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 NORTHERN DISTRICT OF CALIFORNIA

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7 Attorneys for Plaintiff  
8 APPLE INC.

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

DMR

11 APPLE INC., a California corporation,  
 12 Plaintiff,

13 v.

14 AMAZON.COM, INC., a Delaware  
 15 corporation,  
 16 Defendant.

CV 11 1327  
 Case No. 11 1327

COMPLAINT FOR

- (1) Trademark Infringement; False Designation of Origin and False Description (Lanham Act § 43(a), 15 U.S.C. § 1125(a))
- (2) Dilution (Lanham Act § 43(c), 15 U.S.C. § 1125(c))
- (3) Trademark Infringement (Common Law)
- (4) Dilution (Cal. Bus. & Prof. Code § 14330 and Common Law)
- (5) Unfair Competition (Cal. Bus. & Prof. Code § 17200)

DEMAND FOR JURY TRIAL

1 Plaintiff Apple Inc. ("Apple") brings this action to enjoin Amazon.com,  
2 Inc.'s ("Amazon") unauthorized use of Apple's APP STORE™ trademark. Apple seeks  
3 preliminary and permanent injunctive relief and damages under the laws of the United  
4 States and the State of California and alleges on knowledge as to itself and its own acts,  
5 and on information and belief as to all other matters, as follows:

6 **NATURE OF ACTION**

7 1. Apple is a market leading computer hardware, software, and mobile  
8 computing technology and services company. Its APP STORE mobile software download  
9 service has transformed the way that mobile device users customize and expand the  
10 functionality of their devices. Apple, long renowned for its innovation and product  
11 design, introduced the APP STORE service and coined the APP STORE mark just over  
12 two and ½ years ago. In that short period of time, the service has experienced  
13 phenomenal growth and success, and the service is now used by over 160 million  
14 consumers worldwide who have downloaded more than 10 billion software programs.

15 2. Recently, Amazon has begun improperly using Apple's APP STORE  
16 mark in connection with Amazon's mobile software developer program. Amazon has also  
17 taken actions which, on information and belief, evidence Amazon's intent to improperly  
18 use Apple's mark in connection with Amazon's mobile software download service.  
19 Amazon's present and intended uses are unauthorized and unlawful.

20 **PARTIES**

21 3. Plaintiff Apple is a corporation organized and existing under the laws  
22 of the State of California and has its principal place of business in Cupertino, California.

23 4. On information and belief, defendant Amazon is a corporation  
24 organized and existing under the laws of the State of Delaware, with its principal place of  
25 business in Seattle, Washington.

26 **JURISDICTIONAL STATEMENT**

27 **Jurisdiction**

28 5. The Court has jurisdiction over this action pursuant to 28 U.S.C. §

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1 1331 and 1338, 15 U.S.C. §§ 1116 and 1125, and 28 U.S.C. § 1367.

2 **Venue**

3 6. Venue lies within this district because a substantial part of the events  
4 giving rise to these claims occurred in this district and Amazon resides in this judicial  
5 district for purposes of 28 U.S.C. § 1391(b) and (c).

6 **Intradistrict Assignment**

7 7. This action arises in Santa Clara County because a substantial part of  
8 the events giving rise to the claim occurred in Santa Clara County. This is an intellectual  
9 property action subject to district-wide assignment pursuant to Civil Local Rule 3-2(c).

10 **FACTUAL ALLEGATIONS**

11 **Apple Coins, Uses In Commerce, And Protects APP STORE**

12 8. On July 11, 2008, Apple launched its APP STORE service. This  
13 service allows users of Apple's iPhone, iPod and, most recently, iPad mobile devices, and  
14 users of computers running Apple's iTunes software, to browse for and license a wide  
15 range of third party software programs, including games, business, educational, finance,  
16 news, sports, productivity, social networking, health, reference, travel, and utility  
17 software.

