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

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

29 APPLE INC., a California corporation,
 30
 31 Plaintiff,

32 v.

33 AMAZON.COM, INC., a Delaware
 34 corporation, and AMAZON DIGITAL
 35 SERVICES, INC., a Delaware
 36 corporation,

37 Defendants.

Case No. CV 11-01327 PJH

**JOINT CASE MANAGEMENT
 STATEMENT**

1 In accordance with Fed.R.Civ.P. 26(f) and Local Rule 16-9, Plaintiff and Counter-
2 Defendant Apple Inc. (“Apple”) and Defendants and Counter-Claimants Amazon.com, Inc. and
3 Amazon Digital Services, Inc. (collectively “Amazon”) respectfully submit the following Joint
4 Case Management Statement in preparation for the June 30, 2011 Initial Case Management
5 Conference. Counsel for the parties conducted a teleconference on June 21, 2011. David
6 Sepanik participated on behalf of Apple. Clara Shin participated on behalf of Amazon.

7 1. Jurisdiction and Service: Jurisdiction is proper in this Court pursuant to 28 U.S.C.
8 §§ 1331 and 1338, 15 U.S.C. §§ 1116 and 1125, and 28 U.S.C. § 1367. Venue is proper in this
9 judicial district because a substantial part of the events giving rise to these claims occurred in this
10 district and the parties reside in this district for purposes of 28 U.S.C. § 1391(b) and (c). This
11 case is not subject to the intra-district venue provisions of Northern District of California Local
12 Rule 3-2(c) because it is an intellectual property case. All parties have appeared.

13 2. Facts:

14 (a) ***Plaintiff’s Statement***: Apple introduced the APP STORE service and coined the APP
15 STORE trademark in 2008. This revolutionary service allows users of Apple’s iPhone, iPod, and
16 iPad mobile devices, and users of computers running Apple’s iTunes software, to browse for and
17 license a wide range of third party software programs. The service has experienced phenomenal
18 growth and success, and is now used by over 160 million consumers worldwide who have
19 downloaded more than 10 billion software programs. Apple has spent hundreds of millions of
20 dollars promoting the APP STORE service and APP STORE mark and has vigorously defended
21 the mark from infringement by third parties. Apple has trademark registrations in APP STORE in
22 over fifty foreign jurisdictions and has a trademark registration pending in the United States
23 Patent and Trademark Office. As a result of Apple’s efforts, the majority of consumers in the
24 United States perceive APP STORE as a trademark.

25 In approximately January 2011, Amazon began soliciting developers to participate in a
26 future mobile software download service under the infringing mark APPSTORE. On March 22,
27 2011, despite multiple demands from Apple that Amazon discontinue use of the infringing mark,
28 Amazon publicly launched its mobile download service under the infringing mark APPSTORE.

1 Apple therefore brought this action for trademark infringement and dilution under state and
2 federal law and unfair competition under state law.

3 Amazon claims, among other things, that APP STORE is a generic term that is not subject
4 to trademark protection, that its use of the mark APPSTORE is a fair use, and that Apple has
5 suffered no harm. Apple disputes these contentions and has brought a motion for a preliminary
6 junction which is currently pending before the Court.

7 (b) *Defendant's Statement:*

8 Apple did not coin the terms “app” or “app store,” and does not own a federal registration
9 for the term “app store.” The word “app” has been around for decades and is generic for
10 “applications” that smartphone users download to their phones. For instance, in 2006, the
11 company Salesforce.com announced its vision for an app store. Apple itself has used “app store”
12 in its generic sense, and there is significant evidence of generic use of “app store” by the media,
13 industry press, competitors, and consumers. As of March 2011, there were over 2,100 active
14 registered domain names containing the term “app store.”

