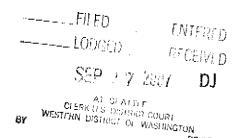
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07-CV-01443-CMP

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

BLUE NILE, INC., a Delaware corporation,

Plaintiff,

ν.

JAMES ALLEN DIAMONDS, INC., a Maryland corporation, and JAMESALLEN.COM LLC, a Maryland limited liability company,

Defendants.

607-1443 2

COMPLAINT

JURY DEMAND

I. INTRODUCTION

- 1. This action arises from James Allen Diamonds, Inc. and James Allen.com LLC's (collectively, "James Allen") knowing, willful and intentional copying of protected elements of Blue Nile, Inc.'s website.
- 2. Founded in 1999, Blue Nile, Inc. ("Blue Nile") has rapidly grown into the largest and most successful online retailer of certified diamonds and fine jewelry.
 - 3. The Blue Nile websites are the heart of its business.
- 4. Building on the premise that, with the right information and tools, educated buyers will purchase higher-end jewelry on the Internet, Blue Nile developed and continues to

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ORIGINAL

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refine its retail diamond and fine jewelry websites to do just that. Blue Nile's websites are renowned for their industry-leading customization and innovative tools to help customers visualize final customized products.

Through its websites, Blue Nile has not only sold goods, Blue Nile has built the "Blue Nile" brand. Today, "Blue Nile" is synonymous with high-quality diamonds and fine jewelry and with high-quality online user interface, information and services that provide a nearperfect customer experience.

II. **PARTIES**

- 6. Plaintiff Blue Nile is a Delaware corporation with its principal place of business at 705 Fifth Avenue South, Suite 900, Seattle, Washington 98104. Blue Nile owns and operates an online diamond and fine jewelry retail sales business through the websites <u>www.bluenile.com</u>, www.bluenile.ca, and www.bluenile.co.uk.
- 7. Defendant James Allen Diamonds, Inc. is a Maryland corporation with its principal place of business in Maryland. Defendant James Allen.com LLC is a Maryland limited liability company with its principal place of business in Maryland. James Allen operates an online retail jewelry business under the domain name JamesAllen.com. The JamesAllen.com website is distributed and displayed in interstate commerce and within this judicial district. The JamesAllen.com business competes directly with Blue Nile in online retail sales of diamonds and jewelry.

IH. JURISDICTION AND VENUE

- 8. The Court has subject-matter jurisdiction over Blue Nile's claims pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright and trademark).
- 9. The Court has supplemental jurisdiction over Blue Nile's state law claims pursuant to 28 U.S.C. § 1367,

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10. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to Blue Nile's claims occurred in this district and because James Allen is subject to personal jurisdiction in this district.

IV. FACTS AND BACKGROUND

THE BLUE NILE COMPANY AND BUSINESS Α.

- 11. Blue Nile has, since 1999, provided diamond and fine jewelry retail services over the Internet. It is today the market leader in the online diamond and fine jewelry industry.
- 12. Blue Nile provides its services and products through the websites www.bluenile.com (serving the United States), www.bluenile.ca (serving Canadian customers), and <u>www.bluenile.co.uk</u> (serving the United Kingdom). Blue Nile's websites are available globally, and it sells diamonds and fine jewelry via its websites in interstate commerce throughout the United States and elsewhere.
- 13. As Internet retail experts have commented, Blue Nile is "admittedly obsessed" with the concept of a perfect online order experience.
- 14. Blue Nile provides extraordinary detail in every aspect of its website and customer experience, from the photographs that display diamonds on Blue Nile's websites to the depth of data accessible to customers to the navigation and selection tools available to customers on the websites.
- 15. Through this investment and diligent attention to detail, Blue Nile has proven that luxury items can be sold online. In an online jewelry market where the average purchase is about \$300, Blue Nile customers spend about \$1,536 on each purchase. In addition, where the industry average sale price for an engagement ring is about \$2,800, a typical engagement ring order at Blue Nile is about \$5,500.
- 16. With no "brick and mortar" stores, Blue Nile's storefronts and sales clerks are the Blue Nile websites. The websites attract the customers, the websites answer questions, and the websites sell the diamonds and jewelry.

