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7 Attorneys for Plaintiff  
 8 WILLIAMS-SONOMA, INC.

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 WILLIAMS-SONOMA, INC., a California  
 13 corporation,

14 Plaintiff,

15 v.

16 ONLINE MARKETING SERVICES, LTD., et  
 17 al.,

18 Defendants.

Case No. C 06-6572 JSW (MEJ)

**DECLARATION OF TIMOTHY R.  
 CAHN IN SUPPORT OF PLAINTIFF  
 WILLIAMS-SONOMA, INC.'S  
 SUBMISSION FOR AN AWARD OF  
 ATTORNEY'S FEE AND COSTS  
 PURSUANT TO COURT ORDER  
 DATED MARCH 4, 2008**

Hon. Jeffrey S. White

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 23  
 24 **DOCUMENT SUBMITTED UNDER SEAL**  
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1 I, Timothy R. Cahn, declare as follows:

2 1. I am licensed to practice law in the State of California and am an attorney at the law  
3 firm of Townsend and Townsend and Crew LLP ("Townsend"), counsel of record for plaintiff  
4 Williams-Sonoma, Inc. ("WSI" or "Plaintiff") in this matter. The following facts are within my  
5 personal knowledge unless otherwise indicated and, if called as a witness by the Court, I would be  
6 competent to testify to the matters set forth below.

7 2. I prepare this declaration pursuant to the Court's March 4, 2008 Order Adopting In Part  
8 and Modifying In Part Report And Recommendation On Plaintiff's Motion For Default Judgment And  
9 Entry of Injunction ("March 4, 2008 Order") against Defaulting Defendants Online Marketing  
10 Services, Ltd., Unimaster, Ltd., Andrej Korchev, YetisCash, Ales Lexico, Vladimir Techl, Sweethelda  
11 Ballesteros, Stein Tvedt and Eddie Morgan. The Court's order held that "WSI shall recover as  
12 damages from the Defaulting Defendants, jointly and severally, its reasonable attorneys' fees and  
13 costs" and, hence, ordered WSI to "submit a supplemental submission detailing the amount of  
14 attorneys' fees and costs they have expended by no later than March 21, 2008." (March 4, 2008 Order,  
15 Dkt. No. 70, at 5.) I submit this declaration to substantiate the amount of WSI's attorneys' fees and  
16 costs incurred to prosecute this action against the Defaulting Defendants.

17 3. As the Townsend litigation partner with day-to-day responsibility for this matter from  
18 its inception, I am thoroughly familiar with this litigation and the legal services provided by  
19 Townsend's attorneys and legal assistants. I have been extensively involved in this matter including  
20 the prefiling investigation of these claims, the preparation of the Complaint and First Amended  
21 Complaint, preparation of the Application for Temporary Restraining Order and Order to Show Cause  
22 Re Preliminary Injunction, preparation of the Motion to Authorize Electronic Mail Service,  
23 negotiations with defendants, investigations conducted regarding the defendants' identities and  
24 infringing uses, preparation of case management statements, preparation of the Application for Default  
25 Judgment, and hearing before Magistrate Judge James.

26 4. In preparing to make this declaration, I directed an associate (Megan M. Chung) and  
27 legal assistant (Claude N. Mendelson) to thoroughly review and categorize all entries in the billing and  
28 cost records in this matter and summarize information in compliance with Civil L.R. 54-6(b).

1 Thereafter, I reviewed their categories and summaries.

2 5. In this declaration below, I summarize the relevant billing entries and attorney and  
3 legal assistant time spent in connection with the identified litigation activities to substantiate WSI's  
4 reasonable fees and costs. The fees and costs sought by WSI include only those fees and costs  
5 actually charged to WSI by Townsend. If the Court desires, Townsend can make the underlying  
6 billing records available for the Court's *in camera* inspection.

