

Exhibit A

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12 Telephone: (801) 359-9000
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14 ATTORNEYS FOR DEFENDANT
15 PODFITNESS, INC.

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION
20

21 APPLE, INC.,
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23 Plaintiff,
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25 v.
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27 PODFITNESS, INC., and DOES 1-100,
28 Inclusive
29
30 Defendants.

Case No. 4:06-cv-05805 SBA

**FED. R. CIV. P. 30(b)(6) DEPOSITION
NOTICE OF APPLE, INC.**

1 PLEASE TAKE NOTICE that Defendant and Counterclaim Plaintiff Podfitness, Inc.
2 ("Podfitness"), by and through counsel of record MAGLEBY & GREENWOOD, P.C. and KERR &
3 WAGSTAFFE, LLP, will take the deposition of Apple, Inc. ("Apple") pursuant to Rule 30(b)(6) of
4 the Federal Rules of Civil Procedure. In accordance with Rule 30(b)(6), Apple is required to
5 designate one or more officers, directors, managing agents, or other persons who consent to
6 testify on its behalf with respect to the following matters:

7 1. All facts and documents, including the particular control nos. of any documents
8 upon which Apple intends to rely to support the claim, which support Apple's claim that there is
9 a likelihood of confusion between the mark PODFITNESS and IPOD, including as alleged in ¶¶
10 89, 90, and 91 of the First Amended Complaint.

11 2. All facts and documents, including the particular control nos. of any documents
12 produced by Apple or any other person or entity or any other party to this case, which Apple
13 contends support or reflect actual confusion between the mark PODFITNESS and IPOD,
14 including as alleged in ¶ 91 of the First Amended Complaint.

15 3. All facts and documents, including the particular control nos. of any documents
16 produced by Apple or any other person or entity, which support the allegations of ¶ 29, including
17 that "the POD mark has been used by consumers and industry publications as a slang term for
18 the IPOD mark and products."
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20 4. All facts and documents, including the particular control nos. of any documents
21 produced by Apple or any other person or entity, which support the allegations of ¶ 78 of the
22 First Amended Complaint, that "Defendant's use of the Infringing Marks and Defendant's
23 actions described herein are likely to cause confusion, deception and/or mistake in the
24 marketplace, the relevant industry, and all channels of trade for Apple's IPOD goods and related
25 services."
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1 5. All facts and documents, including the particular control nos. of any documents
2 produced by Apple or any other person or entity, which support the allegations of ¶ 79 of the
3 First Amended Complaint, that “Defendant’s use of the Infringing Marks and Defendant’s
4 actions described herein cause dilution of the famous IPOD mark.”

5 6. All facts and documents, including the particular control nos. of any documents
6 produced by Apple or any other person or entity, which support the allegations of ¶ 81 of the
7 First Amended Complaint, including the assertion that “Apple has sustained and will continue to
8 sustain irreparable injury as a result of Defendant’s conduct, which injury is not compensable by
9 the award of monetary damages.”

10 7. All facts and documents, including the particular control nos. of any documents
11 produced by Apple, which support any claim by Apple that is has made commercial use of the
12 term “POD: as a stand-alone mark (as opposed to “IPOD”).

13 8. All facts and documents, including the particular control nos. of any documents
14 produced by Apple or any other person or entity, which support the statements made to the PTO
15 in the July 16, 2001 “Amendment” filed in response to the PTO’s office action.

16 9. All facts and documents, including the particular control nos. of any documents
17 produced by Apple, which reflect the corporate decision making process which led to the filing
18 of this lawsuit, including without limitation all communications about Podfitness, the Podfitness
19 advertising, the Podfitness reference to Steve Jobs, and every person who was involved in
20 making the decision.

21 10. All facts and documents, including the particular control nos. of any documents
22 produced by Apple or any other person or entity, which reflect Apple’s licensing of the IPOD
23 mark in general, but in particular all efforts by Apple to police, monitor, or supervise the use of
24 the IPOD mark by any licensee.

