

EXHIBIT 1

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Attorneys for Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

No. CIV06-173-TUC-RCC

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS TIM OEY
AND JANE DOE OEY'S MEMORANDUM
IN SUPPORT OF MOTION TO STAY OR
TRANSFER**

Defendants Tim Oey and Jane Doe Oey respectfully request this Court to take judicial notice of court records from the United States District Court for the Northern District of California under Fed.R.Evid. 201. *See Service Employees Intern. Union, Local 102 v. County of San Diego*, 60 F.3d 1346, 1356 n.3 (9th Cir. 1994) ("We take judicial notice of this document [amicus brief filed in another case] which is part of an official court record.") Defendants ask this Court to take judicial notice of the court records in *FreecycleSunnyvale v. The Freecycle Network*, Case No. C 06-00324 CW (N.D. Cal. filed Jan. 18, 2006), which is pending before the Honorable Claudia Wilken, United States District Court Judge. In particular, Defendants

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request this Court to take judicial notice of the following court records, each of which is attached as an exhibit to this request.

1. History of Documents filed in *FreecycleSunnyvale v. The Freecycle Network*, Case No. C 06-00324 CW (N.D. Cal. filed Jan. 18, 2006), attached to this request as Tab 1.
2. Complaint for Declaratory Judgment of Trademark Non-Infringement and Tortious Interference with Business Relations, Case No. C 06-00324 CW (N.D. Cal. filed Jan. 18, 2006; Document 1), attached to this request as Tab 2.
3. Defendant The Freecycle Network, Inc.'s Memorandum in Support of Motion to Dismiss Complaint under Rule 12(b)(6), Case No. 06-00324 CW (N.D. Cal. filed Feb. 22, 2006; Document 6), attached to this request as Tab 3.
4. Plaintiff FreecycleSunnyvale's Opposition to Defendant's Motion to Dismiss under Rule 12(b)(6), Case No. C 06-00324 CW (N.D. Cal. filed Mar. 9, 2006; Document 11), attached to this request as Tab 4.
5. Defendant The Freecycle Network, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss under Rule 12(b)(6), Case No. C 06-00324 CW (N.D. Cal. filed Mar. 16, 2006; Document 12), attached to this request as Tab 5.
6. Minute Order and Case Management Order, Case No. C 06-00324 CW (N.D. Cal. filed Apr. 4, 2006; Document 18), attached to this request as Tab 6.
7. Order Denying in Part and Granting in Part Defendant's Motion to Dismiss, Case No. C 06-00324 CW (N.D. Cal. filed Apr. 4, 2006; Document 19), attached to this request as Tab 7.

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Copy of the foregoing
mailed this 4th day of
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Tab 1

Defendant's Request for Judicial Notice

Case No. CIV 06-00173-TUC-RCC
United States District Court
District of Arizona

4:06-cv-00324-CW FreecycleSunnyvale v. The Freecycle Network
 Claudia Wilken, presiding
 Date filed: 01/18/2006 Date of last filing: 04/18/2006

History

Doc. No.	Dates	Description
--	Filed: 01/18/2006 Entered: 01/23/2006	Summons Issued
--	Filed: 01/18/2006 Entered: 01/23/2006	Case Referred to ECF
<u>1</u>	Filed: 01/18/2006 Entered: 01/23/2006	Complaint
<u>2</u>	Filed: 01/18/2006 Entered: 01/23/2006	ADR Scheduling Order
--	Filed & Entered: 01/23/2006	Patent/Trademark Copy
<u>3</u>	Filed & Entered: 01/24/2006	Summons Returned Executed
<u>4</u>	Filed & Entered: 02/07/2006	Stipulation
<u>5</u>	Filed & Entered: 02/22/2006 Terminated: 02/24/2006	Motion to Dismiss
<u>6</u>	Filed & Entered: 02/22/2006	Memorandum in Support
<u>7</u>	Filed & Entered: 02/22/2006	Request for Judicial Notice
<u>8</u>	Filed & Entered: 02/22/2006	Notice (Other)
<u>9</u>	Filed & Entered: 02/22/2006	Proposed Order
<u>10</u>	Filed & Entered: 02/24/2006 Terminated: 04/04/2006	Motion to Dismiss
<u>11</u>	Filed & Entered: 03/09/2006	Memorandum in Opposition
<u>12</u>	Filed & Entered: 03/16/2006	Reply to Opposition
<u>13</u>	Filed & Entered: 03/27/2006	Notice of Appearance
<u>14</u>	Filed & Entered: 03/27/2006 Terminated: 03/29/2006	Motion for Leave to Appear
<u>15</u>	Filed & Entered: 03/28/2006	Proposed Order
<u>16</u>	Filed & Entered: 03/29/2006	Order on Motion for Leave to Appear
<u>17</u>	Filed: 03/31/2006 Entered: 04/04/2006	Motion Hearing
<u>18</u>	Filed & Entered: 04/04/2006	Case Management Scheduling Order

<u>19</u>	<i>Filed & Entered:</i> 04/04/2006	● Order on Motion to Dismiss
<u>20</u>	<i>Filed & Entered:</i> 04/06/2006	● Amended Complaint
<u>21</u>	<i>Filed & Entered:</i> 04/07/2006	● Exhibits
<u>22</u>	<i>Filed & Entered:</i> 04/13/2006	● ADR Clerks Notice Appointing Mediator
<u>23</u>	<i>Filed & Entered:</i> 04/14/2006	● Answer to Amended Complaint
--	<i>Filed & Entered:</i> 04/17/2006	● Pre MED phone conference
--	<i>Filed & Entered:</i> 04/18/2006	● Pre MED phone conference

PACER Service Center			
Transaction Receipt			
05/01/2006 12:38:36			
PACER Login:	mb0951	Client Code:	05165907
Description:	History/Documents	Search Criteria:	4:06-cv-00324-CW
Billable Pages:	1	Cost:	0.08

Tab 2

Defendant's Request for Judicial Notice

Case No. CIV 06-00173-TUC-RCC
United States District Court
District of Arizona

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Attorneys for Plaintiff
FREECYCLESUNNYVALE

ORIGINAL FILED

JAN 18 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

E-Filing

FREECYCLESUNNYVALE,
a California unincorporated association,

Plaintiff,

v.

