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11 XOOM CORPORATION

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 XOOM CORPORATION, a California Corporation,
15 Corporation,

16 Plaintiff,

17 vs.

18 MOTOROLA TRADEMARK
19 HOLDINGS, LLC, a Delaware limited
20 liability company, MOTOROLA
21 MOBILITY, INC., a Delaware corporation,
22 and MOTOROLA MOBILITY
23 HOLDINGS, INC., a Delaware
24 corporation, and DOES 1 through 10
25 inclusive

26 Defendants.

27 Plaintiff Xoom Corporation ("Xoom") for its Complaint against Defendants alleges as
28 follows:

1. Xoom brings this action against Defendants Motorola Trademark Holdings, LLC,
Motorola Mobility, Inc. and Motorola Mobility Holdings, Inc. and DOES 1 through 10
(collectively "Defendants" or "Motorola") for trademark infringement, false designation of
origin, unfair competition, false advertising and unfair business practices in violation of the
Lanham Act, 15 U.S.C. §§ 1114(1), and 1125(a)(1), California Business and Professions Code
§§ 17200 *et seq.*, and § 14335, and common law, arising from Defendants' adoption and/or use of
the identical XOOM brand for Defendants' mobile computer and related products and services

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RICHARD W. WILKINSON
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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1 offered to consumers via the Internet, which products and services are directly related to the
2 products Xoom has long offered using its federally registered, incontestable XOOM® mark and
3 its Xoom trade name to consumers via the Internet and accessible on computers and mobile
4 devices over the Internet. Defendants' adoption and/or use of the XOOM and MOTOROLA
5 XOOM brand has caused and is likely to continue to cause confusion with Xoom's long held and
6 incontestable XOOM® mark and Xoom's Xoom trade name.

7 **PARTIES**

8 2. Xoom Corporation is a California corporation, with its principal place of business
9 at 100 Bush Street, San Francisco, California 94104, doing business in San Francisco, throughout
10 the United States and in foreign countries, since at least as early as 2003 under the Xoom trade
11 name and the federally registered and incontestable XOOM® trademark.

12 3. Motorola Trademark Holdings, LLC is a Delaware limited liability company, with
13 its principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

14 4. Motorola Mobility, Inc. is a Delaware corporation with its principal place of
15 business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

16 5. Motorola Mobility Holdings, Inc. is a Delaware corporation with its principal
17 place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

18 6. Xoom is informed and believes, and on that basis alleges, that Motorola
19 Trademark Holdings, LLC, Motorola Mobility, Inc. and Motorola Mobility Holdings, Inc. acted
20 together or in connection with DOES 1 through 10 in engaging in the acts giving rise to these
21 claims and that they are liable for the acts of each other as agents, conspirators, principals or alter
22 egos of each other in committing the acts described herein.

23 7. The true names and capacities of DOES 1 through 10 are unknown to Xoom,
24 which therefore sues such defendants by fictitious names. Xoom will seek leave to amend this
25 Complaint to allege the true names and capacities of such DOE defendants when the same are
26 ascertained. Xoom is informed and believes, and on that basis alleges, that each of the fictitiously
27 named defendants is responsible in some manner for the conduct, injuries and damages alleged in
28 this Complaint.

1 **JURISDICTION AND VENUE**

2 8. This Court has subject matter jurisdiction over Xoom's federal, state and common
3 law claims of trademark infringement and unfair competition pursuant to 15 U.S.C. § 1121 and
4 28 U.S.C. §§ 1331, 1338(a)-(b), and 1367(a).

5 9. This Court has personal jurisdiction over Motorola, and venue is proper in this
6 district pursuant to 28 U.S.C. § 1391 (b)-(c), because on information and belief, Motorola has a
7 presence in the state of California and in this District, and conducts regular and systematic
8 business in California and in this District, has purposefully availed itself of conducting business
9 in California and in this District, and/or the events giving rise to the claims alleged in this
10 complaint have a substantial effect in California and a substantial part of such events occurred in
11 this District. Xoom is informed and believes, and on that basis alleges, that Motorola is qualified
12 to do business in California; Motorola sells, promotes and advertises its products and services in
13 California, including its XOOM mobile computer and related product offerings; and has offices
14 within California and in this District.

