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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 DAIMLER AG,
13 *Plaintiff,*
14
15 v.
16 AMAZON.COM, INC.,
17 *Defendant.*

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Case No. 2:17-cv-07674-AB-FFM
Amazon.com, Inc.'s Answer to
Complaint; Demand for Jury Trial

1 Amazon.com, Inc. (“Amazon”) answers the Complaint of Daimler AG
2 (“Daimler”) as follows:

3 1. Amazon admits that this case purports to be an action for
4 trademark infringement, counterfeiting, unfair competition, and related state
5 and common law claims. Except as otherwise admitted, Amazon denies the
6 remaining allegations, if any, contained in paragraph 1.

7 2. Amazon admits that the products Daimler accuses in this case
8 were “shipped from and sold by Amazon.com.” Except as expressly
9 admitted, Amazon denies the remaining allegations, if any, of paragraph 2.

10 3. Amazon admits Daimler seeks certain relief in its complaint.
11 Except as expressly admitted, Amazon denies the remaining allegations, if
12 any, of paragraph 3.

13 4. Amazon is without information sufficient to form a belief as to
14 the truth of the allegations of paragraph 4, and on that basis, denies them.

15 5. Amazon admits that it is a Delaware corporation with a principal
16 place of business in Seattle, Washington, and that, through its subsidiaries,
17 Amazon provides an online retail marketplace, www.amazon.com, through
18 which consumer products, computing products, and digital content, among
19 other things, are sold directly by Amazon’s subsidiaries and by third-party
20 sellers. Except as expressly admitted, Amazon denies the remaining
21 allegations, if any, of paragraph 5.

22 6. Amazon admits that this case purports to be a claim under 35
23 U.S.C. § § 1051 *et seq.*, and that the Court has subject-matter jurisdiction.
24 Amazon admits that the Court has supplemental jurisdiction over related state
25 law claims. Except as expressly admitted, Amazon denies the remaining
26 allegations, if any, of paragraph 6.

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1 7. For purposes of this case only, Amazon admits that the Court
2 has personal jurisdiction over Amazon. Except as expressly admitted,
3 Amazon denies the remaining allegations, if any, of paragraph 7.

4 8. For purposes of this case only, Amazon admits that venue is
5 proper in this District. Except as expressly admitted, Amazon denies the
6 remaining allegations, if any, of paragraph 8.

7 9. Amazon is without information sufficient to form a belief as to
8 the truth of the allegations of paragraph 9, and on that basis, denies them.

9 10. Amazon is without information sufficient to form a belief as to
10 the truth of the allegations of paragraph 10, and on that basis, denies them.

11 11. Amazon admits that copies of registration certificates, renewal
12 notices, and abstracts of title that purport to be for various Mercedes-Benz
13 Marks purport to be attached to the Complaint. Amazon is without
14 information sufficient to form a belief as to the truth of the remaining
15 allegations of paragraph 11, and on that basis, denies them.

16 12. No response to paragraph 12 is necessary. To the extent a
17 response is deemed necessary, Amazon denies the allegations, if any, of
18 paragraph 12.

19 13. Amazon admits that copies of what purport to be various
20 USPTO Trademark Status and Document Retrieval status pages are attached
21 to the Complaint. Except as expressly admitted, Amazon denies the
22 remaining allegations, if any, of paragraph 13.

23 14. Amazon lacks information sufficient to form a belief as to the
24 truth of the allegations of paragraph 14, and on that basis, denies them.

25 15. Amazon lacks information sufficient to form a belief as to the
26 truth of the allegations of paragraph 15, and on that basis, denies them.

27 16. Amazon admits that Daimler's use of the Mercedes-Benz Marks
28 began prior to the Otis LA 550166C, 550166B, and 550166S products (the

1 “Otis Products”) appearing on Amazon.com. Except as expressly admitted,
2 Amazon denies the remaining allegations, if any, of paragraph 16.

3 17. Amazon admits that to the extent that the Mercedes-Benz Marks
4 became famous, they became famous before the Otis Products appeared on
5 Amazon.com. Except as expressly admitted, Amazon denies the remaining
6 allegations, if any, of paragraph 17.

7 18. Denied.

