

EXHIBIT 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,
Plaintiff,

v.

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

Case No. 11-cv-01846-LHK
**EXPERT REPORT OF
SANJAY SOOD**

****CONFIDENTIAL – CONTAINS MATERIAL DESIGNATED AS HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY PURSUANT TO A PROTECTIVE
ORDER****

TABLE OF CONTENTS

	Page
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
I. INTRODUCTION.....	1
II. QUALIFICATIONS.....	1
III. ASSIGNMENT AND COMPENSATION	2
IV. MATERIALS CONSIDERED.....	2
V. DESIGN IS IMPORTANT IN CONSUMER CHOICE	3
B. The Impact of Product Aesthetics on Choice.....	4
C. The Impact of Bias on Choice of High Aesthetics.....	6
D. The Impact of Deliberation on Choice of High Aesthetics.....	7
E. The Impact of Self-Affirmation on Choice of High Aesthetics.....	9
VI. BUILDING BRAND EQUITY VIA CREATING STRONG BRAND ASSOCIATIONS	11
VII. APPLE IS KNOWN FOR DESIGN	14
A. The Importance of Design to Steve Jobs and Apple	14
B. Design is in Apple’s DNA.....	16
C. Publicity Surrounding Products and Product Launches.....	17
D. Design Recognition	22
VIII. APPLE’S BRAND EQUITY, AMONG THE HIGHEST IN THE WORLD, IS TIED CLOSELY TO PRODUCT DESIGN.....	25
IX. CONSUMERS MAY NOT IDENTIFY DESIGN AS A PRIMARY DRIVER OF PURCHASES OF APPLE PRODUCTS.....	28
X. SAMSUNG’S COPYCAT PRODUCTS WILL DILUTE THE STRENGTH OF APPLE’S DISTINCTIVE DESIGNS, AND, AS A RESULT, THE OVERALL APPLE BRAND	28
XI. SUPPLEMENTATION.....	32
XII. EXHIBITS TO BE USED.....	32

1 **I. INTRODUCTION**

2 1. I, Sanjay Sood, have been asked to provide an Expert Report on behalf of
3 Apple Inc. (“Apple”) in the above-captioned case. I understand that Apple has alleged that
4 Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung
5 Telecommunications America, LLC (collectively “Samsung”) have infringed Apple’s patents,
6 trade dress, and trademarks.

7 **II. QUALIFICATIONS**

8 2. I am an Associate Professor at the Anderson Graduate School of Management of
9 the University of California, Los Angeles (“UCLA”). My teaching and research interests are
10 marketing management, brand management, advertising, and consumer behavior.

11 3. I hold a Ph.D. in Marketing from Stanford University. I also received a Master of
12 Business Administration degree from Northwestern University and a Bachelor of Science in
13 Electrical Engineering from the University of Illinois at Urbana-Champaign.

14 4. Over the past thirteen years, I have taught marketing management, brand
15 management, and entertainment marketing to students in graduate and executive education
16 programs at UCLA and Rice University. A copy of my *curriculum vitae* is attached hereto as
17 Exhibit A.

18 5. I am an associate editor at the *Journal of Marketing*. I am also on the editorial
19 boards of the *Journal of Marketing Research*, the *Journal of Consumer Psychology*, and the
20 *Journal of Consumer Research*. I also have published numerous journal articles on consumer
21 behavior, brand equity, and other marketing topics. A list of my honors, awards, articles, and
22 speaking engagements appears in my *curriculum vitae*.

23 6. My research focuses on marketing management, brand management, advertising,
24 and consumer behavior. Specifically, I have studied the effects of branding strategies and product
25 experience on brand evaluations, competitive anticipation in marketing decision making, and the
26 effects of design on consumer behavior.

27 7. In the past five years, I have provided expert opinions concerning marketing and
28 consumer behavior in the following cases:

- 1 • *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, Case No. 07-cv-03752-
2 JSW (N.D. Cal.) (expert for Levi Strauss & Co. on trade dress recognition and
3 likelihood of confusion);
- 4 • *Experian Information Solutions, Inc. v. LifeLock, Inc.*, 08-cv-00165-AG-MLG
5 (C.D. Cal.) (expert for Experian Information Solutions, Inc. on consumer
6 behavior); and
- 7 • *Erica Possin v. ConsumerInfo.com, Inc., d/b/a Freecreditreport.com*, SACV10-
8 00156-JVS (C.D. Cal.) (expert for ConsumerInfo.com, Inc. on consumer
9 perceptions of advertising).

10 8. I also have been professionally engaged by the following companies to provide
11 corporate training and consultation regarding marketing and branding: Microsoft Corporation,
12 MTV Network, The Walt Disney Company, Kaiser Permanente, Sony Corporation, Sanofi-
13 Aventis, Novartis, Irish Medical Devices Association, State Farm, Lynx Grills, and National
14 Promotions & Advertising, Inc.

15 **III. ASSIGNMENT AND COMPENSATION**

16 9. I have been asked by counsel for Apple Inc. to provide an Expert Report in this
17 matter on several issues. These issues include: (a) the general impact of design on consumer
18 purchasing decisions, (b) the specific impact of design on consumer decisions to purchase
19 Apple's iPhone and iPad products, and (c) the impact of sales of competing products with
20 substantially the same design on the brand image and marketing efforts of a company known for
21 its innovative and distinctive designs, such as Apple. This report sets forth my professional
22 opinion on these issues as an expert in marketing and branding.

23 10. I have been retained as an expert consultant in this case by Morrison &
24 Foerster LLP, attorneys for Apple Inc. For my work in this matter, I am receiving compensation
25 at my hourly rate of \$550. My compensation is in no way tied to the outcome of this case or any
26 particular part of this case.

27 **IV. MATERIALS CONSIDERED**

28 11. A list of the documents I considered and relied upon is attached as Exhibit B.

1 **V. DESIGN IS IMPORTANT IN CONSUMER CHOICE**

2 12. Over the past five years, I have conducted surveys as part of my research on the
3 impact of product design on consumer choice. Research on consumer behavior—including my
4 own research—demonstrates that design plays an important role in consumers’ purchasing
5 decisions. As described below, my research examines consumer willingness to pay a premium
6 for good design, how consumers process information about design, and the impact of design on a
7 consumer’s sense of self.

8 13. Typically, the research paradigm provides consumers with a choice between an
9 attractive-looking product and an average-looking product. Depending on the study parameters,
10 the products will have varying levels of functional feature information provided, with up to five
11 other attributes, including price, shown in addition to design. I have examined a host of product
12 categories, ranging from some that are more public in nature such as socially oriented products
13 (*e.g.*, sunglasses, blue jeans, etc.) as well as categories that are more private in nature and less
14 socially oriented (*e.g.*, tape dispensers, CD alarm clock radios, etc.). Based on the studies I have
15 conducted and that are described below, I have determined that an attractive design for a product
16 is a critical driver of purchasing decisions in both public and private categories.

17 14. My research also reveals that while consumers are greatly influenced by attractive
18 design, they are not necessarily consciously aware of this influence. Consumers may not realize
19 the significance of design in their purchasing decisions, or may be unwilling to identify design as
20 the single most important factor in their purchase decisions.

