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THE FREECYCLE NETWORK, INC.

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

THE FREECYCLE NETWORK, INC.,  
an Arizona non-profit organization,

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

CASE NO. 06-CV-00173-RCC

**THE FREECYCLE NETWORK, INC.'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF *EX  
PARTE* MOTION FOR ORDER TO  
SHOW CAUSE AGAINST  
DEFENDANT TIM OEY REGARDING  
CONTEMPT DUE TO FAILURE TO  
COMPLY WITH TEMPORARY  
RESTRAINING ORDER AND  
SANCTIONS**

Date: May 9, 2006  
Time: 3:00 p.m.  
Before: Honorable Raner C. Collins  
Location: Courtroom 5B

## I. INTRODUCTION

On April 24, 2006, this Court properly granted plaintiff The Freecycle Network, Inc. (“The Freecycle Network”) a temporary restraining order (“Order”) against defendant Tim Oey (“Defendant” or “Oey”). To date, however, Oey has failed to comply with the requirements of the Order, despite having received an additional informal request from The Freecycle Network, in which specific violations of the Order were brought to Oey’s attention. Accordingly, The Freecycle Network respectfully requests entry of an order to show cause regarding Oey’s contempt of the Court’s Order and sanctions in the amount of The Freecycle Network’s attorneys’ fees for the time required to prepare the papers and attend the hearing for this *ex parte* motion, The Freecycle Network’s *Ex Parte* Motion for Temporary Restraining Order, which was granted by this Court on April 24, 2006, and The Freecycle Network’s Motion for Preliminary Injunction, which is scheduled to be heard on May 9, 2006.

## II. FACTUAL BACKGROUND

On April 24, 2006, this Court specifically ordered that Oey and his agents, servants and employees and those persons in active concert and participation with Oey are “restrained and enjoined from directly or indirectly inducing infringement of The Freecycle Network’s intellectual property, including its trademarks or any variation or imitation thereof, disparaging The Freecycle Network’s intellectual property, including its trademarks or any variation or imitation thereof, and from disseminating false and misleading statements regarding The Freecycle Network and its intellectual property, including its trademarks or any variation or imitation thereof.” Declaration of Esha Bandyopadhyay in Support of The Freecycle Network, Inc.’s *Ex Parte* Motion for Order to Show Cause Against Defendant Tim Oey Regarding Contempt Due to Failure to Comply with Temporary Restraining Order and Sanctions (“Bandyopadhyay Declaration”), Paragraph 2, Exh. 1.

On April 28, 2006, counsel for The Freecycle Network brought to the attention of counsel for Oey that Oey had failed to comply with the Court’s Order. Bandyopadhyay Decl., Paragraph 3, Exh. 2. In particular, counsel for The Freecycle Network raised instances in which

Oey had continued, and continues, to engage in behavior contrary to the Court's Order. *Id.* For example, a Yahoo! group includes a posting in which Oey describes and encourages infringement of The Freecycle Network's valid trademarks, and disparages these marks. *Id.*, Exh. 3. In fact, this very posting was attached to the underlying complaint in this action as an exhibit, and was emphasized by counsel for The Freecycle Network during the April 24, 2006, hearing as being a cause of irreparable harm to The Freecycle Network and its marks.

The Freecycle Network reiterated its request that Oey comply with this Court's Order, and specifically remove the above-mentioned posting, in a letter dated May 2, 2006, to counsel who represented Mr. Oey at the April 24, 2006 hearing. Bandyopadhyay Decl., Paragraph 5, Exh. 5.

Despite the request of counsel for The Freecycle Network, Oey continues to refuse to remove this posting. *Id.*, Paragraph 6, Exh. 6. Accordingly, The Freecycle Network has had no choice but to seek relief from the Court in the form of this *ex parte* motion.

### III. ARGUMENT

The factors to be considered in a determination of civil contempt are: 1) the character and magnitude of the harm threatened by continued noncompliance, and 2) the probable effectiveness of the sanction. U.S. v. United Mine Workers of America, 330 U.S. 258, 303-304 (1947). The law is clear that judicial sanctions in civil contempt proceedings may be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order and compensate the plaintiff for losses sustained. *Id.*, 330 U.S. at 303-304.

Here, despite having received a specific request from The Freecycle Network, Oey has failed to comply with Court's Order requiring that he be enjoined and restrained from behavior which constitutes, among other things, inducing infringement and trademark disparagement. Bandyopadhyay Decl., Paragraphs 2-6, Exh. 2-6. For example, Oey continues to post on a Yahoo! group a posting encouraging others to infringe upon The Freecycle Network's valid trademarks, and disparage The Freecycle Network's valid trademark rights. *Id.* As stated above, this was the very posting that was the impetus for The Freecycle Network's *Ex Parte* Motion for