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THE BLUE NILE WEBSITES B.

- As an Internet-only company in the high-end jewelry market, one of Blue Nile's 17. highest priorities is the customer interface of its websites, which is critical to its success. A highquality website gives online customers a heightened level of confidence in products that they consider purchasing as well as confidence that the retailer is really an expert in the field.
- 18. To attract and build the confidence of customers, Blue Nile's websites explain the complexities of diamond and fine jewelry selection through carefully crafted text, through sharp imagery, and in clear and creative organization and compilations on its websites that are easy for both novice and sophisticated buyers to navigate and understand.
- 19. One of the most distinctive creative elements of Blue Nile's websites is the "diamond search" webpage. Blue Nile created a webpage that easily, comprehensively and distinctly compiles and displays to customers and potential customers the key factors in diamond selection (e.g., price, cut, color, clarity, carat). Blue Nile's unique compilation and expression of diamond selection criteria includes its creation of vertical visual scales for each criterion. These vertical scales or "sliders" are a visual expression of parameters that diamond-buying customers may consider in evaluating potential diamond purchases. Blue Nile's diamond search page also includes unique display boxes that show further details of diamonds (e.g., depth, symmetry, culet, fluorescence, measurements) identified by Blue Nile's diamond search program pursuant to parameters set by the customer. Blue Nile publicly launched this unique and distinctive expression of its diamond search program in a beta release on February 23, 2006, and in full release on March 23, 2006.
- 20. Since its release and continuing through today, Blue Nile's diamond search webpage has been distinguished by its unique style and overall appearance, including the search page purchase factor columns featuring vertical sliders and the layout of the purchase factor columns, search result list, and diamond information box. Blue Nile's marketing has enhanced the trade identity significance of these and other distinctive visual features. The total visual

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image of Blue Nile's diamond search webpage represents substantial and valuable goodwill and serves as a badge of the company's promise to provide complete and detailed information about the quality and characteristics of diamonds in a format that is easy to navigate and understand.

PROTECTION OF BLUE NILE'S COPYRIGHTS

- As an Internet-only enterprise, intellectual property is one of Blue Nile's most important and most valued assets. Consequently, Blue Nile invests significant resources into its intellectual property and carefully protects its intellectual property rights.
- For example, Blue Nile owns all right, title and interest in the creative 22. compilations and other expressive elements of its website. Its websites, including diamond search pages, display copyright notices. Blue Nile has obtained numerous copyright registrations relating to its website, including related to the diamond search webpage compilation and expression of its diamond search program. These registrations include:

| Reg. No. | Reg. Date | Title |
|---|---------------|--|
| TX 6-349-238 June 21, 2006 Blue Nile Diam | | Blue Nile Diamond Search (Public Beta Version) - |
| | | Sliders Section |
| TX 6-349-239 | June 21, 2006 | Blue Nile Diamond Search with Vertical Sliders |
| | | (Public Beta Version) |

True and correct copies of these registration certificates are attached as Exhibit A, pp. 13-14. Screen shots of the registered diamond search feature displayed on BlueNile.com are attached as Exhibit B, pp. 15-16.

JAMES ALLEN IS WILLFULLY AND UNLAWFULLY COPYING BLUE D. NILE'S PROTECTED DIAMOND SEARCH FEATURE

23. James Allen has and is willfully and unlawfully copying Blue Nile's protected diamond search feature.

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24. James Allen copies this Blue Nile copyright-registered diamond search feature on the James Allen.com website to ease the searchability of its diamonds for its viewers. Screen shots of this diamond search feature on James Allen.com are attached as Exhibit C, pp. 17-20.