21 15. The overall pattern of results suggests that design is a highly valued product
22 attribute that can provide a strong competitive advantage in the marketplace. The results of my
23 studies have revealed that consumers are willing to pay large price premiums for products with an
24 attractive design.¹ Because design is an important factor in consumer buying decisions, a
25 company such as Apple that has attractive product designs has a significant competitive

26 _____
27 ¹ Exhibit C, Claudia Townsend and Sanjay Sood, *The Impact of Product Aesthetics on*
28 *Choice: A Dual Process Explanation.*

1 advantage. My research shows that not only are consumers more likely to buy those specific
2 products, they are willing to pay more for them. Moreover, other research suggests that if a
3 company has a consistent focus on design, it may acquire a reputation as an innovator in design
4 that may increase the overall value of the brand and create a positive image that attracts more
5 customers.²

6 **B. The Impact of Product Aesthetics on Choice**

7 16. The primary focus of some of my studies has been to identify the price premium
8 that consumers would be willing to pay for a product with an attractive design. My research
9 reveals a systematic underweighting of design as a reason for choice when consumers are asked
10 directly to rate the importance of design, as opposed to when consumers are asked indirectly by
11 being offered a choice between two specific products, one of which has a more aesthetically
12 pleasing design than the other. I have conducted several studies that examine this contrast in the
13 importance of design when asking the question directly or indirectly. For example, when asked
14 directly (as in the case of a survey or questionnaire) about how much extra they would be willing
15 to pay for a product with an attractive design, consumers replied that they would be willing to pay
16 about a 30% price premium in categories such as sunglasses.

17 17. When asked indirectly through a choice task, however, the results differed
18 significantly. Specifically, we provided consumers a choice between a product with an attractive
19 design and a product with an average design, presented in side by side pictures. Different sets of
20 people were given different prices for the two products, with the average-looking product priced
21 at a “base” price and the attractively-designed product priced at a premium, starting at a
22 15% premium over the base price and going up from there. A fundamental principle in business
23 is that as the price of a product increases, its market share decreases. In our studies, this principle
24 did not hold true for products with attractive design. Instead, the market share of the attractive
25

26 ² Kevin Lane Keller, *Strategic Brand Management*, (3rd edition, Upper Saddle River, NJ:
27 Prentice-Hall, 2008); Kevin Lane Keller, *The Brand Report Card*, HARV. BUS. REV., 3
28 (Jan-Feb. 2000); Kevin Lane Keller, *Conceptualizing, Measuring, and Managing Customer-
based Brand Equity*, 57 JOURNAL OF MARKETING, 1-22 (March 1993).

1 product remained the same even when the price premium increased dramatically to 210%. The
2 results demonstrate that consumers are very willing to pay a substantial price premium for an
3 attractively designed product.

4 18. In contrast, the market share decreased when consumers were given a choice
5 between two products with the same design but varied product attributes. We employed the same
6 research paradigm described above for products that varied in terms of price (starting with a 15%
7 price premium) and functionality. However, this time consumers were shown an identical picture
8 for both options to indicate they had the same design. For example, consumers were given a
9 choice between a product that was average in functionality and a product that was superior in
10 functionality (*e.g.*, sound quality for a CD alarm clock) with no variation in design. As the price
11 of the superior functioning product increased, its market share decreased. The same pattern holds
12 for products that varied in quality and brand name. That is, when consumers were given a choice
13 between a product rated average in quality (or from an average brand) and a product rated high in
14 quality (or superior brand), the market share of the high-quality (or superior brand) product
15 decreased as its price increased. Thus, we conclude that the remarkably flat price response is
16 uniquely associated with products that have good design.

17 19. Our studies show that the powerful impact of design is related to its visual nature.
18 That is, consumers process information about design so quickly that they are not necessarily
19 aware of the impact of design. In the research paradigm described above, when design is shown
20 verbally in terms of ratings instead of visually in terms of pictures, the flat price response of
21 design disappears. To examine the importance of the visual/verbal distinction, we converted the
22 visual presentation of design into numerical ratings. First we asked a set of consumers to rate the
23 overall looks/design of the good-looking and average-looking products used above on a 100-point
24 scale. We then averaged these ratings and provided them to a second set of consumers in a choice
25 task that now featured a numerical (not visual) variation in design. Specifically, this second set of
26 consumers was given a choice between a product rated average in design (*e.g.*, 48/100, the design
27 rating of the average-looking product) and a product rated highly in design (*e.g.*, 73/100, the
28 actual design rating of the good-looking product). Similar to functionality, when design was

1 described verbally in ratings, the market share of the attractive product decreased as its price
2 increased.

3 20. It is important to note several additional precautions that provide further
4 confidence that the results could be uniquely attributed to design. We conducted a pretest to
5 confirm unanimity of aesthetics. In the pretest, a subset of the participants from the main study
6 described above were presented with two black and white pictures side-by-side for each product
7 category, and they were asked to indicate which one had the better “overall looks/design.” There
8 was more than 90% agreement in each product category for the better-looking design. Thus,
9 there was general agreement amongst the subject population about which products were beautiful.
10 In addition, we attempted to separate design from functionality. That is, respondents were told
11 that all other features were the same across products except for the design and the price. This
12 statement was included so that respondents would not infer that the product with good design was
13 also better in terms of functionality or quality more generally. Finally, we focused on categories
14 that are more privately consumed and therefore do not rely on fashion or have value in terms of
15 social signaling. For example, we studied CD alarm clocks and desk lamps, products that are
16 functional in nature and do not have very much social currency. One would expect design to be
17 more important in fashion categories such as clothing and indeed the results are similar and/or
18 larger in magnitude.

19 **C. The Impact of Bias on Choice of High Aesthetics**

20 21. My research also shows that consumers may be reluctant to identify “design” as a
21 reason for their purchase decision when responding to surveys. Similar to the price-premium
22 research described above, we asked consumers two sets of questions that were designed to test
23 directly and indirectly whether they felt that “design” justified purchase decisions. Specifically,
24 consumers were presented with the following scenario: “Person A and Person B are both
25 shopping for a new blender. There are two options. One is more aesthetically pleasing while the
26 other functions better [or is lower priced or better branded]. Person A opts for the more
27 aesthetically pleasing option. Person B opts for the better functioning product [or lower priced or
28 better branded] option.” Based on this scenario, consumers were asked, “Who is smarter?”

1 None of the respondents said that Person A was smarter in any of the three scenarios (design vs.
2 function, price, or brand). This research demonstrates that, although consumers weigh design
3 heavily in their purchase decisions (as discussed above), consumers perceive that reporting that
4 their decisions are being driven by design is not a rational or “smart” decision. As a result,
5 consumers may systematically underreport the impact of design in their decision making because
6 of the bias reflected above.

7 **D. The Impact of Deliberation on Choice of High Aesthetics**

8 22. In another study, we asked consumers questions that indirectly tested whether they
9 felt that design justified purchasing decisions. Specifically, consumers were given the choice
10 between an aesthetically appealing product and an average-looking product, similar to the studies
11 of willingness to pay described above. We used five product categories in this study: tape
12 dispensers, blenders, CD alarm clocks, desk lamps, and wall clocks. In contrast to the earlier
13 studies, consumers were given four functional features (in addition to design and price) as a basis
14 for evaluations for each of the products. For example, in tape dispensers the functional features
15 included whether or not the base was no-slip (feature A), whether or not the base was weighted
16 (feature B), whether or not the dispenser could handle more than one size of tape (feature C), and
17 whether or not it was easy to load the dispenser with tape (feature D).

18 23. All of these functional features were shown to the respondents; however, the
19 features differed in terms of whether or not they favored the aesthetically pleasing option. For
20 half of the respondents, two of the features (*e.g.*, features A and B) favored the aesthetically
21 pleasing option (*e.g.*, this dispenser had a weighted base and a no-slip base) and the other two
22 features (*e.g.*, features C and D) favored the average-looking option (*e.g.*, this dispenser could
23 handle more than one tape size and was easy to load). This was reversed for the other half of
24 respondents so that the features that previously favored the average-looking option (*e.g.*,
25 features C and D) now favored the aesthetically pleasing option and the features that previously
26 favored the aesthetically pleasing option (*e.g.*, features A and B) now favored the average-looking
27 option. After choosing an option, consumers were asked to rate how important each feature was
28 in their decision.