18 9. Prior to the introduction of the APP STORE service, operators of  
19 mobile communications networks offered a variety of downloadable mobile software such  
20 as ringtones, wallpapers, and games. The operators branded their download services with  
21 a variety of terms that bore no similarity to APP STORE. For example, Verizon called its  
22 mobile software download service the "Get It Now virtual store" and later changed the  
23 name of that service to the "Verizon Media Store."

24 10. When it launched, the APP STORE service represented a  
25 revolutionary kind of online software service and was an instant commercial and critical  
26 success. As a columnist for *The New York Times* remarked soon after the launch of the  
27 service, "[n]othing like the App Store has ever been attempted before." Apple coined the  
28 term APP STORE as a means of branding its new service. The term APP STORE was not

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1 in general use in connection with the distribution of software programs prior to Apple's  
2 adoption of the term as a trademark.

3 11. The APP STORE service serves as the distribution center for a  
4 variety of software programs developed by third parties or by Apple. For example, if a  
5 user of an Apple mobile device wishes to play the popular "Angry Birds" video game, she  
6 would touch the "App Store" icon on her mobile device, search for the "Angry Birds"  
7 program and obtain a copy of that program on her device by licensing the software  
8 through the APP STORE service.

9 12. In order to distribute software programs through the APP STORE  
10 service, third party software developers are required to sign a distribution agreement in  
11 which the developer appoints Apple as its worldwide agent for delivery of the software  
12 programs. All of the software programs that are available through the APP STORE  
13 service are licensed to consumers, not sold.

14 13. To date, there have been more than 10 billion downloads of programs  
15 through the service by more than 160 million consumers worldwide. An average of over a  
16 million downloads take place every hour worldwide. There are currently more than  
17 350,000 software programs available for download on the APP STORE service.

18 14. Apple has extensively advertised, marketed and promoted the APP  
19 STORE service and the APP STORE mark, spending millions of dollars on print,  
20 television, and internet advertising. News outlets have also commented extensively and  
21 repeatedly on the operations of the APP STORE service in the months and years  
22 following its launch. The enormous public attention given the APP STORE service, and  
23 the success of the service, have cemented the public's identification of APP STORE as a  
24 trademark for Apple's service. Moreover, Apple has obtained registrations of the APP  
25 STORE mark covering more than fifty foreign jurisdictions, including the European  
26 Union, Japan, and China.

27 15. Apple has applied to register the APP STORE mark in the United  
28 States. The U.S. Patent and Trademark Office approved Apple's application to register

1 APP STORE as a trademark. Microsoft has opposed that application's registration. The  
2 matter is currently subject to opposition proceedings before the Trademark Trial And  
3 Appeal Board.

4 16. From Apple's launch of the APP STORE service in 2008, Apple has  
5 prominently featured the APP STORE mark in print advertising in the United States,  
6 California, and elsewhere. The mark has been featured in such print advertising  
7 sponsored both by Apple as well as AT&T (which offers wireless connectivity for certain  
8 Apple mobile devices). These ads have appeared in such magazines and newspapers as  
9 *Fortune*, *The New Yorker*, *The Economist*, *Newsweek*, *Time*, *The New York Times*, the  
10 *Washington Post*, as well as numerous other regional and local newspapers.

11 17. As part of its marketing for the APP STORE service, Apple has  
12 implemented a unique television advertising campaign. Most recently, Apple has aired  
13 nationwide television commercials that state "If you don't have an iPhone - you don't  
14 have the App Store." These commercials highlight the different computer software  
15 programs available through the APP STORE service and the variety of functions each  
16 computer software program serves. These commercials verbally refer to the APP STORE  
17 mark and also depict the APP STORE mark as featured on Apple's devices. Apple has  
18 aired these and other commercials regarding its APP STORE services on all the major  
19 television broadcast stations in the United States, including ABC, CBS, NBC, FOX, The  
20 CW, BET, Comedy Central, CNN, ESPN, MTV, TBS, TNT, and VH1. As a result,  
21 millions of consumers in the United States and California have been exposed to Apple's  
22 television campaigns.

