

1 DAVID R. EBERHART (S.B. #195474)
deberhart@omm.com
2 RYAN J. PADDEN (S.B. #204515)
rpadden@omm.com
3 DAVID J. SEPANIK (S.B. #221527)
dsepanik@omm.com
4 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
5 San Francisco, CA 94111
Telephone: (415) 984-8700
6 Facsimile: (415) 984-8701
7 Attorneys for Plaintiff
APPLE INC.
8

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

12 APPLE INC., a California corporation,
13 Plaintiff,
14 v.
15 AMAZON.COM, INC., a Delaware
corporation, and AMAZON DIGITAL
16 SERVICES, INC., a Delaware corporation,
17 Defendants.

Case No. CV 11-01327 PJH

**DECLARATION OF THOMAS R. LA
PERLE IN SUPPORT OF APPLE INC.'S
MOTION FOR PRELIMINARY
INJUNCTION**

1 I, Thomas R. La Perle, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am currently a Director in Apple Inc.'s Legal Department, managing the
3 Trademark, Copyright and Enforcement Group. I submit this declaration in support of Apple
4 Inc.'s ("Apple") motion for a preliminary injunction against Amazon.com, Inc. and Amazon
5 Digital Services, Inc. (collectively, "Amazon") on the basis that Amazon is infringing Apple's
6 trademark APP STORE.

7 2. In my capacity as a Director in Apple's Legal Department with management
8 responsibility for Apple's Trademark, Copyright and Enforcement Group, I am responsible for
9 the global protection of Apple's marks, which include Apple's APP STORE mark. My
10 responsibilities encompass the protection and, where necessary, the enforcement of Apple's
11 trademark rights. All information provided within this declaration is personally known to me or
12 is information that has been provided to me, which I believe to be true, and if called as a witness I
13 would testify to all information herein under oath.

14 **A. Apple And The Launch Of Its Breakthrough APP STORE Software Download
15 Service**

16 3. Apple designs, manufactures and markets a range of mobile communication and
17 media devices, personal computers, and portable digital media players, and sells a variety of
18 related software, services, peripherals, networking solutions, and third-party digital content and
19 applications. Apple's longstanding commitment to bringing the best user experience to its
20 customers through its innovative hardware, software, peripherals, services, and Internet offerings
21 has earned it a reputation as a pioneer and leader in the field of technology. Apple's products and
22 services include the iPhone®, iPad®, iPod®, and Apple TV® digital devices, Mac® computers, a
23 portfolio of consumer and professional software applications, the iOS®¹ and Mac OS® X
24 operating systems, third-party digital content and applications available through the iTunes
25 Store®, App StoreSM, and iBookstoreSM software and services, and a variety of accessory, service
26 and support offerings. In addition, Apple sells a variety of third-party iPhone, iPad, Mac, and
27 iPod compatible products, including application software, printers, storage devices, speakers,

28 ¹ iOS is a trademark or registered trademark of Cisco Systems, Inc. in the United States and other countries and is used by Apple under license.

1 headphones, and various other accessories and peripherals.

2 4. On March 6, 2008, Apple announced that it would launch the revolutionary APP
3 STORE service. On July 11, 2008, the APP STORE service became operational. Users of
4 Apple's iPhone, iPod and iPad mobile devices may use the APP STORE service to browse,
5 search for and license a wide range of third-party software programs, including games, business,
6 educational, finance, news, sports, productivity, social networking, health, reference, travel, and
7 utility software.

8 5. When it launched, the APP STORE service represented a different kind of online
9 software service and was an instant commercial and critical success. The APP STORE service
10 was revolutionary. As a columnist for *The New York Times* remarked soon after the launch of the
11 service, “[n]othing like the App Store has ever been attempted before.” The columnist continued,
12 “[s]ure, there are thousands of programs for the Mac, Windows, Palm organizers, Treos,
13 BlackBerries and Windows Mobile phones—but there’s no single, centralized, utterly complete
14 source of software for those platforms.” David Pogue, Pogue’s Posts: A Candy Store for the
15 iPhone, *The New York Times*, July 17, 2008. A true and correct copy of this article is attached
16 hereto as Exhibit 1.

17 6. Likewise, *The New York Times*, shortly after the launch of the APP STORE
18 service, proclaimed it “nothing short of revolutionary.” Laura M. Holson, Cellphone Carriers
19 Relax Grip on Content, *The New York Times*, Aug. 4, 2008, C1. A true and correct copy of this
20 article is attached hereto as Exhibit 2.

21 7. It is my belief that Apple was the first to use the phrase APP STORE in connection
22 with offering third party software products in an online retail platform. To the best of my
23 knowledge, that term was not in use in the United States, or elsewhere for that matter, in
24 connection with the type of services offered by Apple under the APP STORE mark.

