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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION

18 CASE NO. C 06 7754 SBA

19 HELIO LLC

20 Plaintiff,

21 vs.

22 PALM, INC.

23 Defendant.

24 **DECLARATION OF SCOTT HANCOCK**
 25 **IN SUPPORT OF PALM'S OPPOSITION**
 26 **TO PLAINTIFF'S MOTION FOR A**
 27 **PRELIMINARY INJUNCTION**

28 I, Scott Hancock, declare as follows:

1. I am Director of Marketing Communications for defendant Palm, Inc. My responsibilities include overseeing Palm's advertising. I was personally involved in the development of Palm's "Not Just a Cell Phone. A Treo." campaign to promote the introduction of Palm's Treo 680 smartphone. I make this declaration in support of Palm's opposition to plaintiff's motion for a preliminary injunction. I have personal knowledge of the matters stated herein, and if called as a witness could and would competently testify thereto.

2. The development of Palm's "Not Just a Cell Phone. A Treo." campaign (hereinafter the "Campaign") began over two years ago, in January 2005. At that time, AKQA, Palm's

1 external advertising agency, developed the theme line "Not a Cell Phone. A Treo." and presented
2 it to Palm. AKQA created fourteen advertising mockups at that time, each of which contained the
3 theme line "Not a Cell Phone. A Treo." Attached hereto as Exhibit A is a true and correct copy of
4 these fourteen advertising mockups that were presented to Palm.

5 3. Palm decided not to use the proposed campaign theme until 2006 in conjunction
6 with the introduction of the Treo 680 smartphone. The Treo 680 was the first Palm smartphone
7 that did not include an external antenna. AKQA originally proposed using the line "Not just a
8 Cell Phone. A Treo." but Palm was concerned that if it used the line as proposed, some consumers
9 might actually think that the Treo 680 was not a cell phone at all. Accordingly, after AKQA
10 pitched the "Not a Cell Phone. A Treo." campaign idea to Palm in April 2006, Palm debated
11 whether to include the word "just" in the theme line. By including "just," Palm believed that the
12 theme line would convey the idea that the Treo 680 was a cell phone that also had additional
13 features, which was an intended goal of the campaign.

14 4. On October 12, 2006, Palm publicly launched the Campaign at the Digital Life
15 electronics expo in New York City, which is a significant electronics-industry event. Palm
16 displayed a large banner over its exhibition booth with the theme line, "Not Just a Cell Phone. A
17 Treo." Attached as Exhibit B is a true and correct copy of the banner used at the expo. Attached
18 as Exhibit C is a true and correct copy of an October 12, 2006 article written by James Miller
19 regarding Palm's launch of its campaign. Additionally, prior to the October introduction in the
20 United States, Palm had been using the theme line "Not just a mobile. A Treo." in European
21 advertising beginning in September 2006.

22 5. The two sentences in Palm's theme line "Not Just a Cell Phone. A Treo." are
23 always presented together in Palm's Campaign. Palm never uses "Not Just a Cell Phone." alone.
24 Palm's "Not Just a Cell Phone. A Treo." advertisements feature a bright orange background as the
25 predominant visual element. The print advertisements also include the Palm logo, which is a
26 simple circle around the word "Palm." Finally, except in certain small uses on the internet where
27 space is limited, they contain a picture of the Treo 680 smartphone itself.
28

1 6. Palm did not run its "Not Just a Cell Phone. A Treo." campaign on television or
2 radio. The magazines in which Palm ran its ads were: Entertainment Weekly, Rolling Stone,
3 Lucky, Real Simple, Men's Health, GQ, Sports Illustrated, The Onion, and Conde Nast Traveler.
4 The websites on which Palm ran its ads were: E! Online, YouTube, Evite, Weather.com,
5 BabyCenter, CitySearch, Third Screen Wireless Network, NY Times Digital, Time Out New
6 York, LATimes.com, SF Gate, Chicago Tribune.com, Boston, FARK, Federated Media Network,
7 Pandora, Revver, Internet Movie Database, and Concierge.com. Palm also entered into
8 agreements with: Yahoo, Orbitz, Fandango, Flickr, The Onion, Sports Illustrated, Zagat, and Yelp.
9 These latter agreements allowed Palm to display representations of the respective parties' web
10 sites on the devices pictured in the ads and provided for promotion of the devices on those parties
11 web properties. Palm focused its outdoor advertising on highly trafficked locations in 11 urban
12 areas.

13 7. I am aware that Palm ran a "Not Just a Cell Phone. A Treo." advertisement in
14 Entertainment Weekly one week after Helio allegedly ran a "Don't Call it a Phone" advertisement
15 in the same magazine. Based on my experience in advertising, magazines require several weeks
16 of lead time to contract to run an advertisement. It would have been nearly impossible for Palm to
17 observe a Helio advertisement, enter into a contract with Entertainment Weekly, provide
18 advertising copy, and manage to have the ads appear in the very next issue. In fact, Palm's
19 decision to advertise in Entertainment Weekly had no relationship to any advertising by Helio. I
20 executed the final order allowing our ad agency to place the ad on approximately October 26,
21 2006.

22 8. I have discussed with Palm's legal department the issue of notice provided by Helio
23 in connection with its application for a temporary restraining order. I have been informed that the
24 first instance in which Helio expressed any concern regarding the Campaign was on December 19,
25 2006, when counsel for Helio sent a copy of the complaint and its application for a temporary
26 restraining order. I am unaware of Helio ever having expressed concerns about the Campaign
27 prior to that date.
28

1 9. Palm's Campaign is effectively over. Palm contracted with two magazines to run
 2 print advertisements with cover dates through April 2007, but has no plans to publish any further
 3 advertisements that include the theme line "Not just a Cell Phone. A Treo." There is no outdoor
 4 advertising that is still being displayed at the request of Palm containing the subject theme line,
 5 and Palm has no plans to purchase any such outdoor advertising. While some outdoor advertising
 6 may remain on display, all of Palm's leases have expired and it is up to the property owners to
 7 remove the displays and replace them with new ads. There is no present online advertising for
 8 which Palm has contracted that features Palm's "Not Just a Cell Phone. A Treo." theme line, and
 9 Palm has no plans to purchase any additional online advertising containing the subject theme line.

10
 11 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
 12 correct.

13 DATED: March 20, 2007

Scott Hancock
 Digitally signed by Scott Hancock
 DN: cn=Scott Hancock, c=US, o=Palm, Inc.,
 ou=Marketing Communications, email=scott.
 hancock@palm.com
 Date: 2007.03.20 11:27:49 -0700

 Scott Hancock

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