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AMAZON.COM, INC. and
7 AMAZON WEB SERVICES, INC.

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10 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 ELASTICSEARCH, INC., a Delaware
14 corporation, and ELASTICSEARCH B.V., a
Dutch corporation,

15 Plaintiffs,

16 v.

17 AMAZON.COM, INC., a Delaware corporation,
18 and AMAZON WEB SERVICES, INC., a
Delaware corporation,

19 Defendants.
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Case No. 5:19-cv-06158-EJD

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

Ctrm: 4, 5th Floor

Judge: Honorable Edward J. Davila

1 Defendants Amazon.com, Inc. and Amazon Web Services, Inc. (collectively “Defendants” or
2 “Amazon”) hereby answer the Complaint of Plaintiffs Elasticsearch, Inc. and Elasticsearch B.V.
3 (collectively “Plaintiffs” or “Elastic”) as follows. All allegations not specifically admitted herein are
4 denied.

5 **INTRODUCTION**

6 1. Amazon admits that the Complaint purports to state claims for trademark infringement
7 and false advertising. Amazon denies any remaining allegations in this paragraph.

8 2. Amazon admits that its website states, “Elasticsearch has become an essential technology
9 for log analytics and search” Amazon lacks sufficient knowledge or information to admit or deny
10 the remaining allegations in this paragraph and on that basis denies them.

11 3. Amazon admits that it offers Amazon Elasticsearch Service (“AESS”) and Open Distro
12 for Elasticsearch (“Open Distro”). Amazon admits that it describes AESS as a “Fully managed, scalable,
13 and secure Elasticsearch service” and Open Distro as “[a]n Apache 2.0-licensed distribution of
14 Elasticsearch enhanced with enterprise security, alerting, SQL, and more.” Amazon denies all remaining
15 allegations in this paragraph.

16 4. Denied.

17 5. Denied.

18 **PARTIES**

19 6. Amazon lacks sufficient knowledge or information to admit or deny the allegations in this
20 paragraph and on that basis denies them.

21 7. Amazon.com, Inc. admits it is incorporated in Delaware, with its principal place of
22 business in Seattle, Washington. Amazon.com, Inc. admits that it maintains an office or offices in this
23 District.

24 8. Amazon Web Services, Inc. admits it is incorporated in Delaware, with its principal place
25 of business in Seattle, Washington. Amazon Web Services, Inc. admits that it maintains an office or
26 offices in this District. Amazon Web Services, Inc. admits that it is a wholly-owned subsidiary of
27 Amazon.com, Inc. Except as expressly admitted, Amazon denies the allegations in this paragraph.
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1 **JURISDICTION AND VENUE**

2 9. Amazon does not contest that this Court may assert subject matter jurisdiction over
3 Elastic's claims.

4 10. For purposes of this Action only, Amazon consents to venue in this District.

5 **INTRADISTRICT ASSIGNMENT**

6 11. The allegations in this paragraph are legal conclusions to which no response is required.

7 **THE ELASTICSEARCH MARK**

8 12. Amazon lacks sufficient knowledge or information to admit or deny the allegations in this
9 paragraph and on that basis denies them.

10 13. Amazon lacks sufficient knowledge or information to admit or deny the allegations in this
11 paragraph and on that basis denies them.

12 14. Amazon lacks sufficient knowledge or information to admit or deny the allegations in this
13 paragraph and on that basis denies them.

14 15. Amazon lacks sufficient knowledge or information to admit or deny the allegation that
15 Elastic has used its ELASTICSEARCH mark continuously since its September 25, 2012 registration
16 date, and on that basis denies it. The remaining allegations in this paragraph are legal conclusions to
17 which no response is required. To the extent any response is required, Amazon denies the remaining
18 allegations in this paragraph.

19 **AMAZON'S INFRINGEMENT OF THE ELASTICSEARCH MARK**

20 16. Amazon admits that the website for AESS describes AESS as "a fully managed service
21 that makes it easy for you to deploy, secure, and operate Elasticsearch at scale with zero down time."
22 Amazon admits that its AESS documentation states that users will get "direct access to the Elasticsearch
23 APIs" and that the service "makes it easy to deploy, operate, and scale Elasticsearch clusters in the AWS
24 Cloud." Amazon admits that Elastic offers SAAS services that compete with AESS. Except as expressly
25 admitted, Amazon denies the allegations in this paragraph.

26 17. Amazon admits that the first image in this paragraph depicts a portion of the landing page
27 for Amazon Elasticsearch Service. Amazon admits that Werner Vogels is the chief technology officer
28 and a vice president at Amazon. Amazon admits that the second image in this paragraph purports to be a

1 tweet made by Werner Vogels on or about October 1, 2015. Amazon denies the remaining allegations in
2 this paragraph.