15 10. Xoom has its principal place of business in San Francisco, California, which is
16 located within this District and has suffered and will continue to suffer injury and harm in this
17 District as a result of Defendants' adoption and/or use of the Xoom designation without
18 authorization from Xoom.

19 **FACTUAL ALLEGATIONS**

20 11. Xoom has long owned and prominently used the trade name Xoom and the
21 federally registered, incontestable trademark XOOM® for its online business. Since at least as
22 early as 2003, Xoom has offered consumers access to its remittance software services through its
23 www.xoom.com web site using its distinctive XOOM® mark and trade name. Through this long
24 online use accessible via computer and mobile devices, Xoom's trade name and the XOOM®
25 products have become associated exclusively with Xoom. Until Defendants' adoption of the
26 Xoom brand without authorization from Xoom, Xoom to its knowledge was the only entity
27 currently using the name or mark Xoom for online product offerings. Xoom secured the
28 www.xoom.com domain name in 2003 and has used it for its online product offerings.

1 12. At the website, xoom.com, and elsewhere on the Internet, Xoom features and
2 promotes Xoom's computer accessible, secure, fast and inexpensive remittance services, which
3 allow users to transmit monies through the xoom.com web site to more than 30 different
4 countries. The Xoom website and the XOOM® product offerings are available for use through
5 computers and mobile devices, including mobile or tablet computers.

6 13. As a result of its exclusive use since at least as early as 2003, the XOOM® mark
7 has become exclusively associated by consumers as a designation of source for Xoom's online
8 products, including its provision of online access to XOOM® product offerings.

9 14. Xoom owns an incontestable United States trademark registration for XOOM®,
10 Federal Registration No. 2,909,931, covering "providing business information, namely, on money
11 transfer services," and "money transfer services; electronic funds transfer services; bill payment
12 remittance services; electronic payment, namely, electronic processing and transmission of bill
13 payment data." The mark registered on December 14, 2004 and became incontestable with the
14 filing (and acceptance) of Xoom's Section 8 and 15 affidavits demonstrating continuous use of
15 the XOOM® mark for five years after registration. A true and correct copy of the registration
16 certificate is attached hereto as Exhibit A and incorporated herein as if fully set forth.

17 15. In an effort to exploit and improperly trade on Xoom's goodwill, to otherwise
18 diminish the value of the Xoom trade name and the XOOM® mark, and to confuse and mislead
19 consumers, Motorola without authorization deliberately and unlawfully appropriated Xoom's
20 trade name and trademark rights through its adoption and/or use of the XOOM and/or
21 MOTOROLA XOOM designations, and its intent-to-use application to register an identical
22 XOOM designation for mobile computers and related accessories, U.S. Application No.
23 85161358.

24 16. Motorola filed its intent-to-use trademark application for the XOOM designation
25 on October 26, 2010, well after Xoom adopted its trade name in 2003, well after Xoom began
26 offering its products under its XOOM® mark and name in 2003, well after the XOOM® mark
27 registered to Xoom, and well after the XOOM® federal trademark registration became
28 incontestable.

1 17. Xoom is informed and believes, and on that basis alleges, that Defendants have
2 promoted, advertised and marketed, and offered for sale in interstate commerce a mobile
3 computer and related product offerings using Xoom's XOOM® mark. Defendants display the
4 Xoom trademark alone and in lettering much larger than the Motorola wording on their website
5 and in other advertisements, all of which are the subject of this Complaint.

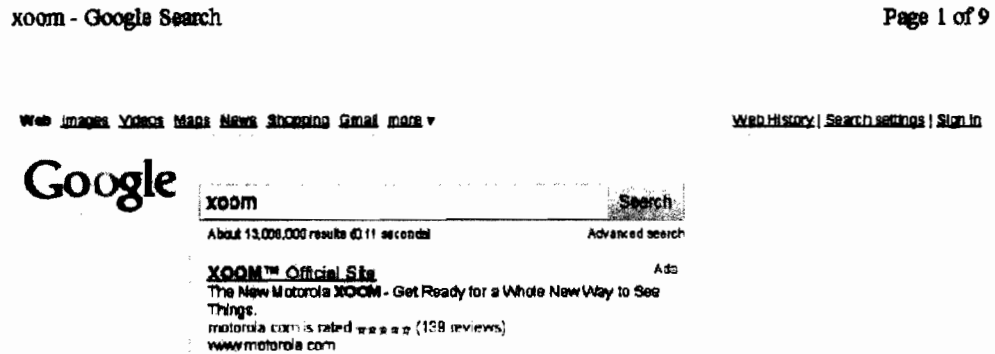
6 18. By way of example, Defendants, on their website at motorola.com, allow users to
7 view a commercial for their Xoom product offering, in which Defendants use Xoom's XOOM®
8 mark on the screen of the device screen, very much like the XOOM® mark and name would
9 appear on the screen if the xoom.com site was accessed online through the Defendants' Xoom
10 device:



