UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TODD C. BANK, Individually and on Behalf of All Others Similarly Situated, *Plaintiff*, -against- KINGSTON TECHNOLOGY COMPANY, INC., *Defendant*.	**COMPLAINT** 1:26-cv-4702

INTRODUCTION

1. Plaintiff brings this action individually and intends to maintain it on behalf of all other persons who, during the statute-of-limitations periods governing their respective claims, purchased, through Amazon (as defined below), a "Kingston Exodia S USB Flash Drive" (the "Flash Drive") (Plaintiff and the other persons described in this paragraph are hereinafter referred to collectively as the "Class," and each such person as a "Class Member").

PARTIES

2. Plaintiff, Todd C. Bank ("Bank"), is a natural person and a resident of this District.

3. Defendant, Kingston Technology Company, Inc. ("Kingston"), is a corporation organized and existing under the laws of Delaware, and maintains its principal place of business in Fountain Valley, California.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under 28 U.S.C. Section 1332(d)(2) because

there are more than one hundred Class Members and the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

5. Venue is proper in this District under 28 U.S.C. Section 1391(b)(2) because Bank purchased a Flash Drive in this District.

6. This Court has personal jurisdiction over Kingston under N.Y. C.P.L.R. Section 302(a)(1) because Kingston submitted, pursuant to a contract between Kingston and Amazon.com Services, Inc., or a subsidiary thereof ("Amazon"), a listing for the Flash Drives, which, thereby, appeared in the various formats of Amazon's website, *i.e.*, amazon.com (the "Product Listing"), and placed the Flash Drives on sale throughout the United States, including New York, which resulted in Bank's purchase, in New York, of a Flash Drive and therefore caused Bank's harm to occur in New York.

7. This Court has personal jurisdiction over Kingston under N.Y. C.P.L.R. Section 302(a)(3)(i) because: (i) Kingston, while outside of New York, submitted the Product Listing to Amazon, which resulted in Bank's purchase, in New York, of a Flash Drive and therefore caused Bank's harm to occur in New York; and (ii) Kingston derives substantial revenue from goods that are used in New York.

8. This Court has personal jurisdiction over Kingston under N.Y. C.P.L.R. Section 302(a)(3)(ii) because: (i) Kingston, while outside of New York, submitted the Product Listing to Amazon, which resulted in Bank's purchase, in New York, of a Flash Drive and therefore caused Bank's harm to occur in New York; (ii) Kingston expected, or should reasonably have expected, the Product Listing to have consequences in New York; and (iii) Kingston derives substantial revenue from interstate commerce.

FACTS

9. At all relevant times, Kingston has sold the Flash Drives through Amazon.

10. On May 5, 2026, Bank accessed the Product Listing and thereupon purchased a Flash Drive.

11. The Product Listing contained, as its title, the name of the Flash Drives, one of which would initially appear in the Product Listing and each other of which would replace the initial name upon a person's clicking of a box that contained the following: "[X]GB," the "X" being 128, 256, or 512, and "GB" meaning a gigabyte of one billion bytes; and the price.

12. In the Product Listing, a number followed by "GB," *i.e.*, "128 GB," "256 GB," or "512 GB," appeared next to the term "Memory Storage Capacity" (these items, collectively with the corresponding items described in the preceding paragraph, are hereinafter referred to as the "Capacity Representations" or the "Represented Capacities").

13. The term "GB," as used in the Product Listing, means a gigabyte, *i.e.*, one billion bytes.

14. The Capacity Representations referred to the storage capacity of the Flash Drives.

15. Based upon the Capacity Representations, a significant portion of the purchasers of the Flash Drives reasonably believed that they would be able to store the applicable Represented Capacity of data on the Flash Drives (these purchasers are hereinafter referred to as the "Reasonable Belief Purchasers"); that is, these purchasers believed that the Flash Drives had a user storage capacity ("User Storage Capacity") of the applicable Represented Capacity.

16. The actual User Storage Capacities of the Flash Drives are materially less than the Represented Capacities (the "Discrepancies").

17. The Discrepancies are caused by "over-provisioning," which is the sealing off, or reserving, of a portion of the Flash Drives' storage capacity for various functions of the Flash Drives.

18. Kingston intended that the purchasers of the Flash Drives would believe that the User Storage Capacity was the applicable Represented Capacity.

19. Kingston believed that a significant portion of the purchasers of the Flash Drives

would be Reasonable Belief Purchasers.