25 **B. Apple’s Efforts To Protect Its Rights In Its APP STORE Mark**

26 8. Apple has a long-established internal trademark use policy which governs all use
27 of any of Apple’s trademarks by Apple and its employees. This internal use policy is designed to
28 ensure that all of Apple’s trademarks are correctly marked and used, including on products, their

1 packaging, and in all forms of advertising. Apple's internal trademark policies apply to the APP
2 STORE mark and, to the best of my knowledge, Apple and its employees have complied with this
3 policy with respect to Apple's APP STORE mark.

4 9. Apple also publishes policies governing use of the Apple's trademarks by third
5 parties, including licensees, resellers, developers, and customers. These policies apply to Apple's
6 APP STORE mark as well as Apple's other marks. In my position as a Director in Apple's Legal
7 Department, I am familiar with these external use policies. Attached hereto as Exhibit 3 is a true
8 and correct copy of Apple's external use policies, which is published under the title "Guidelines
9 for Using Apple Trademarks and Copyrights," and which is available on Apple's website at
10 <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html>. Apple also provides detailed
11 guidelines for developers who license software through the APP STORE service, a true and
12 correct copy of which is attached as Exhibit 4 and is available online at
13 <http://developer.apple.com/appstore/AppStoreMarketingGuidelines.pdf>. Apple vigorously
14 enforces these external use policies, and in my position as a Director in Apple's Legal
15 Department, I am involved in these efforts as a part of my responsibility for the protection of
16 Apple's brands.

17 10. Apple also enforces and protects its APP STORE trademark in the U.S. and
18 globally through the use of cease-and-desist letters and the initiation of administrative, *inter*
19 *partes* and, when appropriate, litigation proceedings. Indeed, Apple has secured trademark
20 registrations covering more than 50 foreign jurisdictions, including but not limited to China, the
21 European Union, Japan, Mexico, Norway, the Russian Federation, Switzerland, and Turkey.
22 Attached as Exhibit 5 are representative examples of Apple's trademark registrations of the APP
23 STORE mark in these countries. Each of the foregoing countries conducted substantive
24 examinations of the applications to register the APP STORE mark, including examining the
25 applications for descriptiveness or genericness, and determined that the APP STORE mark is
26 registrable.

27 11. Apple also applied to register the APP STORE mark in the United States. On
28 January 5, 2010, the U.S. Patent and Trademark Office concluded that Apple was entitled to

1 claim trademark rights in APP STORE and approved Apple's application for publication. On
2 July 6, 2010, Microsoft Corporation filed an opposition to that application. That opposition is
3 pending before the Trademark Trial and Appeal Board, and no decision has been issued.

4 12. Apple's principal competitors have found ways of branding and describing their
5 competing services without using the term APP STORE. For example, Verizon called its mobile
6 software download service the "Get It Now virtual store" and later changed the name of that
7 service to the "Verizon Media Store." The following table summarizes the ways Apple's
8 competitors refer to their application download services:

9 Competitor	Brand for Application Download Services
10 AndSpot	AndSpot Market
11 AT&T	AppCenter
12 Cellmania	Cellmania mFinder
13 Cellular South	Discover Apps
14 Cricket Communications, Inc.	Games & Apps
15 explorePDA	explorePDA.com
16 Google	Android Market
17 HP/Palm	App Catalog
18 Intel	AppUp
19 Microsoft	Marketplace and Marketplace for Mobile
20 MobiHand	MobiHand Store and MobiHand SuperStore
21 MobSpot, Inc.	MobSpot
22 Nintendo DSi	DSi Shop
23 Nokia	Ovi Store
24 Research in Motion (RIM)	BlackBerry App World
25 Samsung	Samsung Apps
26 SlideME	SAM (SlideME Application Manager)
27 Sony's Playstation Portable	PlayStation Store
28 Sprint	Sprint Software Store
U.S. Cellular	easyEdge
Verizon	Verizon Media Store

Certain competitors identified above hold the largest market share of smartphone operating
systems. Moreover, even Amazon refers to other providers of "apps" as providing
"marketplaces" rather than "app stores." Attached hereto as Exhibit 6 is a true and correct copy
of Amazon's webpage copied from

1 <http://www.amazon.com/gp/help/customer/display.html/?&nodeId=200551840#ATT>, where
2 Amazon states on page 5 under the heading “Using Apps Purchased from Amazon Appstore”:
3 “Once you’ve downloaded and installed your apps, you can find your apps listed alongside all of
4 **your other application [sic] purchased from other marketplaces.**” (Emphasis added).

5 13. From time to time, a limited number of third parties have used the APP STORE
6 mark to refer to their own services or products. Apple has responded by contacting these entities
7 to request they cease all improper use of Apple’s APP STORE mark, including the following
8 entities:

9 PocketGear.Com
10 AppStoreHq.Com
11 MobiHand.Com
12 Treefort, Inc
13 GreenAppStore.Com
14 Shopify.Com
15 MetroPCS.Com
16 DC.gov
17 DirecTV
18 Handmark
19 MiKandi
20 AndAppStore.com
21 WinMoAppStore.com
22 Sendmail
23 Tiger Direct

24 Apple’s enforcement efforts are continuing.

25 14. As a result of Apple’s enforcement efforts, and in recognition of Apple’s rights in
26 its famous APP STORE mark, many of the entities that Apple contacted agreed to cease use of
27 Apple’s APP STORE mark. Certain of them, however, made reference to Microsoft’s challenge
28 of Apple’s rights in its APP STORE mark, and refused to cease using APP STORE pending a

1 ruling in this proceeding. These entities include: DirecTV, AppStoreHq.Com, Shopify.Com and
2 MetroPCS.Com.

