

1 Robert J. Itri (Bar No. 10938)
2 Charles E. Runyan (Bar No. 019277)
3 GALLAGHER & KENNEDY, P.A.
4 2575 East Camelback Road
5 Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Facsimile: (602) 530-8500
Email: rji@gknet.com
Chuck.runyan@gknet.com

6 | *Attorneys for Plaintiff I Cloud Communications, LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

9 I Cloud Communications, LLC, an Arizona Limited Liability Company, | No

No.

COMPLAINT

12 v.
13 Apple, Inc., a California Corporation,
Defendant.

15 Plaintiff I Cloud Communications, LLC (“iCloud Communications”), for its
16 complaint against Defendant Apple Inc. (“Apple”) alleges as follows:

NATURE OF THE ACTION

18 1. This action seeks preliminary and permanent injunctive relief, monetary
19 relief, and attorneys' fees based on Apple's i) federal unfair competition and false
20 designation of origin in violation of § 43 of the Lanham Act, 15 U.S.C. § 1125(a); and ii)
21 Arizona state trademark infringement, unfair competition, and injury to business
22 reputation in violation of Arizona common law.

PARTIES

24 2. Plaintiff iCloud Communications is an Arizona limited liability corporation
25 having its principal place of business in Phoenix, Arizona.

3. Apple is a California corporation which, upon information and belief, is the most highly valued technology company in the world.

JURISDICTION AND VENUE

4. These causes of action arise under the Lanham Act (15 U.S.C. §§1051-1127), the laws of the State of Arizona, and the common law.

5. This Court has original federal question jurisdiction and supplemental jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367(a).

6. This Court has specific personal jurisdiction over Apple because Apple has purposefully committed acts within this District from which these claims arise and/or has committed tortious acts outside of the District knowing that such acts would cause injury in this District. This Court's general personal jurisdiction over Apple flows from Apple's continuous, systematic and routine business contacts within Arizona and the Arizona District.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this District.