1 11. All facts and documents, including the particular control nos. of any documents
2 produced by Apple or any other person or entity, which reflect the use of the term "IPOD" by the
3 general public and persons or entities who have not entered into licensing agreements with
4 Apple.

5 12. All facts and documents, including the particular control nos. of any documents
6 produced by Apple or any other person or entity, which relate to the dispute between Apple and
7 an entity sometimes known generally as "Apple Records."
8

9 13. All facts and documents, including the particular control nos. of any documents
10 produced by Apple or any other person or entity, which relate to the dispute between Apple and
11 Cisco, over the use by Apple of the term/mark "IPHONE."
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13 14. Apple's damages claims, including without limitation the amount of damages
14 sought for each of Apple's claims in the First Amended Complaint, the particular calculation of
15 each damages figure, and the basis for each element of such calculation. This topic includes,
16 without limitation all general and specific damages categories sought by Apple for each of
17 Apple's claims, including any claim by Apple to actual damages. This topic includes all facts
18 and documents, including the particular control nos. of any documents produced by Apple or any
19 other person or entity, which supports or relates to the alleged damages.
20

21 15. All facts and documents, including the particular control nos. of any documents
22 produced by Apple or any other person or entity, which reflect or relate to contacts or
23 communications by Apple or its agents about Podfitness, with any vendors, customers, or other
24 persons or entities with actual or potential business relationships with Podfitness, including
25 without limitation W Hotels; Lifetime Entertainment Services, and Marware.

26 The Rule 30(b)(6) deposition will be commence on Thursday, December 13, 2007,
27 commencing at 9:00 a.m. and continuing from day-to-day thereafter until completion, at the
28

1 offices of KERR & WAGSTAFFE LLP, 100 Spear Street, Suite 1800, San Francisco, CA
2 94105-1528, Telephone: (415) 371-8500.

3 The deposition will be conducted pursuant to the Federal Rules of Civil Procedure before
4 a notary public of the state of California or such other officer authorized by law to administer

5 Dated: December 7, 2007

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7 By 131
8 JAMES M. WAGSTAFFE

9 Attorneys for Defendant, **PODFITNESS, INC.**

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1 **PROOF OF SERVICE**

2 I, Maryann Milla, declare that I am a resident of the State of California, over the age of
3 eighteen years, and not a party to the within action. My business address is Kerr & Wagstaffe
4 LLP, 100 Spear Street, Suite 1800, San Francisco, California 94105.

5 On, December 7, 2007 I served the following document(s):

6 **1. FED. R. CIV. P. 30(b)(6) DEPOSITION NOTICE OF APPLE, INC.**
7 on the parties listed below as follows:

8 David J. Miclean 9 Fish & Richardson P.C. 10 500 Arguello Street, Suite 500 11 Redwood City, CA 94063 12 miclean@fr.com	13 Lisa M. Martens 14 Andrew M. Abrams 15 Fish & Richardson P.C. 16 12390 El Camino Real 17 San Diego, CA 92130 18 martens@fr.com
19 William S. Farmer 20 Jacob Alpern 21 Collette Erickson Farmer & O'Neill LLP 22 235 Pine Street, Suite 1300 23 San Francisco, CA 94104-2733 24 wfarmer@collette.com	25 Charles J. Veverka 26 Robert A. Aycock 27 Mark W. Ford 28 Brett I. Johson Workman, Nydegger & Seeley P.C. 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111 cveverka@wnlaw.com
James E. Magleby Jason A. McNeill Magleby & Greenwood, P.C. 170 South Main Street, Suite 350 Salt Lake City, Utah 84101 jmagleby@MGPCCLAW.com	

20 **By first class mail** by placing a true copy thereof in a sealed envelope with postage
21 thereon fully prepaid and placing the envelope in the firm's daily mail processing center
22 for mailing in the United States mail at San Francisco, California.

23 **By electronic email:** wfarmer@collette.com; martens@fr.com, pino@fr.com;
24 cveverka@wnlaw.com; jwarner@wnlaw.com; jmagleby@MGPCCLAW.com

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed on December 7, 2007, at San Francisco, California.

28 
MARYANN MILLA