23 18. Not surprisingly given the success of Apple's APP STORE service,  
24 the service and Apple's APP STORE mark have been the subject of an overwhelming  
25 amount of high-profile positive unsolicited media coverage in the United States and  
26 California. These articles recognize the APP STORE mark as referring exclusively to  
27 Apple's service.

28 19. The phenomenal popularity of Apple's mobile software download

1 service has prompted a number of competitors to offer their own services. In fact,  
2 Microsoft, Google, Nokia, Research in Motion (Blackberry), Sprint, Verizon and other  
3 major companies now offer software download services for mobile operating systems that  
4 compete with Apple's mobile operating system. These competitors have found ways of  
5 branding and describing their own mobile software download services without using the  
6 term APP STORE. For example, Microsoft uses the term MARKETPLACE to refer to its  
7 service and uses the descriptor "virtual store for apps."

8           20. In limited instances, third parties have made improper use of the term  
9 APP STORE. In response, Apple has contacted those parties and requested that they  
10 cease and desist from further use of the mark. In almost every instance, the entities  
11 contacted by Apple agreed to cease use of Apple's APP STORE mark.

12           **Amazon Unlawfully Uses APP STORE And Threatens Expanded Unlawful Use**

13           21. In approximately January of 2011, Amazon began soliciting software  
14 developers to participate in a future mobile software download service offered by  
15 Amazon. On information and belief, Amazon began unlawfully using the APP STORE  
16 mark in or about that same month.

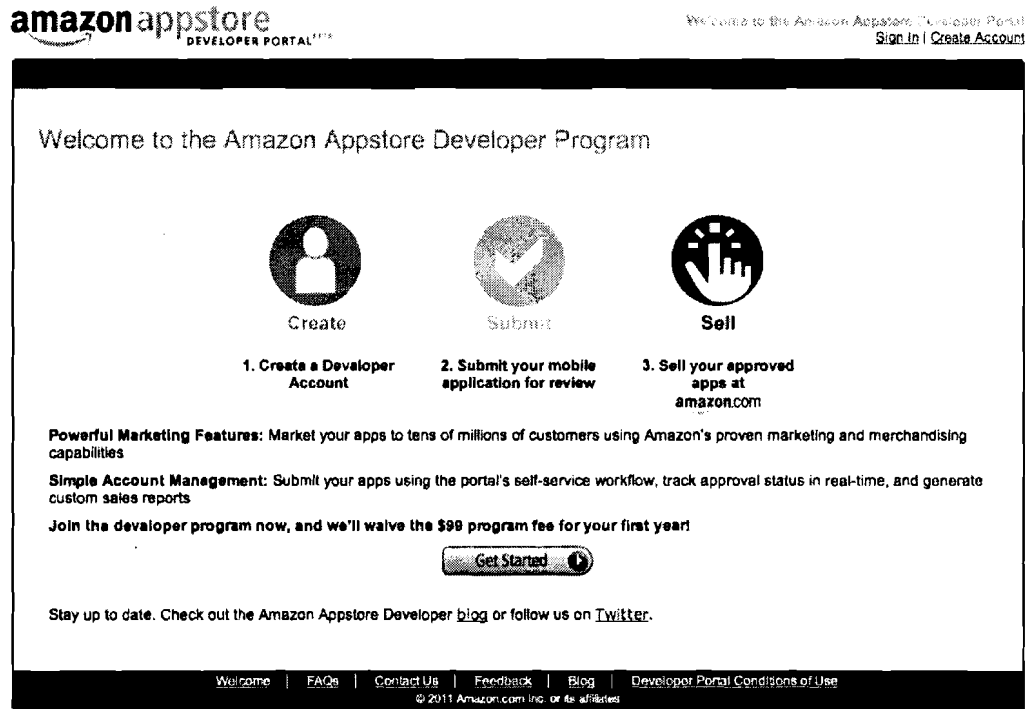
17           22. Amazon has unlawfully used the APP STORE mark to solicit  
18 software developers throughout the United States, including in the Northern District of  
19 California. Amazon's unlawful use includes, but on information and belief is not limited  
20 to, such use at web pages accessed through the developer.amazon.com URL.

