

HowardRice

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 AMAZON.COM, INC., a Delaware corporation, and
 9 AMAZON DIGITAL SERVICES, INC., a Delaware
 corporation
 10

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13

14 APPLE INC., a California corporation,
 15 Plaintiff and Counter-
 Defendant,
 16

17 v.

18 AMAZON.COM, INC., a Delaware corporation,
 and AMAZON DIGITAL SERVICES, INC., a
 Delaware corporation,
 19

20 Defendants and Counter-
 Claimants.
 21

No. 11-CV-01327 PJH

Action Filed: March 18, 2011

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DECLARATION OF AARON RUBENSON
 IN SUPPORT OF OPPOSITION TO
 PLAINTIFF APPLE INC.'S MOTION FOR
PRELIMINARY INJUNCTION

1 I, Aaron Rubenson, declare as follows:

2 1. I am the Category Leader for Mobile Services of Defendant Amazon.com, Inc.
3 (“Amazon”), and as such am familiar with the history, business, and operations of the company,
4 including the development and launch of Amazon Appstore for Android on Amazon’s website,
5 www.amazon.com. I make this Declaration in support of Defendants and Counter-Claimants
6 Amazon.com, Inc. and Amazon Digital Services, Inc.’s Opposition To Plaintiff and Counter-
7 Defendant Apple Inc.’s Motion For Preliminary Injunction (“Declaration”) upon personal
8 knowledge except where indicated as to information and belief and, if called upon to testify, could
9 and would testify competently hereto.

10 2. Amazon is a corporation organized and existing under the laws of the State of Delaware,
11 with its headquarters in Seattle, Washington. Jeff Bezos founded Amazon in 1994, and the
12 www.amazon.com website went online in 1995. Amazon started as an online bookstore, but soon
13 diversified, selling DVDs, CDs, MP3 downloads, computer software, video games, electronics,
14 apparel, furniture, food, toys, and more. Amazon is one of the largest online retailers in the United
15 States, with over 33,000 employees and over \$34 billion in total annual gross revenue in 2010.

16 3. In early 2010, Amazon decided to sell apps for Android mobile devices, and began
17 developing an app store through which to sell those apps—Amazon Appstore for Android. As the
18 Category Leader for Mobile Services, I was one of the people primarily responsible for this effort.
19 Amazon’s intention to open an app store for Android mobile devices became public in October
20 2010.

21 4. On or about March 22, 2011, after many months of planning and development, Amazon
22 launched Amazon Appstore for Android. Attached as **Exhibit 1** are printouts from the
23 www.amazon.com website dated March 24 and 25, 2011, reflecting the introduction and operation
24 of Amazon Appstore for Android.

25 5. Amazon Appstore for Android is an app store that allows a consumer to view and
26 instantly download apps for their Android devices. Users may shop Amazon Appstore for Android
27 either from their computers at the www.amazon.com website, or from the Amazon Appstore app on
28 their Android mobile devices. Attached as **Exhibit 2** are printouts from the www.amazon.com

1 website dated March 26, 2011, reflecting instructions to consumers regarding how to use Amazon
2 Appstore for Android. As reflected in **Exhibit 2**, it is not possible for a consumer to purchase an
3 app from Amazon Appstore for Android until he or she has downloaded the Amazon Appstore app
4 to his or her Android mobile device.

5 6. As reflected by its name and explained on Amazon’s website, Amazon Appstore for
6 Android is only compatible with Android devices. Accordingly, Amazon Appstore for Android
7 does **not** offer apps for use with Apple mobile devices such as the iPhone, iPad, or iPod.

8 7. The launch of Amazon Appstore for Android on March 22 was the result of more than a
9 year of hard work and investment by Amazon. After deciding to enter the app business in early
10 2010, my colleagues and I put together a team of people to work on this project, which included
11 website design, technical design, developing business relationships with developers, branding,
12 marketing, and customer outreach. Amazon has spent millions of dollars in connection with its
13 development and launch of Amazon Appstore for Android.

14 8. Since Amazon Appstore for Android went live on March 22, many millions of apps
15 have been downloaded by consumers who own Android devices. That number increases every
16 minute. If this Court were to enjoin Amazon from using the term “app store,” Amazon might be
17 forced to shut down Amazon Appstore for Android for a period of time while it developed a new
18 designation not already in use by other competitors. Such a shutdown would result not only in lost
19 app sales during shutdown, but also a general loss of confidence in Amazon by its customers. In
20 addition, if the Court were to find that Apple has exclusive rights to the term “app store”, Apple
21 would essentially have a monopoly of the simplest and shortest term for what Amazon Appstore for
22 Android is—a store for apps.

23 9. If Amazon were required to change the name of Amazon Appstore for Android,
24 Amazon would have to undertake the following tasks:

- 25 • Amazon has contractual relationships with many thousands of app developers who joined
26 Amazon’s app developer program and communicate with Amazon under the Amazon
27 Appstore for Android name. A name change would require Amazon to create a developer
28 outreach program that explains the change and the rationale behind Amazon’s new brand

1 positioning. Creating this program and communicating with all of Amazon's developers
2 would require significant Amazon employee resources and would be time-consuming and
3 expensive.

- 4 • Over a million Amazon customers have purchased many millions of apps through Amazon
5 Appstore for Android via Amazon's www.amazon.com website and via the Amazon
6 Appstore for Android app that customers may download to their Android devices in order
7 to purchase apps directly on their smartphones. A name change would require Amazon to
8 educate its millions of customers regarding the name change and the reasoning behind it.
9 A name change would also require a new version of the Amazon Appstore for Android
10 app to be developed and installed on millions of Android smartphone user's devices.
11 Again, this would require significant Amazon employee resources.
- 12 • Amazon has engaged in a large number of interviews and communications with the press
13 regarding Amazon Appstore for Android. If Amazon were required to change the name of
14 Amazon Appstore for Android, Amazon would have to engage in a new public relations
15 campaign to explain what changes are occurring and why.
- 16 • Hundreds of different design elements incorporating the Amazon Appstore for Android
17 name currently exist across Amazon's websites, its partners' websites, and among
18 developers. A name change would require Amazon to create all new visual assets to
19 account for this change, which again would require significant employee resources.
- 20 • Amazon would be required to seek the advice of counsel in clearing a new designation for
21 its app store.

22 10. If Amazon were to prevail at trial, Amazon would again face the same difficulties and
23 expenses identified in Paragraph 9 above in switching back to the designation Amazon Appstore for
24 Android. Developers and customers would also likely become perplexed by the multiple name
25 changes, which would result in a loss of confidence in Amazon. For these, Amazon would be
26 unlikely to make the switch a second time even if Amazon prevails at trial.

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HowardRice

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I declare under penalty of perjury under the laws of California that the foregoing is true and correct to the best of my knowledge. Executed this 1st day of June, 2011, at San Diego, California.



AARON RUBENSON