20. Kingston believed that the Reasonable Belief Purchasers would rely upon their belief regarding the User Storage Capacity in deciding whether to purchase a Flash Drive.

21. Kingston intended that the Reasonable Belief Purchasers would rely upon their belief regarding the User Storage Capacity in deciding whether to purchase a Flash Drive.

22. Kingston believed that the Reasonable Belief Purchasers would, based upon their belief regarding the User Storage Capacity, be more likely to purchase a Flash Drive than they would have been if they had known of the actual User Storage Capacity.

23. Kingston intended that the Reasonable Belief Purchasers would, based upon their belief regarding the User Storage Capacity, be more likely to purchase a Flash Drive than they would have been if they had known of the actual User Storage Capacity.

24. The Product Listing contained the following: "Useable capacity less due to formatting and other functions. kingston.com/flashguide." (the "Disclaimer").

25. The Reasonable Belief Purchasers did not find that the Capacity Representations were ambiguous and therefore did not believe that they should search the Product Listing if they wished to know whether they would be able to store the applicable Represented Capacity of data on the Flash Drives.

26. The Disclaimer was insufficiently conspicuous in general, in view of its importance, and in view of the conspicuousness of the Capacity Representations.

27. The Reasonable Belief Purchasers were materially misled by the Capacity Representations.

28. If the Product Listing had adequately represented the User Storage Capacities of the Flash Drives, the price of the Flash Drives would have been less than what it actually was, and, therefore, the Class Members would have paid that lower amount.

CLASS ALLEGATIONS

29. Bank brings this action individually, and intends to maintain this action, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), on behalf of all other persons who, during the statute-of-limitations period governing their respective claims asserted herein, purchased a Flash Drive through Amazon.

30. There are thousands of persons who are similarly situated to Bank and would therefore be Class Members.

31. Excluded from the Class are the directors, officers, and employees of Kingston or of their subsidiaries and affiliates.

32. Bank's individual claims are, factually and legally, typical of the claims of the other Class Members.

33. Bank would fairly and adequately protect the interests of the other Class Members. Bank has no interests that are antagonistic to, or in conflict with, the other Class Members. Indeed, Bank's interests are, for purposes of this litigation, coincident with the interests of the other Class Members.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the Class is so numerous that joinder of all Class Members is impracticable, and because the damages suffered by most of the individual Class Members are too small to render prosecution of the claims asserted herein economically feasible on an individual basis, the expense and burden of individual litigation make it impractical for Class Members to adequately address the wrongs complained of herein. Bank knows of no impediments to the effective management of this action as a class action.

35. Common questions of law and fact predominate over questions that affect only individual Class Members. Among those questions are:

(i) whether the Capacity Representations accurately represented the User Storage Capacities of the Flash Drives;

(ii) whether a significant portion of the Class reasonably believed that the User Storage Capacities of the Flash Drives were the applicable Represented Capacities of the Flash Drives;

(iii) whether the differences between the Represented Capacities and the actual User Storage Capacities of the Flash Drives are material;

(iv) whether Kingston intended that the Class Members would believe that the Represented Capacities of the Flash Drives were the User Storage Capacities of the Flash Drives;

(v) whether Kingston believed that a significant portion of the purchasers of the Flash Drives would be Reasonable Belief Purchasers;

(vi) whether Kingston believed that the Reasonable Belief Purchasers would rely upon their belief regarding the User Storage Capacity in deciding whether to purchase a Flash Drive;

(vii) whether Kingston intended that the Reasonable Belief Purchasers would rely upon their belief regarding the User Storage Capacity in deciding whether to purchase a Flash Drive;

(viii) whether Kingston believed that the Reasonable Belief Purchasers would, based upon their belief regarding the User Storage Capacity, be more likely to purchase a Flash Drive than they would have been if they had known of the actual User Storage Capacity;

(ix) whether Kingston intended that the Reasonable Belief Purchasers would, based upon their belief regarding the User Storage Capacity, be more likely to purchase a Flash Drive than they would have been if they had known of the actual User Storage Capacity; and

(x) whether, if the Product Listing had adequately represented the User Storage Capacity, the price of the Flash Drives would have been less than what it actually was.

CAUSES OF ACTION

36. With respect to each of the causes of action asserted below, Bank repeats and re-alleges, and incorporates herein, each and every allegation contained in paragraphs "1" through "35" inclusive of this Complaint as if fully set forth herein.