THE FREECYCLE NETWORK,
an Arizona corporation,

Defendant.

CASE NO - 00324 CW

**COMPLAINT FOR DECLARATORY
JUDGMENT OF TRADEMARK NON-
INFRINGEMENT AND TORTIOUS
INTERFERENCE WITH BUSINESS
RELATIONS**

**CERTIFICATION OF INTERESTED
PARTIES**

1/18/06

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ORIGINAL FILED

JAN 18 2006

RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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CASE NO. - 00324 CW

**COMPLAINT FOR DECLARATORY
JUDGMENT OF TRADEMARK NON-
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**CERTIFICATION OF INTERESTED
PARTIES**

1 Plaintiff FreecycleSunnyvale (“FreecycleSunnyvale”), through its *pro bono* attorneys
2 Mayer, Brown, Rowe & Maw LLP, alleges upon knowledge as to itself and its own actions, and
3 on information and belief as to all other matters, against Defendant The Freecycle Network as
4 follows:

5 **THE PARTIES**

6 1. Plaintiff FreecycleSunnyvale is an unincorporated non-profit association with its
7 principal place of business in Sunnyvale, California, which is located in the Northern District of
8 California. FreecycleSunnyvale promotes freecycling by providing support and advice to
9 freecyclers.

10 2. Defendant The Freecycle Network is an Arizona non-profit corporation with its
11 principal place of business in Tucson, Arizona. The Freecycle Network also promotes
12 freecycling by providing support and advice to freecyclers who wish to create Internet fora for
13 freecycling. The Freecycle Network has provided support, advice and other services to
14 freecycling associations in California within the jurisdiction of this Court.

15 **JURISDICTION AND VENUE**

16 3. Jurisdiction is proper in this court because this litigation arises under federal law,
17 namely 17 U.S.C. § 1051 *et seq.* (Lanham Act). The Court has jurisdiction over this action under
18 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 28 U.S.C. § 2201
19 (Declaratory Judgment Act).

20 4. This Court has supplemental jurisdiction over FreecycleSunnyvale’s state law
21 claims under 28 U.S.C. § 1367(a) because these claims are so related to FreecycleSunnyvale’s
22 Lanham Act claims as to form part of a single case or controversy because they arise from the
23 same nucleus of operative facts and amount to a single judicial proceeding.

24 5. This Court has personal jurisdiction over The Freecycle Network because The
25 Freecycle Network conducts business in California by, among other things: (a) providing support,
26 advice and other services to freecycling associations in California within the jurisdiction of this
27 Court and (b) operating online services hosted by Yahoo! Inc. (“Yahoo!”), an online service
28 provider with its headquarters in California within the jurisdiction of this Court.

1 society: (1) it reduces landfill by preventing or delaying the disposal of items unwanted by their
2 current owners; and (2) it gives those same items to others for free, who do want them and may
3 be unable to afford to purchase them.

4 14. Many freecyclers announce the availability of the items they wish to give away
5 online by, for example, sending an email message to an email distribution list. Many of the email
6 distribution lists freecyclers use are hosted by Yahoo! as part of its Yahoo! Groups online service.

7 15. Freecyclers who use the Yahoo! Groups online service to freecycle items enter
8 into a contract with Yahoo! In exchange for their compliance with Yahoo!'s conditions, the
9 freecyclers receive Yahoo!'s online services. These services allow freecyclers to reach many
10 other freecyclers in their area by sending a single email message.

11 16. The Freecycle Network was founded in May 2003. The Freecycle Network helped
12 popularize freecycling by assisting local freecycling groups, including FreecycleSunnyvale, in
13 using Yahoo!'s online services to freecycle items.

14 17. FreecycleSunnyvale was founded in October 2003. It entered into a contractual
15 relationship with Yahoo! and used Yahoo!'s online services to assist freecyclers in the Sunnyvale,
16 California area in freecycling items.

17 18. FreecycleSunnyvale used a Yahoo! Group with the name "freecyclesunnyvale."

18 19. FreecycleSunnyvale initially received enthusiastic support from The Freecycle
19 Network.

20 20. When a member of FreecycleSunnyvale requested assistance in creating a graphic
21 logo reading "FreecycleSunnyvale," the Board Chair and Executive Director of The Freecycle
22 Network, granted permission to do so, provided that the logo was not used for commercial
23 purposes. The text of the email granting permission reads: "Yeah, Sunnyvale! ... You can get the
24 neutral logo from <http://www.freecycle.org> , just don't use it for commercial purposes or maybe
25 Mark or Albert can help you to do your own fancy schmancy logo!"

26 21. Freecyclers and The Freecycle Network treated freecycling as the common or
27 generic name for giving something away to another for free. In August 2004, The Freecycle
28 Network's home page included, among others, the references to freecycling:

- 1 (a) "Number of cities freecycling: 1,210"
- 2 (b) "Number of people freecycling: 406,949"
- 3 (c) "Have fun and keep on Freecyclin'!"
- 4 (d) "How does Freecycling work?"
- 5 (e) "Who can Freecycle?"