GENERAL ALLEGATIONS

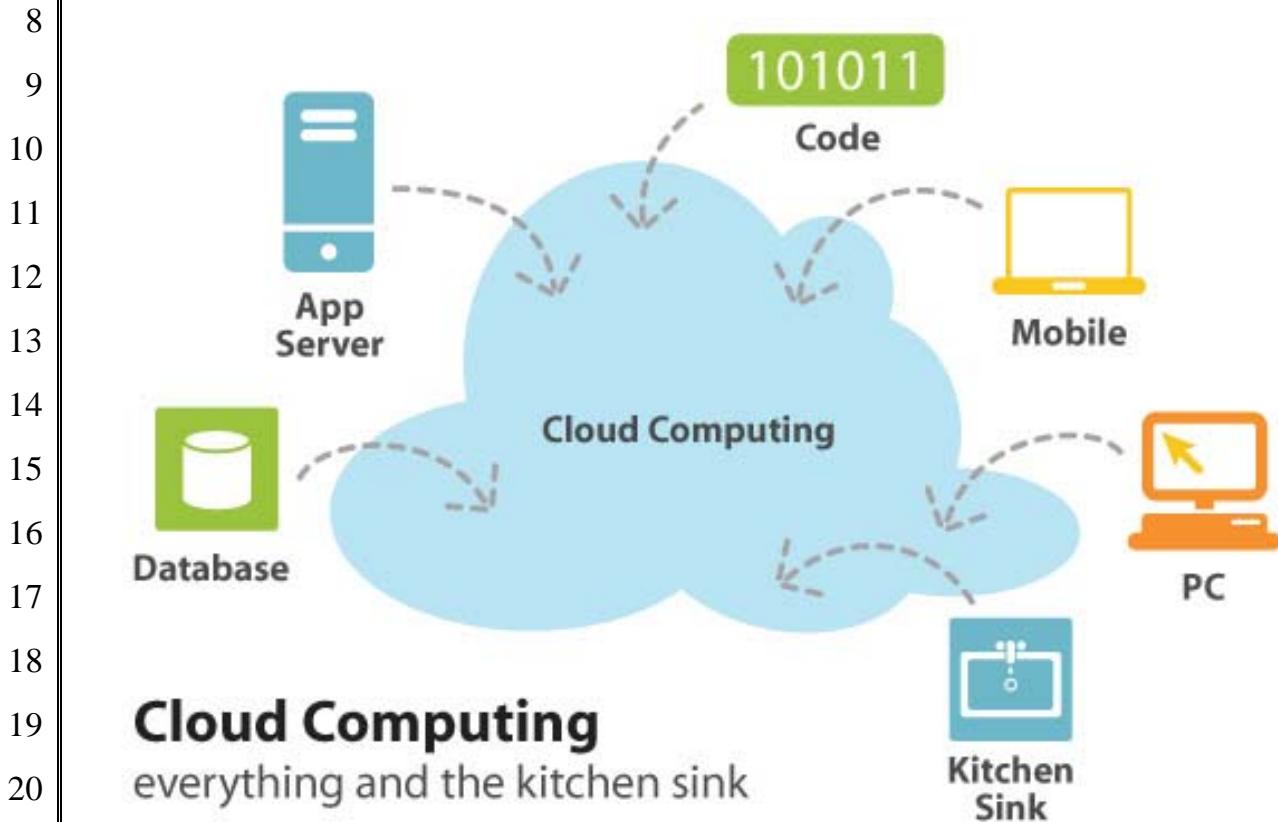
Cloud Computing

8. The National Institute of Standards and Technology (“NIST”) has defined “cloud computing” as follows:

Cloud computing is a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

NIST SP 800-145.

1 9. More generally stated, “cloud computing” refers to applications and
2 services offered over the Internet. The “cloud” reference is a metaphor derived from the
3 cloud image used to represent the Internet in computer network diagrams and is a
4 simplification of the complex series of network connections and systems involved in
5 online services. Any user with an Internet connection can access the “cloud” and the
6 services it provides. An example of a diagram depicting cloud computing is set forth
7 below:



22 10. Some commonly known cloud computing services include: Gmail by
23 Google; Google Docs; Google Calendar; YouTube; LinkedIn; Amazon Web Services;
24 Amazon MP3; Rackspace; Microsoft Azure; and MobileMe by Apple.

iCloud Communications

11. iCloud Communications was formed in 2005 and is a provider of, among other “cloud computing” products and services, computer telephony (telecommunication) hardware and software for the electronic transmission of email, text, audio, video, photos, information, data, video conferencing, virtual video conferencing and other content via the internet and wireless data networks.

12. iCloud Communications' software applications and customer data are hosted at and are accessed through its secure data center and telecommunications hub in Phoenix, Arizona, which was acquired and equipped by iCloud Communications at a cost of over \$550,000.

13. iCloud Communications has customers located throughout North America, South America, Europe and the Middle East.

iCloud Marks

14. iCloud Communications spends tens of thousands of dollars annually—in excess of several hundreds of thousand of dollars since its formation in 2005—in regional, national and international, electronic, print and other advertising to promote its goods and services using the following marks and logos (the “**iCloud Marks**”).

iCloud

I Cloud Communications

iCloud Communications



Attached as **Exhibit A** are various current and historic marketing brochures and materials describing the goods and services offered by iCloud Communications under the **iCloud Marks**.

15. iCloud Communications also promotes, and since 2005 has promoted, its services through its website, www.geticloud.com, where the name iCloud and other **iCloud Marks** are prominently displayed. See **Exhibit B** attached hereto.

16. iCloud Communications also uses, and since 2005 has used, the **iCloud Marks** at tradeshows, in brochures, and in every communication and invoice it disseminates to customers and prospective customers.

16. By virtue of iCloud Communications' long and extensive use of the **iCloud Marks**, its advertising and promotional campaigns and expenditure of substantial monies thereon, iCloud Communications had, prior to June 6, 2011, established significant goodwill and valuable rights in and ownership to the **iCloud Marks** in connection with computer telephony and electronic data transmission and storage services.

Apple's Infringement of the iCloud Marks

17. Apple was formed on April 1, 1976, began to conduct business in Arizona in 1976, and continues to conduct business in Arizona.

