

Appeal No. 10-15113

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

APPLE INC., a California corporation,

Plaintiff-Appellee,

v.

PSYSTAR CORPORATION,

Defendant-Appellant.

**APPLE'S UNOPPOSED MOTION FOR AN EXTENSION OF TIME TO
FILE ITS ANSWERING BRIEF; SUPPORTING DECLARATION OF
JAMES G. GILLILAND, JR.**

Appeal from the United States District Court
For the Northern District of California
Honorable William Alsup

Case No. CV 08-3251 WHA

TOWNSEND AND TOWNSEND AND CREW LLP
JAMES G. GILLILAND, JR.
MEHRNAZ BOROUMAND SMITH
NANCY L. TOMPKINS
MEGAN M. CHUNG
TYLER J. GEE
Two Embarcadero Center, 8th Floor
San Francisco, California 94111
Telephone: (415) 576-0200
Facsimile: (415) 576-0300

Attorneys for Plaintiff-Appellee
APPLE INC.

CORPORATE DISCLOSURE STATEMENT

Plaintiff-Appellee Apple Inc. is a California corporation. It has no parent corporation, and no publicly-held corporation owns 10% or more of its stock.

UNOPPOSED MOTION FOR EXTENSION OF TIME

Plaintiff-Appellee Apple Inc. (“Apple”) respectfully requests a 22-day extension of time, until July 8, 2010, to file its answering brief in this appeal. This motion is necessitated by the Court’s April 30, 2010, Order, which granted Defendant-Appellant Psystar Corporation’s (“Psystar”) oral motion for a 14-day extension of time to file the opening brief. Psystar does not oppose this motion, which is supported by the attached declaration of James G. Gilliland, Jr.

Under the original schedule, Psystar’s opening brief was due on or before May 3, 2010, and Apple’s answering brief was due on or before June 2, 2010. Gilliland Decl. ¶2. On April 26, 2010, Psystar’s lead counsel Kiwi Camara contacted Apple’s lead counsel James Gilliland and asked whether Apple would consent to a 14-day extension of time for Psystar to file its opening brief. Apple agreed not to oppose Psystar’s motion if Psystar would consent to a 22-day extension of time so that Apple could file its answering brief after counsel’s scheduled vacation and the Fourth of July holiday. Psystar agreed. *Id.* ¶3. The Court granted Psystar’s oral request for a 14-day extension on April 30, 2010, resetting the due date for Apple’s answering brief to June 16, 2010. *Id.* ¶4.

Apple now respectfully moves for a 22-day extension of time, until July 8, 2010, to file the answering brief. There is substantial need for the requested extension because Apple’s lead counsel planned a family vacation to accommodate

the original briefing schedule, and will not be in California on the date the brief is currently due. *Id.* ¶¶2-3. Apple has not asked for any prior extensions, and affirms that it will file the answering brief within the time requested.

Dated: June 9, 2010

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP
JAMES G. GILLILAND, JR.
MEHRNAZ BOROUMAND SMITH
NANCY L. TOMPKINS
MEGAN M. CHUNG
TYLER J. GEE

By: _____ s/Nancy L. Tompkins
Nancy L. Tompkins

Attorneys for *Plaintiff-Appellee*
APPLE INC.

DECLARATION OF JAMES G. GILLILAND, JR.

I, James G. Gilliland, Jr., declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a partner at the law firm of Townsend and Townsend and Crew LLP, counsel of record for Plaintiff-Appellee Apple in this action. Pursuant to Ninth Circuit Rule 31-2.2(b), I submit this declaration in support of “Appellee Apple’s Unopposed Motion For An Extension Of Time Within Which To File Its Answering Brief.” I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. Under the schedule established in this Court’s January 15, 2010, scheduling order, the excerpts of record and opening brief of Appellant Psystar Corporation were due to be filed by May 3, 2010, and Appellee Apple’s answering brief was due to be filed by June 2, 2010. With these dates in mind, I scheduled a vacation in late June 2010.

3. On April 26, 2010, Psystar’s lead counsel Kiwi Camara contacted me to ask whether Apple would be opposed to a 14-day extension for Psystar’s opening brief. Psystar’s proposed extension of time to file its opening brief moved Apple’s corresponding answering brief due date to a date that conflicted with my planned vacation and the Fourth of July holiday. Therefore, I responded that Apple would not oppose Psystar’s extension request if Psystar would similarly not

oppose an extension until July 8, 2010, for Apple's answering brief. Psystar agreed to not oppose Apple's request for an extension to file its answering brief on or before July 8, 2010.

4. With this agreement, Psystar's counsel orally requested an extension of time. On April 30, 2010, the Court granted Psystar's 14-day oral extension of time by phone. Accordingly, Appellant Psystar's opening brief was due by May 17, 2010, and the due date of Appellee Apple's answering brief was reset for June 16, 2010. For the reasons set forth above, Apple respectfully requests a 22-day extension of the due date for its answering brief, which would extend that due date to Thursday, July 8, 2010.

5. Apple has not previously sought any extensions of the due date for its answering brief. Counsel have exercised and will exercise diligence in working on the preparation of Apple's answering brief in this matter, which will be filed within the requested time.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED this 9th day of June 2010 at San Francisco, California.

s/James G. Gilliland, Jr.
James G. Gilliland, Jr.

9th Circuit Case Number(s) 10-15113

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system

on (date) Jun 9, 2010 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

s/Nancy L. Tompkins

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system

on (date) Jun 9, 2010 .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Eugene Action
1780 E. Barstow Avenue, #5
Fresno, CA 93710

Signature (use "s/" format)

s/Nancy L. Tompkins