6 The Freecycle Network submitted a copy of the home page of its website, containing these uses
7 of freecycle and freecycling in a generic sense, as a specimen to its pending application for
8 registration of the mark FREECYCLE on the Principal Register on or about August 27, 2004. A
9 copy of the application and specimen submitted is attached as Exhibit 1.

10 22. The Freecycle Network's use of the terms freecycle and freecycling in a generic
11 sense is consistent with prevailing practice in the national media. Examination of publicly-
12 accessible media sources reveals hundreds of newspaper and magazine articles that use freecycle
13 and freecycling to refer to the practice of recycling by giving something away to another for free.

14 Examples include:

- 15 (a) "If a true packrat hordes [sic], a 'freecycler' can't stand to see something that
16 might be useful to someone go to waste, languishing unused in a musty garage,
17 attic, bottom dresser-drawer or—worse yet—a landfill." Katharine Mieszkowski,
18 *From each according to his junk, to each according to her need*, Salon.com, Nov.
19 23, 2003, at <http://www.salon.com/tech/feature/2003/11/25/freecycle/print.html>
20 (Attached as Exhibit 2);
- 21 (b) "Freecyclers use Yahoo Groups as a free bulletin board, requiring registration
22 only. Givers post their excess items on Yahoo and takers send an e-mail saying
23 they will come and pick it up." Mike Cassidy, *Freecycling Movement Gains*
24 *Ground in Valley*, San Jose Mercury News, Jan. 27, 2004, at C1 (Attached as
25 Exhibit 3);
- 26 (c) "Dusty but new exercise equipment, a five-person hot tub, and enough white Ikea
27 bookshelves to furnish a small college town have been posted online through a
28 new group that practices freecycling, the giving away of useful but unwanted

1 goods to keep them out of landfills and maybe help someone less fortunate in the
2 process.” Tina Kelley, *One Sock, With Holes? I'll Take It; Freecycling Brings*
3 *Castoff Goods Back From the Bin*, The New York Times, March 16, 2004, at B1
4 (Attached as Exhibit 4);

5 (d) “Known as ‘freecycling,’ the approach creates Web-based communities in cities
6 across the country that allow members to post by e-mail a listing of items they are
7 looking to unload. The catch? Everything much be given away free.” *Gambits*
8 *and Gambles in the World of Technology*, The Wall Street Journal, May 6, 2004
9 (Attached as Exhibit 5); and

10 (e) “And just how does one freecycle? . . . If there's an object, or even a service, you
11 want to give or receive, you post an e-mail, leave a contact and, if someone bites,
12 arrange for a pickup. The rules are simple: no politics or spam, and everything
13 must be free.” Richard Jerome and Strawberry Saroyan, *Free For All, People*,
14 May 10, 2004, at 195 (Attached as Exhibit 6).

15 **The Freecycle Network Attempts to Seize the Generic Term Freecycle**

16 23. Despite the generic nature of the terms freecycle and freecycling, The Freecycle
17 Network filed an application for the registration of the mark FREECYCLE and a graphic logo
18 using that mark on the Principal Register of trademarks on or about August 27, 2004. The
19 application is still pending.

20 24. In late 2004 or early 2005, The Freecycle Network altered the text of its website to
21 remove some, but not all, uses of freecycle and freecycling in a generic sense. The Freecycle
22 Network’s website continues to include many hundreds of instances where freecycle and
23 freecycling are used in the generic sense to refer to the practice of recycling by giving something
24 away to another for free.

25 25. In January or February 2005, The Freecycle Network began to assert the right to
26 exclusive use of the terms freecycle and freecycling.

1 Freecycle Network's trademark rights in the term freecycle and/or in its graphic logo and
2 requesting that Yahoo! terminate the FreecycleSunnyvale Yahoo! Group.

3 33. On or about November 21, 2005, Yahoo! terminated the FreecycleSunnyvale
4 Yahoo! Group.

5 34. On or about November 21, 2005, Yahoo! sent an email message to
6 FreecycleSunnyvale. The message asserted that FreecycleSunnyvale might have violated
7 Yahoo!'s Terms of Service. The message also stated that "If your use of your Yahoo! account is
8 brought to our attention again, and we believe that such use violates the [Terms of Service], then
9 we may terminate your account without further notice." A copy of this email message is attached
10 as Exhibit 10.

11 35. The termination of its Yahoo! Group rendered FreecycleSunnyvale unable to assist
12 freecyclers in freecycling items. FreecycleSunnyvale therefore suffered harm as a direct and
13 proximate result of The Freecycle Network's false assertions that FreecycleSunnyvale's use of
14 the word freecycle and/or the graphic logo The Freecycle Network had licensed to
15 FreecycleSunnyvale for non-commercial use infringed The Freecycle Network's trademark rights
16 in that term and/or that logo.

17 **CLAIMS FOR RELIEF**

18 **Declaratory Judgment of Non-Infringement of Trademarks**

19 **(15 U.S.C. § 1051 et seq.)**

20 36. FreecycleSunnyvale realleges and incorporates by reference paragraphs 1 through
21 35 hereof as if set forth herein in full.