18. Recently, Apple began using marks identical or confusingly similar to the **iCloud Marks** to promote its new cloud computing telecommunications and data services.

19. On June 6, 2011, at Apple's highly anticipated Worldwide Developer Conference ("WWDC"), Apple's Chief Executive Officer, Steve Jobs, publicly announced the launch of its new cloud computing telecommunications and data storage platform "iCloud."

1 20. A press release issued by Apple concurrently with Steve Job's public
2 announcement at the June 6th WWDC describes Apple's vision for its "iCloud" platform.
3 Among other things, the press release states that Apple's iCloud will "wirelessly store
4 your content in iCloud and automatically and wirelessly push it to all your devices." It
5 further states that the iCloud platform will wirelessly transmit and store at its data center
6 email, text, audio, video, photos and other data. A copy of the Apple press release is
7 attached hereto as **Exhibit C**.

8 21. Moreover, in one of its recent trademark filings with the United States
9 Patent and Trademark Office made on June 1, 2011, Apple stated its intent to use the
10 "iCloud" mark in connection with, among other services:

11 Telecommunications; telecommunication access services;
12 communications by computer; communication between
13 computers; delivery of digital music by telecommunications;
14 electronic transmission of streamed and downloadable audio
15 and video files via computer and other communications
16 networks; delivery of messages by electronic transmission;
17 delivery of digital music by telecommunications; electronic
18 mail services; streaming of video content via a global
19 computer network; electronic transmission of audio and video
20 files via communications networks; information, advisory and
21 consultancy services relating to all the aforesaid.

22 A copy of the Apple's U.S. application is attached hereto as **Exhibit D**.

23 22. In a similar filing with the Trademarks and Designs Registration Office of
24 the European Union made on May 31, 2011, Apple indicated its intent to use the "iCloud"
25 mark in connection with, among other services:

26 Telecommunications; communication and telecommunication
27 services; telecommunication access services; communications
28 by computer; communication between computers; electronic
29 sending of data and documentation via the Internet or other
30 databases...communication by computer, computer
31 intercommunication; telex, telegram and telephone services;
32 broadcasting or transmission of radio and television

1 programs; . . . provision of telecommunications access and
2 links to computer databases and the Internet...delivery of
3 messages by electronic transmission; provision of
4 connectivity services and access to electronic
5 communications networks, for transmission or reception of
6 audio, video or multimedia content; provision of
7 telecommunications connections to electronic communication
8 networks... provision of telecommunications connections to
9 the Internet or computer databases; electronic mail services;
10 telecommunication of information (including web
11 pages)...rental and hire of communication apparatus and
12 electronic mail-boxes; electronic news services; electronic
13 communications consultancy; facsimile, message collection
14 and transmission services; transmission of data and of
15 information by electronic means, computer, cable, radio,
16 teleprinter, teleletter, electronic mail, telecopier.

17 A copy of the Apple's E.U. filing is attached hereto as **Exhibit E**

18 23. Apple has, since the June 6th announcement, widely promoted its proposed
19 "iCloud" services across numerous marketing channels, including print and electronic
20 media and on its website, www.apple.com, and through the use of the domain name
21 icloud.com.

22 24. The goods and services with which Apple intends to use the "iCloud" mark
23 are identical to or closely related to the goods and services that have been offered by
24 iCloud Communications under the **iCloud Marks** since its formation in 2005. However,
25 due to the worldwide media coverage given to and generated by Apple's announcement of
26 its "iCloud" services and the ensuing saturation advertising campaign pursued by Apple,
the media and the general public have quickly come to associate the mark "iCloud" with
Apple, rather than iCloud Communications.

27 25. Upon information and belief, at the time Apple elected to adopt "iCloud"
28 for its cloud computing telecommunications and data services, Apple was aware of or
29 was willfully blind to iCloud Communications' use of and rights in the **iCloud Marks**.

Apple's Pattern Of Willful Trademark Infringement

26. Although Apple aggressively protects its trademark rights, Apple has a long and well known history of knowingly and willfully treading on the trademark rights of others—a history which began as early as the 1970s when Apple was first sued for trademark infringement by the Beatles record label, Apple Corp. Although the case was settled on the condition that Apple not enter into the music business, Apple entered into the music business in the 1990s and was sued again.

