

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

Claude M. Stern (Bar No. 96737)

2 Brian Cannon (Bar No. 193071)

Doug Colt (Bar No. 210915)

3 Andrea Pallios Roberts (Bar No. 228128)

claudestern@quinnemanuel.com

4 brian cannon@quinnemanuel.com

dougcolt@quinnemanuel.com

5 andreaproberts@quinnemanuel.com

555 Twin Dolphin Drive, Suite 560

6 Redwood Shores, California 94065-2139

Telephone: (650) 801-5000

7 Facsimile: (650) 801-5100

8 Attorneys for Defendant Palm, Inc.

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

13 CASE NO. C 06 7754 SBA

14 HELIO LLC

15 Plaintiff,

16 vs.

17 PALM, INC.

18 Defendant.

**DECLARATION OF JULIE PATTERSON
IN SUPPORT OF PALM'S OPPOSITION
TO PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

19
20 I, Julie Patterson, declare as follows:

21 1. I am an account director at AKQA, an advertising agency. My responsibilities
22 include acting as a liaison between clients and the agency and leading the development of
23 advertising campaigns for my clients. In this position, I was personally involved in the
24 development of Palm's "Not Just a Cell Phone. A Treo." campaign. I make this declaration in
25 support of Palm's opposition to plaintiff's motion for a preliminary injunction. I have personal
26 knowledge of the facts stated herein and if called to testify could and would competently testify
27 thereto.
28

1 2. The development of Palm's "Not Just a Cell Phone. A Treo." theme line began
2 over two years ago, in January 2005. At that time, AKQA developed the slogan "Not a Cell
3 Phone. A Treo." and presented it to Palm. AKQA created fourteen advertising mockups at that
4 time, each of which contained the tagline "Not a Cell Phone. A Treo."

5 3. In early 2006, Palm engaged AKQA to begin developing a campaign for its new
6 smartphone, the Treo 680. As early as April 21, 2006, AKQA delivered a creative brief to Palm,
7 identifying "Not a cell phone. A Treo." as the single-most important element of the campaign.
8 Attached as Exhibit A is a true and correct copy of the April 21, 2006 creative brief delivered to
9 Palm.

10 4. It was not until late July 2006 that the Palm team at AKQA became aware of
11 Helio's "Don't Call it Phone" campaign and began to discuss it. It is possible that individual
12 members were aware of Helio's campaign at an earlier date, but the team members did not pay
13 attention to it until they began discussing it in late July. AKQA already had a meeting scheduled
14 with Palm for August 2, 2006, and Helio's campaign was added to the agenda for that meeting.
15 We decided to notify Palm, not because we were concerned that the two taglines sounded similar,
16 but because we believed "Don't Call it a Phone" and "Not a Cell Phone. A Treo." might convey
17 the same message, namely that the product being advertised was not a phone. We were aware that
18 Palm was already concerned over whether the lack of an antenna on the Treo 680 would cause
19 consumers to believe that it was not a phone.

20 5. Before we advised Palm of Helio's campaign, Palm had been considering whether
21 to include the term "just" in its tagline to ensure that consumers would understand that the Treo
22 680 is a cell phone with additional capabilities, which was the intended message of the campaign.

23 6. In August 2006, we considered the possibility of developing alternative lines for
24 Palm. We did not do so because we thought that Palm *should* develop a different campaign.
25 AKQA simply wanted to be prepared in the event that Palm concluded that "Not *Just* a Cell
26 Phone. A Treo." still conveyed the message that the Treo 680 was not a cell phone. (Emphasis
27 added). Palm ultimately chose to proceed with the slogan "Not Just a Cell Phone. A Treo."

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 DATED: March 20, 2007


Julie Patterson

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