7 6. As substantiated herein, the total costs and fees expended in prosecuting this action  
8 against Defaulting Defendants are approximately \$150,000. We have made a good faith effort to  
9 eliminate from the total calculation any fees and costs related only to prosecution of the action against  
10 the other (settling) defendants, such as fees incurred in connection with settlement negotiations with  
11 such defendants. Despite having spent approximately \$150,000, WSI seeks an award of only  
12 \$100,000, to eliminate any doubt that the fee award is reasonable and that any fees or costs unique to  
13 the other defendants have been excluded.

#### 14 ***Overview of the Litigation***

15 7. This litigation has continued for approximately 16 months. WSI filed the original  
16 Complaint on October 20, 2006. WSI and its counsel gathered substantial evidence establishing the  
17 allegations in the Complaint. Counsel examined and analyzed the evidence showing defendants' use  
18 of WSI's famous POTTERY BARN family of marks to promote explicit and graphic pornographic  
19 adult websites.

20 8. WSI contacted the defendants and demanded that they cease from unlawfully using  
21 WSI's trademarks. All but two defendants ignored WSI's request. Instead, defendants continued to  
22 use WSI's marks and there was proliferation of additional web pages and websites that  
23 misappropriated WSI's marks. For these reasons and concerns that defendants would transfer their  
24 websites or domain names in attempt to escape liability, WSI prepared and filed an Application for a  
25 Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction on November 3,  
26 2006.

27 9. Meanwhile, WSI obtained information indicating that other parties were involved in  
28 defendants' infringing use of WSI's marks on various porn websites. Further investigations by WSI

1 and its counsel led to the discovery of the identity of six additional entities. Consequently, on  
2 January 5, 2007, WSI filed a First Amended Complaint, as required under Federal Rule of Civil  
3 Procedure 15(a), to add six more defendants.

4 10. For both the original and amended complaints, WSI attempted to serve defendants  
5 several times and some as many as five times. However, in many cases and especially for the foreign  
6 defendants, the physical addresses provided by the defendants to the domain name registrars were  
7 wrong or fictitious. WSI was required to conduct additional investigation to discover accurate  
8 physical addresses for these defendants. Even when accurate physical addresses were discovered,  
9 defendants refused to accept delivery of the complaints with no explanation. In contrast to the  
10 incorrect physical addresses, the electronic mail addresses provided in the WHOIS database proved to  
11 be accurate and WSI succeeded in reaching the defendants via these electronic addresses. Because  
12 defendants continued to evade service upon their physical addresses, WSI prepared and filed a motion  
13 to authorize electronic mail service under Federal Rule of Civil Procedure 4(f)(3) on March 16, 2007.  
14 At the Court's request, WSI prepared and filed supplemental briefing on the service laws of nine (9)  
15 foreign countries. After the Court granted WSI's motion, WSI properly served all of the defendants  
16 with the original and amended complaints.

17 11. From the onset of this case through May 2007, counsel engaged in extensive  
18 negotiations and written communications with all defendants, but most notably Virtual World  
19 Holdings AVV, Final Whistle, Inc., Moniker Privacy Services, Inc., FriendFinder Inc., Johan  
20 Salmond, Dorothy Simpson, Domain Name Systems, Inc., Ford Jeske, and Umesh Chandra Rastogi  
21 (collectively, "Settling Defendants"). The primary objectives of these ongoing communications were  
22 (1) to discover information about the scope and extent of defendants' infringing activities and the  
23 identities of their collaborators; and (2) to explore settlement possibilities. After these extensive  
24 discussions, WSI was able to settle with and voluntarily dismiss the nine Settling Defendants.  
25 However, nine other defendants refused to settle, *i.e.*, the Defaulting Defendants. We have deducted  
26 the fees incurred in connection with negotiating and settling with these defendants from WSI's  
27 proposed fee award.

28 12. Due to the complexities associated with numerous defendants, many of them being

1 foreign, WSI had to submit two case management statements to update the Court on the status of the  
2 case. In July and September 2007, WSI prepared and filed case management statements. I also  
3 attended a case management conference.