8 19. Amazon admits that by some measures, Amazon is the World’s
9 largest internet-based retailer, and that Amazon, through its subsidiaries, sells
10 products in all fifty states. Amazon further admits that, through its
11 subsidiaries, it sells millions of products to consumers, including many
12 million that are shipped by and sold by Amazon entities. Except as expressly
13 admitted, Amazon denies the remaining allegations, if any, of paragraph 19.

14 20. Amazon admits that, through its subsidiaries, it offers a
15 marketplace through which millions of manufacturers, wholesalers, retailers,
16 and third-party sellers sell and ship products to consumers. Amazon further
17 admits that, through subsidiaries, it provides Fulfillment by Amazon, a
18 service that allows third-party sellers to store products in Amazon fulfillment
19 centers for shipment to customers by Amazon. Except as expressly admitted,
20 Amazon denies the remaining allegations, if any, of paragraph 20.

21 21. Amazon admits that, through its subsidiaries, it sells and ships
22 products designated as “ships from and sold by Amazon.com.” Amazon
23 further admits that some of these products are Amazon-branded or developed
24 products. Amazon further admits that some of these products are purchased
25 from manufacturers, wholesalers, and brand owners pursuant to vendor
26 agreements. Except as expressly admitted, Amazon denies the remaining
27 allegations, if any, of paragraph 21.

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1 22. Amazon admits that “ships from and sold by Amazon.com”
2 products are listed on product detail pages where customers may find
3 information about a product for sale on Amazon’s website
4 www.amazon.com. Amazon further admits that product detail pages may
5 include, among other things, an image of the product, a price, a description of
6 the product, customer reviews, ordering information, and whether the product
7 is shipped from and sold by Amazon. Except as expressly admitted, Amazon
8 denies the remaining allegations, if any, of paragraph 22.

9 23. Denied.

10 24. Denied.

11 25. Amazon admits that in 2016, Fortune announced that Amazon
12 was the most “trustworthy” company among U.S. adults and for the third
13 year in a row it was ranked as the “most reputable” company by the
14 Reputation Institute, as reported by Forbes, and that many customers trust
15 Amazon. Except as expressly admitted, Amazon denies the remaining
16 allegations, if any, of paragraph 25.

17 26. Denied.

18 27. Amazon admits that it has an anti-counterfeiting policy and
19 infringement reporting forms and procedures. Except as expressly admitted,
20 Amazon denies the remaining allegations, if any, of paragraph 27.

21 28. Amazon admits that a past version of its anti-counterfeiting
22 policy stated that “Customers trust that they can always buy with confidence
23 on Amazon.com.” and that “The sale of counterfeit products, including any
24 products that have been illegally replicated, reproduced, or manufactured, is
25 strictly prohibited.” Amazon further admits that its current anti-counterfeiting
26 policy states that “Products offered for sale on Amazon must be authentic.
27 The sale of counterfeit products is strictly prohibited.” Amazon admits that it
28 provides reporting forms and tools to enable rights owners to report

1 infringement on amazon.com, and that it maintains policies and procedures
2 for handling those reports. Amazon further admits that it reviews rights
3 owner reports and takes appropriate action, including removal of products or
4 listings from amazon.com. Except as expressly admitted, Amazon denies the
5 remaining allegations, if any, of paragraph 28.

6 29. Denied.

7 30. Denied.

8 31. Amazon admits that between approximately January 2016 and
9 October 2017, the Otis Products were sold on Amazon.com as “ships from
10 and sold by Amazon.com.” Amazon further admits that within days of
11 Daimler filing its Complaint in this case, Amazon removed the Otis Products
12 from Amazon.com. Except as expressly admitted, Amazon denies the
13 remaining allegations, if any, of paragraph 31.

14 32. Amazon admits that what purport to be screenshots are attached
15 to the Complaint. Amazon further admits that the Otis Products were listed as
16 “ships from and sold by Amazon.com.” Except as expressly admitted,
17 Amazon denies the remaining allegations, if any, of paragraph 32.

18 33. Amazon is without information sufficient to form a belief as to
19 the truth of the allegations of paragraph 33, and, on that basis, denies them.