15 Amazon went online in 1995 at www.amazon.com, starting as an online bookstore. It
16 soon diversified, selling DVDs, CDs, MP3 downloads, computer software, video games,
17 electronics, apparel, furniture, toys, and more. Amazon decided in 2010 to sell Android
18 smartphone apps through its own online store—Amazon Appstore for Android. Amazon made
19 public its intention to open an app store for Android apps in October 2010. On March 22, 2011,
20 Amazon launched Amazon Appstore for Android on www.amazon.com. Amazon Appstore for
21 Android is an app store that allows consumers to view and download apps for their Android
22 devices. As reflected by its name and explained on Amazon’s website, apps sold at Amazon
23 Appstore for Android are compatible only with Android devices. Thus, only customers who own
24 Android devices and have downloaded the Amazon Appstore for Android app onto their Android
25 smartphone may use Amazon Appstore for Android. Amazon Appstore for Android does not
26 offer apps for use with Apple mobile devices such as the iPhone, iPad, or iPod. In other words,
27 even if “app store” were not generic, there is no likelihood of confusion because apps sold
28 through Amazon Appstore for Android work *only* on Android smartphones while apps sold

1 through Apple's App Store work *only* on Apple's mobile devices. Customers who have shopped
2 for and purchased expensive mobile devices are sophisticated and understand that any apps they
3 acquire must be compatible with the device they own. There is likewise no likelihood of dilution
4 as the term "app store" is not famous, exclusive, or distinctive; nor is it the category of mark that
5 meets the statutory criteria for dilution.

6 3. Legal Issues

7 (1) Whether Apple owns a valid trademark in APP STORE or whether
8 Amazon has the right to use the words "app store" in connection with Amazon's online
9 app store that provides apps for Android devices.

10 (2) If Apple owns a valid trademark in APP STORE, whether Amazon's use of
11 the term APPSTORE infringes Apple's mark.

12 (3) If Apple owns a valid trademark in APP STORE, whether Amazon's use of
13 the term APPSTORE has caused dilution of Apple's mark.

14 (4) If Apple owns a valid trademark in APP STORE, whether Amazon's use of
15 the term APPSTORE is a fair use.

16 (5) Whether Apple alleged any facts to establish unlawful and/or unfair
17 business practices in violation of the California Unfair Competition Law, Cal. Bus. &
18 Prof. Code §§17200 *et seq.*

19 (6) Whether Apple is entitled to preliminary or permanent injunctions
20 prohibiting Amazon from using the words "app store" in connection with Amazon's
21 online app store that provides apps for Android devices.

22 (7) Whether Apple is entitled to any damages or any form of specific relief.

23 (8) Whether Amazon is entitled to a declaration that Amazon's use of the
24 words "app store" does not infringe or dilute any trademark rights or other rights of
25 Apple.

26 (9) Whether Amazon is entitled to costs and its attorneys' fees and expenses
27 incurred in this matter as an exceptional case under 15 U.S.C. §1117.

28 4. Motions:

1 On April 13, 2011, Apple filed a Motion for Preliminary Injunction. (Docket No. 18.)
2 That motion is fully briefed and argued and is now pending before the Court. The parties
3 anticipate that summary judgment motions will likely be filed on the issues of trademark validity,
4 infringement, dilution, and the fair use defense pursuant to the schedule set forth in paragraph 17.

5 5. Amendment of Pleadings:

6 Apple anticipates amending its complaint to change the statute supporting its fourth cause
7 of action from California Business & Profession Code § 14330 to California Business &
8 Professions Code § 14247. The parties do not anticipate making any other amendments to the
9 pleadings at this time.

10 6. Evidence Preservation:

11 The parties acknowledge their obligations regarding evidence preservation and agree to
12 abide by such obligations.

13 7. Disclosures

14 The parties will exchange Rule 26(a)(1) initial disclosures by agreement on July 5, 2011.

15 8. Discovery:

16 The parties anticipate discovery will be taken on at least the following topics:
17 (1) trademark validity or the lack thereof; (2) Apple's attempt to register the term "app store" in
18 the United States Patent and Trademark Office; (3) consumer confusion or the lack thereof; (4)
19 trademark dilution or the lack thereof; (5) Apple's generic use of "app store," if any; (6) Apple's
20 advertising and promotion efforts of the term "app store" and its App Store; (7) Apple's
21 communications with other companies regarding these third parties' use of the term "app store";
22 (8) Apple's decision to use the term "app store" in connection with its products or services; (9)
23 the intent of Amazon in using "appstore," including in "Amazon Appstore for Android"; (10)
24 potential market expansion or the lack thereof; and (11) damages or the lack thereof. The parties
25 anticipate proposing a joint protective order to the Court. The parties also anticipate that they will
26 agree to a procedure for producing electronically-stored information, if any such production is
27 required. The parties currently do not believe that any changes to the limitations on discovery
28

1 imposed by the Rules of Civil Procedure are necessary. The parties' requested discovery
2 schedule is set forth in paragraph 17 below.

