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 TELECOMMUNICATIONS AMERICA, LLC  
 15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

21 SAMSUNG ELECTRONICS CO., LTD., a  
 Korean business entity; SAMSUNG  
 22 ELECTRONICS AMERICA, INC., a New  
 York corporation; SAMSUNG  
 23 TELECOMMUNICATIONS AMERICA,  
 LLC, a Delaware limited liability company,

24 Defendants.  
 25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S RESPONSES TO APPLE'S  
 OBJECTIONS TO EXHIBITS TO BE  
 USED IN SAMSUNG'S DIRECT  
 EXAMINATION OF JUSTIN DENISON**

1 Samsung hereby submits responses to Apple’s objections to two exhibits Samsung intends  
2 to use during its direct examination of Justin Denison.

3 **DX627**

4 **(1) Authentication:** This exhibit consists of Best Buy advertisements for electronic  
5 devices including smartphones and tablet computers by various manufacturers other than Apple.  
6 Justin Denison was the Chief Strategy Officer for Samsung Telecommunications America, LLC  
7 (“STA”) during the relevant time period. Part of his job responsibilities included monitoring and  
8 reviewing the competitive landscape, and gaining a general understanding of what devices were  
9 released by various manufacturers at any given time. He will testify that as part of this function,  
10 he would regularly review marketing by major electronics retailers, including Best Buy, and he  
11 will be able to lay a foundation for the advertisements comprising this exhibit by confirming based  
12 on his own personal experience that they are what they purport to be.

13 **(2) Relevance:** The wide variety of electronic devices depicted in this exhibit also is  
14 relevant to show that a number of third parties have used aspects of the trade dress claimed by  
15 Apple, and therefore that Apple’s claimed trade dress lacks distinctiveness. The advertisements  
16 comprising this exhibit are also relevant to Samsung’s state of mind, as they show that Samsung  
17 monitors the competitive marketplace on a regular basis as part of its effort to avoid intellectual  
18 property violations.

19 **(3) Certain phones excluded by MIL # 3:** Samsung does not intend to show any pages  
20 depicting phones that were excluded by the Court’s ruling on MIL #3.

21 **DX 629**

22 **(1) Relevance:** This exhibit constitutes a Samsung television advertisement for its Galaxy  
23 S II, launched in the fall of 2011. The advertisement, part of Samsung’s “Next Best Thing”  
24 campaign, is an explicit attempt by Samsung to draw distinction between Apple’s iPhone and  
25 Samsung's product and to direct consumers to Samsung's product. It demonstrates differences  
26 between the products and shows that far from sowing confusion or engaging in deception or  
27 dilution Samsung actually is doing the opposite.

1 Apple does not dispute that the exhibit is relevant to show “Samsung’s marketing channels,  
2 Samsung’s target consumers, and the competitive nature of the parties’ respective products.”  
3 July 29, 2012 11:52 p.m. email from Taryn Rawson to Victoria Maroulis et al. Rather, Apple  
4 contends that the exhibit cannot be introduced to show lack of confusion or dilution. *Id.* But  
5 Samsung does not intend to argue that this exhibit shows a lack of actual confusion or dilution.  
6 Rather, the exhibit is relevant to Samsung’s state of mind (intention), including to rebut Apple’s  
7 claims of willful infringement.

8 **(2) Hearsay:** The exhibit is not being offered for its truth. Rather, as explained above, it  
9 is being offered as relevant to Samsung’s state of mind to avoid, rather than perpetuate, any  
10 confusion or dilution with Apple’s products.

11 **(3) Foundation:** Mr. Denison, as STA’s Chief Strategy Officer, has personal knowledge  
12 regarding Samsung’s marketing strategy generally, and the “Next Best Thing” campaign in  
13 particular, and can authenticate this exhibit and testify to the intent behind its creation.

14 **(4) Apple’s Proposed Limiting Instruction:** Samsung objects to Apple’s proposed  
15 limiting instruction with regard to this exhibit, because the exhibit’s relevance is not limited to the  
16 topics Apple has identified – Samsung’s marketing channels, Samsung’s target consumers, and the  
17 competitive nature of the parties’ respective products. At a minimum, as discussed above, the  
18 exhibit is directly relevant to Samsung’s state of mind.

19  
20 DATED: July 30, 2012

QUINN EMANUEL URQUHART &  
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21  
22 By /s/ Victoria F. Maroulis

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