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Attorneys for Plaintiff

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

**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**

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

I, ESHA BANDYOPADHYAY, declare:

1. I am an attorney with the law firm of Perkins Coie LLP, counsel of record for plaintiff The Freecycle Network, Inc. ("The Freecycle Network"). I have personal knowledge of the facts set forth in this Declaration and can testify competently to those facts.

2. On April 24, 2006, this Court granted The Freecycle Network's *Ex Parte* Motion for Temporary Restraining Order. Specifically, this Court ordered that defendant Tim Oey ("Defendant" or "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." Attached to this Declaration as Exhibit 1 is a true and correct copy of the April 24, 2006 Order Granting The Freecycle Network's *Ex Parte* Motion for Temporary Restraining Order ("Order").

3. On April 28, 2006, I wrote to counsel for Oey, indicating that Oey had refused and failed to comply with this Court's Order, and requesting that Oey immediately comply with this Court's Order. Attached to this declaration as Exhibit 2 is a true and correct copy of my April 28, 2006, letter to Ian Feinberg (without attachments). With my letter, I included a posting from the Yahoo! group FCNext, moderated by Oey, in which Oey encourages others to infringe upon The Freecycle Network's trademarks and disparages the marks. Attached to this Declaration as Exhibit 3 is a true and correct copy of the posting from the Yahoo! group FCNext.

4. On May 1, 2006, I received a response from Mr. Dennis Corgill of Mr. Feinberg's office, indicating that their firm is not representing Oey as an individual. Attached to this declaration as Exhibit 4 is a true and correct copy of Mr. Corgill's May 1, 2006 letter.

5. On May 2, 2006, I wrote to Oey's local counsel, reiterating that Oey had refused and failed to comply with this Court's Order, and requesting that Oey immediately comply with

this Court's Order. Attached to this declaration as Exhibit 5 is a true and correct copy of my May 2, 2006, letter to Ashley Lynn Kirk. With my letter, I included a copy of the posting discussed above.

6. To date, Oey's posting on the Yahoo! group FCNext encouraging others to misuse The Freecycle Network's trademarks remains posted on the Yahoo! group. Attached to this Declaration as Exhibit 6 is a true and correct copy of the posting from the Yahoo! group FCNext with a date stamp of May 2, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Menlo Park, California on May 2, 2006.

By: _____/s/
Esha Bandyopadhyay

Attorney for Plaintiff
The Freecycle Network, Inc.

EXHIBIT 1

BANDYOPADHYAY DECLARATION 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

1 Freecycle Network's reputation, its ability to protect its trademarks, its goodwill, and its
2 ability to retain corporate sponsorship, and will continue to cause such immediate and
3 irreparable harm unless and until Defendant is temporarily restrained and enjoined from
4 continuing the acts complained of in the Motion.

5 IT IS HEREBY ORDERED that The Freecycle Network's Motion is granted as
6 follows:

7 Pursuant to Federal Rule of Civil Procedure 65, Defendant and his agents, servants
8 and employees and those persons in active concert and participation with Defendant who
9 received actual notice of this Temporary Restraining Order, are restrained and enjoined from
10 directly or indirectly inducing infringement of The Freecycle Network's intellectual property,
11 including its trademarks or any variation or imitation thereof, disparaging The Freecycle
12 Network's intellectual property, including its trademarks or any variation or imitation
13 thereof, and from disseminating false and misleading statements regarding The Freecycle
14 Network and its intellectual property, including its trademarks or any variation or imitation
15 thereof, for a period of time not to exceed ten (10) days, pending further briefing and oral
16 argument in this Court by The Freecycle Network's concurrently filed Motion for
17 Preliminary Injunction..

18 Dated this 24 day of April, 2006.



19
20
21 Presented by:
22 DeConcini McDonald Yetwin & Lacy, P.C.
& Perkins Coie LLP

23 By: _____ /s/
24 Attorneys for Plaintiff
25 The Freecycle Network, Inc.

26 I:\files\docs\FREE11\260449\PLDG\FD7048.WPD

EXHIBIT 2

BANDYOPADHYAY DECLARATION 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



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FAX: 650.838.4350
www.perkinscoie.com

April 28, 2006

Via Facsimile (650-331-2060) and U.S. Mail

Ian N. Feinberg
MAYER, BROWN, ROWE & MAW LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, California 94306-2112

Re: *The Freecycle Network, Inc. v. Tim Oey*, Case No. 06-CV-00173-RCC

Dear Ian:

I am writing to address your client Tim Oey's ("Mr. Oey") failure to comply with the Court's Order Granting The Freecycle Network, Inc.'s *Ex Parte* Motion for Temporary Restraining Order ("Order") in the above-captioned case. As you are aware, the Court has specifically ordered that Mr. Oey and his agents, servants and employees and those persons in active concert and participation with Mr. 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."