22 37. Freecycle has claimed that FreecycleSunnyvale's use of the words "freecycle" and
23 "freecycling" and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale
24 for non-commercial use constitutes trademark infringement and has threatened to bring a lawsuit
25 against FreecycleSunnyvale on this basis

26 38. An actual, present and justiciable controversy has arisen between
27 FreecycleSunnyvale and Freecycle concerning FreecycleSunnyvale's right to use the words
28

1 “freecycle” and “freecycling” and/or the graphic logo The Freecycle Network had licensed to
2 FreecycleSunnyvale for non-commercial use.

3 39. FreecycleSunnyvale seeks a declaration from this Court that its use of the generic
4 terms “freecycle” and “freecycling” and/or the graphic logo The Freecycle Network had licensed
5 to FreecycleSunnyvale for non-commercial use does not constitute trademark infringement.

6 40. In the alternative, FreecycleSunnyvale seeks a declaration from this Court that The
7 Freecycle Network has dedicated the terms “freecycle” and “freecycling” and/or the graphic logo
8 The Freecycle Network had licensed to FreecycleSunnyvale for non-commercial use to the public
9 domain and that FreecycleSunnyvale’s use of those terms and/or that logo does not constitute
10 trademark infringement.

11 41. In the second alternative, FreecycleSunnyvale seeks a declaration from this Court
12 that The Freecycle Network has engaged in uncontrolled or naked licensing of the terms
13 “freecycle” and “freecycling” and/or the graphic logo The Freecycle Network had licensed to
14 FreecycleSunnyvale for non-commercial use and thereby abandoned any trademark rights it
15 might otherwise of acquired, and that therefore FreecycleSunnyvale’s use of those terms and/or
16 that logo does not constitute trademark infringement.

17 **Tortious Interference with Business Relations**

18 42. FreecycleSunnyvale realleges and incorporates by reference paragraphs 1 through
19 35 hereof as if set forth herein in full.

20 43. The Freecycle Network has tortiously interfered with FreecycleSunnyvale’s
21 contractual relations with Yahoo!, its online service provider.

22 44. FreecycleSunnyvale had a valid contract with Yahoo!

23 45. The Freecycle Network knew of FreecycleSunnyvale’s contract with Yahoo!

24 46. The Freecycle Network sent a communication or communications to Yahoo!
25 falsely alleging that FreecycleSunnyvale’s use of the generic terms “freecycle” and “freecycling”
26 and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale for non-
27 commercial use infringed The Freecycle Network’s trademark rights in those terms and/or that
28 logo.

1 47. By making this false allegation, The Freecycle Network intended to cause Yahoo!
2 to terminate its contractual relations with FreecycleSunnyvale.

3 48. The Freecycle Network's conduct actually disrupted FreecycleSunnyvale's
4 contract with Yahoo! because it induced Yahoo! to terminate that contract and to suspend the
5 online services it provided to FreecycleSunnyvale.

6 49. FreecycleSunnyvale has suffered damages as a proximate result of The Freecycle
7 Network's tortious interference with its contract with Yahoo! in an amount to be proven at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, FreecycleSunnyvale respectfully prays for:

- 10 1. Judgment granting FreecycleSunnyvale the declaratory relief it seeks;
- 11 2. An order awarding FreecycleSunnyvale damages to compensate for the harm suffered as a
12 result of The Freecycle Network's tortious interference with FreecycleSunnyvale's
13 contract with Yahoo!;
- 14 3. A declaration that this case is exceptional under 15 U.S.C. § 1115(a)(3);
- 15 4. An order awarding FreecycleSunnyvale its attorneys' fees in this action;
- 16 5. An order awarding FreecycleSunnyvale its costs in this action; and
- 17 6. Such other and further relief to which FreecycleSunnyvale may be entitled as a matter of
18 law or equity or which this Court deems just and proper.

19 Dated: January 18, 2006

20 MAYER, BROWN, ROWE & MAW LLP
21 IAN N. FEINBERG
22 ERIC B. EVANS

23 By: 

24 Ian N. Feinberg

25 Attorneys for Plaintiff
26 FREECYCLESUNNYVALE

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CERTIFICATION OF INTERESTED PARTIES

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: January 18, 2006

MAYER, BROWN, ROWE & MAW LLP
IAN N. FEINBERG
ERIC B. EVANS

By: 

Ian N. Feinberg

Attorneys for Plaintiff
FREECYCLESUNNYVALE

Exhibit 1

Trademark/Service Mark Application, Principal Register

Serial Number: 78475113

Filing Date: 08/27/2004

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK FILE NAME	\\ttrs\EXPORT11\IMAGEOUT 11\784\751\78475113\xml1\ APP0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	FREECYCLE
COLOR MARK	YES
COLOR(S) CLAIMED	The color(s) GREEN, TAN, BLACK, ORANGE, YELLOW is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK	The mark consists of The word "freecycle" is in lower case Rave (Open Type) font in green with a slight black shadow. The double "ee" is superimposed over the spokes of the wheels of an old fashioned bicycle facing to the left. The wheels of the bicycle project below the "ee" to a level even with the bottom of the "y" and slightly above the "f." The wheels and frame of the bicycle are tan outlined in black. The letter "l" within the "freecycle" name has been replaced with the fretboard facing downward. The headstock and fretboard are black with two white stripes suggesting strings running along its length. The headstock with six tuning pegs is reflexed to the left and is level with the bottom of the letter "y." The body of the guitar is shaded in black around the edge with an insertion of a white and orange line running from the top left corner of the body to the neck of the guitar. The interior of the body is orange with an image of a gold reflection surrounding the left side of the bridge and completely surrounding the strings. Four black lines, suggesting strings, begin above the sound hole and stop below the bridge. The body of the guitar projects above the name approximately the same width as the type face for the name..
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	891 x 250
OWNER SECTION	
NAME	THE FREECYCLE NETWORK
STREET	901 NORTH PERRY AVENUE
CITY	TUCSON
STATE	AZ
ZIP/POSTAL CODE	85705
COUNTRY	United States

