

Shipment #1: Ordered from TheBulkSource

Problem with this order?

1 package via USPS

For information about this order, please contact TheBulkSource. (TheBulkSource order #2023378364)
Learn more about TheBulkSource's return and replacement policy.

Shipping Address:
Kelsey Kidd
132 MERCURY DR
ELYRIA, OH 44035-8924
United States

Items Ordered

Price



Shipping Speed:
Standard

1 of: 500G 1.1 Lbs. Caffeine Powder 100% USP
Pharma Grade Pure Powder Foil Sealed for freshness.
Ultra Pure Powder.
Sold by: TheBulkSource (seller profile)

Condition: New

\$14.99

Item(s) Subtotal: \$14.99
Shipping & Handling: \$5.49

Total before tax: \$20.48
Sales Tax: \$0.00
Gift Card Amount: -\$7.68

Total for This Shipment: \$12.80
Total paid by Gift Card: -\$7.68

Your seller feedback about this order

Seller Name

TheBulkSource We're sorry. More than 90 days have passed since you placed this order from TheBulkSource.

See all orders awaiting feedback

Payment information

Need to print an invoice?

Payment Method:
Visa | Last digits: 2922

Item(s) Subtotal: \$14.99
Shipping & Handling: \$5.49

SMS Messages (274)

| Index | Type   | To/From                           | Date/Time                | Status | Message  |
|-------|--------|-----------------------------------|--------------------------|--------|--|
| 1     | Drafts | To<br>4406105358<br>Kelsey Kidd   | 9/4/2014<br>11:25:07 AM  | Unsent |  |
| 2     | Drafts | To<br>4406105358<br>Kelsey Kidd   | 9/4/2014<br>11:24:27 AM  | Unsent | dude wif is this? can i dis from this? i think i |
| 3     | Drafts | To<br>[REDACTED]                  | 9/4/2014<br>11:21:51 AM  | Unsent | [REDACTED]                                       |
| 4     | Drafts | To<br>4403156365                  | 5/27/2014<br>2:30:01 PM  | Unsent |  |
| 5     | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/27/2014<br>2:29:52 PM  | Read   | Whats on our final tomorrow??                    |
| 6     | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>2:29:49 PM  | Read   | [REDACTED]                                       |
| 7     | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>2:16:59 PM  | Read   | [REDACTED]                                       |
| 8     | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>2:15:55 PM  | Read   | [REDACTED]                                       |
| 9     | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>2:15:52 PM  | Read   | [REDACTED]                                       |
| 10    | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>2:15:48 PM  | Read   | [REDACTED]                                       |
| 11    | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>2:15:45 PM  | Read   | [REDACTED]                                       |
| 12    | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>11:11:01 AM | Read   | [REDACTED]                                       |
| 13    | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>10:52:28 AM | Read   | [REDACTED]                                       |
| 14    | Inbox  | From<br>[REDACTED]                | 5/27/2014<br>10:52:03 AM | Read   | [REDACTED]                                       |