It has been brought to our attention that Mr. Oey has failed to comply with the Court's order, and continues to engage in activity from which he has been restrained and enjoined on at least the following Web sites: Mr. Oey's home page, located at <http://oeyweb.com/timoey/>, Mr. Oey's Web log ("blog"), located at <http://www.blogger.com/profile/19380816>, the Yahoo! group FreecycleSunnyvale, located at <http://groups.yahoo.com/group/freecyclesunnyvale/>, the Yahoo! group SunnyvaleFree, located at <http://groups.yahoo.com/group/sunnyvalefree/>, and the Yahoo! group FCNext, located at <http://groups.yahoo.com/group/fcnext/>. Copies of these Web pages and/or posts from these Web pages are hereby attached for your convenience.

Since Mr. Oey has the ability to remove or modify the above-mentioned Web sites, or posts contained on these Web sites, we request that Mr. Oey immediately comply with the Court's order by removing the aforementioned Web sites, or postings contained on these Web sites, and any other similar publications or Web pages. Should Mr. Oey fail to comply

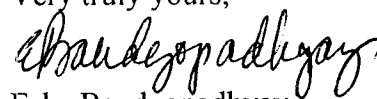
[BY061180.096]

Ian N. Feinberg
MAYER, BROWN, ROWE & MAW LLP
April 28, 2006
Page 2

with the Court's Order immediately, we will have no choice but to request relief from the Court.

We look forward to your anticipated cooperation. Please feel free to contact me should you have any questions or concerns regarding this or any other matter.

Very truly yours,



Esha Bandyopadhyay

EB:ls

Enclosures

EXHIBIT 3

BANDYOPADHYAY DECLARATION 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

Yahoo! My Yahoo! Mail Make Yahoo! your home page

YAHOO! GROUPS Sign In New User? Sign Up

Search the Web

Groups Home - Help



fcnext · Free Recycling - The Next Generation

Messages

Messages Help

Message # Search:

Up Thread | Message Index | View Source | Unwrap Lines

Message 3171 of 5309 < Previous | Next >

From: Tim Oey <timooey@...>
Date: Thu Feb 23, 2006 5:55 pm
Subject: Let your voices be heard...

reduce_reuse...
 Offline
 Send Email

Many of us know that TFN is already a bit crazy in trying to clamp down on free speech freedoms, but now is a great time to further the cause and keep freecycle free for everyone forever (and drive TFN even crazier).

What you can do on your own:

1) Using TFN's directory, please contact all the freecycle groups in your state and surrounding states to let them know that freecycle is a generic term. Ask them to visit <http://greenribbon.us> for more information. There is no need to be that organized about it but if you think you have a state well covered, please post a note to fcnext. You'll need to dribble the mails out a few at a time and by as many people as possible to get around Yahoo's intricate group owner spam catchers. Make all your emails unique -- don't repeat exactly the same contents or subject, etc..

2) If you currently have a group within TFN, either take it out of TFN and tell all your members that freecycling should stay free or do comply initially with

Home

Messages

Members Only

Post

Chat

Files

Photos

Links

Database

Polls

Calendar

Promote

Already a member?
Sign in to Yahoo!

Yahoo! Groups Tips

Did you know...
Commiserate with other parents. Find a Parents

Group.

Yahoo! 360°
 Keep connected to your friends and family through blogs, photos and more.
 Create your own 360° page now.



TFN's request so that your group is not deleted but then later sprinkle freecycling around your group and other groups so the free grassroots movement continues to be free (this is likely to really drive TFN nuts). Let more people know about <http://greenribbon.us>

- 3) Do give TFN GOAs a hard time because they are doing bad things by limiting free speech. Free speech is very important. Let everyone know that TFN does not need to control freecycling for TFN to be successful.
- 4) Get your freecycling is free statements to Eric for posting on <http://greenribbon.us>
- 5) Let others know that freecycling is a wonderful thing that people can do via Google, Craigslist, Yahoo Groups, any email list, or however they wish -- even just leaving stuff out on the curb with a "Free" or "Freecycle this" note attached.



Spread the word and let the word be free.

Enjoy!
 Cheers,
 Tim

Replies	Author	Date
3190	If I told ya.... belhaven_lass	Feb 24, 2006 1:18 am
3314	Tim Oey reduce_reuse...	Feb 27, 2006 7:00 am
3336	xtina (freecycle mode...	Feb 27, 2006 1:11 pm

3348  **Re: Let your voices be heard...**  existentiaalista
 I think I've made my intent known when it comes to
 FreeSpeech ;-) FreeCyco ...

i second tim's post...educating others is a necessity in any
 grassroots ...