4 13. Throughout this litigation, WSI engaged in extensive investigations to determine and  
5 gather evidence of defendants' infringing activities. WSI had to investigate to determine the correct  
6 identities of the defendants, who hid behind their websites and fictitious names in registering the  
7 domain names under a privacy filter. WSI had to investigate the scope of willful infringing use by  
8 defendants. Because some of the original defendants transferred domain names after the  
9 commencement of this action, WSI had to continually investigate to determine the owners of the  
10 infringing web portals and their infringing use.

11 14. After WSI conducted these investigations to confirm whether Defaulting Defendants  
12 continued to willfully misappropriate WSI's marks, WSI requested an entry of default on July 6, 2007.  
13 After the Clerk entered default, WSI prepared and filed its motion for default judgment requesting a  
14 permanent injunction against the Defaulting Defendants. After the motion was referred to Magistrate  
15 Judge James, WSI prepared further submissions pursuant to her standing order and attended a hearing  
16 before Magistrate Judge James. Following the recommendation and report, WSI prepared further  
17 briefing of issues concerning personal jurisdiction upon the Court's request.

#### 18 ***Lawyer and Paralegal Qualifications and Hourly Rates***

19 15. The Townsend attorneys who actively litigated this matter for WSI are Timothy R.  
20 Cahn, Gregory S. Gilchrist, Tali L. Alban and Megan M. Chung. In addition, a legal assistant, Sana Q.  
21 Hamelin, assisted throughout the litigation.

22 16. I, Timothy Cahn, am a litigation partner and have been litigating commercial and  
23 intellectual property cases since 1991. I graduated from Harvard Law School in 1990. I have litigated  
24 scores of trademark infringement and counterfeiting cases, often as the lead attorney. For example, I  
25 was primarily responsible for successfully litigating the following matters that resulted in favorable  
26 published decisions: *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982 (11th Cir. 1995);  
27 *Levi Strauss & Co. v. Shilon*, 121 F.3d 1309 (9th Cir. 1997); *Levi Strauss & Co. v. GTFM, Inc.*, 196 F.  
28 Supp. 2d 91 (N.D. Cal. 2002); and *Emery v. Visa Int'l Service Assoc.*, 95 Cal. App. 4th 952 (2002) (for

1 Visa).

2 17. In my role as day-to-day manager, I was responsible for all aspects of preparing this  
3 case, including formulating strategy, drafting and editing pleadings, drafting and editing motions,  
4 propounding and responding to discovery requests, developing evidence, conducting legal research,  
5 negotiating with defendants, and also generally overseeing the work of Ms. Alban and Ms. Chung.  
6 My hourly billing rates during the course of this litigation have been [REDACTED] (2006) and [REDACTED]  
7 (2007-2008).

8 18. Gregory S. Gilchrist is a litigation partner and has been litigating commercial and  
9 intellectual property cases since 1983. He graduated from University of Michigan Law School in  
10 1983. His practice focuses on brand protection, and thus has litigated many trademark cases, often as  
11 the lead attorney.

12 19. Mr. Gilchrist was directly involved in formulating strategy, investigating defendants,  
13 drafting the complaint and amended complaint, and negotiating with defendants. His hourly billing  
14 rates during the course of this litigation have been [REDACTED] (2006) and [REDACTED] (2007-2008).

15 20. Tali L. Alban is an associate in Townsend's San Francisco office. Ms. Alban graduated  
16 from the American University, Washington College of Law in 2004. Ms. Alban's practice has focused  
17 on intellectual property litigation, including patent and trademark litigation in the federal courts and  
18 before the U.S. International Trade Commission.

19 21. Ms. Alban was directly involved in the initial stages of this litigation, including  
20 formulating strategy, drafting and editing pleadings, drafting and editing motions, developing  
21 evidence, and conducting legal research. Ms. Alban's hourly billing rate was [REDACTED] (2007).

22 22. Megan M. Chung is an associate in Townsend's San Francisco office. Ms. Chung  
23 graduated from University of California, Davis, King Hall School of Law in 2003. After clerking for  
24 Judge William Alsup in 2004, Ms. Chung started litigating intellectual property cases, with an  
25 emphasis on patent and trademark cases.

