

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ashley Lynn Kirk
HAYES SOLOWAY PC
3450 E. Sunrise Drive, Suite 140
Tucson, AZ 85718
Telephone: (520) 882-7623
Facsimile: (520) 882-7643

Attorneys for Defendants
TIM OEY and JANE DOE OEY

**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. CIV 06-173-TUC-RCC

**DECLARATION OF TIMOTHY OEY
IN SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

Date: May 9, 2005
Time: 3:00 p.m.
Before: Hon. Raner C. Collins
Location: Courtroom 5B

1 I, Timothy Oey, declare as follows:

2 1. I am a resident of Sunnyvale, California, and I reside at 795 Allison Way,
3 Sunnyvale, California 94087.

4 2. The only time that I have been physically present in Arizona was for a day or two
5 as a tourist visiting Monument Valley and the Four Corners Monument in 1994.

6 3. I first learned of the above-captioned lawsuit when my wife, Pat Oey, gave me a
7 copy of legal documents shortly after 2:30 p.m. on Friday, April 21, 2006, when I arrived home
8 after a trip to India. I am represented in the above-captioned lawsuit by Norman P. Soloway and
9 Ashley Lynn Kirk, of Hayes Soloway PC, 3450 E. Sunrise Drive, Suite 140, Tucson, AZ 85718.
10 Counsel agreed to represent me for these initial proceedings on Sunday afternoon, April 23, 2006.

11 4. I am a member of FreecycleSunnyvale, a California unincorporated association. I
12 joined FreecycleSunnyvale on January 28, 2004. A true and correct copy of my welcome to the
13 group is attached to this Declaration as Exhibit A. FreecycleSunnyvale was formally registered
14 as a California unincorporated association on December 27, 2005. A true and correct copy of the
15 registration is attached to this Declaration as Exhibit B.

16 5. FreecycleSunnyvale is comprised of volunteers who moderate a Yahoo! online
17 group (group moderators). The online group assists individuals (group members) in the local
18 Sunnyvale area who want to freecycle items. FreecycleSunnyvale operated a Yahoo! online
19 group named "freecyclesunnyvale" until November 21, 2005, when Yahoo! terminated this online
20 group account at the behest of The Freecycle Network ("TFN"). The freecyclesunnyvale group
21 had approximately 2200 members when it was deleted. On November 22, 2005,
22 FreecycleSunnyvale obtained and now operates another Yahoo! online group account that is
23 named, "SunnyvaleFree." SunnyvaleFree has grown to about 600 members as of May 1, 2006.

24 6. Freecycling is a practice where someone, who has an item that he or she no longer
25 wants, gives that item for free to someone who wants the item so that the item continues to be
26 used rather than ending up as trash in a landfill. Anyone can find a local online group by using
27 Google or another internet search engine and using search terms "freecycle" and the name of the
28 local community. To freecycle an unwanted item, an individual (a) sends an "offer" email to an

1 online group, (b) the "offer" email is posted on the group's home page and relayed to members,
2 (c) individuals who want the item reply to the "offer" email, and (d) the individual offering the
3 item arranges an exchange with one of the individuals wanting the item.

4 7. When I first joined FreecycleSunnyvale I did not know that TFN existed.
5 Freecycling was simply a popular grassroots movement, involving numerous local online
6 freecycle groups.

7 8. Moderators are needed for local online groups to make sure, for example, that
8 individuals in a local area do not use the online group to advertise items for sale. Moderators are
9 also needed to prevent spam.

10 9. After I became a moderator of FreecycleSunnyvale's online group, I was added to
11 the "freecyclemodsquad" Yahoo! online group in February 2004. "Freecyclemodsquad" stands
12 for freecycle moderator squad. The freecyclemodsquad online group is where freecycle
13 moderators discuss freecycling issues.

14 10. I never entered into any contract with anyone to become a freecycle moderator or
15 to use the word "freecycle." To the best of my knowledge, FreecycleSunnyvale never entered
16 into any contract with anyone to use the word "freecycle."

17 11. At least until September 2004, I was unaware that anyone claimed trademark
18 rights in the word "freecyle."

19 12. Up to and including September 2004, and even beyond, Deron Beal, the Executive
20 Director of TFN, commonly used "freecyle" as a generic term. Examples of Mr. Beal's use of the
21 word "freecyle" include:

22 a. Mr. Beal used "freecyle" as a noun in emails dated June 23, 2004 and
23 September 20, 2004. True and correct copies of these two emails are attached
24 collectively to this Declaration as Exhibit C.

25 b. Mr. Beal used "freecycling" as a gerund in emails dated March 28, 2004 and
26 July 27, 2004. True and correct copies of these two emails are attached
27 collectively to this Declaration as Exhibit D.