E. PROTECTION OF BLUE NILE'S TRADEMARKS

- 25. Blue Nile also carefully protects its trademarks.
- 26. For example, Blue Nile owns common law rights in the BUILD YOUR OWN RING mark.
- 27. Blue Nile has applied for a federal trademark registration for the BUILD YOUR OWN RING mark. When the registration issues, Blue Nile will amend this complaint to assert claims based on the registered mark.
- 28. BUILD YOUR OWN RING has been used in commerce by Blue Nile since at least as early as October 1999. Blue Nile's use has been substantially continuous and exclusive. A true and correct copy of the BUILD YOUR OWN RING mark being used on BlueNile.com to signify Blue Nile's interactive ring creation service is attached as Exhibit D, p. 21.
- 29. Blue Nile has expended considerable advertising and marketing resources to build strong name recognition in the BUILD YOUR OWN RING mark.
- 30. Blue Nile has developed substantial goodwill in the BUILD YOUR OWN RING mark.
- 31. From 2003 through 2006, over 12 million U.S. customers or potential customers used Blue Nile services bearing the BUILD YOUR OWN RING mark, as measured by unique website visitors. From 1999 through 2006, Blue Nile's U.S. sales under the BUILD YOUR OWN RING mark have resulted in more than \$639 million in revenue. In the same period, Blue Nile's sales outside the United States under the BUILD YOUR OWN RING mark have resulted in more than \$7 million in revenue. In fact, the majority of revenue for the Blue Nile business is generated by the use of services offered by Blue Nile under the BUILD YOUR OWN RING mark.

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JAMES ALLEN IS UNLAWFULLY USING THE "BUILD YOUR OWN RING" F. MARK

- James Allen is unlawfully using the BUILD YOUR OWN RING mark in 32. commerce. A true and correct copy of the BUILD YOUR OWN RING mark being used on JamesAllen.com is attached as Exhibit E, p. 22.
- 33. James Allen is using the BUILD YOUR OWN RING mark to (1) falsely suggest that the interactive ring creation service on the James Allen.com website is or originates from the renowned Blue Nile interactive ring creation service; (2) falsely suggest an association, affiliation or connection between Blue Nile and the JamesAllen.com website or James Allen; or (3) falsely represent that James Allen.com is authorized to use, copy and/or otherwise replicate Blue Nile's original interactive ring creation service.
- James Allen's use of the BUILD YOUR OWN RING mark causes confusion and 34. mistake and is likely to deceive customers and potential customers regarding the origin, affiliation, association, connection and/or endorsement of the interactive ring creation service, the James Allen.com website, and/or James Allen with or by Blue Nile.
- At no time has Blue Nile authorized or consented to James Allen's use of the 35. BUILD YOUR OWN RING mark or any other Blue Nile intellectual property.
- 36. At no time has Blue Nile had any association, affiliation or connection with, or endorsed, the James Allen.com website or James Allen.
- 37. In using the BUILD YOUR OWN RING mark, James Allen has willfully and deliberately sought to profit from Blue Nile's pre-established goodwill and reputation.

V. CLAIMS

FIRST CAUSE OF ACTION

COPYRIGHT INFRINGEMENT, 17 U.S.C. § 101 et seq.

38. Blue Nile realleges and incorporates by reference the allegations in paragraphs 1 through 24 above as if fully set forth herein.

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- Blue Nile has registered copyrights in its unique and original diamond search 39. feature.
- 40. James Allen had access to Blue Nile's websites, including the diamond search feature on Blue Nile's websites.
- James Allen copied and/or created derivative works from the diamond search 41. feature on Blue Nile's websites.
- 42. The diamond search feature on the JamesAllen.com website is substantially similar to Blue Nile's original copyright-protected diamond search feature.
- 43. James Allen is not licensed or authorized by Blue Nile to use Blue Nile's copyrighted works.
- 44 At all times relevant, James Allen obtained direct financial benefit from the infringement and had the right and ability to control the infringing conduct, and/or intentionally induced, encouraged, caused or materially contributed to the infringement.
- 45. The foregoing acts of James Allen constitute direct infringement, vicarious infringement and/or contributory infringement of Blue Nile's exclusive rights in its copyrighted works under 17 U.S.C. § 106.
- 46. Upon information and belief, James Allen's actions were intentional, willful, wanton and performed in disregard of the rights of Blue Nile.
- 47. Blue Nile has been and will continue to be damaged, and James Allen has been unjustly enriched, by James Allen's unlawful infringement of Blue Nile's copyrighted works in an amount to be proven at trial.