Free cycle Recycle  freecycos 
 Feb 27, 2006 2:47 pm

[Reply](#) [Forward](#)

Up Thread | Message Index | View Source | Unwrap Lines **Message 3171 of 5309** < Previous | Next >

Message # Search: [Search](#)

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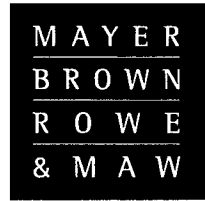
Blue Ribbon for Gift Wrapping - Blue ribbon plus many other assorted colors and sizes of gift wrapping ribbons, bows and raffia.
www.buygiftribbon.com

Blue Ribbon Design - Letterpress greeting cards, invitations and announcements.
www.blueribbondesign.com

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EXHIBIT 4

BANDYOPADHYAY DECLARATION 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



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Two Palo Alto Square, Suite 300
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Palo Alto, California 94306-2112

Main Tel (650) 331-2000
Main Fax (650) 331-2060
www.mayerbrownrowe.com

Dennis S. Corgill
Direct Tel (650) 331-2058
Direct Fax (650) 331-4558
dcorgill@mayerbrownrowe.com

May 1, 2006

VIA FACSIMILE (650.838.4350) and U.S. MAIL

Esha Bandyopadhyay
Perkins Coie LLP
101 Jefferson Drive
Menlo Park, CA 94025-1114

Re: *The Freecycle Network, Inc. v. Tim Oey and
Jane Doe Oey*

Dear Esha:

This letter responds to your letter dated April 28, 2006, concerning Tim Oey and the temporary restraining order issued by Judge Collins on April 24, 2006 ("TRO").

First, please understand that we represent FreecycleSunnyvale. We do not represent Tim Oey as an individual.

Second, as counsel for FreecycleSunnyvale, we can assure you that FreecycleSunnyvale and its members intend to comply fully with the TRO.

Third, as counsel for FreecycleSunnyvale, we disagree with your interpretation of the TRO. The TRO requires Tim Oey and persons who participate with him to refrain from future conduct. The TRO does not compel action or apply to past conduct. TFN knew about all of the internet postings attached to your letter before TFN filed its lawsuit in Arizona, but TFN failed to draft a proposed order that compels any action with respect to the TRO.

Fourth, on review, we do not understand how any of the contents of the attachments to your letter, even if attributed FreecycleSunnyvale, violate the TRO. We would appreciate your help in identifying which portions of which attachments violate which specific portions of the TRO.

I look forward to your response and to cooperating with you to assure that FreecycleSunnyvale and its members comply with the TRO. Or, we would be happy to take this matter up with Judge Collins before the hearing scheduled for May 9, 2006.

Very truly yours,

Dennis S. Corgill

Berlin Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete y Nader S.C.

Mayer, Brown, Rowe & Maw LLP operates in combination with our associated English limited liability partnership in the offices listed above.

EXHIBIT 5

BANDYOPADHYAY DECLARATION 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

Esha Bandyopadhyay
PHONE: 650.838.4355
FACSIMILE: 650.838.4555
EMAIL: ebandyopadhyay@perkinscoie.com



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Menlo Park, CA 94025-1114
PHONE: 650.838.4300
FAX: 650.838.4350
www.perkinscoie.com

Via Facsimile (520-882-7643) and First Class Mail

May 2, 2006

Ashley Lynn Kirk
Hayes Soloway PC
3450 E Sunrise Dr
Ste 140
Tucson, AZ 85718

Re: *The Freecycle Network v. Tim Oey, et al.*
Case No. CV 06-173-RCC

Dear Ms. Kirk:

The substance of this letter repeats what was faxed to Ian Feinberg of Mayer, Brown, Rowe & Maw LLP ("Mayer Brown") on April 28, 2006, a copy of which is attached for your convenience. Today we received a letter from Dennis Corgill, also of Mayer Brown, stating that Mayer Brown does not represent Tim Oey in this action, although Mr. Feinberg appeared telephonically on Mr. Oey's behalf at the hearing on April 24, 2006. It is now our understanding that you are the sole legal representative of Tim Oey ("Mr. Oey") and Jane Doe Oey in the above-referenced action and on that basis, we reiterate to you what we have already communicated to Mr. Feinberg.

Specifically, I am writing to address Mr. Oey's failure to comply with the Court's Order Granting The Freecycle Network, Inc.'s *Ex Parte* Motion for Temporary Restraining Order ("Order") in the above-captioned case. As you are aware, the Court has specifically ordered that Mr. Oey and his agents, servants and employees and those persons in active concert and participation with Mr. 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."

