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9 Attorneys for Plaintiff and
 10 Counterclaim Defendant
 APPLE INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 (OAKLAND DIVISION)

14 APPLE INC.,

15 Plaintiff,

16 v.

17 PODFITNESS, INC., and DOES 1-100,
 18 inclusive,

19 Defendants.

Case No. C 06-5805 SBA

**DECLARATION OF GREG JOSWIAK IN
 SUPPORT OF APPLE INC.'S
 OPPOSITION TO DEFENDANT
 PODFITNESS, INC.'S PARTIAL MOTION
 FOR SUMMARY JUDGMENT**

Date: June 3, 2008
 Time: 1:00 pm
 Courtroom: 3, 3rd Floor
 Judge: Hon. Sandra B. Armstrong

21 PODFITNESS, INC.,

22 Counterclaim Plaintiff

23 v.

24 APPLE INC.,

25 Counterclaim Defendant

26
 27 I, Greg Joswiak, declare as follows:

- 28 1. I am Vice President of Worldwide iPod Product Marketing for Apple Inc.

1 (“Apple”). I have personal knowledge of the matters stated in this declaration and would testify
2 truthfully to them if called upon to do so.

3 2. As of the end of the fiscal year 2007, the iPod had sold over 140 million units
4 worldwide, making it the best-selling digital audio player series in history.

5 3. Neither Steve Jobs nor Apple have ever authorized the use of his name or of the
6 IPOD brand in connection with Defendant’s services; nor have they ever been affiliated with or
7 sponsored Defendant’s services.

8 4. Apple has not consented to any of Defendant’s uses of its IPOD mark or its
9 product images, nor any mark comprised in whole or part of POD, nor has Apple sponsored,
10 endorsed or approved the goods or services offered and promoted by Defendant. Nor is there any
11 affiliation between Apple and Defendant.

12 5. In the seven years that Apple has been continuously using the IPOD mark in
13 interstate commerce, it has spent hundreds of millions of dollars advertising and promoting its
14 goods and services under the IPOD mark in a variety of media, including but not limited to
15 television, radio, a wide variety of general circulation and specialized print media, billboards,
16 trade shows and the Internet.

17 6. Apple’s technical analysis of the Podfitness software confirms that it does not fit
18 the accepted definition of a podcast.

19 7. As a result of the product’s popularity in connection with fitness activities, Apple
20 markets and sells iPod-compatible arm bands to facilitate the use of the iPod player while
21 exercising.

22 8. Apple has also partnered with shoe manufacturer Nike to market the Nike+iPod
23 Sports Kit, which is a device which measures and records the distance and pace of a walk or run.

24 9. Apple’s iTunes Store features numerous downloadable podcasts, “iMixes” (pre-
25 made audio file mixes), and celebrity playlists which incorporate a fitness theme.

26 10. Such products compete directly with Defendant’s audio files, and are marketed to
27 consumers under a link entitled “Nike Sport Music,” a true and correct depiction of which is
28 attached hereto as Exhibit 1.