PHONE	520-631-2171
FAX	na
EMAIL	deron@freecycle.org
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	Arizona
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	042
DESCRIPTION	DESIGN, CREATION, HOSTING AND MAINTENANCE OF A FREE WEBSITE THAT PROVIDES OTHERS WITH A GLOBAL INTERNET BASED SYSTEM OF GIVING AND RECEIVING PERSONAL PROPERTY FOR FREE
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	05/01/2003
FIRST USE IN COMMERCE DATE	05/01/2003
SPECIMEN FILE NAME(S)	\\tirs\EXPORT11\IMAGEOUT 11\784\751\78475113\xml\ APP0003.JPG
SPECIMEN DESCRIPTION	HOME PAGE FOR WEBSITE FREECYCLE.ORG
SIGNATURE SECTION	
SIGNATURE	/John C. Lacy/
SIGNATORY NAME	John C. Lacy
SIGNATORY DATE	08/27/2004
SIGNATORY POSITION	Attorney
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
ATTORNEY	
NAME	JOHN C. LACY
FIRM NAME	DeCONCINI McDONALD YETWIN & LACY, P.C.
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FILING INFORMATION	
SUBMIT DATE	Fri Aug 27 17:40:02 EDT 2004
TEAS STAMP	USPTO/BAS-20616920282-200 40827174002213551-7847511 3-2004e31ac8bdab84df68ea0 3f888eca601d-CC-320-20040 827173421319417

PTO Form 1473 (Rev 4/98)
OMB Control #0651-0009 (Exp. 06/30/2005)

Trademark/Service Mark Application, Principal Register

Serial Number: 78475113

Filing Date: 08/27/2004

To the Commissioner for Trademarks:

MARK: FREECYCLE (stylized and/or with design, see mark)

The literal element of the mark consists of FREECYCLE.

The color(s) GREEN, TAN, BLACK, ORANGE, YELLOW is/are claimed as a feature of the mark.

The mark consists of The word "freecycle" is in lower case Rave (Open Type) font in green with a slight black shadow. The double "ee" is superimposed over the spokes of the wheels of an old fashioned bicycle facing to the left. The wheels of the bicycle project below the "ee" to a level even with the bottom of the "y" and slightly above the "f." The wheels and frame of the bicycle are tan outlined in black. The letter "l" within the "freecycle" name has been replaced with the fretboard facing downward. The headstock and fretboard are black with two white stripes suggesting strings running along its length. The headstock with six tuning pegs is reflexed to the left and is level with the bottom of the letter "y." The body of the guitar is shaded in black around the edge with an insertion of a white and orange line running from the top left corner of the body to the neck of the guitar. The interior of the body is orange with an image of a gold reflection surrounding the left side of the bridge and completely surrounding the strings. Four black lines, suggesting strings, begin above the sound hole and stop below the bridge. The body of the guitar projects above the name approximately the same width as the type face for the name..

The applicant, THE FREECYCLE NETWORK, a corporation of Arizona, residing at 901 NORTH PERRY AVENUE, TUCSON, AZ, United States, 85705, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 042: DESIGN, CREATION, HOSTING AND MAINTENANCE OF A FREE WEBSITE THAT PROVIDES OTHERS WITH A GLOBAL INTERNET BASED SYSTEM OF GIVING AND RECEIVING PERSONAL PROPERTY FOR FREE

In International Class 042, the mark was first used at least as early as 05/01/2003, and first used in commerce at least as early as 05/01/2003, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) HOMEPAGE FOR WEBSITE FREECYCLE.ORG.

Specimen - 1

The applicant hereby appoints JOHN C. LACY and JAMES A. JUTRY of DeCONCINI McDONALD YETWIN & LACY, P.C., #200, 2525 EAST BROADWAY, TUCSON, AZ, United States, 85716 to submit this application on behalf of the applicant.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: jlacy@dmyl.com.

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John C. Lacy/ Date: 08/27/2004

Signatory's Name: John C. Lacy

Signatory's Position: Attorney

Mailing Address:

JOHN C. LACY

#200

2525 EAST BROADWAY

TUCSON, AZ 85716

RAM Sale Number: 320

RAM Accounting Date: 08/30/2004

Serial Number: 78475113

Internet Transmission Date: Fri Aug 27 17:40:02 EDT 2004

TEAS Stamp: USPTO/BAS-20616920282-200408271740022135

51-78475113-2004e31ac8bdab84df68ea03f888

eca601d-CC-320-20040827173421319417

freecycle



Changing the world one gift at a time.

home | Frequently Asked Questions | Start a Group | Other Resources

Make a Donation

Freecycle Groups:

- Canada
- International
- US Northeast
- US Central
- US Southern
- US Southwest
- US West Coast
- US Pacific
- All Groups

Newest Freecycles

- Cedar Springs
- Waterford
- Howard County

Biggest Freecycles

- freecycleportland(8263)
- AustinFreecycle(5542)
- freecyclenewyorkcity(5391)
- chicagofreecycle(3354)
- DFWFreecycle(5042)
- grfreecycle(4703)
- FreecycleDC(4596)
- FreecycleSeattle(3711)

1203 Cities! Others coming soon! If you want to start one, visit our Start-A-Group page.

If you know of one that isn't listed, let us know.



1658486

THE COUNTER:

Number of cities freecycling: 1203
Number of people freecycling: 392,416

Welcome!