1 24. Across the product categories, each feature set (*e.g.*, features A and B or features C
2 and D) was weighted as being significantly more important whenever it was paired with the more
3 aesthetically pleasing product. In other words, when asked about the importance of certain
4 features in terms of being a basis for choice, consumers in this study consistently inflated the
5 importance of functional features that were paired with the more aesthetically pleasing products,
6 regardless of which feature set was paired with those products. This research demonstrates that
7 consumers may justify their choice of an aesthetically appealing product by overweighting
8 functional product features because they may be reluctant to articulate that design drove their
9 purchasing decisions.

10 25. As stated above, based on my research, the distinctiveness of a product's design is
11 a critical driver of purchasing decisions. The experimental paradigm that we used in the studies
12 paired an aesthetically pleasing product with an average-looking product. Consumers' choices
13 made it clear that consumers are willing to pay substantially more for an aesthetically pleasing
14 product; yet, when asked directly, consumers would underweight the importance of design as a
15 basis for their choices. Instead, they overweighed the importance of functional features, such as a
16 tape dispenser with a no-slip base. This is consistent with research in the field of consumer
17 behavior that shows that when consumers are surveyed about their choices, they tend to give
18 reasons that are easier to justify to themselves and others (*e.g.*, a tape dispenser with a no-slip
19 base) rather than reasons that are less rational and harder to justify (*e.g.*, an attractive-looking tape
20 dispenser).³ Thus, although consumers prefer notable, attractive designs, they nonetheless tend to
21 underweight the importance of design when directly asked about its importance, and they
22 correspondingly overweight other factors.

27 ³ Eldar Shafir, Itamar Simonson & Amos Tversky, *Reason-Based Choice*, 49 COGNITION
28 11 (1993).

1 **E. The Impact of Self-Affirmation on Choice of High Aesthetics**

2 26. My research also reveals that choosing a product with an attractive design can
3 actually enhance a consumer’s sense of self.⁴ The study participants were randomly assigned to
4 one of three groups based on the following conditions: (1) self-affirmation; (2) self-
5 disaffirmation; or (3) control.⁵ As before, consumers were asked to make a choice between an
6 average-looking product and an attractive product. In this study, however, the consumers were
7 asked to write a short essay prior to making the choice. We provided a list of values to the self-
8 affirmation and self-disaffirmation groups of consumers and requested that they rank them in
9 order of importance. Then, we asked the self-affirmation group to write about a value from the
10 list that was most important to them personally and we asked the disaffirmation group to write
11 about a value from the list that was least important to them personally. The control group was
12 asked to write about what they did the prior day between 5 pm and 7 pm. For example, a
13 consumer in the self-affirmation group may describe an example of when they were honest (very
14 important value) before making the choice. Research in psychology suggests that people are
15 constantly in a state of requiring affirmation and that we have a natural tendency to seek it out.⁶
16 Similarly, earlier psychologists have described people as in a constant state of “ego-
17 enhancement”⁷ and that there is a basic need to enhance and protect the self to which all other

19 ⁴ Exhibit D, Claudia Townsend and Sanjay Sood, *Self-Affirmation Through the Choice of*
20 *Highly Aesthetic Products*.

21 ⁵ Both the self-disaffirmation and control groups actually serve as control conditions. The
22 two groups allow the study to test whether participants who have engaged in a self-affirming
23 activity are less likely to engage in another self-affirming activity (such as selecting an attractive
24 product) or more likely to engage in a disaffirming one (such as selecting an average-looking
25 objects). The control group was added to ensure that the act of discussing one’s values does not
26 have an effect on choice.

27 ⁶ Claude Steele, *The Psychology of Self-affirmation: Sustaining the Integrity of the Self*,
28 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY*, 261-302, (ed: L. Berkowitz, New York:
Academic Press, 1988).

⁷ Gordon W. Allport, *The Ego in Contemporary Psychology*, *PSYCHOLOGICAL REVIEW* 50,
451-478 (1943).

1 needs are subordinate.”⁸ Our hypothesis was that choosing a product with good design could
2 enhance the self in this way.

3 27. After completing the essays, consumers were asked to make a choice between an
4 average-looking product and an attractive product. We used two desk lamps or two calculators
5 for this study. The two options either varied on price and design (*e.g.*, as shown in the
6 photograph of the product) or price and a functional attribute (*e.g.*, number of brightness settings
7 for the desk lamp). For the functional option, the design level was the same for both options as
8 presented in two identical photographs.⁹ Likewise, the functional attributes were the same for the
9 design options. In other words, only two product attributes were varied (function and price or
10 design and price) in any choice decision.

11 28. The results show that when consumers write about an unimportant value, they tend
12 to choose the attractive-looking product. In contrast, when consumers write about an important
13 value, the number who choose the attractive-looking product declines. Because functionality
14 does not implicate the self, affirmation did not have an impact on choices between options
15 varying in functionality. Accordingly, there is no difference in the percentage of people choosing
16 products when they vary only in functionality. Thus, consistent with the psychology literature on
17 self-affirmation, this choice pattern suggests that choosing products with good design enhances
18 one’s sense of self. That is, people choose products with good design when they are seeking
19 affirmation and this tendency decreases when they are not seeking affirmation. On the other
20 hand, the tendency to choose products with good functionality does vary with self-affirmation,
21 suggesting that design is more strongly tied to the self. Overall, this choice pattern is consistent
22 with the notion that choosing an attractive-looking product actually affirms one’s sense of self.

25 ⁸ Seymour Epstein, *The Self-Concept Revisited, or a Theory of a Theory*, AMERICAN
26 PSYCHOLOGIST 28, 404-416 (1973).

27 ⁹ The photographs were pretested and there was over 90% agreement on which product
28 exhibited greater aesthetic appeal. The prices were also pretested and it was confirmed that the
two options were generally balanced in their overall appeal.

1 29. In summary, my research on product design indicates the following: (i) that
2 consumers are willing to pay substantial price premiums for an attractive-looking product;
3 (ii) design is an important feature even in categories that are typically private in nature where
4 social currency is not a big issue, perhaps because choosing attractive products affirms one's
5 sense of self, and (iii) consumers may not be aware of the effect of design, hence the influence of
6 design may not be revealed in surveys where consumers are asked directly. In fact, we would
7 expect this effect to become larger with products that do have social currency. When given a
8 choice between an average-looking product and an attractive-looking product, however, it is clear
9 that design has a large influence on the decision even in more mundane categories.

10 30. I note that my research is consistent with anecdotal evidence from Apple. When
11 Jonathan Ive, Apple's Senior Vice President of Industrial Design, was asked: "[d]o consumers
12 really care about good design[,]" he responded:

13 One of the things we've really learnt over the last 20 years is that
14 while people would often struggle to articulate why they like
15 something – as consumers we are incredibly discerning, we sense
16 where [there] has been great care in the design, and when there is
cynicism and greed. It's one of the thing [sic] we've found really
encouraging.¹⁰

17 **VI. BUILDING BRAND EQUITY VIA CREATING STRONG BRAND**
18 **ASSOCIATIONS**

19 31. A brand is one of the most valuable assets of a company.¹¹ For example,
20 according to BrandZ, in 2011 the world's most valuable brand was Apple, valued at over
21
22

23
24 ¹⁰ See Mark Prigg, *Sir Johnathan Ive: The iMan Cometh*,
25 <http://www.thisislondon.co.uk/lifestyle/london-life/sir-jonathan-ive-the-iman-cometh-7562170.html>.