ALABAMA DECEPTIVE TRADE PRACTICES ACT
(Ala. Code §§ 8-19-1 - 8-19-15)

37. Kingston violated the Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1 - 8-19-15, with respect to those Class Members who, during the one-year period preceding the commencement of the instant lawsuit (the "Action"), were in Alabama when they purchased a Flash Drive (the "Alabama Class Members"); specifically, Kingston violated Ala. Code § 8-19-5(27).

38. The Alabama Class Members are entitled to statutory damages of $100 pursuant to Ala. Code § 8-19-10(a)(1).

39. The Alabama Class Members are entitled to reasonable legal fees pursuant to Ala. Code § 8-19-10(a)(3).

ALASKA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION ACT
(Alaska Stat. §§ 45.50.471 - 45.50.561)

40. Kingston violated the Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§ 45.50.471 - 45.50.561, with respect to those Class Members who, during the two-year period preceding the commencement of this Action, were in Alaska when they purchased a Flash Drive (the "Alaska Class Members"); specifically, Kingston violated Alaska Stat. § 45.50.471(a) for the reasons stated in Alaska Stat. § 45.50.471(b)(11).

41. The Alaska Class Members are entitled to statutory damages of $500 pursuant to Alaska Stat. § 45.50.531(a).

42. The Alaska Class Members are entitled to reasonable legal fees pursuant to Alaska Stat. § 45.50.537(a).

DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT (D.C. Code §§ 28-3901 - 3913)

43. Kingston violated the District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901 - 3913, with respect to those Class Members who, during the three-year period preceding the commencement of this Action, were in District of Columbia when they purchased a Flash Drive (the "District of Columbia Class Members"); specifically, Kingston violated D.C. Code §§ 28-3904(e).

44. The District of Columbia Class Members are entitled to statutory damages of $1,500 pursuant to D.C. Code § 28-3905(k)(1)(A).

45. The District of Columbia Class Members are entitled to reasonable legal fees pursuant to D.C. Code § 28-3905(k)(1)(B).

HAWAII UNFAIR AND DECEPTIVE ACTS OR TRADE PRACTICES ACT (Haw. Rev. Stat. §§ 480-1 - 480-24)

46. Kingston violated Hawaii Unfair and Deceptive Acts or Trade Practices Act, Haw. Rev. Stat. §§ 480-1 - 480-24, with respect to those Class Members who, during the four-year period preceding the commencement of this Action, were in Hawaii when they purchased a Flash Drive (the "Hawaii Class Members"); specifically, Kingston violated Haw. Rev. Stat. § 480-2(a).

47. The Hawaii Class Members are entitled to statutory damages of $1,000 pursuant to Haw. Rev. Stat. § 480-13(a)(1).

48. The Hawaii Class Members are entitled to reasonable legal fees pursuant to Haw. Rev. Stat. § 480-13(a)(1).

MASSACHUSETTS CONSUMER PROTECTION ACT (Mass. Gen. Laws Ch. 93A, §§ 1-11)

49. Kingston violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93a, §§ 1-11, with respect to those Class Members who, during the four-year period preceding the

commencement of this Action, were in Massachusetts when they purchased a Flash Drive (the "Massachusetts Class Members"); specifically, Kingston violated Mass. Gen. Laws Ch. 93A, § 2(a).

50. The Massachusetts Class Members are entitled to statutory damages of $25 pursuant to Mass. Gen. Laws Ch. 93A, § 9(3), or, if the Court finds that Kingston's violation of Mass. Gen. Laws Ch. 93A, § 2(a) was willful or knowing, statutory damages of $50 to $75 pursuant to Mass. Gen. Laws Ch. 93A, § 9(3).

51. The Massachusetts Class Members are entitled to reasonable legal fees pursuant to Mass. Gen. Laws Ch. 93A, § 9(4).

NEW HAMPSHIRE CONSUMER PROTECTION ACT
(N.H. Rev. Stat. Ann. §§ 358-A:1 - 358-A:13)

52. Kingston violated the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. §§ 358-A:1 - 358-A:13, with respect to those Class Members who, during the three-year period preceding the commencement of this Action, were in New Hampshire when they purchased a Flash Drive (the "New Hampshire Class Members"); specifically, Kingston violated N.H. Rev. Stat. Ann. § 358-A:2.