The worldwide (!) Freecycle Network is made up of many individual groups across the globe. It's a grassroots movement of people who are giving (& getting) stuff for free in their own towns. Each local group is run by a local volunteer moderator (them's good people). Membership is free. To sign up, find your city by clicking on the region on the right. It will generate a automatic e-mail which, when sent, will sign you up for your local group and send you an response with instructions on how it works. Or, go directly to the webpage for your city's group by clicking on your city's link on the left. Can't find your city? It takes about ten minutes to start your own (click on "Start your own" for instructions). Have fun and keep on Freecycling!

The Freecycle Network is a project of RISE, Inc., a 501(c)3 nonprofit organization whose mission includes reducing waste, generating employment training, and fostering cooperation between other nonprofit organizations and the public.

RISE started the Freecycle Network in May 2003 to promote waste reduction in Tucson's downtown and help save desert landscape from being taken over by landfills. Freecycle provides individuals and non-profits an electronic forum to "recycle" unwanted items. One person's trash can truly be another's treasure!

How does Freecycling work?

One rule: everything posted must be free. Whether it's a chair, a fax machine, piano, or an old door to be given away, it can be posted on the network. Or, maybe you're looking to acquire something yourself? Respond to the posting directly and you just might get it. After that it is up to the giver to set up a pickup time for passing on the treasure.

Non-profit organizations also benefit from the Freecycle Network. Post the item or items you want to give away and a local organization can help you get it to someone in need.

Who can Freecycle?

As Abe Lincoln once said, "Think globally, recycle locally." The Freecycle Network is open to all cities and to all individuals who want to participate. Freecycle groups are run by local volunteer moderators from across the globe who facilitate each local group - Grassroots at its best!

Freecycle Newswire

Freecycling the

Alphabet!

(08/18)

...slow the flow of trash

(08/17)

What is freecycle?

(08/14)

News Channel 10 -

Freecycle...

(08/13)

FREE market rules

(08/12)

Free for all

(08/11)

Sign Up!

To sign up for a Freecycle Yahooogroup, choose your region below. And then find the closest freecycle to your location. If you click ~~here~~, you will be taken to the website of your freecycle group. If you click ~~here~~, an email windows will pop up. Send a blank email to the address in the 'to' field and you will be signed up shortly for that freecycle group. If you have any questions, please let us know!

- Canada
- International
- US Northeast
- US Central
- US Southern
- US Southwest
- US West Coast
- US Pacific

What information is on this website

Frequently Asked Questions - This is accumulated answers to questions, advice and general etiquette that you should read before joining the list.

Start A Freecycle Group - If you are interested in starting a Freecycle group in your area, this page will help you find out how we can help you.

Other Resources - A list of websites and other resources that are related to what Freecycle is doing. Recycling, trading, free resources, etc.

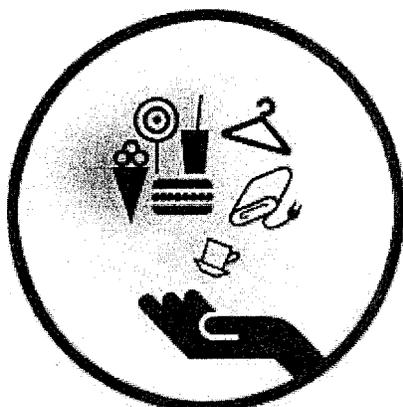


Exhibit 2



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From each according to his junk, to each according to her need

Need a pile of dirt? Got a pile of dirt? It's Christmas every day in the new world of freecycling.

By Katharine Mieszkowski



Nov. 25, 2003 | Brad Wallis, 42, an [erotic photographer](#) who lives in Portland, Ore., works part time remodeling houses to support his art.

But over the past two months the self-described "starving artist" has developed a taste for giving his possessions away to strangers. "I don't have any money. I'm unemployed, but if I am able to give things to other people that make them happy and that they need, what a wonderful gift that is -- to me," he says.

On the [Freecycle Portland mailing list](#), Wallis has offered up a bizarre accumulation of freebies that include large mirrors, art prints, tires, firewood, bike helmets, bicycle racks, trees, a sump pump, 12 Cuban cigars and even a whole computer.

"I was going to give away a computer case, but I ended up putting a hard drive in and an operating system to make it a completely working system," he says. "Because I could, because I didn't really need it, and I could make it a nicer gift to give to somebody."

Via Freecycle, Wallis has also received his share of gifts from people he'd never met before: a little tabletop fountain, a 35-millimeter camera, a toaster-oven and a mini-fridge.

"I grew up poor, and growing up poor you collect stuff, because you're never sure when you're going to need it and you can't buy it," says Wallis, who admits he has "packrat tendencies."

If a true packrat hordes, a "freecycler" can't stand to see something that might be useful to someone else go to waste, languishing unused in a musty garage, attic, bottom dresser-drawer or -- worse yet -- a landfill. That type of person has always existed, but today, thanks to the efficient distribution capabilities of the Internet, Wallis has joined forces with an entire tribe of thrifty givers. At [Freecycle](#) everything is free, and you can get rid of practically anything, from a pile of dirt to a beading loom.

In the face-to-face world, it's often hard to find that deserving person who needs your specific load of useless castoffs. Enter the Internet, which not only makes such networking easy but also has long been suffused with an ethic that [promotes](#) gift giving. Since May 2003, the Freecycle concept has exploded, spreading from city to city with the speed of a grass (roots) fire.