26 ¹¹ This section includes concepts from the following sources: Kevin Lane Keller,
27 *Strategic Brand Management*, (3rd edition, Upper Saddle River, NJ: Prentice-Hall, 2008);
28 Kevin Lane Keller, *Conceptualizing, Measuring, and Managing Customer-based Brand Equity*,
57 JOURNAL OF MARKETING, 1-22 (March 1993).

1 \$150 billion.¹² In addition to being valued financially, the benefits of having a strong brand can
2 be described in terms of the advantages it provides in the marketplace. These benefits include:

- 3 1. Greater customer loyalty—customers desire a relationship
4 with the brand because it has relevant meaning. They are willing to
5 seek the brand out and actively tell others about the brand.
- 6 2. Less vulnerability to competitive marketing actions—other
7 brands are not perceived as acceptable substitutes even though the
8 products may be functionally similar.
- 9 3. Larger price margins—consumers are willing to pay a
10 premium to keep the brand relationship.
- 11 4. Greater trade cooperation and support—bargaining power
12 increases with the trade because other products are not perceived as
13 substitutes. In addition, it is easier for strong brands to develop
14 trade relationships.
- 15 5. Increased marketing communication effectiveness—a well-
16 understood brand does not have to spend as much money to get its
17 positioning across to consumers.
- 18 6. Additional brand extension opportunities—consumers are
19 more likely to accept new products from brands that they know and
20 trust.

21 32. Given the significant benefits of having a strong brand, it is imperative that the
22 brand be managed with the utmost care. Indeed, if not managed effectively, even iconic brands
23 can lose their power in the marketplace. Kodak, Sears, and Saturn are a few examples of brands
24 that have lost tremendous value over the years.

25 33. Creating a strong brand entails establishing relevant meaning in the mind of the
26 customer. Brand equity is strengthened when a company consistently uses the same branding
27 association for its products over time, especially if that association is perceived to be unique.
28 Brand equity is lost when the association is not emphasized or when it ceases to be unique in the
market.

¹² “BrandZ Top 100: Most Valuable Global Brands 2011,” *Millward Brown Optimor*, APLNDC-Y0000234947-234999, at APLNDC-Y0000234953; “BrandZ Top 100: Most Valuable Global Brands 2007,” *Millward Brown Optimor*, APLNDC-Y0000234143-234169 at APLNDC-Y0000234152.

1 34. In order to better understand how to conceptualize brand equity, it is helpful to
2 consider the difference between a product and a brand. Branding is the primary means to
3 distinguish the goods of one producer from those of another. Keller's Customer-Based
4 Brand Equity model provides a framework that distinguishes between products and brands. A
5 product is anything that can be offered to a market for attention, acquisition, use, or consumption
6 that might satisfy a need or want. Thus, a product may be a physical good (*e.g.*, a cereal, tennis
7 racquet, or automobile), service (*e.g.*, an airline, bank, or insurance company), retail store (*e.g.*, a
8 department store, specialty store, or supermarket), or a person (*e.g.*, a political figure, entertainer,
9 or professional athlete).

10 35. Whereas a product refers to the functional aspects of a good or service, a brand
11 refers to the abstract meaning that differentiates that product in some way from other products
12 designed to satisfy the same need. These points of differentiation may be rational features related
13 to product performance or more emotional features related to what the brand represents to
14 consumers. Thus, extending the example from above, a branded product may be a physical good
15 (*e.g.*, Kellogg's Corn Flakes cereal, Prince tennis racquets, or Ford Taurus automobiles), a service
16 (*e.g.*, United Airlines, Bank of America, or Transamerica insurance), a store (*e.g.*,
17 Bloomingdale's department store, Body Shop specialty store, or Safeway supermarket), or a
18 person (*e.g.*, Bill Clinton, Tom Hanks, or Michael Jordan). The important aspect for companies is
19 to emphasize an association consistently over time so that the brand meaning becomes evident to
20 consumers.

21 36. Customer-based brand equity is defined as the differential effect that brand
22 knowledge has on consumer response to the marketing of that brand. A brand is said to have
23 positive customer-based brand equity when customers react more favorably to a product and the
24 way it is marketed when the brand is identified as compared to when it is not (*e.g.*, when it is
25 attributed to a fictitiously named or unnamed version of the product). As described below, brand
26 knowledge is the critical component that drives brand equity.

27 37. For example, blind tests routinely find differences in consumer responses between
28 products when the brand is known relative to when the brand is not known. Many consumer

1 categories such as cola, soap, and pain relievers have competitive products that perform very
2 similarly when the brand name is not known. The reality, however, is that Coke, Dove, and
3 Tylenol are some of the strongest brands in the world and when those brands are revealed in
4 consumer tests, that knowledge affects the results. This brand strength reflects the importance of
5 brand knowledge, which creates brand meaning and ultimately generates the differential
6 responses to marketing programs. Two colas may be quite physically similar in composition but
7 Coke and Pepsi are perceived to be vastly different due to the knowledge accumulated about these
8 brands over time. Thus, brands and brand equity reside in the minds of consumers, and it is of
9 paramount importance to actively manage this knowledge with effective brand marketing
10 programs. Of utmost importance is the creation and consistent reinforcement of a unique point of
11 difference around which the brand can be positioned.

12 38. Uniqueness is critical to establish, because the strongest brands have a
13 recognizable point of difference that differentiates them from the competition. For example,
14 consider a brand like Pepsi. Brand knowledge is often examined by asking customers what
15 comes to mind when the brand name is mentioned. When asked about Pepsi, consumers may
16 mention, for example, category associations (cola), attributes (sweet taste), and image
17 associations (endorsers like Britney Spears). These responses represent the knowledge that
18 customers have about the Pepsi brand in memory and form the basis of brand equity. What is
19 important for Pepsi, however, is whether consumers mention something related to the brand's
20 point of difference. In this case, many customers tend to say that Pepsi is for young people, or
21 people who think young, or for Generation Next, etc. This is exactly what the brand manager at
22 Pepsi desires, that customers understand brand meaning and can communicate the brand's point
23 of difference.

24 **VII. APPLE IS KNOWN FOR DESIGN**

25 **A. The Importance of Design to Steve Jobs and Apple**

26 39. Apple's focus on design is evident in the way Apple has structured itself internally
27 and how it expresses itself externally. From the outset, Apple co-founder Steve Jobs believed in
28

1 the power of design.¹³ Eulogizing Jobs as designer first and CEO second, the *New York Times*
2 pointed out Jobs' attention to design and detail, stating: "He thought about design In fact,
3 he went beyond thinking about it. He obsessed over it—every curve, every pixel, every ligature,
4 every gradient."¹⁴ John Maeda, President of the Rhode Island School of Design, stated that Jobs'
5 single greatest design achievement "is the Apple organization, an organization that actually cares
6 about design more than technology."¹⁵

7 40. Steve Jobs was widely recognized as a design visionary throughout his career.¹⁶
8 For example, Paola Antonelli, senior curator of architecture and design at the Museum of

9 ¹³ For instance, the *Wall Street Journal* stated:

10 The most productive chapter in Mr. Jobs's career occurred near the
11 end of his life, when a nearly unbroken string of successful
12 products like the iPod, iPhone, and iPad changed the PC,
13 electronics and digital-media industries. The way he marketed and
14 sold those products through savvy advertising campaigns and
15 Apple's retail stores helped turn the company into a pop-culture
16 phenomenon.

17 *At the beginning of that phase, Mr. Jobs described his philosophy
18 as trying to make products that were at 'the intersection of art and
19 technology.'* In doing so, he turned Apple into the world's most
20 valuable company with a market value of \$350 billion." (emphasis
21 added)

18 Yukari Iwatani Kane, *Steven Paul Jobs, 1955-2011*, Wall Street Journal, October 5, 2011,
19 <http://online.wsj.com/article/SB10001424052702304447804576410753210811910.html>.