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20 19. Defendants also have purchased the XOOM keyword on online search engines.
21 Thus, when users conduct an online search for "Xoom" using the Google search engine,
22 Defendants' advertisements for XOOM product offerings are featured, sometimes as the first
23 result, and are listed before any of Xoom's own advertisements or links to Xoom's website. The
24 outcome is similar on other search engines.

25 20. Resellers of Defendants' Xoom product offerings also have begun to purchase and
26 use Xoom as a keyword and in headlines for the ads that they run on the Internet, all without any
27 apparent objection from the Defendants.

1 21. Defendants' advertisements on the Internet also represent that they constitute the
2 Xoom "Official Site," when that is not the case. For example, the following advertisement
3 appeared after entering "xoom" as a search term using the Google search engine:



11 Indeed, Xoom has long used the wording "Official Site" in conjunction with its website at
12 xoom.com and the products and services that it offers on the site, all of which increase the
13 likelihood that consumers will be confused and misled as a result of Defendants' unauthorized
14 use of Xoom's name and mark on the Internet, particularly with the wording "Official."

15 22. By engaging in this willful and deliberate conduct, Defendants have willfully
16 infringed Xoom's trade name and federally registered trademark, creating a false association
17 between Defendants and Xoom, when there is no association, and otherwise falsely and
18 fraudulently representing the Xoom product offerings of Defendants to the public, and engaging
19 in false advertising that is materially false and misleading to the public.

20 23. As a result of Defendants' unlawful conduct, the public is misled as to an
21 association with Xoom, when there is none, and thereby Xoom has suffered and will continue to
22 suffer irreparable injury and be otherwise harmed, along with consumers who are confused and
23 misled. Such injury and harm will continue unless Defendants' conduct is enjoined.

24 **FIRST CLAIM FOR RELIEF**
25 **(TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114(1))**

26 24. Xoom incorporates by reference and realleges as though fully set forth herein the
27 allegations of paragraphs 1 through 23, inclusive.

28 25. The above acts of Defendants constitute trademark infringement of Xoom's

1 XOOM® mark in violation of section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

2 26. Motorola has applied for and sworn under penalty of perjury that it intends to use
3 the identical XOOM designation for mobile computer product offerings, including on the
4 Internet, without any authorization from Xoom. In furtherance of its Application, Defendants
5 have used, promoted and offered for sale, their product offerings under an identical XOOM
6 designation, without any authorization from Xoom, causing confusion in the marketplace, which
7 is harming consumers and Xoom. Further, Defendants have used, promoted and offered for sale,
8 their product offerings under the confusingly similar MOTOROLA XOOM designation, without
9 any authorization from Xoom, causing confusion in the marketplace, which is harming consumers
10 and Xoom.

11 27. Defendants' proposed use and use of the identical XOOM designation for its
12 mobile computer and related product offerings has caused confusion and is likely to continue
13 cause confusion, mistake and deception among the general consuming public as to the identity of
14 the XOOM product offerings, whether those of Defendants or Xoom.

15 28. Defendants' use of XOOM and/or MOTOROLA XOOM is without the permission
16 of Xoom.

17 29. Xoom is informed and believes, and on that basis alleges, that Defendants'
18 conduct has been knowing, deliberate and willful.

19 30. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been,
20 and will continue to be, irreparably harmed, injured and/or damaged by Defendants' wrongful
21 acts, and such harm, injury and/or damage will continue unless Defendants' conduct is enjoined
22 by the Court.

23 31. As a direct and proximate result of Defendants' unlawful conduct, Xoom has
24 suffered and is entitled to monetary damages in an amount not yet determined.