3 18. Amazon denies the allegations of the first and second sentences of this paragraph.
4 Amazon admits that some of the code used to operate AESS was not written by Elastic. Amazon admits
5 that Elastic offers some functionality under the ELASTICSEARCH brand that is not offered as part of
6 AESS. Amazon denies any remaining allegations of this paragraph.

7 19. Amazon admits that on or about March 11, 2019, it began offering Open Distro. Amazon
8 admits that it described Open Distro as “a value-added distribution of Elasticsearch that is 100% open
9 source (Apache 2.0 license) and supported by AWS.” Amazon admits that the image in this paragraph
10 depicts part of an Open Distro page on GitHub. Amazon denies the remaining allegations in this
11 paragraph.

12 20. Amazon admits that the image in this paragraph depicts a portion of an Open Distro page
13 on GitHub. Amazon denies the remaining allegations in this paragraph.

14 21. The allegations in this paragraph are legal conclusions to which no response is required.
15 To the extent any response is required, Amazon denies the allegations in this paragraph.

16 22. Amazon admits that the AWS Trademark Guidelines contain the phrases quoted in this
17 paragraph. The remaining allegations in this paragraph are legal conclusions to which no response is
18 required. To the extent any response is required, Amazon denies the remaining allegations in this
19 paragraph.

20 **FIRST CAUSE OF ACTION**

21 **Trademark Infringement**

22 **(15 U.S.C. §§ 1114-1117, 1125)**

23 23. Amazon repeats and realleges each and every response to Elastic’s foregoing allegations.

24 24. Denied.

25 25. Amazon admits that the name of AESS is “Amazon Elasticsearch Service” and that the
26 name of Open Distro for Elasticsearch is “Open Distro for Elasticsearch.” The remaining allegations in
27 this paragraph are legal conclusions to which no response is required. To the extent any response is
28 required, Amazon denies the remaining allegations in this paragraph.

1 26. Denied.

2 27. Denied.

3 **SECOND CAUSE OF ACTION**

4 **False Description/Advertising**

5 **(15 U.S.C. § 1125)**

6 28. Amazon repeats and realleges each and every response to Elastic's foregoing allegations.

7 29. Denied.

8 30. Denied.

9 31. Denied.

10 32. Denied.

11 **PRAYER FOR RELIEF**

12 As to Elastic's prayer for relief, it contains legal conclusions to which no response is required. To
13 the extent a response is required, Amazon denies that Plaintiffs are entitled to any of the relief requested
14 and denies any factual allegations in its prayer for relief.

15 **DEMAND FOR A JURY TRIAL**

16 Amazon demands a jury trial on all issues so triable.

17 **ADDITIONAL DEFENSES**

18 Without modifying any burden, Amazon states the following defenses to Elastic's Complaint and
19 to each cause of action, claim, and allegation Elastic asserts against Amazon. Amazon reserves the right
20 to allege additional defenses and to amend its Answer to the complaint as information becomes known
21 through the course of discovery or otherwise.

22 **FIRST ADDITIONAL DEFENSE**

23 **(Failure to state a claim)**

24 The Complaint fails to state a claim upon which relief can be granted.
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1 **SECOND ADDITIONAL DEFENSE**

2 **(Nominative fair use)**

3 Elastic's claims are barred at least in part by the doctrine of nominative fair use. For example, the
4 term ELASTICSEARCH is being used in connection with code distributed by Elastic under the
5 ELASTICSEARCH name.

6 **THIRD ADDITIONAL DEFENSE**

7 **(Equitable estoppel)**

8 Elastic's claims are barred at least in part by the doctrine of equitable estoppel.

9 **FOURTH ADDITIONAL DEFENSE**

10 **(License)**

11 Elastic's claims are barred at least in part because Elastic granted Amazon a license to use the
12 term "Elasticsearch."

13 **FIFTH ADDITIONAL DEFENSE**

14 **(Laches and Acquiescence)**

15 Elastic's claims are barred at least in part by the doctrine of laches.

16 **SIXTH ADDITIONAL DEFENSE**

17 **(Waiver)**

18 Elastic's claims are barred at least in part by the doctrine of waiver.

19 **SEVENTH ADDITIONAL DEFENSE**

20 **(Statute of limitations)**

21 Elastic's claims are bared at least in part by the applicable statutes of limitations.

22 **EIGHTH ADDITIONAL DEFENSE**

23 **(Failure to mitigate)**

24 Elastic is barred from recovering damages because and to the extent of its failure to mitigate its
25 alleged damages.

26 **NINTH ADDITIONAL DEFENSE**

27 **(Unclean hands)**

28 Elastic's claims are barred at least in part by the doctrine of unclean hands.

Dated: November 20, 2019

DURIE TANGRI LLP

By: /s/ Joseph C. Gratz
JOSEPH C. GRATZ

Attorneys for Defendants
AMAZON.COM, INC. and
AMAZON WEB SERVICES, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2019 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Joseph C. Gratz
JOSEPH C. GRATZ