20 ¹⁴ Nick Bilton, *Steve Jobs: Designer First, C.E.O. Second*, October 6, 2011,
21 <http://bits.blogs.nytimes.com/2011/10/06/steve-jobs-designer-first-c-e-o-second/?ref=stevenpjobs>.

22 ¹⁵ *How Steve Jobs Changed the World of Design*, October 7, 2011,
23 <http://www.npr.org/2011/10/07/141144758/remembering-how-steve-jobs-changed-the-design-world>.

24 ¹⁶ John Markoof, *Redefined the Digital Age as the Visionary of Apple*, N.Y. Times,
25 October 5, 2011; *Obituary: Apple co-founder and Silicon Valley pioneer Steve Jobs is dead*,
26 MercuryNews.com, October 7, 2011, http://www.mercurynews.com/obituaries/ci_19048827;
27 *Steve Jobs: The Passing of a tech visionary*, SFGate, October 6, 2011,
28 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/10/06/ED1BILE1C9.DTL>; See Steve Lohr,
The Power of Taking the Big Chance, N.Y. Times, October 8, 2011,
<http://www.nytimes.com/2011/10/09/business/steve-jobs-and-the-power-of-taking-the-big-chance.html?scp=1&sq=The%20Power%20of%20Taking%20the%20big%20chance&st=cse>.

1 Modern Art in New York exclaimed that Jobs “had an exceptional eye for design, and not just an
2 eye, but an intelligence for design.”¹⁷ Jobs explained his focus on design, stating “[d]esign is the
3 fundamental soul of a man-made creation that ends up expressing itself in successive outer layers
4 of the product or service.”¹⁸

5 **B. Design is in Apple’s DNA**

6 41. As a result of Steve Jobs’ focus on design, one of Apple’s primary points of
7 difference is its strong association with design. This association derives from a continued
8 emphasis on design over decades in the marketplace. Apple has placed the utmost importance in
9 product design. The focus on design, however, is not limited to the look of the products. Apple’s
10 corporate culture values design. Apple’s advertising showcases design. Even Apple retail stores
11 and product packaging emphasize design.

12 42. Apple has stated that its overall business strategy includes leveraging its unique
13 ability to design and develop products that represent innovative industrial design. According to a
14 recent annual report:

15 The Company’s overall business strategy is to control the design
16 and development of the hardware and software for all of its
17 products, including the personal computer, mobile communications
18 and consumer electronics devices. The Company’s business
19 strategy leverages its unique ability to design and develop its own
20 operating system, hardware, application software, and services to
21 provide its customers new products and solutions with superior
22 ease-of-use, seamless integration, and innovative industrial
23 design.¹⁹

24 43. This sentiment on the importance of design is echoed in comments from the entire
25 Apple leadership team. Cordell Ratzlaff, a chief architect of the Mac OS X operating system,
26 said: “We did the design first. We focused on what we thought people would need and want, and

27 ¹⁷ James B. Stewart, *How Jobs Put Passion Into Products*, N.Y. Times, October 7, 2011,
28 <http://www.nytimes.com/2011/10/08/business/how-steve-jobs-infused-passion-into-a-commodity.html>.

¹⁸ *Id.*

¹⁹ Apple 10-K/A (Amended Annual Report) filed January 25, 2010, APLNDC-Y0000135185-APLNDC-Y0000135265 at APLNDC-Y0000135191.

1 how they would interact with their computer.”²⁰ Similarly, Jonathan Ive, the Senior Vice
2 President of Industrial Design at Apple, reflecting upon the importance of design, said that the
3 appearance of Apple products is “the result of painstaking attention to detail.”²¹ Clearly, Apple’s
4 corporate culture places tremendous value on design.

5 **C. Publicity Surrounding Products and Product Launches**

6 44. This internal emphasis on design is also expressed externally to consumers. For
7 example, [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

17 ²⁰ See “Design Thinking and Innovation at Apple,” Harvard Business School Case Study
18 No: 9-609-066, revised March 4, 2010, APLNDC-Y0000134928–134940.

19 ²¹ See *id.*

20 [REDACTED]
21 ²³ [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

45. [REDACTED]

[REDACTED]

[REDACTED]

46. Apple’s products have attained unprecedented levels of publicity and news coverage.²⁶ The launch of the iPhone in 2007 was covered exhaustively by the national media,²⁷ as was each introduction of each new iPhone model.²⁸ The formal launch of the iPad was even more extensively covered, with several major media outlets posting live blog reports throughout the event.²⁹ These products were exceedingly successful and they appeared in a variety of mass media channels, from newspapers, magazines, television, and movies. [REDACTED]

[REDACTED]

²⁵ [REDACTED]

²⁶ See, e.g., Jefferson Graham, *Apple Buffs Marketing Savvy to a High Shine*, USA Today, March 9, 2007, http://www.usatoday.com/tech/techinvestor/industry/2007-03-08-apple-marketing_N.htm.

²⁷ See, e.g., John Markoff, *Apple, Hoping for Another iPod, Introduces Innovative Cellphone*, N.Y. Times, Jan. 10, 2007; Ellen Lee, *Apple Unveils All-in-One iPhone*, S.F. Chronicle, Jan. 9, 2007; Jon Swartz, *Apple Unveils All-in-One iPhone*, USA Today, Jan. 10, 2007; Li Yuan & Pui-Wing Tam, *Apple Storms Cellphone Field*, Wall Street Journal, Jan. 10, 2007.

²⁸ See, e.g., Brad Stone and Jenna Wortham, *iPhone Stars in Apple Show, Supported by Software*, N.Y. Times, June 8, 2009; Ryan Kim, *Apple Unveils Faster iPhone with New Features*, S.F. Chronicle, June 9, 2009; Nathan Olivarez-Giles and Shan Li, *Apple Fans Camp Out to Get New iPhone 4S*, L.A. Times, Oct. 15, 2011; Casey Newton, *Apple’s iPhone 4S Generates Big 1st-Day Sales*, S.F. Chronicle, Oct. 14, 2011; *For Apple Fans, New iPhone Worth the Wait*, Chicago Tribune, Oct. 15, 2011;

²⁹ See, e.g., David Gallagher, <http://bits.blogs.nytimes.com/2010/04/03/live-blogging-the-ipads-big-day/> (New York Times blog entry titled “The iPad’s Big Day”).

1 [REDACTED] For example, an episode of the hit ABC series *Modern Family* revolved
2 around a character's efforts to obtain an iPad the day it was released.³¹ The iPad quickly became
3 associated with leading newsmakers and public figures throughout the world. Pope Benedict
4 XVI used an iPad to send the Vatican's first tweet and photos of the Pope with his iPad were
5 viewed all over the world.³² President Barack Obama stated in an interview that he uses his iPad
6 to read newspapers that he used to read in print.³³ And Oprah Winfrey named the iPad one of her
7 "Ultimate Favorite Things."³⁴ In addition, Apple recently won a product placement award for its
8 products appearing in a significant number of movies that were top box office hits in 2011.³⁵

9 47. Apple has made substantial expenditures on advertising since the iPhone was
10 launched in 2007.³⁶ [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 ³¹ See Brian Steinberg, 'Modern Family' Featured an iPad, but ABC Didn't Collect, <http://adage.com/article/mediaworks/modern-family-ipad-abc-collect/143105/>.

20 ³² See, e.g., <http://www.bbc.co.uk/news/world-europe-13956572>.

21 ³³ See Julia Edwards, *Obama Received an Early iPad From Steve Jobs* <http://www.nationaljournal.com/obama-received-an-early-ipad-from-steve-jobs-20111003>.

22 ³⁴ "Oprah's Ultimate Favorite Things 2010," *The Oprah Winfrey Show*,
23 November 19, 2010 (<http://www.oprah.com/oprahshow/Oprahs-Ultimate-Favorite-Things-2010/2>).