27. Apple's early flagship product—the Macintosh computer—also ran afoul of the trademark rights of both McIntosh Labs, a high-end stereo equipment maker, and a software company named Management and Computer Services, Inc. (MACS). Apple's former CEO John Sculley reported that Apple paid nearly \$2 million (nearly 3 decades ago) to extricate itself from the legal mess it created by its adoption of the Macintosh label.

28. Apple was sued another time for trademark infringement due to its adoption of the name “Mighty Mouse” for computer devices despite Terrytoon’s famous trademark for the cartoon character of the same name.

29. In more recent times, Apple has been sued for its use of various marks employing the “i” prefix in connection with various wireless technology goods and services. For example, Apple was sued by Cisco Systems, Inc. (“Cisco”) in 2007 for trademark infringement arising from Apple’s introduction of the iPhone. Cisco, which owned the mark “iPhone,” and Apple had been in licensing discussions for two years prior to the launch of the iPhone. Nonetheless, Apple ignored Cisco’s trademark rights and announced the iPhone without first reaching any agreement with Cisco.

30. Upon information and belief, Apple also began using "iPad" without seeking a license from Fujitsu Frontech North America, which had previously used and

1 had pending before the United States Patent and Trademark Office an application for the
2 iPad mark.

3 31. Most recently, in May 2010, Apple was sued by Innovative Media Group,
4 LLC (“IMG”) for infringement of IMG’s federally registered “iAds” trademark after
5 Apple launched its “iAd” mobile advertising program.

6 32. Apple’s announcement and launch of its “iCloud” cloud computing service
7 appears to be just one more example of Apple’s “act first and worry about the
8 consequences later” approach to trademark use as even the most cursory Internet
9 search—which could have easily been conducted by any of the legion of Apple’s in-
10 house marketing or legal staff—would have revealed the prior, long term usage of the
11 **iCloud Marks** by iCloud Communications.

12 33. Moreover, as was the case of the “iPhone” and “iAd” marks, Apple
13 discreetly applied for a foreign trademark registration for ICLOUD months prior to the
14 launch announcement on June 6, 2011 (Apple applied initially in Australia for iPhone,
15 Canada for iAd and Jamaica for iCloud). That foreign ICLOUD application appears to
16 now form the basis for the various iCloud applications for which Apple filed in the
17 United States on June 1, 2011. Apparently, Apple is attempting to use a foreign
18 jurisdiction’s laws to gain priority for its U.S. registrations while circumventing the
19 notice and publication requirements for trademark applications filed here in the United
20 States with respect to “intent-to-use” applications.

21 34. Apple also went through the motions of purchasing a U. S. trademark
22 registration for “iCloud,” Reg. No. 3,744,821, from a Swedish consulting company
23 whose use of the mark post-dates that of iCloud Communications by two years.
24 Moreover, upon information and belief, the Swedish company has continued offering the
25 same services to the same customers under a similar mark. Thus, Apple’s acquisition of
26 the mark iCloud appears to have been “in gross” and is, therefore, invalid.

Irreparable Harm Suffered by iCloud Communications

35. Apple has used, and continues to use, “iCloud” in connection with its efforts to advertise, market, and promote its cloud computing services throughout the world using many of the same marketing channels used by iCloud Communications.

5 36. Apple's announcement of and the launch of its advertising campaign for its
6 iCloud service have so thoroughly swamped the reputation of iCloud Communications
7 and the goodwill it had built up over the years in the **iCloud Marks** that is likely to
8 cause—and has actually caused—confusion among consumers of cloud computing
9 services and members of the general public as to the source of the parties' goods and
10 services. In fact, iCloud Communications has received numerous inquiries from both
11 existing and prospective customers regarding whether it is now owned or affiliated with
12 Apple.

13 37. Additionally, it is likely that consumers will be given the misimpression
14 that Apple, not iCloud Communications, is the source of the services offered under the
15 **iCloud Marks** and/or that iCloud Communications is an unauthorized user of and is
16 infringing upon Apple's trademark rights. Such misimpressions will damage iCloud
17 Communications' reputation.