"A gift economy is different from anything that most people have ever experienced," says Albert Kaufman, 42, an unemployed activist and musician who is the moderator of the Portland freecycle list. With more than 2,000 members, it is one of the largest created so far. "It's pretty wonderful," Kaufman says. "It's sort of like Christmas all the time." Best of all: You don't have to buy anything new.

While eBay recasts clutter as a collection of valuable commodities to be marketed to the highest bidder, Freecycle magically transforms junk into presents, allowing almost anyone a chance to play Santa Claus channeling St. Francis. Which raises the question, what's really more valuable: Selling that 1980 Strawberry Shortcake lunchbox you've been carting around for decades for the best price possible? Or knowing that your much-neglected ice-cream maker, bread machine and transcription device have been given away to good homes where they may actually be turned on occasionally?

Besides the lofty altruism, freecycling is also about trying to get rid of junk: an old washing machine that may work but hasn't been hooked up in years, a jumbo dog-carrying cage for a dearly departed pooch, those coffee mugs that seem to breed and multiply in the kitchen cabinet. Lurking on the lists are the detritus of many abandoned projects and long-forsaken hobbies: On the Tucson list on Nov. 17 a woman's 10-pound bowling ball was up for grabs with this caveat: "It's grey marble color and unfortunately I had my name etched into it but I hope someone can use it and is a better bowler than I was!" The ball, along with a blue bowling-ball carrying case and a pair of "almost new" size 6 and a half bowling shoes, was spoken for in just 13 minutes.

Picture a vast junk box floating in the ether, spilling over with an inflatable raft, a clothesline, a 12-inch radial-arm saw, an Elmo sandbox, 18 post-mastectomy bras, three squashes, two rats, a rat cage and all sorts of other battered treasures, all flanked by a giant sign: FREE STUFF.

"We all have something that we don't want to admit that we're not using and will never use," says Deron Beal, 36, who started the very first Freecycle list in May 2003 in Tucson, Ariz., where he works part time for a nonprofit recycling group called Rise. Beal created the list as a way to hook other nonprofits up with the used couches, computers, office chairs, desks and file folders that the businesses he worked with no longer needed. Since then, the Tucson list has grown beyond the nonprofit world to include more than 1,600 members, and the concept has been adopted in more than 82 cities, including Kansas City, Orlando, Washington, Bangalore and Tokyo, with new lists now starting at the rate of 10 per week.

The ground rules are simple: Posts to the list indicate whether an item is an "offer" or "wanted" in the subject line, and there's no cash, barter or trade allowed. While offloading free stuff on the Net certainly isn't new to local community sites, Freecycle has spawned a mini-movement devoted to giving. Some people may get on the lists solely in search of freebies, but they soon start feeling the itch to part with their own extra filing cabinets, hearing aids and plasterboard.

Sometimes the goal of wasting-not is taken to extremes. Bryan Cordova, 24, a recycling education coordinator for a nonprofit environmental organization who has given away cacti, towels and a twin bed on the Tucson list, recently found himself mailing a dog food coupon to a fellow freecycler. "It was a coupon for a free bag of dog food," he says. "It wasn't a brand that I was planning on purchasing for my dog. It was just a few dollars' value, but why let it go to waste?"

Unlike donating to a charity such as Goodwill, freecycling puts the giver in touch with the people who will be benefiting from his or her largesse: "You deal with them directly so you know that the person who is getting what you're giving away is somebody who needs it," says Anna Harrison Griessel, a 39-year-old video and film producer who lives in Green Valley, Ariz. Griessel has given away five bags of clothes, a Microsoft keyboard, piano books and cookbooks on the Tucson list.

There's the added incentive that it takes less effort to shoot an e-mail out offering a single item than mustering up the energy to clean out a whole closet to justify a trip to the Salvation Army. And freecyclers argue that they do reach the needy who can't afford to log on for freebies via the many nonprofits that frequent the lists.

Once you start giving things away on the list and meeting the people who want them, the game of giving can become an end in itself. "It's just sort of fun now to walk through my house one room at a time and see what I can get rid of," says Griessel.

"Paying it forward" and "karma" pervade the way freecyclers think about their lists. "People are always talking about doing the right thing and helping your fellow man and saving the environment," says Martha Blake, 36, a stay-at-home mother in White Salmon, Wash., who is the moderator for the [Columbia Gorge Freecycle list](#), which has 203 members. "We all have really good intentions and have all these dreams of things we want to do to help, but we always seem to be stuck in our everyday things and never get to those. This is kind of handed to them on a silver platter: This is your chance." She received an old bookshelf from the list, which she converted into a ferret playground, and gave away a fish and a fish tank to a local 7-year-old boy whose mother didn't want him to have a more labor-intensive animal as his first pet.

The spread of freecycling, however eco-friendly a way it may be to relieve chronic overconsumption, does raise the not-so-ideal prospect of perpetual junk shuffling -- as soon as you get rid of your clutter, you take on someone else's. But maybe that will turn out to be the Internet's greatest gift -- in the future, there will be *no* junk, because every last thing will have found its way to a person who truly needs and appreciates it.

About the writer

[Katharine Mieszkowski](#) is a senior writer for Salon Technology.

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Is online shopping good for the environment or just a better way to be as wasteful as we want to be?

By Katharine Mieszkowski

12/07/00

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Exhibit 3

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1/27/04 San Jose Mercury News 1C
2004 WLNR 2960583

San Jose Mercury News (CA)
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January 27, 2004

Section: Business

FREECYCLING MOVEMENT GAINS GROUND IN VALLEY FROM TRASH TO TREASURE: GOODS GIVEN AWAY, PUT TO NEW USES

MIKE CASSIDY column

We are a consumer nation. Update. Upgrade. Buy. Buy. Buy.

