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8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 **CASE NO. C 067754 SBA**

13 HELIO LLC

14 Plaintiff,

15 vs.

16 PALM, INC.

17 Defendant.

**DECLARATION OF SCOTT HANCOCK
 IN SUPPORT OF PALM, INC.'S
 OPPOSITION TO PLAINTIFF'S
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER AND ORDER TO
 SHOW CAUSE WHY A PRELIMINARY
 INJUNCTION SHOULD NOT ISSUE**

18
 19 I, Scott Hancock, declare as follows:

20 1. I have personal knowledge of the matters stated herein, and if called as a witness, I could
 21 testify competently thereto.

22 **BACKGROUND**

23 2. I am the Director of Marketing and Communications for Palm, Inc. and have been
 24 employed by Palm since October 2001. My duties and responsibilities include oversight over
 25 Palm's marketing policies, strategies, and advertising. I was responsible for the oversight of the
 26 development and execution of Palm's current advertising campaign (hereinafter the "Campaign")
 27 that is the subject of Helio LLC's complaint filed on December 19, 2006.

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1 3. Palm, Inc., headquartered in Sunnyvale, California, is a leader in mobile computing that
2 was founded in 1992. The company's products include Palm® Treo™ smartphones, Palm
3 LifeDrive™ mobile managers and Palm handheld computers, as well as software, services and
4 accessories. Palm sells its products through select Internet, retail, reseller, and wireless operator
5 channels throughout the world, and at Palm Retail Stores and Palm online stores. For nearly 15
6 years, Palm has developed, supported, and protected a brand that is known worldwide for
7 innovation and quality. Since its founding, Palm has shipped more than 34 million mobile-
8 computing products. Attached hereto as Exhibit A is a true and correct copy of a printout from the
9 United States Patent and Trademark Office indicating that the "Palm" trademark was registered on
10 August 29, 2001.

11 **DEVELOPMENT OF THE PALM CAMPAIGN**

12 4. The development of Palm's current advertising Campaign began nearly two years ago at
13 the beginning of 2005, prior to Helio's existence. At that point, Palm's advertising agency,
14 AKQA first developed the slogan, "NOT A CELL PHONE. A TREO" and presented it to Palm.
15 Attached hereto as Exhibit B is a true and correct copy of 14 advertising mockups that were
16 created by AKQA in January 2005. Each mockup contains the tagline "not a cell phone. a Treo."
17 This tagline provided the foundation of Palm's current advertising slogan, "NOT JUST A CELL
18 PHONE. A TREO." This final language was adopted by Palm in May 2006. The Campaign is
19 highly stylized and each advertisement features bold orange coloring along with the Palm logo.

20 5. During the Digital Life electronics expo in New York City on October 12, 2006, a
21 significant electronics-industry event, Palm publicly launched the slogan, "NOT JUST A CELL
22 PHONE. A TREO." The Digital Life expo is a major industry event that is billed as "the ultimate
23 consumer technology, gaming & entertainment event of the year." In 2006, more than 100
24 vendors participated in the expo, including companies such as Dell, Intel, Kodak, Logitech,
25 Napster, and Microsoft. Attached hereto as Exhibit C is a color representation of the banner that
26 adorned Palm's display booth at the expedition. Attached hereto as Exhibit D is a true and correct
27 copy of an October 12, 2006 article from "PDA Street" entitled "Treo 680 Cost Model Targets
28 Wider Audience." The article states, "To support the roll out of the Treo 680, Palm is going to

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1 roll out \$25 million advertising and marketing campaign. The main tag line will be 'Not Just A
2 Cell Phone. A Treo.'”

3 6. I have reviewed Helio’s complaint and its claim that “Defendant’s advertising...is
4 designed to confuse consumers as to the source of Defendant’s products and services and to
5 suggest some affiliation or sponsorship between Plaintiff and Defendant where there is none.”
6 This claim is false. At no point during the development of the Campaign were Helio’s current
7 claims, “Don’t call it a phone” and “Don’t call us a phone company” ever discussed, considered,
8 or raised by Palm. In summary, Palm’s Campaign was never intended to have any relationship to
9 Helio’s current advertising claims, nor was Palm’s Campaign ever intended or expected to suggest
10 any relationship between Palm’s well-known products and those of Helio. Palm’s Campaign and
11 its original slogan, “not just a phone. a Treo,” was conceived prior to Helio’s existence, let alone
12 Helio’s current advertising campaign.