SECOND CAUSE OF ACTION

TRADEMARK INFRINGEMENT, 15 U.S.C. § 1125(a)

48. Blue Nile realleges and incorporates by reference the allegations in paragraphs 1-17 and 25-37 above as if fully set forth herein.

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- 49. Blue Nile owns common law rights in the BUILD YOUR OWN RING mark that date back to 1999.
- At all times relevant, James Allen exercised ownership or control over the 50. James Allen.com website, and knowingly cooperated in and/or induced, encouraged, enabled or aided the infringement of Blue Nile's trademark rights on the James Allen.com website.
- 51. James Alien's use of the BUILD YOUR OWN RING mark in interstate commerce is likely to cause consumer confusion or to cause mistake or to deceive as to the origin of the interactive jewelry creation service on JamesAllen.com and as to JamesAllen.com's affiliation, connection, or association with and/or endorsement or approval by Blue Nile.
- 52. The foregoing acts of James Allen constitute false designation of association, affiliation, connection, endorsement and/or approval under 15 U.S.C. § 1125(a), and/or vicarious or contributory infringement of Blue Nile's rights under 15 U.S.C. § 1125(a).
- Upon information and belief, James Allen has engaged in such false designation 53. of origin, association, affiliation, connection, endorsement and/or approval knowingly, willfully, deliberately, and in conscious disregard of Blue Nile's rights, making this an exceptional case within the meaning of 15 U.S.C. § 1117.
- 54. Blue Nile has been damaged and will continue to be damaged, and James Allen has been unjustly enriched, by such unlawful conduct in an amount to be proven at trial.
- 55. In addition, James Allen's conduct described herein has caused and, if not enjoined will continue to cause, irreparable damage to Blue Nile's rights in its marks, and to the business, positive reputation and goodwill of Blue Nile, which cannot be adequately compensated solely by monetary damages. Blue Nile therefore has no adequate remedy at law and seeks permanent injunctive relief pursuant to 15 U.S.C. § 1116.

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THIRD CAUSE OF ACTION

TRADEMARK INFRINGEMENT UNDER WASHINGTON LAW

- 56. Blue Nile realleges and incorporates by reference the allegations in paragraphs 1-17 and 25-37 above as if fully set forth herein.
- 57. Blue Nile owns common law rights in the BUILD YOUR OWN RING mark that date back to 1999.
- 58. The acts and conduct of James Allen as alleged in these paragraphs constitute trademark infringement under the common law of Washington.
- 59. As a direct and proximate result of James Allen's conduct, Blue Nile has been damaged in an exact amount to be proven at trial.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION

- 60. Blue Nile realleges and incorporates by reference the allegations in paragraphs 1-17 and 25-37 above as if fully set forth herein.
- 61. James Allen's activities as alleged in these paragraphs constitute unfair competition in violation of the common law of Washington.
- 62. Blue Nile has been damaged and will continue to be damaged by James Allen's unlawful conduct in an amount to be proven at trial.

VI. JURY DEMAND

63. Pursuant to Federal Rule of Civil Procedure 38(b), Blue Nile demands a trial by jury as to all issues so triable in this action.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff Blue Nile, Inc. prays for the following relief:

1. A preliminary injunction and permanent injunction enjoining and restraining James Allen, its officers, agents, servants, employees and all persons in active concert or participation with them, during the pendency of this action and thereafter perpetually from:

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- Copying, distributing, displaying, creating derivative works or otherwise a. using protected elements of Blue Nile's copyrighted works, including, but not limited to, Blue Nile's diamond search feature;
- b. Using the BUILD YOUR OWN RING mark or any other marks or symbols that are confusingly similar to marks owned by Blue Nile in connection with any goods and services marketed, advertised or sold in the diamond, jewelry and watches marketplace or with respect to computerized online services in the field of diamonds, jewelry and watches, including, but not limited to, on any website owned, operated or controlled by James Allen; and
 - Unfairly competing with Blue Nile in any manner. Ċ.
- 2. An award of damages sustained by Blue Nile pursuant to 15 U.S.C. § 1117, 17 U.S.C. § 504(b) and as otherwise permitted by law;
- An accounting and award of profits and other unjust enrichment derived by James Allen from its unlawful conduct pursuant to 15 U.S.C. § 1117, 17 U.S.C. § 504(b) and as otherwise permitted by law;
- At Blue Nile's election, an award of statutory damages pursuant to 17 U.S.C. § 504(c) and as otherwise permitted by law;
- 5. An award of increased or exemplary damages pursuant to 15 U.S.C. § 1117 including, but not limited to, treble damages or treble profits, whichever is greater, and as otherwise permitted by law;
- 6. An award of Blue Nile's costs of suit and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117, 17 U.S.C. § 505 and as otherwise permitted by law;
 - 7. An award of prejudgment and post-judgment interest; and