24 ³⁵ See <http://www.brandchannel.com/home/post/2012-Brandcameo-Product-Placement-Awards-021312.aspx#one>.

25 ³⁶ See Beth Snyder Bulik *Marketer of the Decade: Apple* <http://adage.com/article/special-report-marketer-of-the-year-2010/marketer-decade-apple/146492/>

26 [REDACTED]
27 ³⁷ [REDACTED]

28 ³⁸ [REDACTED]

1 [REDACTED] Attached as Exhibit E are examples of iPhone print and
2 billboard advertising.

3 48. [REDACTED]
4 [REDACTED]
5 [REDACTED] [REDACTED]
6 [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED]

9 [REDACTED] Attached as Exhibit F are examples of iPad print and billboard
10 advertising.

11 49. Apple Stores are also an expression of design and many of them have won
12 architecture awards.⁴¹ Not only are the stores visually appealing in terms of architecture,⁴² the
13 layout inside of the store differs significantly from other consumer electronics stores such as
14 Best Buy. The products are not jam packed on a shelf, rather they are spaced out on tables to
15 allow consumers to admire the design, similar to a museum, and even to interact with the
16 products in a spacious environment. There is a genius bar instead of a help desk.⁴³ Consumers
17
18

19 39 [REDACTED]

20 40 [REDACTED]

21 ⁴¹ See, e.g., <http://www.bcj.com/public/news/article/81.html> (Opéra Paris);
22 <http://www.bcj.com/public/projects/project/82.html> (Fifth Avenue);
23 <http://www.bcj.com/public/projects/project/116.html> (Covent Garden);
24 <http://www.bcj.com/public/projects/project/123.html> (San Francisco);
25 <http://www.bcj.com/public/projects/project/121.html> (North Michigan Avenue);
26 <http://www.bcj.com/public/projects/project/119.html> (Lincoln Park)

27 ⁴² See David Hill, *Steve Jobs: A Great Client*
28 <http://archrecord.construction.com/news/2011/10/Apple-Store.asp> (“From the start—Apple’s first
two stores opened on May 19, 2001, in Tysons Corner, Virginia, and Glendale, California—the
stores were noted for their sleek, minimalist design, a reflection of Apple’s products.”).

⁴³ See Bohlin Cywinski Jackson, *Apple Soho*,
<http://archrecord.construction.com/projects/BTS/archives/retail/AppleStore/overview.asp>.

1 like these stores so much that there are often lines to get in on opening day.⁴⁴ The stores are yet
2 another communication device that further associates Apple with design.⁴⁵

3 50. Even the packaging for Apple products reinforces the uniqueness of Apple
4 products. Steve Jobs said: “When you open the box of an iPhone or iPad, we want that tactile
5 experience to set the tone for how you perceive the product.”⁴⁶ For the iPhone, the packaging
6 features a compact black or black-and-white box with metallic silver lettering on a matte black
7 surface, with the sides of the top of the box extending down to cover the bottom portion of the
8 box completely. The exterior of the box has minimal wording and a simple, prominent, nearly
9 full-size photograph of the iPhone itself. The style carries over within the box—the iPhone is
10 cradled within a specially designed display so that the iPhone, and nothing else, is visible when
11 the box is opened. The iPad packaging is similarly innovative. Like the iPhone, it utilizes a box
12 that, when opened, prominently displays the iPad so that it is immediately visible, with all other
13 accessories and materials layered beneath it. The exterior of the box has a simple, prominent,
14 nearly full-size photograph of the iPad on a white background. Like the products, advertising,
15 and retail stores, the packaging of Apple products reinforce the importance of design to Apple

20 ⁴⁴ See Shara Tibken, *Apple Opens New York Grand Central Store*,
21 <http://online.wsj.com/article/SB10001424052970203413304577088201456063374.html> (“Apple
22 Inc. opened its latest retail store Friday in New York’s historic Grand Central Terminal to
23 hundreds of eager shoppers from around the country who had been waiting in line for as long as a
day.”).

24 ⁴⁵ See <http://archrecord.construction.com/features/bwarAwards/archives/03apple.asp> (“In
25 an effort to bring public attention to its products, the always daring and innovative Steve Jobs
26 began a campaign a few years ago of opening modern, uniquely designed Apple retail stores that
reflected the company’s design philosophy.”); see also [http://adage.com/article/special-report-
marketer-of-the-year-2010/marketer-decade-apple/146492/](http://adage.com/article/special-report-marketer-of-the-year-2010/marketer-decade-apple/146492/) (Apple stores are meant to act as
“brand ambassadors.”).

27 ⁴⁶ See Walter Isaacson, *The Real Leadership Lessons of Steve Jobs*
28 <http://hbr.org/2012/04/the-real-leadership-lessons-of-steve-jobs/ar/pr>.

1 and the Apple brand.⁴⁷ Examples of the Apple packaging are attached as Exhibits G
2 (iPhone 3GS) and H (iPad 2).

3 **D. Design Recognition**

4 51. The end result of the commitment to design is widespread praise for Apple from
5 critics and consumers alike. Notably, the iPad and iPhone have both won numerous design
6 awards. The iPad was named as one of *Time* magazine's 50 Best Inventions of the Year 2010,
7 Engadget's 2010 Editors' Choice Gadget of the Year, and it received a 2010 Red Dot Award for
8 Product Design. Likewise, the iPhone received a 2008 Design and Art Direction (D&AD)
9 "Black Pencil" award, a 2008 International Forum (iF) Product Design Award, and the 2008
10 International Design Excellence Award (IDEA) Best in Show. More recently, Engadget included
11 the iPhone as part of its list of the 10 Gadgets That Defined the Decade.

12 52. The iPhone's beauty and distinctive appearance have also been praised in many
13 articles, including the following:

- 14 • A *New York Times* review of the iPhone (January 11, 2007) notes that "[a]s
15 you'd expect of Apple, the iPhone is gorgeous."⁴⁸
- 16 • A *New York Times* article (June 27, 2007) describes the iPhone as "a tiny,
17 gorgeous hand-held computer," and notes that "[t]he phone is so sleek and
18 thin, it makes Treos and Blackberrys look obese."⁴⁹
- 19 • A *Wall Street Journal* article (June 27, 2007) stated that smartphone
20 "designers have struggled to balance screen size, keyboard usability and
21
22

23 ⁴⁷ See generally [http://www.gianfagnamarketing.com/blog/2010/05/21/branding-in-the-](http://www.gianfagnamarketing.com/blog/2010/05/21/branding-in-the-package-lessons-from-apples-master-marketers/)
24 [package-lessons-from-apples-master-marketers/](http://www.gianfagnamarketing.com/blog/2010/05/21/branding-in-the-package-lessons-from-apples-master-marketers/) ("Apple's look is always simple and clean and
the packaging for the iPad is true to the brand.").

25 ⁴⁸ David Pogue, *Apple Waves Its Wand at the Phone*
26 <http://www.nytimes.com/2007/01/11/technology/11pogue.html?sq=pogue>.

27 ⁴⁹ David Pogue, *The iPhone Matches Most of Its Hype*
28 <http://www.nytimes.com/2007/06/27/technology/circuits/27pogue.html?pagewanted=2&ref=iphone>
ne.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

battery life [T]he iPhone is, on balance, a beautiful and breakthrough handheld computer.”⁵⁰

53. [REDACTED]

54. [REDACTED]

⁵⁰ Walter S. Mossberg and Katherine Boehret, *Testing Out the iPhone* <http://online.wsj.com/articles/SB118289311361649057.html>.

⁵¹ [REDACTED]

⁵² [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

55.