21           23. At no time has Amazon received a license or authorization from  
22 Apple to use the APP STORE mark.

23           24. On or about January 19, February 9, and March 14, 2011, Apple  
24 communicated with Amazon and demanded that Amazon cease its use of the APP STORE  
25 mark. Amazon has not provided a substantive response to any of Apple's  
26 communications.

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1 25. Amazon is currently unlawfully using the APP STORE mark in  
2 connection with what Amazon terms the “Amazon Appstore Developer Portal” and the  
3 “Amazon Appstore Developer Program.” The following is a screenshot of Amazon’s  
4 website showing that use on March 17, 2011:



17 26. Recently, Amazon expanded its infringing use of the APP STORE  
18 mark—using the mark in connection with advertisements for a forthcoming software  
19 product called “Angry Birds Rio” to be offered through “the Amazon Appstore.” A  
20 screenshot showing that use on Amazon’s website on March 17, 2011 is set forth below:



21 **Angry Birds Rio Is Coming Soon**

22 The Android app, Angry Birds Rio, is launching exclusively on the Amazon Appstore. [Learn more](#)



1           27. A similar infringing use by Amazon—referencing “amazon  
2 appstore”—is shown in the following screenshot taken from Amazon’s website on March  
3 17, 2011:



17           28. As referenced in Paragraph 25 above, Amazon’s website indicates  
18 that “Angry Birds Rio Is Coming Soon,” which indicates that Amazon intends to expand  
19 its unlawful use of the APP STORE mark by using that mark “soon” in connection with  
20 the launch of Amazon’s mobile software download service. Apple is informed and  
21 believes that Amazon intends to use the APP STORE mark in the Northern District of  
22 California in connection with Amazon’s mobile software download service.

23           29. Amazon’s ongoing unlawful use of the APP STORE mark has  
24 irreparably harmed Apple, and Amazon’s threatened expansion of that unlawful use will  
25 increase the irreparable harm to Apple.  
26  
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**FIRST CAUSE OF ACTION**

**(Trademark Infringement; False Designation Of Origin/Description – Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

30. Apple repeats and realleges each and every allegation of paragraphs 1 through 29 above, and incorporates them by reference as if fully set forth herein.

31. Apple has used its APP STORE trademark since 2008 to identify its services in California, in the United States, and worldwide. The general consuming public of the United States widely recognizes the APP STORE mark as designating Apple as the source of services and/or goods.

32. Amazon’s use of Apple’s APP STORE mark constitutes a false designation of origin and/or a false or misleading description or representation of fact that is likely to cause confusion, to cause mistake, or to deceive as to (a) the affiliation, connection, or association of Amazon with Apple and/or (b) the origin, sponsorship, or approval of Amazon’s goods, services, or commercial activities by Apple. For example, consumers of mobile software downloads are likely to be confused as to whether Amazon’s mobile software download service is sponsored or approved by Apple or is merely a conduit for Apple’s APP STORE service.

33. Amazon’s wrongful activities have caused Apple irreparable injury. Apple is informed and believes that unless said conduct is enjoined by this Court, Amazon will continue and expand those activities to the continued and irreparable injury of Apple. This injury includes a reduction in the distinctiveness of Apple’s APP STORE mark and injury to Apple’s reputation that cannot be remedied through damages, and Apple has no adequate remedy at law. Apple is entitled to preliminary and permanent injunctions pursuant to 15 U.S.C. § 1116 restraining and enjoining Amazon and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the APP STORE mark or any colorable imitation thereof.

34. Pursuant to 15 U.S.C. § 1117, Apple is also entitled to recover (i)

1 Amazon's profits, (ii) Apple's ascertainable damages, and (iii) Apple's costs of suit.  
2 Amazon's willful use of Apple's APP STORE mark without excuse or justification  
3 renders this an exceptional case and entitles Apple to its reasonable attorney fees.  
4

5 **SECOND CAUSE OF ACTION**

6 **(Dilution – Lanham Act § 43(c), 15 U.S.C. § 1125(c))**

7 35. Apple repeats and realleges each and every allegation of paragraphs 1  
8 through 34 above, and incorporates them by reference as if fully set forth herein.