It has been brought to our attention that Mr. Oey has failed to comply with the Court's order, and continues to engage in activity from which he has been restrained and enjoined. In particular, as mentioned in my letter of April 28th, the Yahoo! group FCNext, located at <http://groups.yahoo.com/group/fcnext>, continues to include a posting from Mr. Oey encouraging others to infringe upon The Freecycle Network's marks. As you are aware,

BY061210.208

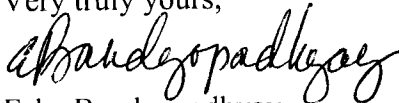
Ashley Lynn Kirk
Hayes Soloway PC
May 2, 2006
Page 2

a copy of this post was attached as Exhibit G to The Freecycle Network's underlying complaint against Tim Oey in this matter, and specifically raised by counsel for The Freecycle Network at the April 24th hearing. An additional copy of this post is hereby attached for your convenience.

Since Mr. Oey has the ability to remove or modify the above-mentioned Web site, or posts contained on this Web site, we request that Mr. Oey immediately comply with the Court's order by removing the aforementioned Web site, or postings contained on this Web site, and any other similar publications or Web pages. Should Mr. Oey fail to comply with the Court's Order immediately, we will have no choice but to request relief from the Court.

We look forward to your anticipated cooperation. Please feel free to contact me should you have any questions or concerns regarding this or any other matter.

Very truly yours,



Esha Bandyopadhyay

EB:ls

Enclosures

EXHIBIT 6

BANDYOPADHYAY DECLARATION 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

Yahoo! My Yahoo! Mail Make Yahoo! your home page

YAHOO! GROUPS Sign In New User? Sign Up

Search the Web Search

Groups Home - Help

SEDUCTIVE

Soft Rock
Coffeehouse
Love Songs

MUSIC LAUNCHERS

TUNE IN

fcnext · Free Recycling - The Next Generation

Messages

Home

Messages

Members Only

Post

Chat

Files

Photos

Links

Database

Polls

Calendar

Promote

Search

Go

Search:

Up Thread | Message Index | View Source | Unwrap Lines

Message 3171 of 5411

Previous | Next >

Reply

Forward

From: Tim Oey <timooey@...>

Date: Thu Feb 23, 2006 5:55 pm

Subject: Let your voices be heard...

reduce_reuse...

Offline

Send Email

Many of us know that TFN is already a bit crazy in trying to clamp down on free speech freedoms, but now is a great time to further the cause and keep freecycle free for everyone forever (and drive TFN even crazier).

What you can do on your own:

1) Using TFN's directory, please contact all the freecycle groups in your state and surrounding states to let them know that freecycle is a generic term. Ask them to visit <http://greenribbon.us> for more information. There is no need to be that organized about it but if you think you have a state well covered, please post a note to fcnext. You'll need to dribble the mails out a few at a time and by as many people as possible to get around Yahoo's intricate group owner spam catchers. Make all your emails unique -- don't repeat exactly the same contents or subject, etc.

2) If you currently have a group within TFN, either take it out of TFN and tell all your members that freecycling should stay free or do comply initially with

Already a member?

Sign in to Yahoo!

Yahoo! Groups Tips

Did you know...
Your group can all chat together with free online

fcnext : Message: Let your voices be heard...

conferences in Yahoo!
Messenger with Voice.
[Show me now.](#)

Yahoo! 360°

Keep connected to
your friends and
family through blogs,
photos and more.
Create your own 360°
page now.

TFN's request so that your group is not deleted but then later sprinkle freecycling around your group and other groups so the free grassroots movement continues to be free (this is likely to really drive TFN nuts). Let more people know about <http://greenribbon.us>

3) Do give TFN GOAs a hard time because they are doing bad things by limiting free speech. Free speech is very important. Let everyone know that TFN does not need to control freecycling for TFN to be successful.

4) Get your freecycling is free statements to Eric for posting on <http://greenribbon.us>

5) Let others know that freecycling is a wonderful thing that people can do via Google, Craigslist, Yahoo Groups, any email list, or however they wish -- even just leaving stuff out on the curb with a "Free" or "Freecycle this" note attached.

Spread the word and let the word be free.

Enjoy!

Cheers,
Tim

Replies	Author	Date
3190	If I told ya.... belhaven_jass	Feb 24, 2006 1:18 am
3314	Tim Oey reduce_reuse...	Feb 27, 2006 7:00 am
3336	xtina (freecycle mode...	Feb 27, 2006 1:11 pm

fcnext : Message: Let your voices be heard...

i second tim's post...educating others is a necessity in any grassroots ...

existentialista

3348

Re: Let your voices be heard...
I think I've made my intent known when it comes to FreeSpeech :) FreeCyclo ...

Free cycle Recycle

Feb 27, 2006
2:47 pm

freecycos

Reply Forward

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Message # Go Search: Search

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