25 32. Xoom is informed and believes, and on that basis alleges, that Defendants' acts
26 were in conscious and willful disregard of Xoom's federal trademark rights, and the resulting
27 damage to Xoom warrants treble damages and the recovery of attorney's fees and costs.

SECOND CLAIM FOR RELIEF
(FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION —
15 U.S.C. § 1125(a))

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3 33. Xoom incorporates by reference and realleges as though fully set forth herein the
4 allegations of paragraphs 1 through 32, inclusive.

5 34. The above acts of Defendants constitute unfair competition and false designation
6 of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

7 35. Defendants are unfairly competing with Xoom by virtue of its unauthorized use of
8 Xoom's XOOM® trademark and trade name in interstate commerce to sell, offer for sale,
9 distribute and advertise a mobile computer and related product offerings, which falsely leads
10 consumers to believe that Defendants' products and services are affiliated or associated with,
11 originate from, or are sponsored, or approved by Xoom.

12 36. Xoom is informed and believes, and on that basis alleges, that Defendants have in
13 effect informed the marketplace that Defendants' XOOM and MOTOROLA XOOM product
14 offerings are the products and services of Xoom or that Xoom's XOOM® product offerings are
15 affiliated or associated with Motorola. These misrepresentations were made in commercial
16 advertising or promotion of Defendants' products, and are false and/or misleading and do not
17 properly represent the nature or characteristics of Defendants' mobile computer or related
18 products.

19 37. Defendants' false and/or misleading statements, which Defendants have made or
20 caused to be made in interstate commerce, have actually deceived, and/or have the tendency to
21 deceive a substantial segment of the consuming public and the marketplace.

22 38. Xoom is informed and believes, and on that basis alleges, that Defendants' actions
23 were done with full knowledge, and with the intent to cause confusion and to mislead and deceive
24 the purchasing public and that these statements have actually deceived or have a tendency to
25 deceive a substantial segment of the purchasing public.

26 39. Xoom has been injured and damaged by Defendants' conduct.

27 40. Xoom has no adequate remedy at law. Defendants' conduct, as described herein,

1 has caused and, if not enjoined, will continue to cause irreparable damage to Xoom. As a result
2 of Defendants' conduct, Xoom is entitled to injunctive relief and damages.

3 41. As a direct and proximate result of Defendants' unlawful conduct, Xoom has
4 suffered and is entitled to monetary damages in an amount not yet determined.

5 42. Xoom is informed and believes, and on that basis alleges, that Defendants' acts
6 were in conscious and willful disregard of Xoom's trademark and trade name, and the resulting
7 damage to Xoom warrants treble damages and attorneys' fees and costs.

8 **THIRD CLAIM FOR RELIEF**
9 **(FALSE ADVERTISING—15 U.S.C. § 1125)**

10 43. Xoom incorporates by reference and realleges as though fully set forth herein the
11 allegations of paragraphs 1 through 42, inclusive.

12 44. The above acts of Defendants constitute false advertising under Section 43 of the
13 Lanham Act, 15 U.S.C. § 1125.

14 45. Defendants are falsely advertising XOOM product offerings as emanating from
15 Motorola by such acts as buying the keyword "Xoom" to place ads on Google for the Xoom
16 product offerings of Defendants, and by claiming to be the "Xoom — Official Site." Such acts
17 falsely lead consumers to believe that Defendants' product offerings are affiliated or associated
18 with, originate from, or are sponsored, or approved by Xoom or that Xoom is affiliated or
19 associated with Motorola, when that is not the case.

20 46. Xoom is informed and believes, and on that basis alleges, that Defendants inform
21 the marketplace that Defendants offer Official Xoom product offerings. These misrepresentations
22 were made in commercial advertising or promotion of Defendants' products, are false and/or
23 misleading and do not properly represent the nature or characteristics of Defendants' product
24 offerings.

25 47. Defendants' false and/or misleading statements, which Defendants have made or
26 caused to be made in interstate commerce, have actually deceived, and/or have the tendency to
27 deceive a substantial segment of the consuming public and the marketplace.

28 48. Defendants' deception is material, in that it is likely to influence the purchasing

1 decisions of the consuming public and the marketplace.

2 49. Defendants' false and/or misleading statements made in connection with the
3 distribution, advertising and/or sale of its products constitutes false advertising in violation of 15
4 U.S.C. § 1125.