9 36. The APP STORE mark is famous and distinctive, and that mark  
10 became famous prior to Amazon's commencement of use of the mark.

11 37. Amazon's existing and intended use of the APP STORE mark for its  
12 developer program and/or its mobile software download service online marketplace are  
13 likely to cause dilution by blurring or dilution by tarnishment of the APP STORE mark.  
14 For example, Amazon's use of the APP STORE mark is likely to reduce the  
15 distinctiveness of that mark by reducing the general consuming public's association of the  
16 mark with Apple's services.

17 38. Amazon's wrongful activities have caused Apple irreparable injury.  
18 Apple is informed and believes that unless said conduct is enjoined by this Court, Amazon  
19 will continue and expand those activities to the continued and irreparable injury of Apple.  
20 This injury includes a reduction in the distinctiveness of Apple's APP STORE mark that  
21 cannot be remedied through damages, and Apple has no adequate remedy at law. Apple is  
22 entitled to preliminary and permanent injunctions pursuant to 15 U.S.C. § 1116 restraining  
23 and enjoining Amazon and its agents, servants, employees, and all persons acting  
24 thereunder, in concert with, or on their behalf, from using in commerce the APP STORE  
25 trademark or any colorable imitation thereof.

26 39. Amazon first used the APP STORE mark after October 6, 2006 and  
27 Amazon willfully intended to trade on the recognition of the APP STORE mark and/or  
28 intended to harm the reputation of the APP STORE mark. Pursuant to 15 U.S.C. §§ 1117

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1 and 1125(c)(5) Apple is also entitled to recover (i) Amazon's profits, (ii) Apple's  
2 ascertainable damages, and (iii) Apple's costs of suit. Amazon's willful use of Apple's  
3 APP STORE mark without excuse or justification renders this an exceptional case and  
4 entitles Apple to its reasonable attorney fees.

5  
6 **THIRD CAUSE OF ACTION**

7 **(Trademark Infringement – Common Law)**

8 40. Apple repeats and realleges each and every allegation of paragraphs 1  
9 through 39 above, and incorporates them by reference as if fully set forth herein.

10 41. The general consuming public of California widely recognizes the  
11 APP STORE mark as designating Apple as the source of services and/or goods. Apple  
12 has common law trademark rights in the APP STORE mark under California law.

13 42. Amazon's wrongful activities in the State of California have caused  
14 Apple irreparable injury. Apple is informed and believes that unless said conduct is  
15 enjoined by this Court, Amazon will continue and expand those activities to the continued  
16 and irreparable injury of Apple. This injury includes a reduction in the distinctiveness of  
17 Apple's APP STORE mark and injury to Apple's reputation that cannot be remedied  
18 through damages, and Apple has no adequate remedy at law. Apple is entitled to  
19 preliminary and permanent injunctions restraining and enjoining Amazon and its agents,  
20 servants, employees, and all persons acting thereunder, in concert with, or on their behalf,  
21 from using in commerce the APP STORE mark or any colorable imitation thereof.

22 43. Apple is also entitled to recover (i) Amazon's profits, (ii) Apple's  
23 ascertainable damages, and (iii) Apple's costs of suit. Amazon's willful use of Apple's  
24 APP STORE mark without excuse or justification entitles Apple to its reasonable attorney  
25 fees.

**FOURTH CAUSE OF ACTION**

**(Dilution – Cal. Bus. & Prof. Code § 14330 and Common Law)**

44. Apple repeats and realleges each and every allegation of paragraphs 1 through 43 above, and incorporates them by reference as if fully set forth herein.