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8. For such further and other relief as the Court deems just and proper.

DATED: September 14, 2007

PERKINS COIE LLP

Bv:

Elizabeth L. McDougall, WSBA No. 2702@ Rebecca S. Engrav, WSBA No. 33275

Angela R. Martinez, WSBA No. 38276

1201 Third Avenue, Suite 4800 Seattle, WA 98101-3099 Telephone: 206.359.8000 Facsimile: 206.359.9000

Email: EMcDougall@perkinscoie.com REngrav@perkinscoie.com AMartinez@perkinscoie.com

Attorneys for Plaintiff Blue Nile, Inc.

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This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code. attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

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Register of Copyrights, United States of America



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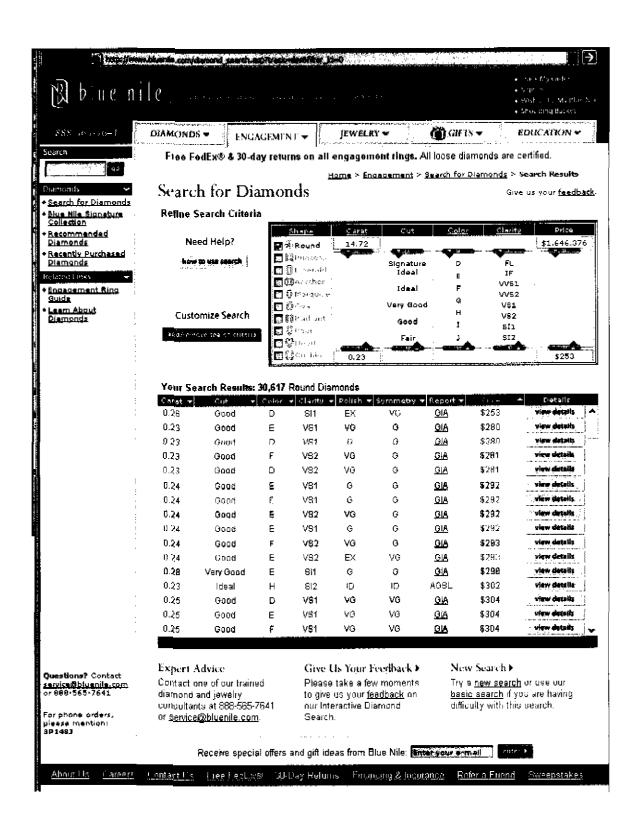
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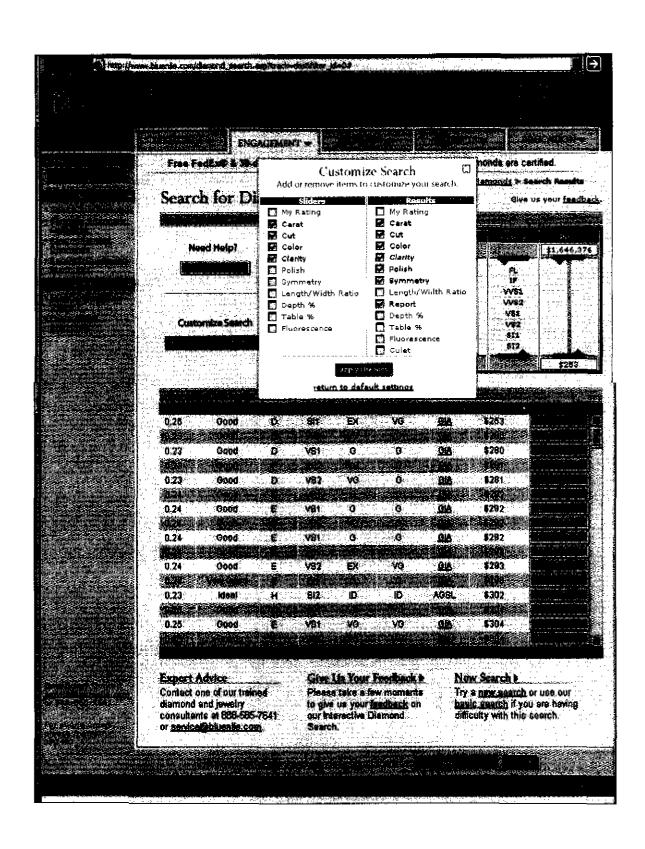
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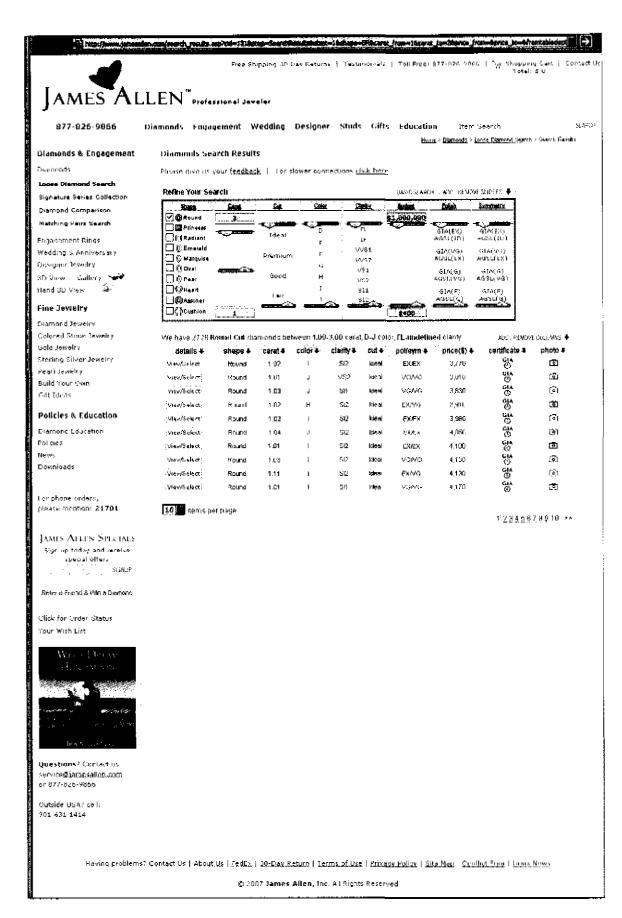
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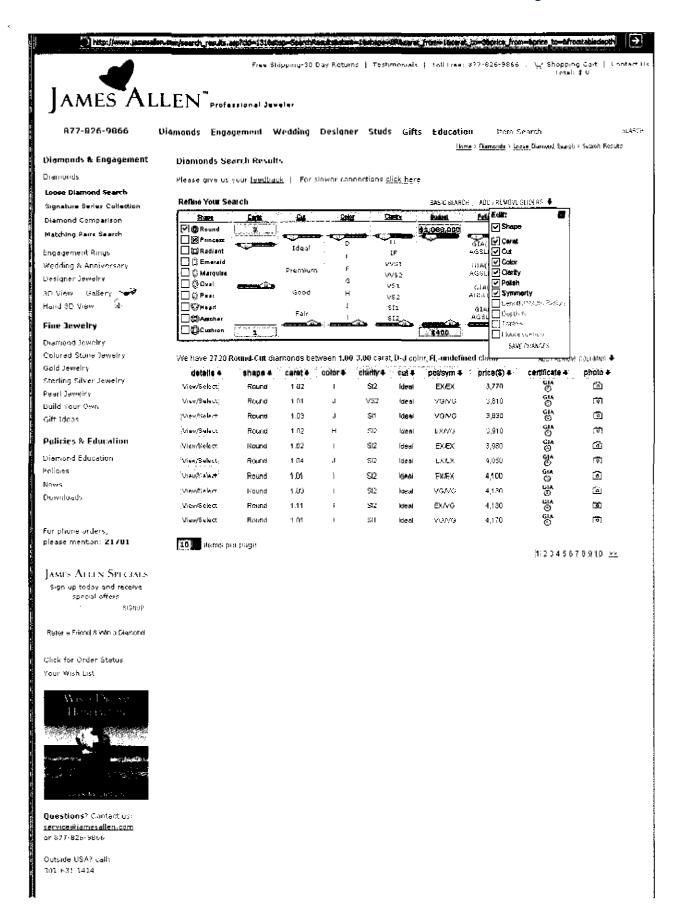


