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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

13
 14 HELIO LLC
 15 Plaintiff,
 16 vs.
 17 PALM, INC.
 18 Defendant.

CASE NO. C 06 7754 SBA

JOINT CASEMENT MANAGEMENT STATEMENT

19

20 Pursuant to Local Rule 16-9, the parties to the above entitled action jointly submit this
 21 Case Management Statement and Proposed Order, which the parties respectfully request that the
 22 Court adopt.

23 1. Jurisdiction and Service

24 This Court has subject matter jurisdiction because this is an action for trademark
 25 infringement and unfair competition arising under the laws of the United States. The Court has
 26 supplemental jurisdiction over the state and common law claims of trademark infringement and
 27 unfair competition. No issues exist as to personal jurisdiction or venue and all parties have been
 28 served.

1 2. Facts

2 a. Chronology

3 On December 19, 2007, plaintiff filed a complaint for trademark infringement and unfair
4 competition. On December 21, 2007, the Court heard oral argument on plaintiff’s motion for a
5 temporary restraining order, which was denied. A hearing on plaintiff’s motion for a preliminary
6 injunction has been set for April 10, 2007.

7 b. Factual Issues in Dispute

- 8 • Whether there is a likelihood of confusion between Helio’s DON’T CALL IT A
9 PHONE marks and Palm’s use of the slogan “Not Just A Cell Phone. A Treo.”
10 • Whether Palm’s “Not Just a Cell Phone. A Treo.” slogan infringes Helio’s marks;
11 • Whether and to what extent Helio has suffered damages as a result of any alleged
12 trademark infringement

13 3. Legal Issues

- 14 • Whether the phrases “Don’t call it a phone” and “Don’t call us a phone company
15 are generic;
16 • Whether Helio’s “Don’t call it a phone” and “Don’t call us a phone company”
17 marks have secondary meaning;
18 • Whether legal damages are an adequate remedy for the alleged harm;
19 • Whether there is irreparable harm in the absence of injunctive relief;
20 • Whether Palm should be preliminarily and/or permanently enjoined from using the
21 slogan “Not Just a Cell Phone” in advertisements

22 4. Motions

23 There are two motions currently pending. On March 9, 2007, Palm filed an emergency
24 motion for an expedited briefing and hearing schedule, and motion to compel deposition and for
25 sanctions. The deposition at issue is the Rule 30(b)(6) deposition of Helio. Palm requested an
26 extension on the briefing schedule for Helio’s motion for a preliminary injunction so that the
27 requested deposition can be completed before Palm’s opposition papers are due. The case has
28 been referred to Magistrate Judge Maria-Elena James for resolution of discovery disputes. To

1 date, the Court has not set an expedited briefing schedule or hearing date and Helio has not filed a
2 response to Palm's motions.

3 Also pending is Helio's motion for a preliminary injunction, filed March 6, 2007. Pursuant
4 to the briefing schedule set by the Court, Palm's opposition is currently due on March 20, 2007
5 and Helio's reply papers are due on March 27, 2007. The hearing is scheduled for April 10, 2007
6 at 1:00 p.m.

7 5. Amendment of Pleadings

8 The parties do not anticipate adding parties, claims, or defenses.

9 6. Evidence Preservation

10 The parties have instructed their employees and the advertising agencies that developed
11 and implemented the campaigns at issue to preserve evidence relevant to the issues in this action.

12 7. Disclosures

13 The parties have not yet exchanged initial disclosures pursuant to Fed. R. Civ. P. 26.

14 8. Discovery

15 To date, the parties have engaged in limited, expedited discovery in advance of the
16 preliminary injunction hearing. Pursuant to the Court's January 8, 2007 order, the parties each
17 propounded requests for production of documents and responsive documents have been produced.
18 The parties each conducted third party discovery, subpoenaing documents from the advertising
19 agencies that developed and implemented the campaigns at issue. The Court ordered that each
20 side be permitted to take two depositions during expedited discovery. Helio deposed Palm
21 employee Scott Hancock and AKQA, the advertising agency that developed Palm's campaign.
22 Palm only noticed one deposition, the Rule 30(b)(6) deposition of Helio. This deposition is the
23 subject of motion practice, as discussed above.

24 Only a limited amount of discovery remains after the preliminary injunction hearing. Palm
25 needs to complete the deposition of Jessica Weeks, Helio's Rule 30(b)(6) witness. Palm will
26 likely need to take an additional Rule 30(b)(6) deposition on the topic of damages. Palm will
27 further seek to depose Deutsch, the advertising agency that developed Helio's campaign. Expert
28 discovery and depositions will also be necessary.

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9. Class Actions

This case is not a class action.

10. Related Cases

The parties are not aware of any related cases or proceedings pending before another judge of this court or any other court.

11. Relief

Helio seeks legal and equitable relief, including compensatory and punitive damages, interests and costs, attorneys' fees and enhanced damages, and a preliminary and permanent injunction.

12. Settlement and ADR

The parties are actively pursuing settlement.

13. Consent to Magistrate Judge

The parties do not consent to having a magistrate judge conduct trial in this matter.

14. Other References:

No other references are applicable in this case.

15. Narrowing of Issues

The issues in this action are narrow, thus any further narrowing is unnecessary.

16. Expedited Schedule

This case can be handled on an expedited basis with streamlined procedures.

17. Scheduling

- a. Designation of Experts: September 7, 2007
- b. Discovery cutoff: August 31, 2007 (fact discovery)
October 5, 2007 (expert discovery)
- c. Hearing of Dispositive Motions: November 16, 2007
- d. Pretrial conference: December 6, 2007
- e. Trial: December 10, 2007

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18. Trial

This case will be tried to jury. The expected length of trial is 6-10 trial days.

19. Disclosure of Non-party Interested Entities or Persons

Plaintiff filed a “Certification of Interested Entities of Persons” with its complaint.

Plaintiff identified SK Telecom Co., Ltd. and Earthlink, Inc. as entities having either (i) a financial interest in the subject matter in controversy or in a party to the proceeding or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. Defendant has not yet filed a “Certification of Interested Entities or Persons.”

DATED: March 19, 2007

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By /s/ Claude Stern
Claude Stern
Attorneys for Defendant Palm, Inc.

DATED: March 19, 2007

K&L GATES, LLP

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