20 34. Amazon admits that the Otis Products appear to include the
21 Mercedes-Benz Marks and that photographs purport to be attached to the
22 Complaint. Except as expressly admitted, Amazon denies the remaining
23 allegations, if any, of paragraph 34.

24 35. Amazon is without information sufficient to form a belief as to
25 the truth of the allegations of paragraph 35, and on that basis, denies them.

26 36. Amazon admits that Otis Inc. LA was the vendor to Amazon of
27 the Otis Products and that Otis Inc. LA is within this judicial district. Except
28 as expressly admitted, Amazon is without information sufficient to form a

1 belief as to the truth of the remaining allegations, if any, of paragraph 36, and
2 on that basis, denies them.

3 37. Amazon is without information sufficient to form a belief as to
4 the truth of the allegations of paragraph 37, and on that basis, denies them.

5 38. Amazon is without information sufficient to form a belief as to
6 the truth of the allegations of paragraph 38, and on that basis, denies them.

7 39. Denied.

8 40. Amazon admits that some consumers who have purchased the
9 Otis Products have left negative reviews, that one such review is quoted in
10 paragraph 40, and that others are excerpted in Exhibit S. Amazon denies that
11 the Otis Products have had any effect on sales of Mercedes-Benz wheel
12 center caps or that the Otis Products affected the performance standards of all
13 sellers. Except as expressly admitted or denied, Amazon is without
14 information sufficient to form a belief as to the truth of the remaining
15 allegations, if any, of paragraph 40, and on that basis, denies them.

16 41. Amazon admits that a verified purchaser left a one-star review
17 as quoted in paragraph 41. Except as expressly admitted, Amazon is without
18 information sufficient to form a belief as to the truth of the remaining
19 allegations, if any, of paragraph 41, and on that basis, denies them.

20 42. Amazon admits that a verified purchaser left a one-star review
21 as quoted in paragraph 42. Except as expressly admitted, Amazon is without
22 information sufficient to form a belief as to the truth of the remaining
23 allegations, if any, of paragraph 42, and on that basis, denies them.

24 43. Amazon admits that a verified purchaser left a one-star review
25 as quoted in paragraph 43. Except as expressly admitted, Amazon is without
26 information sufficient to form a belief as to the truth of the remaining
27 allegations, if any, of paragraph 43, and on that basis, denies them.

28 44. Denied.

1 45. Denied.

2 46. Denied.

3 47. Denied.

4 48. No response to paragraph 48 is necessary, but to the extent one
5 is deemed necessary, Amazon denies the allegations, if any, of paragraph 48.

6 49. Denied.

7 50. Denied.

8 51. Denied.

9 52. Denied.

10 53. Denied.

11 54. Denied.

12 55. Denied.

13 56. Denied.

14 57. No response to paragraph 57 is necessary, but to the extent one
15 is deemed necessary, Amazon denies the allegations, if any, of paragraph 57.

16 58. Denied.

17 59. Denied.

18 60. Denied.

19 61. Denied.

20 62. Denied.

21 63. No response to paragraph 63 is necessary, but to the extent one
22 is deemed necessary, Amazon denies the allegations, if any, of paragraph 63.

23 64. Denied.

24 65. Denied.

25 66. Denied.

26 67. No response to paragraph 67 is necessary, but to the extent one
27 is deemed necessary, Amazon denies the allegations, if any, of paragraph 67.

28 68. Denied.

1 69. Denied.

2 70. No response to paragraph 70 is necessary, but to the extent one
3 is deemed necessary, Amazon denies the allegations, if any, of paragraph 70.

4 71. Denied.

5 72. Denied.

6 73. Denied.

7 74. Denied.

8 75. No response to paragraph 75 is necessary, but to the extent one
9 is deemed necessary, Amazon denies the allegations, if any, of paragraph 75.

10 76. Denied.

11 77. Denied.

12 78. Denied.

13 **PRAYER FOR RELIEF**

14 No response is required to the Prayer for Relief. To the extent the
15 Court deems a response necessary, Amazon denies the allegations contained
16 in each paragraph of the Prayer for Relief.

