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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware
 corporation, and AMAZON DIGITAL
 SERVICES, INC., a Delaware corporation,

Defendants.

Case No. CV 11-01327 PJH

**DECLARATION OF DAVID R.
 EBERHART IN SUPPORT OF APPLE
 INC.'S MOTION FOR PRELIMINARY
 INJUNCTION**

1 I, David R. Eberhart, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am a partner with the law firm of O'Melveny & Myers LLP, counsel of record
3 for Plaintiff Apple Inc. ("Apple"). I submit this declaration in support of Apple's motion for
4 preliminary injunction against Amazon.com, Inc. and Amazon Digital Services, Inc. (collectively
5 "Amazon").

6 2. Apple's initial complaint was filed before Amazon launched its APPSTORE
7 service on March 22, 2011.

8 3. On March 21, 2011, I placed a call to Dana Northcott, whom I understand to be
9 Amazon's internal trademark counsel, to discuss Apple's recently filed complaint. The call was
10 not answered and I left a voicemail inviting Ms. Northcott to return my call to discuss the case.

11 4. On March 22, 2011, I placed a call to Scott Hayden, whom I understand to be
12 Amazon's Vice President of Intellectual Property and Associate General Counsel. The purpose
13 of that call was to discuss Apple's recently filed complaint and the issues raised therein. The call
14 was not answered, so I left a voicemail inviting Mr. Hayden to return my call.

15 5. On March 23, 2011, I received a voicemail from David Zapolsky, Amazon's
16 internal counsel. Mr. Zapolsky indicated he did not have time to discuss our issues that day but
17 proposed that we speak on Thursday, March 24. I emailed Mr. Zapolsky to inform him that I
18 could be available to speak with him any time before 4:00 P.M. on Thursday, March 24.

19 6. On March 24, 2011, Mr. Zapolsky and I spoke briefly about the case and Apple's
20 concerns with Amazon's use of the APPSTORE mark. To my knowledge, this was Amazon's
21 first substantive response to Apple's complaints regarding use of the APPSTORE mark.

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

24 Date: April 13, 2011

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27 _____
28 David R. Eberhart