Plaintiff's  
 EXHIBIT NO. 2  
 K. Kidd  
 A. RILEY 5-28-16

|     |        |                                |                         |      |   |
|-----|--------|--------------------------------|-------------------------|------|---|
| 78  | Inbox  | From [REDACTED]                | 5/26/2014<br>9:06:17 PM | Read | [REDACTED]  |
| 79  | Outbox | To [REDACTED]                  | 5/26/2014<br>9:05:22 PM | Sent | [REDACTED]  |
| 80  | Inbox  | From [REDACTED]                | 5/26/2014<br>8:05:10 PM | Read | [REDACTED]  |
| 81  | Outbox | To [REDACTED]                  | 5/26/2014<br>8:03:43 PM | Sent | [REDACTED]  |
| 82  | Outbox | To [REDACTED]                  | 5/26/2014<br>8:02:13 PM | Sent | [REDACTED]  |
| 83  | Outbox | To [REDACTED]                  | 5/26/2014<br>8:54:08 PM | Sent | [REDACTED]  |
| 84  | Outbox | To [REDACTED]                  | 5/26/2014<br>8:51:30 PM | Sent | [REDACTED]  |
| 85  | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>8:51:15 PM | Read | Hay, I don't want you taking a ton then pooping yourself in spanish               |
| 86  | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>8:50:45 PM | Sent | lol okay good tips good tips :b   |
| 87  | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>8:50:30 PM | Read | Haha good, Don't do it on an empty tummy!!!!!! I swear! Unless your constipated   |
| 88  | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>8:49:13 PM | Sent | im prepared lol   |
| 89  | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>8:46:44 PM | Read | Yeah, I do that a lot, it works, Def wakes you up .                               |
| 90  | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>8:45:03 PM | Sent | im takin a 4th  |
| 91  | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>8:44:46 PM | Read | About 100 mg :p I told you already  |
| 92  | Outbox | To [REDACTED]                  | 5/26/2014<br>8:44:29 PM | Sent | [REDACTED]  |
| 93  | Inbox  | From [REDACTED]                | 5/26/2014<br>8:44:16 PM | Read | [REDACTED]  |
| 94  | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>8:44:03 PM | Sent | shill lol how much is in an eighth?   |
| 95  | Outbox | To [REDACTED]                  | 5/26/2014<br>8:43:34 PM | Sent | [REDACTED]  |
| 96  | Inbox  | From [REDACTED]                | 5/26/2014<br>7:55:27 PM | Read | [REDACTED]  |
| 97  | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>7:34:27 PM | Read | Usually 1/8 a teaspoon and after school another 1/8 and my pre workout has 400 mg |
| 98  | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>7:33:36 PM | Sent | lol how much do you take?   |
| 99  | Outbox | To [REDACTED]                  | 5/26/2014<br>7:33:16 PM | Sent | [REDACTED]  |
| 100 | Inbox  | From [REDACTED]                | 5/26/2014<br>7:30:37 PM | Read | [REDACTED]  |
| 101 | Outbox | To [REDACTED]                  | 5/26/2014<br>7:23:05 PM | Sent | [REDACTED]  |
| 102 | Outbox | To [REDACTED]                  | 5/26/2014<br>7:19:04 PM | Sent | [REDACTED]  |
| 103 | Inbox  | From [REDACTED]                | 5/26/2014<br>7:15:15 PM | Read | [REDACTED]  |
| 104 | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>7:13:38 PM | Read | Loooooo   |
| 105 | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>7:12:27 PM | Sent | okay an 8th :-  |
| 106 | Inbox  | From 4406105358<br>Kelsey Kidd | 5/26/2014<br>7:11:56 PM | Read | Hahaha wif no xP I'd rather keep you alive  |
| 107 | Outbox | To [REDACTED]                  | 5/26/2014<br>7:11:29 PM | Sent | [REDACTED]  |
| 108 | Outbox | To 4406105358<br>Kelsey Kidd   | 5/26/2014<br>7:11:12 PM | Sent | lol is a 4th ok? :>   |

|     |        |                                   |                         |        |   |  |
|-----|--------|-----------------------------------|-------------------------|--------|---|--|
| 109 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>6:15:01 PM | Read   | Haha half xP you crack me up  |  |
| 110 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>6:14:28 PM | Sent   | hahahahahaha okay okay, thanks for the warnings kelsi :b im taking half lol   |  |
| 111 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>5:38:32 PM | Sent   | [REDACTED]  |  |
| 112 | Drafts | To<br>[REDACTED]                  | 5/28/2014<br>5:12:38 PM | Unsent | [REDACTED]  |  |
| 113 | Inbox  | From<br>[REDACTED]                | 5/28/2014<br>5:10:10 PM | Read   | [REDACTED]  |  |
| 114 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>5:09:20 PM | Sent   | [REDACTED]  |  |
| 115 | Inbox  | From<br>[REDACTED]                | 5/28/2014<br>5:08:53 PM | Read   | [REDACTED]  |  |
| 116 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>4:44:52 PM | Sent   | [REDACTED]  |  |
| 117 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>4:42:41 PM | Sent   | [REDACTED]  |  |
| 118 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:41:02 PM | Read   | Don't take too much in the morning on an empty tummy. Makes you have the runs xP  |  |
| 119 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:40:58 PM | Read   | here's still traces of caffeine in your urine and now I have maybe 100 mg .   |  |
| 120 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:40:38 PM | Read   | You'd die hahaha my doctor was really concerned with me bc i was having over 700 mg a day and still tired. And the max is supposed to be 1000mg bc then i |  |
| 121 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>4:39:16 PM | Sent   | holy moty, what would happen if i take the whole thing? lol   |  |
| 122 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:34:14 PM | Read   | Probably around a cup or more.  |  |
| 123 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:33:33 PM | Read   | Um hold on lemme see how many pounds my bag is  |  |
| 124 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>4:32:07 PM | Sent   | okay okay sounds great :) lol how much are you givin me?  |  |
| 125 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:30:44 PM | Read   | ght and remember, 1/8 a teaspoon is 100mg of caffeine. That's about 15 oz of coke and 1/4 a teaspoon is about 40 mg more than a monster or rock star      |  |
| 126 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>4:30:08 PM | Sent   | [REDACTED]  |  |
| 127 | Inbox  | From<br>[REDACTED]                | 5/28/2014<br>4:28:10 PM | Read   | [REDACTED]  |  |
| 128 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>4:27:33 PM | Sent   | [REDACTED]  |  |
| 129 | Outbox | To<br>[REDACTED]                  | 5/28/2014<br>4:27:33 PM | Sent   | [REDACTED]  |  |
| 130 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>4:26:31 PM | Sent   | hahahaha sounds good to me :p   |  |
| 131 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:19:13 PM | Read   | Yeah i'll bring it tomorrow. It's gonna look like cocaine in a bag xP   |  |
| 132 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>4:18:08 PM | Sent   | YES PLEASE lol tomorrow ?!  |  |
| 133 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:09:55 PM | Read   | i'll get her caffeine and you can get her meet :p oh thinking about i'll give you some of my caffeine powder if you want                                  |  |
| 134 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>4:08:52 PM | Sent   | yeah dude i know how she works lol therefore, we should get her a "thanks for being such a great teacher" gift so that she wont fail us :b                |  |
| 135 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>4:08:03 PM | Read   | I can just see her being like OH THOSE FUCKERS GET Fs   |  |
| 136 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>4:08:33 PM | Sent   | ughhhhhh  |  |
| 137 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>3:58:49 PM | Read   | Maybe she'll just change it to where we come in Wednesday. Idk I dont want her to fail me   |  |
| 138 | Outbox | To<br>4406105358<br>Kelsey Kidd   | 5/28/2014<br>3:57:36 PM | Sent   | im not coming in a second after tomorrow lol  |  |
| 139 | Inbox  | From<br>4406105358<br>Kelsey Kidd | 5/28/2014<br>3:57:07 PM | Read   | Haha maybe you should email her and tell her we get out Wednesday not Thursday  |  |