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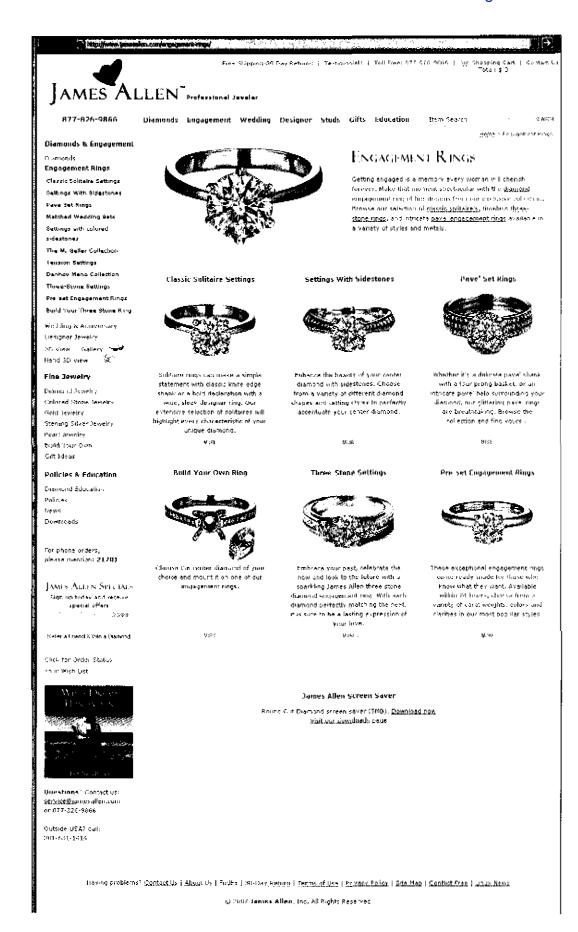


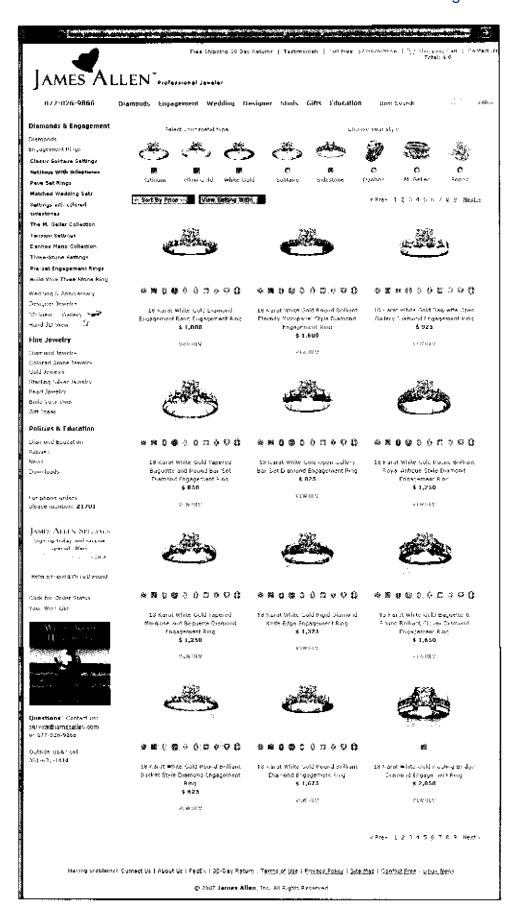


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