5 50. Xoom is informed and believes, and on that basis alleges, that Defendants' actions
6 were done with full knowledge, and with the intent to deceive the purchasing public and that
7 these statements have actually deceived or have a tendency to deceive a substantial segment of
8 the purchasing public.

9 51. Xoom has been injured and damaged by Defendants' conduct.

10 52. Xoom has no adequate remedy at law. Defendants' conduct, as described herein,
11 has caused and, if not enjoined, will continue to cause irreparable damage to Xoom. As a result
12 of Defendants' conduct, Xoom is entitled to injunctive relief and damages.

13 53. As a direct and proximate result of Defendants' unlawful conduct, Xoom has
14 suffered and is entitled to monetary damages in an amount not yet determined and is entitled to
15 Defendants' profits. Xoom is also entitled to its attorneys' fees and costs.

16 54. Xoom is informed and believes, and on that basis alleges, that Defendants' acts
17 were in conscious and willful disregard of Xoom's trademark and trade name, and the resulting
18 damage to Xoom warrants treble damages.

19 **FOURTH CLAIM FOR RELIEF**
20 **(UNFAIR BUSINESS PRACTICES — CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.)**

21 55. Xoom incorporates by reference and realleges as though fully set forth herein the
22 allegations of paragraphs 1 through 54, inclusive.

23 56. The above acts and practices of Defendants are likely to mislead the general public
24 and, thereby, constitute unfair and fraudulent business practices and unfair, deceptive, untrue and
25 misleading advertising in violation of California Business and Professions Code §§ 17200 *et seq.*
26 Defendants' conduct caused injury to Xoom resulting in loss of money or property and caused
27 injury in fact to Xoom resulting in loss of money or property.

28 57. Xoom is entitled to relief against Defendants, including full restitution and/or

1 disgorgement of all profits and benefits that may have been obtained by Defendants as a result of
2 such unfair, deceptive and/or fraudulent business practices and unfair, deceptive, untrue and
3 misleading advertising.

4 58. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been,
5 and will continue to be, harmed, injured and/or damaged by Defendants' wrongful acts, and such
6 harm, injury and/or damage will continue unless Defendants' conduct is enjoined by the Court.

7 **FIFTH CLAIM FOR RELIEF**
8 **(TRADEMARK INFRINGEMENT — CAL. BUS. & PROF. CODE §14335)**

9 59. Xoom incorporates by reference and realleges as though fully set forth herein the
10 allegations of paragraphs 1 through 58, inclusive.

11 60. Xoom is informed and believes, and on that basis alleges that, Defendants have
12 used, and continue to use, the confusingly similar XOOM designation to promote their mobile
13 computer and related products and services for the purpose of enhancing the commercial value of,
14 or selling or soliciting purchases of, Defendants' products and services.

15 61. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been,
16 and will continue to be, harmed, injured and/or damaged by Defendants' wrongful acts, and such
17 harm, injury and/or damage will continue unless Defendants' conduct is enjoined by the Court.

18 **SIXTH CLAIM FOR RELIEF**
19 **(COMMON LAW UNFAIR COMPETITION)**

20 62. Xoom incorporates by reference and realleges as though fully set forth herein the
21 allegations of paragraphs 1 through 61, inclusive.

22 63. In addition to its rights under the Lanham Act and state statutory law, Xoom also
23 has valid and existing common law rights with respect to its XOOM mark and name.

24 64. The above acts of Defendants constitute unfair competition under common law.

25 65. Defendants' use of Xoom's XOOM mark and name in connection with the
26 distribution, advertising, promotion, offering for sale and/or sale of XOOM mobile computer and
27 related product offerings, are likely to cause confusion and, on information and belief, have
28 caused confusion as to the source of Defendants' and Xoom's product offerings in that customers

1 will be likely to associate or have associated the product offerings of Xoom and Defendants when
2 no such association or affiliation exists, all to the detriment of Xoom.

3 66. Xoom is informed and believes, and on that basis alleges that, the above acts of
4 Defendants were and continue to be willful and malicious and undertaken with the deliberate
5 intent to mislead the public and injure the business of Xoom. Xoom thereby should be awarded
6 exemplary damages based upon common law unfair competition principles.