45. Amazon’s actual and intended use of the APP STORE mark in California (i) has diluted, and on information and belief will continue to dilute, the distinctive quality of the APP STORE mark and/or (ii) has tarnished, and on information and belief will continue to tarnish, the image of Apple’s APP STORE mark, in violation of Section 14330 of the California Business and Professions Code.

46. Amazon’s wrongful activities in the State of California have caused Apple irreparable injury. Apple is informed and believes that unless said conduct is enjoined by this Court, Amazon will continue and expand those activities to the continued and irreparable injury of Apple. This injury includes a reduction in the distinctiveness of Apple’s APP STORE mark and injury to Apple’s reputation that cannot be remedied through damages, and Apple has no adequate remedy at law. Apple is entitled to preliminary and permanent injunctions restraining and enjoining Amazon and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the APP STORE trademark or any colorable imitation thereof.

**FIFTH CAUSE OF ACTION**

**(Unfair Competition – Cal. Bus. & Prof. Code § 17200 and Common Law)**

47. Apple repeats and realleges each and every allegation of paragraphs 1 through 46 above, and incorporates them by reference as if fully set forth herein.

48. Amazon’s acts, as alleged above, constitute unlawful and/or unfair business practices in violation of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq.

49. Amazon acts are unlawful and/or unfair under the UCL because

1 Amazon's actual and intended use of the APP STORE mark in California is likely to  
 2 confuse consumers as to the source, origin, or affiliation of Amazon's services, to dilute  
 3 the distinctiveness of Apple's APP STORE mark, and/or to tarnish the image of Apple's  
 4 APP STORE mark.

5           50. Amazon's acts of unfair competition in the State of California have  
 6 caused Apple irreparable injury. Apple is informed and believes that unless said conduct  
 7 is enjoined by this Court, Amazon will continue and expand those activities to the  
 8 continued and irreparable injury of Apple. This injury includes a reduction in the  
 9 distinctiveness of Apple's APP STORE mark and injury to Apple's reputation that cannot  
 10 be remedied through damages, and Apple has no adequate remedy at law. Apple is  
 11 entitled to preliminary and permanent injunctions restraining and enjoining Amazon and  
 12 its agents, servants, employees, and all persons acting thereunder, in concert with, or on  
 13 their behalf, from using in commerce the APP STORE trademark or any colorable  
 14 imitation thereof.

15           51. As a direct and proximate result of Amazon's statutory unfair  
 16 competition, Amazon has been unjustly enriched in an amount to be determined at trial.

17  
 18 **PRAYER FOR RELIEF**

19 WHEREFORE, Apple hereby requests that this Court:

- 20           A. Enter preliminary and permanent injunctions restraining and  
 21 enjoining Amazon and its agents, servants, employees, and all persons  
 22 acting thereunder, in concert with, or on their behalf, from using in  
 23 commerce the APP STORE mark or any colorable imitation or confusingly  
 24 similar variation thereof;
- 25           B. Enter preliminary and permanent injunctions requiring Amazon and  
 26 its agents, servants, and employees, and all persons acting thereunder in  
 27 concert with, or on their behalf, to immediately cease from causing any and  
 28 all dilution and/or tarnishment of Apple's APP STORE mark;


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- C. Award Apple its ascertainable damages, costs, and attorneys' fees;
- D. Award Apple Amazon's profits attributable to Amazon's unauthorized use of Apple's APP STORE mark.
- E. Impose a constructive trust in favor of Apple on all profits obtained from Amazon's misappropriation of Apple's APP STORE trademark.
- F. Award Apple all amounts by which Amazon has been unjustly enriched through its use of Apple's APP STORE mark.
- G. Award such other and further relief as this Court deems just and proper.

Dated: March 18, 2011

O'MELVENY & MYERS LLP

By   
 David R. Eberhart  
 Attorneys for Plaintiff APPLE INC.



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JURY DEMAND

Apple respectfully requests a jury trial on all issues triable thereby.

Dated: March 18, 2011

O'MELVENY & MYERS LLP

By   
David R. Eberhart  
Attorneys for Plaintiff APPLE INC.

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