Transcript of the Testimony of:  
**Joseph Baca**



**Date:**  
June 9, 2017

**Case:**  
DENNIS STINER, Administrator of the Estate of Logan Stiner  
v.  
AMAZON, et al.

Realttime Worldwide, LLC  
12608 State Road, Suite 3  
Cleveland, Ohio 44133  
216.285.0444

*Setting the standard for court reporting service  
Leading the way with technology*



1 BY MS. HUSSEY:

2 Q. Can you tell me what this document  
3 is?

4 A. This is a document that was  
5 generated -- this is a document that was sent to  
6 Gary Coody from Kristy Madden of Amazon with  
7 respect to the advisory that FDA had previously  
8 issued.

9 And she indicates, dated July 24th,  
10 2014, says, "Thank you for the e-mail. We  
11 removed multiple listings of powdered caffeine  
12 products and created a rule to identify and  
13 remove future listings of these products. We  
14 have also warned the sellers of these products."  
15 (As read)

16 Q. Did Amazon have to remove multiple  
17 listings of pure caffeine products in July of  
18 2014?

19 A. I don't believe they did.

20 Q. So Amazon's behavior in July of 2014  
21 went above and beyond what was required by law?

22 MR. GRIECO: Objection.

23 THE WITNESS: Yes.

24 BY MS. HUSSEY:

25 Q. In fact, caffeine powder continued

1 to be sold and continues to be sold today,  
2 doesn't it, in channels other than over  
3 Amazon.com?

4 A. I know that caffeine powder is  
5 available on the Internet.

6 Q. Caffeine powder is available on the  
7 Internet today in bulk form even, correct?

8 A. Correct.

9 Q. In February of 2014, were there any  
10 restrictions on the sale of pure caffeine powder  
11 to consumers legally -- legal restrictions?

12 A. FDA had not placed any restrictions  
13 on that product.

14 Q. FDA has the authority to regulate  
15 dietary supplements, right?

16 A. Yes.

17 Q. In fact, FDA regulates dietary  
18 supplements?

19 A. Yes, they do.

20 Q. And FDA regulates caffeine powder?

21 A. Yes, they do.

22 Q. Is that right?

23 A. Yes, they do.

24 Q. Caffeine powder was sold at least as  
25 early as 2010, right?

## CERTIFICATE OF SERVICE

I certify that the foregoing Supplement to Merit Brief of Defendants-Appellees Amazon.com, Inc., Amazon Fulfillment Services, Inc., Amazon Web Services, Inc., and Amazon Services, L.L.C. was served by First-Class mail, postage prepaid and via email upon the following counsel of record this 12<sup>th</sup> day of December, 2019.

Brian K. Balsler  
BRIAN K. BALSER CO., LPA  
5311 Meadow Lane Court, Suite 1  
Elyria, Ohio 44035

Drew Legando  
Edward S. Jerse  
MERRIMAN LEGANDO WILLIAMS & KLANG,  
LLC  
1360 West 9th Street, Suite 200  
Cleveland, Ohio 44113

/s/ Joyce D. Edelman  
Joyce D. Edelman, Esq. (0023111)  
*Counsel for Defendants-Appellees*