13 7. Helio’s repeated use of the phrase “NOT JUST A CELL PHONE” to refer to Palm’s
14 current Campaign is incomplete and misleading. Palm’s Campaign always includes the full
15 slogan, “NOT JUST A CELL PHONE. A TREO.” Nowhere in the Campaign is the phrase “not
16 just a cell phone” used in isolation without the additional phrase, “a Treo.”

17 **COST AND SCOPE OF THE PALM CAMPAIGN**

18 8. The slogan “NOT JUST A CELL PHONE. A TREO.” is part of a \$25 million print,
19 outdoor and online advertising campaign designed to promote Palm’s Treo 680 smartphone. The
20 Campaign includes significant expenditures on outdoor advertising through billboards, bus
21 shelters, taxi-tops and “wild postings” as well as on print advertising through newspapers and
22 magazines, in both the United States and Europe. Outdoor advertising was launched on
23 November 27, 2006 and is scheduled to terminate on December 31, 2006.

24 9. Billboard, mass-transit station and taxi-top displays have already been launched in the top
25 10 advertising markets throughout the United States at a cost of more than \$3,500,000. Print has
26 also begun to run, of which approximately \$3,500,000 has been spent to date. Palm has also begun
27 using “street teams” that utilize the slogan in New York, Los Angeles and San Francisco. As
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1 stated above, the slogan always includes the Palm mark “Treo”, is stylized to emphasize the Palm
2 mark and uses a unique orange color.

3 10. All outdoor advertising associated with the Campaign, including billboards, taxi-top
4 displays and mass-transit displays, is scheduled to run only through December 31, 2006. Palm
5 does not intend to run any such advertising beyond that date.

6 11. At a cost of more than \$400,000, the Campaign also includes custom-designed and
7 manufactured interactive kiosks, which permit people to select and view category-specific content
8 on larger-than-life Treo smartphones. These kiosks contain a live monitor in place of the Treo
9 screen and are located at bus stops and window fronts in major metropolitan cities, including Los
10 Angeles, New York, and San Francisco.

11 12. At a cost of approximately \$2,000,000 thus far, the Campaign also includes significant
12 expenditures on online advertising, including materials on Fandango, Google, The Onion, Orbitz,
13 and Yahoo!

14 13. The billboards, taxi-top and mass-transit advertising has been posted since November 27,
15 2006. There are over 21,000 of these outdoor units that can not be removed before the scheduled
16 media contract expiration date of December 31, 2006. Print insertions in weekly publications
17 typically require at least six weeks’ notice for removal, depending on the publication. Online
18 publication typically requires at least two weeks’ written notice for removal.

19 **RESPONSE TO CLAIMS MADE IN DECLARATION OF JESSICA WEEKS**

20 14. I have reviewed the Declaration of Jessica Weeks submitted by Helio in support of its
21 application.

22 15. Ms. Weeks stated that Helio’s “DON’T CALL IT A PHONE” advertising has also been
23 featured on MTV, the Cartoon Network, Spike TV, VH-1, and other television networks. Palm’s
24 Campaign does not include any television advertising and Palm has no plans to broadcast any such
25 materials in connection with the Campaign.

26 16. Ms. Weeks claims that Palm “intentionally adopted its tagline to confuse consumers into
27 believing that there is some relationship between the two companies.” This claim is false. Palm
28 first considered the tagline “not a cell phone” in January 2005, prior to Helio’s existence. I am

1 unaware of a single consumer who has expressed any confusion regarding Palm's Campaign and
2 Helio's advertising, nor am I aware of a single consumer who has confused Palm's and Helio's
3 products, services, or relationship.

4 **NOTICE OF APPLICATION BY HELIO**

5 17. I have discussed with Palm's legal department the issue of notice provided by Helio in
6 connection with its application for a temporary restraining order. I have been informed that the
7 first instance in which Helio expressed any concerns with the Campaign was on December 19,
8 2006 when counsel for Helio sent a copy of the complaint and moving papers. I am unaware of
9 Helio ever having expressed any concerns with the Campaign prior to that date.

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I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed on December 20, 2006, at Hayward, California.

Scott Hancock

Digitally signed by Scott Hancock
DN: cn=Scott Hancock, c=US, o=Palm, Inc.,
ou=Marketing Communications, email=scott.
hancock@palm.com
Location: Hayward, CA
Date: 2006.12.20 06:35:02 -08'00'