26 23. Ms. Chung was directly involved in the latter stages of this litigation, including drafting  
27 and editing the motion for default judgment and supplemental briefs in support of the motion and  
28 conducting legal research. Ms. Chung's hourly billing rate has been [REDACTED] (2007-2008).



1 costs expended that may have been unique to the settling defendants and further ensures that the  
2 requested amount is certainly reasonable. Indeed, as reflected in the portions of the "Report of the  
3 Economic Survey," attached to this declaration as Exhibit A, Plaintiff's proposed fee award compares  
4 reasonably and favorably with the average fees and costs reported by attorneys in trademark litigation.  
5 According to recent attorney-polling published in July 2007 by the American Intellectual Property  
6 Law Association, the median "cost" (fees and costs) charged by law firms in the San Francisco Bay  
7 Area for conducting trademark litigation less than \$1 million at risk through the discovery stage was  
8 \$225,000, and was \$450,000 when more than \$1 million was at risk. (*See* Exhibit A at I-94.) Median  
9 costs charged through conclusion of the case were \$400,000 and \$1 million, respectively. (*See id.* at  
10 I-94 and I-95.) Further, the median charges for large firms throughout the country (76 or more  
11 attorneys) for trademark litigation less than \$1 million at risk were \$200,000 through discovery and  
12 \$450,000 through conclusion. (*See id.* at I-96.) For trademark litigation more than \$1 million at risk  
13 were \$500,000 through discovery and \$1 million through conclusion. (*See id.* at I-96 and I-97.)

14 30. In addition, the hours expended are reasonable in view of the seriousness of defendants'  
15 infringing activities, the harm to WSI and consumers, WSI's vigorous attempts to stop defendants'  
16 unauthorized use of WSI's marks, and defendants' ongoing misconduct throughout this litigation to  
17 evade liability and willful infringement. In addition, that Defaulting Defendants are foreign persons  
18 and companies significantly added to the complexity of this action and the necessary fees expended in  
19 prosecuting it.

20 31. Pursuant to Local Rule 54-6, I attempted to e-mail defendants inviting them to confer  
21 regarding the substance of this declaration.

### *Detailed Description of Work Performed and Fees Incurred*

#### **A. Prefiling investigation of defendant's infringing activities and preparing and filing complaint and amended complaint.**

25 As WSI prepared to file its Complaint in federal court, Townsend investigated defendants'  
26 infringing activities. Much of this investigation was carried out online and reviewing public sources  
27 of information. Results from this preliminary investigation served as basis for the complaint filed on  
28 October 20, 2006. The Townsend attorneys updated relevant legal research under the Lanham Act

1 and prepared the Complaint. The attorneys oversaw investigation regarding defendants' locations for  
2 the purpose of securing service of process and prepared and filed an amended complaint once the  
3 "Doe" defendants were identified.

4 Mr. Cahn

5 Mr. Gilchrist

6 Ms. Alban

7 Ms. Hamelin

8 Subtotal (A):

9  
10 **B. Preparing and filing application for temporary restraining order and order to show  
cause re preliminary injunction.**

11 WSI filed its application for temporary restraining order and order to show cause re  
12 preliminary injunction on November 3, 2006. Attorney and legal assistant tasks included:

13 (1) researching and preparing the memorandum of law, including the foreign laws of nine countries;

14 (2) preparing supporting declarations; and (3) reviewing and organizing supporting evidence.

15 Mr. Cahn

16 Mr. Gilchrist

17 Ms. Hamelin

18 Subtotal (B):

19  
20 **C. Preparing and filing motion to authorize electronic service and service of amended  
complaint**

21 WSI filed its motion to authorize electronic mail service on March 16, 2007. Attorney and  
22 legal assistant tasks included: (1) researching and preparing the memorandum of law; (2) preparing  
23 supporting declarations; and (3) reviewing and organizing supporting evidence.

