

June 1, 2018

Amazon.com, Inc.
Legal Department
P.O. Box 81226
Seattle, WA 98108

Re: False Designation of Origin / Trademark Infringement by Amazon
Trademark: MIGHTY GADGET
Owner: Deal-Commerce, LLC
ASIN: B073SBZPWY
Complaint ID: 5100925691

To Whom It May Concern:

My client, Deal-Commerce, LLC (“DCL”), sells cushion foam sheets for packing under the MIGHTY GADGET brand on Amazon.com. We have found that Amazon is fulfilling orders for MIGHTY GADGET products with a generic product instead of with genuine MIGHTY GADGET cushion foam sheets. This is misleading and is a violation of DCL’s trademark rights under the Lanham Act (15 U.S. Code § 1125), and we demand that Amazon.com cease this activity.

Background. DCL is the owner of US Trademark Registration No. 5,199,867 and other common law trademark rights in the mark MIGHTY GADGET for a variety of packing and packaging materials. DCL offers cushion foam sheets for packing under the MIGHTY GADGET brand at the following Amazon web page <https://www.amazon.com/dp/B073SBZPWY/>. The product is titled “50 Pack of Mighty Gadget (R) Cushion Foam Sheets 12" X 12",” and the provider is listed as “Mighty Gadget.”

This web page lists two sellers of MIGHTY GADGET cushion foam sheets, “Mighty Gadget (USA Merchant)” and “Amazon.com”. “Mighty Gadget (USA Merchant)” is the name that identifies Deal-Commerce, LLC on Amazon, and genuine MIGHTY GADGET products are provided when cushion foam sheets are purchased from this seller.

However, when cushion foam sheets purchased on this web page from the “Amazon.com” seller, the product which is provided is *not genuine* MIGHTY GADGET product, but instead is a generic cushion foam sheet product.

This trademark violation was reported (1) through the “Report Infringement” link on May 6, 2018 and (2) through Brand Registry on May 30, 2018. Neither of these reports resulted in a change to the infringing activity by Amazon.com.

DCL Trademark Rights. DCL’s Trademark Registration No. 5,199,867 lists a number of different packing-related products, including:

- *cushioning or padding* made of paper for *packing purposes*
- plastic film for *packaging*

The goods listed in Trademark Reg. No. 5,199,867 are used for the *same purpose* (packing and packaging) and include cushioning and plastic materials. There is a clear likelihood of consumer confusion by the sale by Amazon.com of packing products under the MIGHTY GADGET trademark which do not originate from DCL, and therefore a clear violation of my client’s trademark rights.

The listing at <https://www.amazon.com/dp/B073SBZPWY/> also misidentifies Deal-Commerce, LLC as the source of the products sold by Amazon.com, since the page is titled “50 Pack of Mighty Gadget (R) Cushion Foam Sheets.” The sale of non-genuine product by Amazon.com without clarifying the source of such product constitutes unfair competition, which is a violation of the Lanham Act.

Reply to Refusal from Amazon Brand Registry. In response to the complaint filed by Deal-Commerce, LLC, Amazon Brand Registry responded as follows on May 30, 2018:

“The items you reported do not correspond to the registration classes of your trademark.”

Trademark class identification does not determine trademark infringement, however. Similar products sold under an identical trademark will infringe regardless of their class designations. Trademark classes are determined by international treaty, and similar products may arbitrarily fall into different classes. For example, *shrimp dumplings* are in class 30 while *stuffed shrimp* is in class 29, but these are clearly very similar products.

Consumers are likely to be confused when a generic product is fulfilled by Amazon.com when it is sold on a web page that promises “Mighty Gadget (R) Cushion Foam Sheets.” In view of this, we reiterate our demand that Amazon cease fulfilling goods ordered at <https://www.amazon.com/dp/B073SBZPWY/> with generic products.

If you have any questions about the foregoing, please do not hesitate to contact me at (626) 737-9086 or michael.fedrick@lozaip.com.

Sincerely,



Michael Fedrick, Esq.