18 38. The loss of and damage to the goodwill in the **iCloud Marks**, the damage
19 to iCloud Communication's reputation and confusion among consumers is likely to
20 continue—and, in fact, intensify—unless Apple is enjoined from its use of the mark
21 “iCloud.”

FIRST CAUSE OF ACTION

False Designation of Origin and Unfair Competition

Violating 35 U.S.C. §1125(a)

25 39. iCloud Communications repeats and realleges all allegations contained in
26 paragraphs 1 to 38 and by this reference incorporates them here.

1 40. Apple has knowingly and intentionally misrepresented and falsely
2 designated to the public the source and origin of their products, goods and services.
3 Apple's unauthorized use of the mark iCloud is likely to cause confusion, or to cause
4 mistake, or to deceive consumers as to Apple's affiliation, connection or association with
5 iCloud Communications and as to the true origin, sponsorship and approval of iCloud
6 Communication's services and rights in and authorization to use the **iCloud Marks**.

7 41. Apple's acts constitute unfair competition and false designation of origin
8 violating § 43 of the Lanham Act, 15 U.S.C. § 1125.

9 42. Apple's acts have been willful.

10 43. iCloud Communications has been damaged by, and Apple has profited
11 from, Apple's wrongful conduct in an amount to be proven at trial.

12 44. Monetary relief alone is inadequate to fully address the irreparable injury
13 that Apple's illegal actions have caused and will continue to cause to iCloud
14 Communications if this court does not enjoin Apple. iCloud Communications is,
15 therefore, entitled to preliminary and permanent injunctive relief to stop Apple's unfair
16 competition.

SECOND CAUSE OF ACTION

Unfair Competition Violating Arizona Common Law

19 45. iCloud Communications repeats and realleges all allegations contained in
20 paragraphs 1 to 44 and by this reference incorporates them here.

21 46. Apple's acts in using the mark iCloud has deceived, misled and confused
22 the public generally, and specifically iCloud Communications' customers and potential
23 clients, and will continue to do so if such use continues.

24 47. Unless enjoined, Apple will continue to willfully infringe and violate
25 iCloud Communications' rights in the **iCloud Marks**, which will irreparably harm iCloud

1 Communications and cause iCloud Communications tremendous damage to their
2 goodwill, business reputation, and trademark services.

THIRD CAUSE OF ACTION

Trademark Infringement Under Arizona Common Law

5 48. iCloud Communications repeats and realleges all allegations contained in
6 paragraphs 1 to 47 and by this reference incorporates them here.

7 49. iCloud Communications has developed substantial common law trademark
8 rights in the **iCloud Marks** under Arizona law and in all jurisdictions where iCloud
9 Communications has used those marks.

10 50. Apple has infringed the **iCloud Marks** by using confusingly similar marks
11 in commerce in Arizona in a way that has caused and likely will continue to cause
12 consumer confusion as to iCloud Communications' association with, affiliation with, or
13 sponsorship of Apple and their products, goods and services.

14 51. Apple's acts have been willful and in conscious disregard of the trademark
15 rights of iCloud Communications.

16 52. iCloud Communications has been damaged by, and Apple has profited
17 from, Apple's wrongful conduct in an amount to be proven at trial.

18 53. iCloud Communications is entitled to damages and enhanced damages in
19 amounts to be proven at trial.

20 54. Monetary relief alone is inadequate to fully address the irreparable injury
21 that Apple's illegal actions have caused and will continue to cause to iCloud
22 Communications if this Court does not enjoin Apple. iCloud Communications is
23 therefore entitled to preliminary and permanent injunctive relief to stop Apple's unfair
24 competition.

FOURTH CAUSE OF ACTION

Injury to Business Reputation Under Arizona Common Law

55. iCloud Communications repeats and realleges all allegations contained in paragraphs 1 to 54 and by this reference incorporates them here.