24 Mr. Cahn

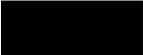
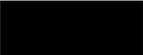
25 Mr. Gilchrist

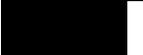
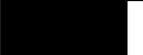
26 Ms. Hamelin

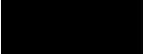
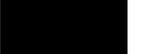
27 Subtotal (C):

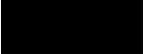
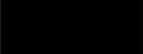
1           **D. Further Investigation.**

2           Attorney and legal assistant tasks related to investigation began shortly after filing the  
3 Complaint and continued through most of the time the litigation has been pending. Tasks included:  
4 (1) overseeing the continuing work of investigators; (2) conducting extensive online research  
5 concerning defendants and their activities; (3) communicating with registrars and other third parties  
6 with relevant information; and (4) communicating with the client about the status of investigation and  
7 any results.

8           Mr. Cahn                                      

9           Mr. Gilchrist                                      

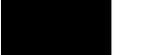
10          Ms. Hamelin                                      

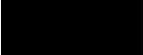
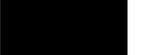
11          Subtotal (D):                                      

12           **E. Preparations for case management conferences**

13           Attorney tasks related to case management conference began shortly after filing the Complaint  
14 and continued through most of the time the litigation has been pending. Tasks included: (1) preparing  
15 case management statements; (2) requesting continuances of case management conferences; and  
16 (3) appearing at the case management conferences.

17          Mr. Cahn                                      

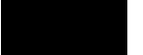
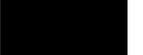
18          Ms. Hamelin                                      

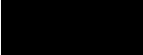
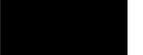
19          Subtotal (E):                                      

20           **F. Entry of default.**

21           WSI requested entry of default in July 2007, against all Defaulting Defendants. Attorney and  
22 legal assistant tasks included: (1) drafting requests for entry of default; (2) preparing supporting  
23 declarations; and (3) confer with the Clerk regarding entry.

24          Mr. Cahn                                      

25          Ms. Hamelin                                      

26          Subtotal (F):                                      

27           **G. Preparation of default judgment motion.**

28           WSI moved for default judgment in September 20, 2007, against all defaulting defendants.

1 Attorney and legal assistant tasks included: (1) researching and preparing the memorandum of law in  
2 support of default judgment motion; (2) preparing supporting declarations; (3) reviewing and  
3 organizing supporting evidence; (4) preparing proposed findings of fact and conclusions of law for  
4 Magistrate Judge James; (5) preparing for and attending hearing; and (6) preparing supplemental brief  
5 on personal jurisdiction pursuant to order.

6 Mr. Cahn

7 Mr. Gilchrist

8 Ms. Chung

9 Ms. Hamelin

10 Subtotal (G):

11 **H. Attempts to resolve claims and voluntary dismissals.**

12 Since early in the case and through May 2007, Townsend attorneys were actively involved in  
13 attempts to resolve WSI's claims. Attorney and legal assistant tasks included: (1) negotiating directly  
14 with defendants; (2) preparing correspondence; (3) testing of defendants' representations in the  
15 negotiations; and (4) preparing voluntary dismissals where the parties were able to settle.

16 Mr. Cahn

17 Mr. Gilchrist

18 Ms. Hamelin

19 Subtotal (H):

20 **I. Totals:**

21 Mr. Cahn

22 Mr. Gilchrist

23 Ms. Chung

24 Ms. Alban

25 Ms. Hamelin

26 Total (A-H)

27 **J. Costs:**

28 Throughout this case, Townsend attorneys have attempted to minimize costs. Bill of costs in

1 accordance with Civil Local Rule 54 is attached as Exhibit B. The \$590.00 in costs accurately and  
2 fairly reflect the allowable costs incurred during litigation, although actual costs were in fact much  
3 higher. As with the billing records for fees, Townsend can make the underlying billing records for  
4 costs and invoices available for the Court's *in camera* inspection.

5 I declare under penalty of perjury under the laws of the United States of America that the  
6 foregoing is true and correct. Executed on this 21st day of March, 2008.

7  
8 /s/ Timothy R. Cahn  
9 TIMOTHY R. CAHN

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