3 15. Prior to its launch of its APP STORE service, Apple became aware of the fact that
4 a company named Salesforce.com, Inc. filed an intent to use application, Serial No. 78/907,865,
5 for the mark APPSTORE for “[a]pplication service provider (ASP) featuring computer software
6 in the field of business project management, business knowledge, information and asset
7 management, customer relationship management, sales, marketing, e-commerce, electronic
8 messaging, and web site development.” A true and correct copy of a print-out from TESS
9 concerning this application is attached hereto as Exhibit 7.

10 16. Apple objected to Salesforce’s intent to use application for the APPSTORE mark.
11 While Salesforce had announced the APPSTORE service as a feature of its APPEXCHANGE
12 ASP services, it is my understanding that Salesforce never commenced use of the mark
13 APPSTORE in connection with such services. Salesforce subsequently abandoned its
14 APPSTORE application in the U.S.

15 **C. Amazon’s Marketplace**

16 17. In approximately January 2011, Amazon began soliciting software developers to
17 participate in a future mobile software download service offered by Amazon. Amazon used (and
18 continues to use) the APPSTORE mark in connection with what Amazon terms the “Amazon
19 Appstore Developer Portal” and the “Amazon Appstore Developer Program.” Upon learning of
20 Amazon’s misuse of Apple’s mark, Apple contacted Amazon on or about January 19, 2011, to
21 demand that Amazon cease its use of the APP STORE mark. Apple followed up with additional
22 efforts to contact Amazon on or about February 4, March 14, and March 21, 2011. Amazon did
23 not provide a substantive response to any of Apple’s communications until after launching
24 Amazon’s APPSTORE service on March 22, 2011. At no time has Amazon received a license or
25 authorization from Apple to use the APP STORE mark.

26 18. Amazon is a well-known reseller of products manufactured and marketed by
27 others. I am aware that Amazon discloses at page 19 of its 10-K that “[t]he products offered on
28 our customer-facing websites primarily include merchandise and content we have purchased for

1 resale from vendors and products offered by third party sellers, and we also manufacture and sell
2 the Kindle e-reader.” Amazon sells and licenses not only goods and services that are not stocked
3 by Amazon but are stocked by other entities and persons for whom Amazon serves as only a sales
4 conduit. Again, at page 42 of Amazon’s 10-K, Amazon states “[w]e provide fulfillment-related
5 services in connection with certain of our sellers’ programs. Third party sellers maintain
6 ownership of their inventory, regardless of whether fulfillment is provided by us or the third party
7 sellers, and therefore these products are not included in our inventories.” A true and correct copy
8 of Amazon’s most recent 10-K, obtained from Amazon’s website, is attached hereto as Exhibit 8.
9 Moreover Amazon is authorized by Apple to resell and license certain Apple hardware and
10 software products. However, the Apple products that Amazon is licensed to resell do not include
11 any of the software or services available from the APP STORE service. Specifically, while
12 Amazon is a reseller of Apple software for the Mac OS operating system, it is not licensed to
13 resell Apple software for the iOS platform. Apple software for the iOS platform is available
14 exclusively through the APP STORE service.

15 19. Despite the fact that Amazon’s APPSTORE is currently only available for
16 Android-based devices, an Amazon spokeswoman is quoted as saying “it wouldn’t surprise [her]”
17 for Amazon’s APPSTORE to expand beyond Android devices into other ecosystems, which
18 would potentially include Apple’s iOS-based devices. Attached hereto as Exhibit 9 is a true and
19 correct copy of the CNN Money article in which Amazon’s spokeswoman is quoted.


20 20. Additionally, on review of Amazon’s website, Amazon makes reference to
21 Apple’s iPhone “AppStore” as “the AppStore.” Attached hereto as Exhibit 10 is a true and
22 correct copy of a screenshot of the webpage located at [http://aws.amazon.com/iphone-](http://aws.amazon.com/iphone-application-hosting/)
23 [application-hosting/](http://aws.amazon.com/iphone-application-hosting/).

24 21. I am aware that Amazon uses the Internet to promote its APPSTORE service and
25 “Amazon Appstore Developer Program.” To my knowledge, Amazon does not use any other
26 advertising or marketing channel to promote its APPSTORE service or “Amazon Appstore
27 Developer Program.”

28 I declare under penalty of perjury of the laws of the United States that the foregoing is true

1 and correct.

2 Dated: April 13, 2011



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4 Thomas R. La Perle
5 Director, Legal
6 Apple Inc.

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