Which leaves us with stuff. Lots of stuff. Stuff in the garage, under our beds, in the back yard. Stuff headed for the landfills, which themselves are stuffed with stuff.

'And I have all this stuff,' says Lissy Abraham, of Sunnyvale, 'and I want to get rid of it. I just have to find the person who wants it.'

So in October, she started Silicon Valley's first **freecycling** community.

Yes, **freecycling** (www.freecycle.org). The movement started in Tucson, Ariz., last year and is now sweeping the nation. Really.

Think of it as eBay without the money and with a dose of 'think globally, act locally.' **Freecyclers** use Yahoo Groups as a free bulletin board, requiring registration only. Givers post their excess items on Yahoo and takers send an e-mail saying they will come and pick it up.

The Internet is how we do things -- sell cars, music, books, plane tickets. But it's also how many seek to change the world in big ways and small.

Freecycling is hardly earth-shattering. Of course it isn't the only way to give stuff away. There are trucks from charities to pick up what you don't need. There are cardboard 'free' signs attached to couches, computers and filing cabinets on our curbs.

And there are other Internet-enabled giveaway programs, such as the 'free stuff' area on Craig's List.

But **freecycling** is hot.

'We think it's great,' says Mark Bowers, who manages Sunnyvale's solid waste program and is therefore well-acquainted with the disposal of excess. 'We love this kind of

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(Cite as: 2005 WL 929089, *12 (E.P.A.))

grass-roots stuff, where people are exchanging those items.'

The movement is growing through viral marketing. Since the Tucson chapter started in May, nearly 200 groups have formed throughout the United States and in Canada, Australia, India, Britain, South Korea, Singapore, Japan and Romania.

The array of unwanted items is vast. Desks, bikes, books, lamps, couches, sure. But also a diaper genie, 10 pounds of batteries, succulent plants and gravel. Yes, rocks.

Together, the groups provide a study of the human condition, materially and more. Some of the older and larger groups have gone beyond the basic give and take.

In Portland, **freecyclers** collected Christmas presents and distributed them to the unemployed and their families, Rosemary Meyer, of Portland, writes by e-mail.

The spirit is contagious.

Aseem Das, of Palo Alto, heard about **freecycling** through an e-mail from an acquaintance. He jumped all over the idea and started **Freecycle** Palo Alto in December.

'It kind of tied in with that whole idea of consuming less, or if you have stuff, you might give it to other people who need it,' Das says.

Other groups targeting San Jose and the greater South Bay also have formed, together attracting more than 200 members so far.

Das, whose group has 75 members, says membership has been building slowly. But he's an optimist. Besides, he already has moved a 13-inch television and a neighbor's baby stroller.

Abraham, whose Sunnyvale group has 264 members, says local founders are talking about combining their groups.

In the meantime, the groups are open to all regardless of where they live.

And one thing you can be sure about: There is plenty of stuff to go around.

Photos (2)

PHOTO JOANNE HOYOUNG LEE -- MERCURY NEWS\Aseem Das started **Freecycle** Palo Alto in December. He is offering old carpeting, and already has moved a 13-inch television and a neighbor's baby stroller. PHOTO JOANNE HOYOUNG LEE -- MERCURY NEWS\Sylvia Dolce and her husband, Aseem Das, are using freecycle.org to find a new home for a roll of surplus carpet and other items.

Silicon Valley Dispatches

----- INDEX REFERENCES -----

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Exhibit 4

3/16/04 NYT B1

Page 1

(Cite as: 2005 WL 929089, *12 (E.P.A.))

3/16/04 N.Y. Times B1

2004 WLNR 5578559

New York Times (NY)

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March 16, 2004

Section: B

One Sock, With Holes? I'll Take It; **Freecycling** Brings Castoff Goods Back From the Bin

TINA KELLEY

Web site freecycle.org was created by Deron Beal to give people opportunity to exchange unwanted items that are still usable, with proviso that everything is free; Beal hopes site will grow and become nonprofit group, with idea of **freecyclers** meeting international needs (M)

Wanted: old socks, "ripped, without partners, and of any size or color." Offered: a telephone pole. Wanted: a chicken coop, a doghouse, a barn. Offered: "Excellent quality landscaping rocks. Organic lemons will be given away to those who take the rocks as an extra bonus."

The Internet has fed dreams of unimaginable wealth, a hope that in many cases turned out to be as fleeting as an instant message. It began as a way for the military and then academia to communicate, with little thought to profit, before evolving into a worldwide marketplace. Now one group is using the Internet as a way to make connections and fall into riches at the same time. In this case, the treasure comes in the form of someone else's trash.

Dusty but new exercise equipment, a five-person hot tub, and enough white Ikea bookshelves to furnish a small college town have been posted online through a new group that practices **freecycling**, the giving away of useful but unwanted goods to keep them out of landfills and maybe help someone less fortunate in the process.

The Web site has become a haven for newlyweds with empty homes, and retirees with full ones. In New York City, there's the added incentive of freeing space in minivan-size apartments, where a spice rack can take up too much room.

Like many staples of the Internet, this pretty much came about by accident. Deron Beal, 36, who works at a recycling nonprofit group in Tucson, sent an e-mail message in May to everyone he knew, to see if they wanted a queen-size bed and some packing peanuts he no longer needed. He subsequently set up a Web site where people could exchange unwanted items, the only constraint being that the items had to be free. "Legal and appropriate for all ages" was added later. The Web site, www.freecycle.org, was born, and 10 months later,