

1 TOWNSEND AND TOWNSEND AND CREW LLP
 JAMES G. GILLILAND, JR. (State Bar No. 107988)
 2 MEHRNAZ BOROUMAND SMITH (State Bar No. 197271)
 MEGAN M. CHUNG (State Bar No. 232044)
 3 J. JEB B. OBLAK (State Bar No. 241384)
 Two Embarcadero Center Eighth Floor
 4 San Francisco, CA 94111
 Telephone: (415) 576-0200
 5 Facsimile: (415) 576-0300
 Email: jggilliland@townsend.com
 6 mboroumand@townsend.com
 mmchung@townsend.com
 7 jboblak@townsend.com

8 O'MELVENY & MYERS LLP
 GEORGE RILEY (State Bar No. 118304)
 9 Two Embarcadero Center, 28th Floor
 San Francisco, CA 94111
 10 Telephone: (415) 984-8700
 Facsimile: (415) 984-8701
 11 Email: griley@omm.com

12 Attorneys for Plaintiff and Counterdefendant
 APPLE INC.

13
 14 UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

18 APPLE INC.,

19 Plaintiff,

20 v.

21 PSYSTAR CORPORATION, a Florida
 corporation,

22 Defendant.

23
 24 AND RELATED COUNTERCLAIMS.

Case No. 08-3251 WHA

**DECLARATION OF PROFESSOR
 CAROL A. SCOTT PH.D IN SUPPORT
 OF APPLE'S MOTION FOR
 PERMANENT INJUNCTION,
 STATUTORY DAMAGES AND
 REASONABLE ATTORNEYS' FEES
 AND COSTS**

Date: December 14, 2009

Time: 8:00 a.m.

Courtroom: 9

Judge: Hon. William Alsup

Trial Date: January 11, 2010

27 I, Carol A. Scott, Ph.D., declare as follows:

28 1. I am a Professor of Marketing at the Anderson Graduate School of Management at

1 the University of California, Los Angeles (“UCLA”). I have been retained by the law firm of
2 Townsend and Townsend and Crew LLP on behalf of Apple Inc. (“Apple”) to provide testimony
3 and expert opinion in the above captioned matter concerning branding and the likelihood that
4 consumers would be confused by Psystar Corporation’s (“Psystar”) use of the Mac OS X operating
5 system on its computers and by Psystar’s offer on its website to sell computers that purportedly run
6 Mac OS X. I have submitted three expert reports that I understand have been served on Psystar’s
7 counsel. Psystar did not take my deposition. I make this declaration on personal knowledge unless
8 otherwise indicated, and if called as a witness I am able to testify with respect to the matters stated
9 herein.

10 2. I hold a Ph.D. in Marketing from Northwestern University, where my minor field of
11 study was Social Psychology. I also received a Master of Science in Management from
12 Northwestern University and a Bachelor of Science in Business and History Education from the
13 University of Texas at Austin. I have served variously as the Chairman of the Faculty, Associate
14 Dean, and Assistant Dean of the Anderson Graduate School of Management from 1985 through
15 1994. I am currently the faculty director of the Anderson School Executive Program. Over the past
16 thirty years, I have taught courses on Marketing Strategy and Management, Consumer Behavior,
17 Advertising, Distribution Strategy, and International Marketing to students in undergraduate and
18 graduate education programs at UCLA, Stanford Business School, Harvard Business School, and
19 Ohio State University. I also have published numerous journal articles, research reports, and book
20 chapters on Consumer Behavior and have served on the editorial boards of the *Journal of*
21 *Marketing*, *Journal of Marketing Research*, and *Journal of Consumer Research*. Over the past 26
22 years, I have served as a consultant and testifying expert for a variety of issues.

23 3. In preparation for my testimony in this case, between July and August 2009, I
24 conducted three surveys of approximately 300 respondents each in order to determine, among other
25 things, the likelihood of confusion as to the relationship between Psystar and Apple. Based on a
26 survey of consumers who viewed Psystar’s website, I concluded that consumers are highly likely to
27 be confused and wrongly believe that there must be some relationship between Psystar and Apple.
28

1 The survey indicated, among other things, that (1) consumers are likely to believe that Psystar
2 received permission from Apple to offer Mac OS X® on Psystar computers; (2) consumers who
3 experience problems when using Psystar computers are likely to believe they are entitled to
4 technical service and support from Apple; and (3) to the extent that consumers experience problems
5 with Psystar computers, they are likely to blame those problems on Apple regardless of the true
6 source of the problems.

7 4. In one survey, I tested whether consumers would blame problems with Psystar
8 computers running Mac OS X on Psystar or Apple. This survey asked respondents to imagine that
9 they had purchased a Psystar computer and experienced the following four types of computer
10 problems: (1) some of the software programs designed for Mac OS X would not work; (2) the
11 computer froze or crashed often; (3) the computer ran very slowly; and (4) the computer would not
12 turn on. For each of these problems, respondents were asked whether they thought the problem was
13 due to Psystar’s hardware, Mac OS X or both. For the first three problems, a majority of the
14 respondents blamed either Mac OS X, or both Mac OS X and the Psystar hardware. For the fourth
15 problem, where the computer simply would not turn on, 53.1% of consumers blamed Psystar and
16 not Mac OS X. Nonetheless, 28.4% of the respondents thought that the problem resulted from both
17 Psystar hardware and Mac OS X.

18 5. Apple has established one of the world’s most famous brands through substantial and
19 consistent brand-building activities that have been studied in university classrooms, including mine,
20 as a textbook example of how to create a strong reputation that resonates with customers. Apple
21 has built a reputation for the highest level of customer satisfaction, innovative and high quality
22 products, and excellent customer service and support. As shown by my study, problems with
23 Psystar computers likely will be associated with Mac OS X and Apple. Technical problems with
24 Psystar computers therefore will undermine the reputations of both Apple and its products and, as a
25 result, have an adverse effect on Apple’s brand and goodwill. For example, Apple produced
26 records of telephone calls and written requests consumers made to Apple’s customer support group,
27 AppleCare®, regarding problems with Psystar computers and/or Mac OS X on those computers.
28

1 Those inquiries to AppleCare and the results from my study confirm the harm that problems with
2 Psystar computers have caused and will likely continue to cause Apple's brand.

3 6. From my review of the deposition testimony of Rodolfo Pedraza, documents
4 produced by Psystar, and the Psystar Website, I understand that Psystar relies heavily on the use of
5 Apple's trademarks and trade names in its advertising. To the extent that consumers viewing these
6 ads, like the consumers in my surveys, recognize and associate these trademarks and trade names
7 with Apple, then these consumers may also believe that Apple has sponsored or gives Psystar
8 permission to sell Apple products. It is therefore my opinion that Apple's brand image and
9 corporate reputation for reliable, high quality products will be harmed should consumers be
10 unhappy with Psystar's computers and other products.

11 I declare under penalty of perjury under the laws of the United States that the foregoing is
12 true and correct to the best of my knowledge and belief.

13 Executed on November 23, 2009, at San Francisco, California.

14
15
16 

17
18

Carol A. Scott Ph.D.