[REDACTED]

Indeed, the *New York Times* discussed the attractive design of Apple’s iPad in a recent article on the market for tablet computers: “Apple also has a lead in design that will be tough to surmount. People want to own its products because they are so good-looking.”⁵⁸

⁵³

[REDACTED]

⁵⁸ David Stretifeld, *Amazon Has High Hopes for its iPad Competitor*, N.Y. Times, September 25, 2011.

1 56. The Apple product designs are in fact so notable that they have even been featured
2 in museums. Apple’s products have been added to the collections of several museums, including
3 the Museum of Modern Art in New York,⁵⁹ the San Francisco Museum of Modern Art,⁶⁰ and the
4 Smithsonian Cooper-Hewitt National Design Museum in New York.⁶¹ Additionally, the
5 United States Patent and Trademark office featured iPhone-shaped displays in an exhibit
6 showcasing Steve Jobs’ numerous patents and trademarks.⁶²

7 **VIII. APPLE’S BRAND EQUITY, AMONG THE HIGHEST IN THE WORLD, IS TIED**
8 **CLOSELY TO PRODUCT DESIGN**

9 57. Since the iPhone was introduced in 2007, Apple’s brand rankings and brand value
10 have increased significantly. Apple is now one of the most highly ranked brands in the world.

11 58. The BrandZ rankings by Millward Brown Optimor determined that Apple was the
12 most valuable brand in the world in 2011. Since the iPhone was introduced in 2007, the BrandZ
13 ranking of Apple has gone from No. 16 to No. 1, and its brand value has gone from \$24.7 billion
14 to \$153.3 billion.⁶³ BrandZ has attributed the increase in brand value and ranking to, in part, the
15 iPhone and the iPad and Apple’s innovative product design:

16 [Apple] earned an 84 percent increase in brand value with
17 successful iterations of existing products like the iPhone, creation
18 of the tablet category with iPad, and anticipation of a broadened
19 strategy making the brand a trifecta of cloud computing, software,
20 and *innovative, well-designed devices*. ... At the start of last year,
21 few people fretted that their lives felt bereft of a digital gadget
22 smaller than their laptop but larger than their mobile phone. By the
23 end of 2010, however, around 18 million of us owned iPads or
24 other tablets. Apple understood that its customers wanted access to

22 ⁵⁹ See http://www.moma.org/collection/artist.php?artist_id=22559.

23 ⁶⁰ See <http://www.sfmoma.org/explore/collection/artists/102694/artwork>.

24 ⁶¹ See <http://www.cooperhewitt.org/apple>.

25 ⁶² Brian Chen, *Patent Office Highlights Jobs’s Innovations*,
<http://bits.blogs.nytimes.com/2011/11/23/patent-office-highlights-jobss-innovations/>.

26 ⁶³ “BrandZ Top 100: Most Valuable Global Brands 2007,” *Millward Brown Optimor*,
27 APLNDC-Y0000234143-234169 at APLNDC-Y0000234152; “BrandZ Top 100: Most Valuable
28 Global Brands 2011,” *Millward Brown Optimor*, APLNDC-Y0000234947-234999 at APLNDC-
Y0000234953.

1 data and images anywhere, anytime, in easy-to-view definition with
2 an easy-to-use touch interface. In a span of a few months, the brand
3 met these needs with the iPad and iPhone 4. Apple trusted that its
4 customers would discover uses for these products that would help
5 organize, simplify or complicate, but mostly improve their lives....
6 Apple continued quietly developing a cloud and loudly discovered
7 an empty space in the computing category that it filled with a new
8 device – the iPad.⁶⁴

9
10 59. In 2010, BrandZ increased its valuation of the Apple brand by 32 percent from
11 2009, again focusing on Apple’s elegant designs, stating:

12 [T]his increase is a tribute to the company’s ability to transform
13 itself from an electronics manufacturer into a brand that is central to
14 people’s lives. Apple manages to celebrate creativity and self-
15 expression while, anticipating consumers’ needs and wants and
16 meeting those needs with *solutions that are noteworthy for their*
17 *ease of use and elegance of design*. Apple benefited specifically
18 from the popularity of the iPhone, its 100,000 apps, and
19 anticipation for the iPad.⁶⁵

20
21 60. Interbrand increased the ranking of Apple’s brand from No. 33 in 2007 to No. 8 in
22 2011. Interbrand also highlighted the importance of the iPhone and iPad products to value of the
23 Apple brand:

24 Setting the bar high in its category and beyond, Apple is the icon
25 for great branding meeting great technology to deliver a unique
26 overall experience, making its giant leap from #17 to #8 in the
27 rankings less than surprising. Consumers continue to follow its
28 product launches with anticipation and are quick to integrate its
sleek products into their lifestyles. Continuing its wave of first-to-
market products, Apple launched the iPad in 2010 creating the new
tablet category in the process. Since its launch, young and old alike
have embraced it as a tool, with organizations from education to
health to sales coming on board as well. Apple has even

25 ⁶⁴ “BrandZ Top 100: Most Valuable Global Brands 2011,” *Millward Brown Optimor*,
26 (emphasis added) APLNDC-Y0000234947-234999 at APLNDC-Y0000234954, APLNDC-
Y0000234970, APLNDC-Y0000234988.

27 ⁶⁵ “BrandZ Top 100: Most Valuable Global Brands 2010,” *Millward Brown Optimor*,
28 (emphasis added) APLNDC-Y0000234185-234257 at APLNDC-Y0000234248.

1 implemented the iPad in its innovative retail spaces as a service tool
2 for customers as they wait in line.⁶⁶

3 61. Apple has successfully created a brand that stands for innovative designs and
4 products. According to *Interbrand*:

5 Apple is a brand that customers immediately understand. They
6 know what they get out of adopting and associating with it. Its
7 products are seen as innovative and creative. *In contrast to Dell,*
8 *which creates products that lack any consistent visual cues,*
9 *Apple's design is consistent and distinctive — from the clean,*
10 *silver or smooth white of its laptops to the pocket-size rectangle of*
11 *its iPod or iPhone.*⁶⁷

12 62. In sum, outside of the field of fashion, I am not aware of any other mass market
13 consumer-oriented company that has been as successful as Apple in tying design to its brand
14 image. As described above, Apple uses a wide variety of techniques to ensure that consumers
15 identify its designs as “Apple.” Of course, it starts with excellent product design, but it goes
16 beyond that. It also features product design front and center in its advertisements, chooses the
17 most conspicuous locations for outdoor advertising, designs its retail stores to showcase its
18 products in a museum-like setting, designs its packaging as carefully as the products themselves,
19 and its products receive extensive exposure in popular media—in the hands of the most
20 influential celebrities and in the most popular television shows and movies. By integrating every
21 aspect of its products’ design and presentation, Apple has created a strong association for the
22 Apple brand. I believe that Apple’s corporate culture has emphasized an integrated approach to
23 product design, packaging design, store design, advertising design, and product placement. As a
24 result, Apple enjoys an unprecedented consumer association between the Apple brand and design.

25
26 ⁶⁶ “Best Global Brands 2011,” *Interbrand*, APLNDC-Y0000234947-234999 at APLNDC-
Y0000234951.

27 ⁶⁷ “Best Global Brands 2010,” *Interbrand*, (emphasis added) APLNDC-Y0000234185-
28 234257 at APLNDC-Y0000234190.