3 9. Class Action:

4 This is not a class action.

5 10. Related Cases:

6 Currently, there are no pending related cases.

7 11. Relief:

8 (a) *Plaintiff's Statement:* Apple requests that: judgment be entered in its favor; Apple be
9 awarded its damages and Amazon's profits attributable to the infringement; an injunction issue
10 preventing Amazon from using the APP STORE mark or any colorable variation thereof and
11 preventing Amazon from causing any further dilution to Apple's APP STORE mark; Apple be
12 awarded its reasonable attorney's fees and costs; the Court grant such other and further relief as it
13 deems just and proper.

14 (b) *Defendant's Statement:*

15 Amazon requests that: judgment be entered its favor; a declaration be issued that
16 Amazon's use of the words "app store" does not infringe or dilute any trademark rights or other
17 rights of Apple; Amazon be awarded its costs and its attorney's fees and expenses incurred in this
18 matter as an exceptional case under 15 U.S.C. §1117; and any other and further relief as the Court
19 deems appropriate.

20 12. Settlement and ADR: The parties will discuss alternative dispute resolution after
21 sufficient discovery has been taken to permit evaluation of the claims and defenses raised.

22 13. Consent to Magistrate Judge For All Purposes: On March 21, 2011, Apple
23 declined to consent to the assignment of this matter to a Magistrate Judge for all purposes.

24 14. Other References: The parties agree that this case is not suitable for reference to
25 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

26 15. Narrowing of Issues: The parties have not yet identified areas where they may
27 narrow the issues in dispute but will revisit this issue as discovery progresses.

28 16. Expedited Schedule: The parties agree that this case cannot be handled on an

1 expedited basis with streamlined procedures.

2 17. Scheduling:

3 (a) ***Plaintiff proposes the following schedule:***

- 4 • Close of all fact discovery: December 16, 2011.
- 5 • Last day to serve expert disclosures and reports (FRCP 26(a)(2)): January 13,
6 2012.
- 7 • Last day to serve rebuttal expert reports: January 27, 2012.
- 8 • Close of expert discovery: February 24, 2012.
- 9 • Last day to file dispositive motions: March 23, 2012.
- 10 • Pre-trial disclosures (FRCP 26(a)(3)): June 8, 2012.
- 11 • Final pretrial conference: July 1, 2012.
- 12 • Trial: July 9, 2012.

13 (b) ***Defendants propose the following schedule:***

14 Defendants' proposed schedule is based on a trial date beginning on July 30, 2012. Lead
15 counsel for Amazon currently has an antitrust jury trial scheduled before Magistrate Judge
16 Elizabeth D. Laporte (No. CV 09-5535 EDL) set to begin on May 7, 2012 and to continue for two
17 to three weeks or more. As the duration of that trial is presently uncertain, a trial date set in this
18 matter for July 30, 2012 is respectfully requested so that there can be proper preparation.

- 19 • Close of all fact discovery: January 20, 2012.
- 20 • Last day to serve expert disclosures and reports (FRCP 26(a)(2)): February 17,
21 2012.
- 22 • Last day to serve rebuttal expert reports: March 19, 2012.
- 23 • Close of expert discovery: April 9, 2012.
- 24 • Last day to file dispositive motions: May 7, 2012.
- 25 • Pre-trial disclosures (FRCP 26(a)(3)): June 29, 2012.
- 26 • Final pretrial conference: July 23, 2012.
- 27 • Trial: July 30, 2012.

28

1 18. Trial: The parties have requested that this case be tried to a jury. The parties
2 currently anticipate that trial of this matter will require eight days of testimony.

3 19. Disclosure of Non-Party Interested Entities or Persons:

4 Apple filed its L.R. 3-16 certification on March 18, 2011 (Docket No. 8); Amazon.com,
5 Inc filed its L.R. 3-16 certification on April 8, 2011 (Docket No. 12); and Amazon Digital
6 Services, Inc. filed its L.R. 3-16 certification on April 18, 2011 (Docket No. 31). The parties
7 disclosed no non-party interested entities or persons.

8 20. Other Matters: The parties do not have any other matters to address with the Court
9 at this time.

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Dated: June 23, 2011

DAVID R. EBERHART
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David R. Eberhart
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Dated: June 23, 2011

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