7 67. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been,
8 and will continue to be, harmed, injured and/or damaged by Defendants wrongful acts, and such
9 harm, injury and/or damage will continue unless Defendants conduct is enjoined by the Court.

10 68. Xoom is entitled to relief against Defendants, including full restitution and/or
11 disgorgement of all profits and benefits that may have been obtained by Defendants as a result of
12 such unfair competition.

13 69. Xoom is informed and believes, and on that basis alleges, that Defendants'
14 conduct is willful, wanton, malicious, oppressive, and in conscious disregard of Xoom's rights in
15 its XOOM mark and trade name, justifying punitive and exemplary damages under California
16 Civil Code § 3294.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Xoom respectfully requests:

19 1. That the Court issue a temporary restraining order and/or preliminary injunction,
20 pending trial of this action, enjoining Defendants, their successors, officers, agents and
21 employees, and anyone acting in concert with or at the behest or direction of Defendants, from
22 using Xoom's XOOM® mark and trade name, or any designation that is confusingly similar to
23 Xoom's XOOM® mark and trade name, or any designation that is likely to cause confusion,
24 mistake, deception or public misunderstanding as to the identity or origin of Xoom's products and
25 services or their connection to or affiliation with Defendants.

26 2. That following trial of this action, the Court enter final judgment as follows:

27 a. permanently enjoining Defendants, their successors, officers, agents and

1 employees, and anyone acting in concert with or at the behest or direction of Defendants, from
2 using a confusingly similar designation to Xoom's XOOM® mark and trade name, or any
3 designation that is likely to cause confusion, mistake, deception or public misunderstanding at the
4 identity or origin of Xoom's product offerings or their connection to or affiliation with
5 Defendants;

6 b. ordering that all labels, packaging, wrappers, signs, prints, banners, posters,
7 brochures, or other advertising, marketing, or other promotional materials bearing a confusingly
8 similar designation to Xoom's XOOM® mark or name, be disabled, removed and destroyed,
9 along with the means for making the same, and that all Internet websites, online advertising,
10 marketing, promotions or other online materials bearing the XOOM designation in any form or
11 manner by Defendants be disabled, removed and destroyed;

12 c. permanently enjoining Defendants, their successors, officers, agents and
13 employees, and anyone acting in concert with or at the behest or direction of Defendants, from
14 seeking to register the XOOM designation for Defendants' mobile computer and related products
15 and services or any designation that is likely to cause confusion, mistake, deception or public
16 misunderstanding as to the identity or origin of Xoom, the Xoom product offerings, or their
17 connection to or affiliation with Defendants;

18 d. ordering Defendants to file with the Court and serve on Xoom's counsel
19 within 30 days after service of the injunction, a written report, sworn under oath, setting forth in
20 detail the manner and form in which Defendants have complied with the injunction;

21 e. declaring that Defendants' unauthorized use of the XOOM and
22 MOTOROLA XOOM designations used in connection with Defendants' mobile computer and
23 other product offerings infringes Xoom's XOOM® mark and trade name;

24 f. declaring that Defendants' have engaged in false advertising by buying the
25 keyword "Xoom," claiming that they own the Xoom Official Site, and otherwise by
26 misrepresenting Defendants' and Xoom's product offerings;

27 g. declaring that Defendants' infringement, unfair competition and false
28 advertising was knowing, intentional, and willful;

- 1 h. awarding Xoom compensation for any and all damages, injury or harm
2 incurred as a result of Defendants wrongful conduct;
- 3 i. ordering full restitution and/or disgorgement of all profits and benefits that
4 may have been obtained by Defendants as a result of their wrongful conduct;
- 5 j. awarding Xoom treble damages resulting from Defendants' willful and
6 intentional conduct;
- 7 k. awarding Xoom punitive and exemplary damages;
- 8 l. awarding Xoom its costs of this action and reasonable attorneys' fees
9 against Defendants; and,
- 10 m. awarding any other such relief the Court deems just and proper or to which
11 Xoom may be entitled.

12 Dated: February 23, 2011

MORGAN, LEWIS & BOCKIUS LLP
ROCHELLE D. ALPERT
LEIGHA E. WILBUR

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16 By 
Rochelle D. Alpert

17 Attorneys for Plaintiff
18 XOOM CORPORATION
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