1 **IX. CONSUMERS MAY NOT IDENTIFY DESIGN AS A PRIMARY DRIVER OF**
2 **PURCHASES OF APPLE PRODUCTS**

3 63. Although there is a strong association between Apple and design, consumers may
4 not necessarily identify design as the primary, or even a top, reason for their purchases of Apple
5 products. However, based upon my research, I believe that the designs of the iPhone and iPad are
6 in fact drivers of consumer purchasing decisions and that design has contributed to the success of
7 these products and to the Apple brand equity. Indeed, because the iPhone and iPad have
8 substantial cultural currency (both products, for example, have become popular accessories
9 among Hollywood celebrities and other newsmakers) and are frequently used in public, the
10 impact of their unique and attractive designs is likely substantial. Nevertheless, I would not be
11 surprised if consumers who are asked to identify their top one or two reasons for purchasing an
12 iPhone or an iPad identify functional attributes, rather than design.

13 64. As set forth above, my research suggests that attractive design is an important
14 driver of purchasing decisions. Yet, consumers will understate the importance of design when
15 they are asked to identify reasons for their purchase, and that they will identify “functional”
16 reasons instead. I believe that consumers do this in part because they view functionality as a
17 better justification for a purchase than attractive design, even though they are willing to pay a
18 premium for an attractive design, as shown in my research. I am not aware of any reason why
19 consumers of Apple products will differ in their responses, and I would expect them to focus on
20 functional attributes, rather than design, if they are asked to identify the top one or two reasons
21 why they bought an iPhone or an iPad. I would also expect the same type of responses if
22 consumers are asked about reasons for purchasing products that are designed to look like the
23 iPhone or the iPad—consumers would likely focus on functional attributes rather than design.

24 **X. SAMSUNG’S COPYCAT PRODUCTS WILL DILUTE THE STRENGTH OF**
25 **APPLE’S DISTINCTIVE DESIGNS, AND, AS A RESULT, THE OVERALL**
26 **APPLE BRAND**

27 65. As stated above, it is my opinion that the end result of Apple’s consistent and
28 successful focus on design is that consumers have come to associate Apple strongly with design,
and that design is an important aspect of Apple’s brand. Apple’s “painstaking attention to detail”

1 in developing the look and feel of the Apple products and their unique packaging has contributed
2 significantly to consumer awareness of the brand.⁶⁸ As discussed above, Keller’s Customer-
3 Based Brand Equity model clearly predicts that Apple’s point of difference on design will be
4 eroded if competitor products that look similar exist in the market. A point of difference derives
5 its power to the extent that it is unique in the market. Pepsi is uniquely associated with youth in
6 colas, Volvo is uniquely associated with safety in automobiles, and McDonald’s is uniquely
7 associated with families in fast food hamburger restaurants. Similarly, Apple is known for its
8 unique and distinctive designs. Being unique helps strengthen the point of difference and
9 increases brand equity.

10 66. Without question, Apple has featured its distinctive design in its advertising.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Advertising is a significant strength for Apple, as evidenced by the awards that Apple has
18 received including Advertising Age’s first ever Marketer of the Decade Award in 2010.⁷¹

19 _____
20 ⁶⁸ “Design Thinking and Innovation at Apple,” Harvard Business School Case Study
21 No: 9-609-066, revised March 4, 2010, APLNDC-Y0000134928–134940 at APLNDC-
22 Y0000134931.

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 ⁷¹ Beth Snyder Bulik, “Marketer of the Decade: Apple,” *available at*
28 <http://adage.com/article/special-report-marketer-of-the-year-2010/marketer-decade-apple/146492/>.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Research on branding shows that repeatedly using a consistent advertising message increases the strength of that message in consumers' minds.⁷² A paper titled "The Brand Report Card" discusses the top ten traits that strong brands share, and one of the traits is that the brand stays consistent over time. The paper describes the case of Michelob and how the inconsistency in its advertising led to consumer confusion about the brand. On the other hand, Apple has been very consistent with its advertising over the last five years. The iPhone and iPad ads typically feature the product, making it easy to appreciate the design. In addition, the ads have a simple, elegant look that has helped Apple strengthen its association with design in the minds of consumers.

68. If other products that look like the iPhone or the iPad are released on the market, then the distinctiveness of the iPhone and iPad designs would begin to be eroded in the eyes of the customer. For example, as discussed above, consumers consistently prefer a product with an attractive design over a product with an average design, even if the average-looking product is functionally as good as or even better than the product with the attractive design. Having products with attractive and distinctive designs gives Apple a competitive advantage over other companies that do not have such products. If other companies are able to offer products with similar designs, however, Apple will lose this competitive advantage.

69. In addition, the sale of competing products with similar designs would erode the ability of the iPhone and iPad to command price premiums based on design. Research has pointed out that strong brands need to have a strong, favorable, and unique point of difference in the marketplace. If products with similar designs to the iPhone and iPad are available, then Apple's strong point of difference of design would be eroded, and eventually design could

⁷² Kevin Lane Keller, *The Brand Report Card*, HARV. BUS. REV., Jan-Feb. 2000, at 3.

1 become a point of parity that is shared among several brands.⁷³ In other words, Apple would no
2 longer be able to effectively use its distinctive design as a unique way to differentiate its products
3 from competitors. [REDACTED]

4 [REDACTED], Apple's advertising can actually benefit competitors
5 that are selling products that look like Apple's.

6 70. One example of when a point of difference begins to lose its power is provided in
7 the "me-too" strategies used by store brands in over-the-counter medications. In this me-too
8 strategy the store brand is placed next to the national brand on the shelf, often with similar-
9 looking packaging. The message to the consumer is that the two products look and perform
10 similarly, so why should consumers pay a price premium for the national brand? This me-too
11 strategy erodes the equity of the national brands and eventually reduces their price premiums in
12 the category. In my view, this me-too strategy is similar to the current situation with the iPhone
13 and iPad. If companies like Samsung are permitted to continue selling products with designs that
14 are similar to the iPhone and the iPad, design may cease to be a relevant point of difference for
15 Apple.

16 71. Further, Apple's reputation as an innovator in design may be tarnished if other
17 companies are selling products with similar designs. Apple has a well-established reputation of
18 coming out with remarkable new products and designs that look very different from what has
19 come before. If consumers can buy products with similar designs from other companies, Apple's
20 design will no longer stand out from the crowd of competing products. Eventually design will no
21 longer be a compelling strength for Apple. To the extent that similar designs exist, then design
22 will become less important and other features such as function and/or price will become more
23 important in the purchase decision. In addition, consumer loyalty towards Apple will weaken,
24 Apple's overall marketing effectiveness will suffer, and Apple will not be able to sustain the same
25

27 ⁷³ Kevin Lane Keller, Brian Sternthal, and Alice Tybout, *Three Questions You Need to*
28 *Ask About Your Brand*, HARV. BUS. REV., Sept. 2002, at 3.

1 price premiums in the market. Given the value of the Apple brand, the potential loss of brand
2 equity is substantial.

3 72. There are compelling anecdotal examples of this erosion of distinctiveness in the
4 marketplace. For example, at one time, high-end kitchens were denoted by appliances with a
5 sleek design featuring a distinctive stainless steel look. The uniqueness of the stainless steel
6 design conveyed status, and consumers were willing to pay huge price premiums for these
7 appliances. Now, however, such a design is no longer as distinctive as many manufacturers have
8 copied the stainless steel look in the marketplace.

9 **XI. SUPPLEMENTATION**

10 73. I reserve the right to supplement or amend this report if additional facts and
11 information that affect my opinion become available. In particular, I understand that Samsung
12 may serve an expert report concerning one or more of the issues addressed by this report. I may
13 therefore supplement or amend my report or opinions in response to additional discovery or other
14 events and may rebut the expert report submitted by Samsung.

15 **XII. EXHIBITS TO BE USED**

16 74. I anticipate using as Exhibits during trial certain documents and things referenced
17 or cited in this report or accompanying this report. I also anticipate using other demonstrative
18 Exhibits or things at trial.

19 March 22, 2012

20
21 

22

SANJAY SOOD