28

- 1 c. Mr. Beal used "freecycler" as a noun in emails dated June 7, 2004, August 14,
2 2004, and January 4, 2005. True and correct copies of these three emails are
3 attached collectively to this Declaration as Exhibit E.
- 4 d. Mr. Beal used "freecycle" as an adjective in emails dated October 5, 2004, and
5 September 29, 2004. True and correct copies of these two emails are attached
6 collectively to this Declaration as Exhibit F.
- 7 e. Mr. Beal used "freecyle" as a verb in emails dated June 17, 2004, and August 5,
8 2004. True and correct copies of these two emails are attached collectively to this
9 Declaration as Exhibit G.
- 10 13. In September 2004, I became aware that TFN wanted to protect "freecycle" as a
11 trademark.
- 12 14. On October 16, 2004, I sent an email about TFN's trademark claim to the word
13 "freecycle" to a small group of active volunteers within TFN and known as the New Webpage
14 Planning Team ("NWPT"). In that email, I discussed leaving "freecycle" as a common language
15 word rather than seeking to protect "freecycle" as a trademark. In that email, I also included an
16 excellent article about freecycling from the Associated Press that Mr. Beal previously sent to the
17 freecyclemodsquad on October 16, 2004. A true and correct copy of that email is attached to this
18 Declaration as Exhibit H.
- 19 15. On November 10, 2004, I received an email, sent by Traci Dale to the NWPT
20 group, questioning the viability of claiming trademark rights in "freecycle" given the extensive
21 use of "freecycle" as a generic term. A true and correct copy of that email is attached as Exhibit I
22 to this Declaration.
- 23 16. On January 5, 2005, Mr. Beal sent an email to the freecyclemodsquad group,
24 acknowledging that the "freecycle" trademark strategy was at risk. A true and correct copy of
25 that email is attached to this Declaration as Exhibit J.
- 26 17. During January and February 2005, I actively helped author trademark policies for
27 TFN.
28

1 18. In March 2005, I began to have serious doubts about my earlier decision to support
2 TFN's pursuit of trademark rights in the word "freecycle" after I received an email sent to the
3 entire FreecycleSunnyvale online group on March 19, 2005. A true and correct copy of that
4 email is attached to this Declaration as Exhibit K. Although I had serious doubts, I chose to
5 continue to publicly support TFN's pursuit of trademark rights.

6 19. From approximately January 2005, to August 2005, TFN steadily lost a number of
7 volunteers. My understanding is that many of these volunteers left over TFN's decision to pursue
8 trademark rights in the word "freecycle" and TFN's treatment of local freecycling groups. I
9 admired these volunteers (particularly Pastor Ken Hedden and David Neeley), and I grew to
10 regret my support of TFN's efforts to obtain trademark rights on the word "freecyle."

11 20. In August 2005, a large group of very active volunteers, all of whom I respected
12 (including Deanna, Judy Ruzich, Lynn Jones, Charlotte Hess, and especially Nancy Castleman
13 who was sometimes known as the 'mother of freecycling'), left TFN suddenly. My
14 understanding is that these individuals left TFN because of TFN's trademark policies and
15 treatment of local freecycling groups. On August 18, 2005, I sent an email to the
16 freecyclemodsquad regarding these developments. A true and correct copy of that email is
17 attached to this Declaration as Exhibit L.

18 21. On September 16, 2005, Paula Spencer, on behalf of TFN, sent me an email
19 requesting that I resign as a moderator of FreecycleSunnyvale. A true and correct copy of that
20 email is attached to this Declaration as Exhibit M.

21 22. On September 17, 2005, Chandan Mishra, a FreecycleSunnyvale volunteer
22 moderator, forwarded an email to me that Paula Spencer had sent to her on September 16, 2005.
23 A true and correct copy of that email is attached to this Declaration as Exhibit N.

24 23. On September 23, 2006, Paula Spencer, on behalf of TFN, sent an email to the
25 FreecycleSunnyvale moderators, including myself, stating, "Having reach the deadline and not
26 having received a reply from you, I have asked that the Sunnyvale link be removed from the
27 Freecycle.org page." A true and correct copy of that email is attached to this Declaration as
28 Exhibit O.

1 24. On November 22, 2005, after Yahoo! deleted FreecycleSunnyvale's online group
2 account, the original FreecycleSunnyvale moderators obtained a new Yahoo! online group
3 account named "SunnyvaleFree" so that individuals in the local Sunnyvale area could continue to
4 freecycle. A true and correct copy of the home page of the SunnyvaleFree online group is
5 attached to this Declaration as Exhibit P.

6 25. On April 27, 2006, an email was forwarded to me and that had been posted to a
7 Yahoo! online group by Mr. Beal. A true and correct copy of this email is attached to this
8 Declaration as Exhibit Q.

9 26. As of May 3, 2006, the temporary restraining order issued in the above-captioned
10 action on April 24, 2006, ("TRO") and that applies to Timothy Oey and "those persons in active
11 concert and participation with Defendant" (which seems to include the online group
12 SunnyvaleFree) is having a significant, detrimental impact on the freecycling activities within
13 SunnyvaleFree. Due to the TRO, none of the moderators are certain that they may approve any of
14 the emails on that group from new members who have joined that group. Normally, these are
15 approved within a few hours or a day at most. As of 9:50 a.m. on May 3, 2006, there are now 24
16 messages waiting to be approved which is blocking 24 freecyclers from freecycling unwanted
17 items in the local Sunnyvale area. If not approved, these messages will be automatically deleted,
18 preventing freecycling. A true and correct copy of the SunnyvaleFree home page showing these
19 unapproved messages is already attached to this Declaration as Exhibit P.

20

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct. Executed in San Jose, California, on May 3, 2006.

23

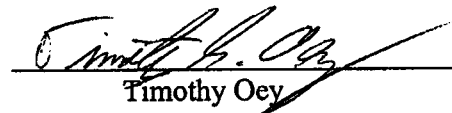
24

25

26

27

28


Timothy Oey