17 **GENERAL DENIAL**

18 Except as expressly admitted above, Amazon denies each and every
19 allegation in Daimler’s Complaint.

20 **ADDITIONAL DEFENSES**

21 Further answering and as additional defenses, Amazon states the
22 following. By raising the following additional defenses, Amazon does not
23 assume the burden of proof of any issue that, as a matter of law, is plaintiff’s
24 burden to prove. Amazon further does not admit any allegation of the
25 Complaint not otherwise admitted and expressly incorporates the admissions
26 and denials in paragraphs 1 through 78, above. Amazon reserves the right to
27 amend or augment these defenses based on further investigation and
28 discovery.

1 *First Defense*

2 The Complaint fails to state any claim upon which relief can be
3 granted.

4 *Second Defense*

5 Daimler is not entitled to seek enhanced damages or attorney fees for
6 willful or deliberate infringement or for any other reason.

7 *Third Defense*

8 Daimler is not entitled to injunctive relief because any purported injury
9 to Daimler is not immediate and irreparable. Even if Daimler could prove
10 that it is entitled to relief, a remedy at law would be adequate, and the public
11 interest and balance of hardships would disfavor an injunction under the
12 circumstances of this case.

13 *Fourth Defense*

14 To the extent that Daimler does not have all or substantially all rights
15 to the marks asserted against Amazon, or to the extent that the purported
16 assignments of such marks are defective for any reason, Daimler lacks
17 standing to pursue its claims against Amazon.

18 *Fifth Defense*

19 Daimler is not entitled to relief because relevant persons, including
20 appreciable numbers of reasonable consumers and others, would not be likely
21 to be confused as to the origin, affiliation, connection, sponsorship,
22 association, or approval between the accused products and Daimler or the
23 asserted marks.

24 *Sixth Defense*

25 Daimler is not entitled to relief because the accused products or
26 alleged use of Daimler's marks are not likely to cause dilution by blurring or
27 tarnishing any purported distinctive quality of the asserted marks.
28

1 *Seventh Defense*

2 Daimler is not entitled to relief to the extent that it has abandoned any
3 trademark rights that it may have had in the marks asserted against Amazon
4 by failing to adequately police, monitor, or control third parties using the
5 asserted marks and/or by failing to treat the asserted marks as trademarks.

6 *Eighth Defense*

7 Daimler's claims are barred, in whole or in part, because Daimler has
8 not suffered any cognizable injury attributable, in whole or in part, to
9 Amazon.

10 *Ninth Defense*

11 Daimler is not entitled to relief because its claims are barred, in whole
12 or in part, because Daimler failed to exercise due diligence.

13 *Tenth Defense*

14 Daimler is not entitled to relief because it failed to mitigate its
15 damages. Daimler admits it conducted test buys of Otis Products in August
16 2016 and October 2016. On information and belief, Daimler became aware
17 of the alleged infringement by August 2016, yet Daimler did not notify
18 Amazon of the alleged infringement until Daimler filed this lawsuit in
19 October 2017.

20 *Eleventh Defense*

21 The relief Daimler seeks is limited under 15 U.S.C. § 1111.

22 **RESERVATION OF RIGHTS**

23 Amazon reserves its rights to raise additional defenses based on
24 additional information learned during discovery or otherwise.

25 **AMAZON'S JURY TRIAL DEMAND**

26 Amazon demands a trial by jury on all issues so triable.

27 **AMAZON'S PRAYER FOR RELIEF**

28 Amazon prays for the following relief:

- 1 A. Dismissal of Daimler’s claims with prejudice;
- 2 B. All remedies Daimler seeks be denied;
- 3 C. A judgment that Amazon’s use of any Daimler marks was lawful
4 and does not violate any rights that Daimler may own or otherwise violate
5 federal or state law;
- 6 D. An award of costs of defending this action, including reasonable
7 attorney fees and costs pursuant to 15 U.S.C. § 1117, and other applicable
8 law; and
- 9 E. Such other and further relief as this Court may deem just and
10 proper.

11
12 Dated: July 2, 2018

PERKINS COIE LLP

13
14 By: /s/ Grant E. Kinsel

Grant E. Kinsel # 172407

GKinsel@perkinscoie.com

15
16 Attorneys for Defendant Amazon.com, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record for the parties.

/s/ Grant E. Kinsel
Grant E. Kinsel # 172407

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