

Appeal No. 10-15113

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

APPLE INC.,

Plaintiff-Appellee,

v.

PSYSTAR CORPORATION,

Defendant-Appellant.

APPLE INC.'S REQUEST FOR JUDICIAL NOTICE

Appeal From The United States District Court
For The Northern District Of California
Honorable William Alsup

Case No. CV 08-3251 WHA

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REQUEST FOR JUDICIAL NOTICE

Apple Inc. (“Apple”), the plaintiff-appellee in this case, requests that the Court take judicial notice of a docket and certain filings the parties have made in two other cases that are directly related to this one. These documents, copies of which are attached hereto as Exhibits A-D, are cited in Apple’s Answering Brief to substantiate facts of which the Court may take judicial notice pursuant to Federal Rule of Evidence 201.

Rule 201 allows the federal courts to take notice of matters of record in other court proceedings “both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F.2d 244, 248 (9th Cir. 1992) (internal citation omitted); *see also Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746, fn. 6 (9th Cir. 2006); *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 (9th Cir. 2002) (judicial notice taken of amended complaint in another court); *Mullis v. U.S. Bankruptcy Court for Dist. of Nevada*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987) (judicial notice taken of documents filed in bankruptcy court). Rule 201 mandates that a federal court take judicial notice “if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d). “Judicial notice may be taken at any stage of the proceeding.” Fed. R. Evid 201(f).

Apple asks the Court to take judicial notice of a docket and docketed filings in two matters that are directly related to the present copyright-infringement case. First, Apple submits the Motion by Apple Inc. for Relief from Stay Pursuant to 11 U.S.C. Sec. 362(d), which Apple filed in United States Bankruptcy Court, Southern District of Florida, Miami Division Case No. 09-19921 BKC-RAM Chapter 11. (Attached hereto as Exhibit A). This motion was necessitated by Psystar's filing Chapter 11 bankruptcy shortly before the close of fact discovery and filing of dispositive motions in this case. Second, Apple submits Psystar's First Amended Complaint in United States District Court, Southern District of Florida, Miami Division Case No. 1:09-cv-22535 WMH, a declaratory-judgment action Psystar filed just a few weeks after the bankruptcy stay was lifted and the district court's docket in that case. (Attached hereto respectively as Exhibits B and C.) Psystar argues to this Court that the permanent injunction entered in this case should have been limited owing to the pendency of this declaratory-judgment case. Apple also submits the parties' Joint Motion for Stay of the Florida case pending resolution of this appeal. (Attached hereto as Exhibit D).

These documents illuminate matters that are “not subject to reasonable dispute,” and substantiate facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R.

Evid. 201. Accordingly, Apple asks the Court to grant its Request for Judicial Notice.

Dated: July 8, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I declare that I am employed in the City and County of San Francisco, California, in the office of a member of the bar of this court at whose direction this service was made. I am over the age of 18 years and not a party to this action; my business address is Two Embarcadero Center, Eighth Floor, San Francisco, California, 94111. On the date set forth below, I served a true and accurate copy of the document(s) entitled:

APPLE INC.'S REQUEST FOR JUDICIAL NOTICE

on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

VIA COURT'S ELECTRONIC FILING SYSTEM

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[By First Class Mail] I 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

[By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

[By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

[By Court's Electronic Filing 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. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at San Francisco, California.

Dated: July 8, 2010.

/s/Diane G. Sunnen
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