53. The New Hampshire Class Members are entitled to statutory damages of $1,000 pursuant to N.H. Rev. Stat. Ann. § 358-A:10(I).

54. The New Hampshire Class Members are entitled to reasonable legal fees pursuant to N.H. Rev. Stat. Ann. § 358-A:10(I).

NEW MEXICO UNFAIR PRACTICES ACT
(N.M. Stat. Ann. §§ 57-12-1- 57-12-26)

55. Kingston violated the New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1- 57-12-26, with respect to those Class Members who, during the four-year period preceding the commencement of this Action, were in New Mexico when they purchased a Flash Drive (the "New Mexico Class Members"); specifically, Kingston violated N.M. Stat. Ann. § 57-12-3.

56. The New Mexico Class Members are entitled to statutory damages of $100 pursuant to N.M. Stat. Ann. § 57-12-10(B).

57. The New Mexico Class Members are entitled to reasonable legal fees pursuant to N.M. Stat. Ann. § 57-12-10(C).

NEW YORK CONSUMER PROTECTION FROM DECEPTIVE ACTS AND PRACTICES ACT (N.Y. Gen. Bus. Law §§ 349 - 350-f-1)

58. Kingston violated the New York Consumer Protection from Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349 - 350-f-1, with respect to those Class Members who, during the three-year period preceding the commencement of this Action, were in New York when they purchased a Flash Drive (the "New York Class Members"); specifically, Kingston violated N.Y. Gen. Bus. Law §§ 349(a) and 350.

59. The New York Class Members are entitled to statutory damages of $50 pursuant to N.Y. Gen. Bus. Law § 349(h) and statutory damages $500 pursuant to N.Y. Gen. Bus. Law § 350-e(3).

60. The New York Class Members are entitled to seek reasonable legal fees pursuant to N.Y. Gen. Bus. Law §§ 349(h) and 350-e(3).

OREGON UNLAWFUL TRADE PRACTICES ACT (Ore. Rev. Stat. §§ 646.605 - 646.700)

61. Kingston violated the Oregon Unlawful Trade Practices Act, Ore. Rev. Stat. §§ 646.605 - 646.700, with respect to those Class Members who, during the one-year period preceding the commencement of this Action, were in Oregon when they purchased a Flash Drive (the "Oregon Class Members"); specifically, Kingston violated Ore. Rev. Stat. § 646.608(1)(u).

62. The Oregon Class Members are entitled to statutory damages of $200 pursuant to Ore. Rev. Stat. § 646.638(1).

63. The Oregon Class Members are entitled to reasonable legal fees pursuant to Ore. Rev.

Stat. § 646.638(3).

RHODE ISLAND DECEPTIVE TRADE PRACTICES ACT
(R.I. Gen. Laws §§ 6-13.1-1 - 6-13.1-30)

64. Kingston violated the Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws §§ 6-13.1-1 - 6-13.1-30, with respect to those Class Members who, during the three-year period preceding the commencement of this Action, were in Rhode Island when they purchased a Flash Drive (the "Rhode Island Class Members"); specifically, Kingston violated R.I. Gen. Laws § 6-13.1-2.

65. The Rhode Island Class Members are entitled to statutory damages of $200 pursuant to R.I. Gen. Laws § 6-13.1-5(2)(a).

66. The Rhode Island Class Members are entitled to seek reasonable legal fees pursuant to R.I. Gen. Laws § 6-13.1-5.2(d).

UTAH CONSUMER SALES PRACTICES ACT
(Utah Code Ann. §§ 13-11-1 - 13-11-23)

67. Kingston violated the Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1 - 13-11-23, with respect to those Class Members who, during the two-year period preceding the commencement of this Action, were in Utah when they purchased a Flash Drive (the "Utah Class Members"); specifically, Kingston violated Utah Code Ann. §§ 13-11-4(1).

68. The Utah Class Members are entitled to statutory damages of $2,000 pursuant to Utah Code Ann. § 13-11-19(2).

69. The Utah Class Members are entitled to reasonable legal fees pursuant to Utah Code Ann. § 13-11-19(5)(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a judgment against Defendant:

(a) Awarding, to Plaintiff and the other Class Members, the relief available under the Class Members' respective causes of action set forth herein; and

(b) Awarding, to Plaintiff and the other Class Members, such other and further relief as the Court finds lawful and proper.

Dated: August 3, 2026

Respectfully submitted,

s/ *Todd C. Bank*]

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