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APPLE INC.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFF APPLE INC.'S MOTION
FOR PRELIMINARY INJUNCTION**

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[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION
CASE NO. CV 11-01327 PJH

1 Plaintiff Apple, Inc.'s Motion for Preliminary Injunction came on for hearing on
2 _____, 2011. Having read the parties' papers and evidence and carefully considered
3 their arguments and the relevant legal authority, and good cause appearing, the Court hereby
4 GRANTS Apple's Motion for Preliminary Injunction for the reasons stated at the hearing and set
5 forth below.

6 Under Ninth Circuit law, Apple is entitled to a preliminary injunction if it establishes that
7 it is likely to succeed on the merits, it is likely to suffer irreparable harm in the absence of
8 preliminary relief, the balance of equities tips in its favor, and an injunction is in the public
9 interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 374 (2008).

10 Here, Apple has established that it is likely to succeed in proving both trademark
11 infringement (15 U.S.C. § 1125(a)) and dilution (15 U.S.C. § 1125(c)). Moreover, Apple has
12 established that Amazon's conduct will likely result in consumer confusion; Apple is thus entitled
13 to the presumption of irreparable harm. *See GoTo.com, Inc.*, 202 F.3d 1199, 1205 n.4; *Cadence*
14 *Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 830 (9th Cir. 1997); *Brookfield Commc'ns, Inc.*
15 *v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1066 (9th Cir. 1999). Even if Apple is not given the
16 benefit of such a presumption, Apple has satisfied this Court that irreparable harm would result if
17 Amazon's conduct is not immediately enjoined. First, Apple has expended substantial efforts and
18 resources in establishing an association between the mark APP STORE and Apple's mobile
19 software download service. Second, Apple has invested hundreds of millions of dollars in
20 advertising and promoting the APP STORE brand and service such that consumers have
21 overwhelmingly come to associate the mark APP STORE with Apple's service. And third, Apple
22 has invested substantial time and effort in maintaining the quality and safety of the software made
23 available through the APP STORE service, leading consumers to rely on those efforts and to
24 associate them with the APP STORE service. Such efforts, reputation, and goodwill will be
25 undermined by Amazon's continued use of the mark APPSTORE or any confusingly similar
26 mark.

27 Moreover, Amazon decided to move forward with the use of the mark APPSTORE after
28 multiple attempts by Apple to seek assurances that Amazon would not infringe Apple's mark.

1 Additionally, Amazon only recently launched its APPSTORE service on March 22, 2011, while
2 Apple has been developing goodwill for its APP STORE service for more than three years. Any
3 harm to Amazon that may result from an injunction is far outweighed by the irreparable harm
4 Apple will suffer if an injunction is not ordered.

5 Finally, the public's interest weighs in Apple's favor. The risk that consumers will be
6 misled to believe there is a relationship between Apple and Amazon with respect to mobile
7 software download services when none exists militates in favor of an injunction. *See Caesars*
8 *World, Inc. v. Milanian*, 247 F. Supp. 2d 1171, 1205 (D. Nev. 2003) ("An important factor in
9 protecting trademarks is to avoid consumer confusion, which is in the public interest.") (citations
10 omitted).

11 In accordance with the foregoing, it is hereby ordered that to prevent irreparable injury,
12 loss, and damage to Apple's goodwill and reputation and in order to protect the public from
13 confusion as to source, Apple's motion for preliminary injunction is GRANTED.

14 IT IS HEREBY ORDERED THAT:

- 15 1. Defendants Amazon.com, Inc. and Amazon Digital Services, Inc. (collectively
16 "Amazon"), together with their officers, agents, servants, affiliates, employees,
17 and attorneys, and those other persons who are in active concert or participation
18 with any of them who receive actual notice of the order by personal service or
19 otherwise shall immediately cease use of, directly or indirectly, Apple's APP
20 STORE trademark, or any other marks that are confusingly similar to or colorable
21 imitations of Apple's mark, including, without limitation, the term APPSTORE
22 alone or as part of or together with any other designs, word or words, trademark,
23 service mark, trade name, trade dress, or other business or commercial designation
24 or any logo, symbol or design;
- 25 2. Amazon shall file with the Court and serve on Apple, within ten (10) days of the
26 entry of this preliminary injunction, a report in writing and under oath, setting
27 forth in detail the manner and form in which Amazon has complied with the
28 injunction;

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3. This preliminary injunction shall stay in effect until final judgment in this case,
unless ordered otherwise.

Dated: _____, 2011

By _____
The Honorable Phyllis J. Hamilton
United States District Court Judge