5 56. Apple's use of the iCloud mark is confusingly similar to and constitutes
6 infringement of iCloud Communications' Marks. Apple's use injures iCloud
7 Communications' business reputation because consumers will believe that iCloud
8 Communications is affiliated with or related to or has the approval of Apple, and any
9 adverse reaction by the public to Apple and the quality of its products and the nature of
10 its business will injure the business reputation of iCloud Communications.

11 57. Apple's use of the iCloud Mark is likely to cause, and has caused,
12 consumers to believe that Apple, not iCloud Communications, is the true source of the
13 goods and services offered under the **iCloud Marks** and that iCloud Communications is
14 infringing upon the trademark rights of Apple in using the **iCloud Marks**.

15 58. Apple has engaged in conduct in bad faith that constitutes unfair, unlawful
16 and fraudulent business practices under the common law of the State of Arizona, causing
17 harm and irreparable injury to iCloud Communications.

18 59. iCloud Communications has no adequate remedy at law to address fully
19 this irreparable injury that Apple’s illegal actions have caused and will continue to cause
20 iCloud Communications if not enjoined. iCloud Communications is therefore entitled to
21 preliminary and permanent injunctive relief to stop Apple’s use of the iCloud mark.

PRAYER FOR RELIEF

23 WHEREFORE, iCloud Communications prays for judgment in its favor and against
24 Apple as follows:

25 A. preliminarily and permanently enjoining Apple, its servants, agents and
26 employees and all other persons in active concert or participation with

Apple and their respective successors and assigns, from directly or indirectly:

- 1) using the iCloud name or marks similar to iCloud, or any Internet domain name or any other name or mark confusingly similar to the **iCloud Marks**, in any manner or form, or any other reproduction, counterfeit, copy or colorable imitation of such marks either alone or in combination with any other designation, or in connection with any advertising, marketing, promotion, offer for sale, or sale of Apple's telecommunications services throughout the United States and the world;
- 2) expressly or impliedly representing itself to customers, potential customers, suppliers, potential suppliers, or the general public to be affiliated with iCloud in any way;
- 3) representing by words or conduct that any product or services provided, offered for sale, sold, advertised, or rented by Apple and supplied, authorized, sponsored or endorsed by or otherwise connected with iCloud Communications; and
- 4) competing unfairly with iCloud Communications in any manner; ordering Apple to deliver for destruction all labels, signs, prints, insignia, letterhead, brochures, business cards, invoices and any other written or recorded material or advertisements in its possession or control containing the iCloud name or any other colorable imitation of any one of the marks in the **iCloud Marks** or confusingly similar variation of the iCloud family of marks;

1 restraining order or injunction, a report in writing, under oath, setting forth
2 in detail the manner and form in which Apple has complied with the terms
3 of the injunction;

4 D. order Apple to pay iCloud Communications:

- 5 1) all profits, gains and advantages obtained from Apple's unlawful
6 conduct, in an amount to be determined at trial;
- 7 2) all monetary damages sustained, and to be sustained, by iCloud
8 Communications as a consequence of Apple's unlawful conduct,
9 including lost profits and reasonable royalties, in an amount to be
10 determined at trial; and
- 11 3) iCloud Communications' costs and disbursements of this action,
12 including reasonable attorneys' fees and otherwise;

13 E. finding Apple's acts have been willful and, therefore, order that Apple's
14 profits or Plaintiff's damages, whichever is greater, be trebled;

15 F. awarding interest on the above damage awards;

16 G. invalidating U.S. Trademark Reg. No. 3,744,821 as having been abandoned
17 due to its "in gross" transfer to Apple;

18 H. ordering Apple to transfer to iCloud Communications the iCloud.com
19 domain name; and

20 I. awarding such other relief as the Court may deem just and proper.

21 **JURY DEMAND**

22 iCloud Communications demand a trial by jury on all issues so triable.

1 RESPECTFULLY SUBMITTED this 9th day of June, 2011.

2 GALLAGHER & KENNEDY, P.A.

3
4 By /s/ Robert J. Itri
5 Robert J. Itri
6 Charles E. Runyan
7 2575 East Camelback Road
8 Phoenix, Arizona 85016-9225
9 *Attorneys for Plaintiff I Cloud*
10 *Communications, LLC*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26