

EXHIBIT A

**DeCONCINI McDONALD
YETWN & LACY, P.C.**
2525 East Broadway, Suite 200
Tucson, Arizona 85716-5300
Telephone: 520-322-5000
Facsimile: 520-322-5585
LISA ANNE SMITH, AZ Bar No. 016762
(lsmith@dmyl.com)
SHEFALI MILCZAREK-DESAI, AZ Bar No. 021237
(smdesai@dmyl.com)

PERKINS COIE LLP
101 Jefferson Drive
Menlo Park, California 94025-1114
Telephone: (650) 838-4300
Facsimile: (650) 838-4350
(Admitted *pro hac vice*)
LISA KOBIALKA
(Lkobialka@perkinscoie.com)
ESHA BANDYOPADHYAY
(EBandyopadhyay@perkinscoie.com)
SEAN BOYLE
(Sboyle@perkinscoie.com)

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. CV 06-173 RCC

**DECLARATION OF DERON BEAL IN
SUPPORT OF THE FREECYCLE
NETWORK, INC.'S OPPOSITION TO
DEFENDANTS' MOTION TO STAY
OR TRANSFER**

I, Deron Beal, declare as follows:

1. I am the founder and Executive Director of The Freecycle Network, Inc. ("The Freecycle Network"). I make this declaration in support of The Freecycle Network's Opposition

to Defendants' Motion to Stay and Transfer. I have personal knowledge of the facts stated and if called to testify as a witness, would competently testify thereto.

2. The Freecycle Network, Inc. is a nonprofit corporation incorporated under the laws of the State of Arizona. The Freecycle Network was founded in Tucson. The Freecycle Network's only office and headquarters are located in Tucson. Further, all board members of The Freecycle Network are located in Tucson, Arizona.

3. The Freecycle Network maintains its own Web site to assist members in their efforts to recycle, reuse, and gift goods. The Web site is located at the URL www.freecycle.org. The site also maintains a directory of all member groups, which lists the individual group links and provides resources for volunteers to create new local recycling groups.

4. Defendant Tim Oey was a very active member of The Freecycle Network from early 2004 until late 2005, during which time he held various key positions within The Freecycle Network.

5. Mr. Oey was the head of the New Website Planning Team for The Freecycle Network. He was tasked with leading a group of the top moderators for The Freecycle Network worldwide in compiling a wish list / plan for an entirely new global website for The Freecycle Network. As the head of the New Website Planning Team, Mr. Oey was to provide his recommendations to The Freecycle Network's only office based in Tucson. This role was addition to his separate efforts related to his local group located in Sunnyvale.

6. Mr. Oey was also the head of FreecycleNext, which was a group formed by The Freecycle Network specifically for the moderators of all of The Freecycle Network's local member groups worldwide. The Freecycle Network formed FreecycleNext so that all moderators beyond the top 25 also had a forum to provide a wish list and input for our new global website design project. As the head of The Freecycle Network's Freecycle Next, Mr. Oey was tasked to collect comments, provide suggestions and make recommendations to The Freecycle Network's only office based in Tucson.

7. Mr. Oey was a member of The Freecycle Network's Penguin Patrol, a further international planning group consisting of some 4-6 worldwide moderators specifically tasked with developing guidelines and policies for the protection of The Freecycle Network's intellectual property, including copyright and trademark protection. Mr. Oey personally drafted and developed The Freecycle Network's Trademark and Copyright Policy and frequently commented on how to improve upon these guidelines and make these guidelines user friendly.

8. Mr. Oey also published these guidelines to the member groups. He provided advice and made numerous detailed recommendations to The Freecycle Network about multiple aspects of its intellectual property. For example, he provided detailed instructions on how to use, protect and identify The Freecycle Network's intellectual property in emails or to post trademark and copyright information on The Freecycle Network's website. In numerous emails, Mr. Oey provided The Freecycle Network with recommendations, suggestions and advice about protecting its intellectual property.

9. For example, Mr. Oey recommended to The Freecycle Network as a member of the Penguin Patrol that The Freecycle Network members should not use the "superscript TM symbol [in emails] . . . because most email programs will not display it right to the recipient." *See* Exhibit 1, attached hereto.

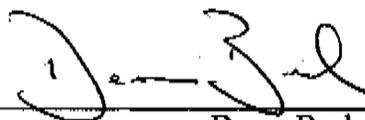
10. Another example includes one of many instances where Mr. Oey provided his "recommendation" on The Freecycle Network's Trademark and Copyright policy. Mr. Oey made on what the text version of The Freecycle Network's Trademark and Copyright policy should say so it could be sent cleanly via email. *See* Exhibit 2, attached hereto.

11. Mr. Oey was also one of 4-5 leaders of The Freecycle Network's main worldwide moderator group, the Freecycle Modsquad, which continues to be the main worldwide group where rules are discussed and voted on by moderators, binding polls of moderators are taken and official notices are made to moderators worldwide. He shared this worldwide leadership with me and 2-3 other moderators. As a leader of The Freecycle Network's "Modsquad," Mr. Oey was tasked with helping lead this main group consisting of well over a thousand moderators worldwide

at the time, informing worldwide moderators, collecting comments, providing suggestions and making recommendations to The Freecycle Network's only office based in Tucson in this regard. This leadership role was in addition to and separate from any Sunnyvale-specific or other locally-oriented volunteer moderating of any groups that Mr. Oey was involved in.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Tucson, Arizona on May 18, 2006.

By: _____



Deron Beal

EXHIBIT 1

----- Original Message -----

From: Tim Oey
To: PenguinPatrol@yahooogroups.com
Sent: Tuesday, March 08, 2005 2:30 AM
Subject: RE: [PenguinPatrol] Timeline

I think we should roll with what we have and just be ready to answer questions and modify our approach as we go.

The only update that I had on the last version I saw sent out was changing text "the ascii version" to "the symbol".

TIP: If you are sending an email and wish to add the TM, it makes sense to use the (TM) version rather than the superscript TM symbol (even if you know how to generate the ascii version) because most email programs will not display it right to the recipient.

to

TIP: If you are sending an email and wish to add the TM, it makes sense to use the (TM) version rather than the superscript TM symbol (even if you know how to generate the symbol) because most email programs will not display it right to the recipient.

Cheers,
Tim

At 12:11 PM -0800 3/7/05, Freecycle Copyright Agent wrote:
>So I assume by your collective silence that all of
>the TM changes are in and we're ready to roll them
>out to the GOAs? I saw that Melissa won't be online
>for a few weeks. Betty- are you comfortable taking

>on the Q&A stuff yourself? You will *not* be
>responsible for figuring out the answers to hard
>questions- you can just bring them back here, we'll
>hash them out together, and then you'll have a form
>letter you can use for the future.
>Anything else before we take the leap?
\

Please note that this email message is intended only for the addressee(s) and contains information that may be confidential and/or copyrighted. If you are not the intended recipient please notify the sender by reply email and immediately delete this email. Disclosure, distribution or reproduction of this email by anyone is strictly prohibited.

Freecycle and the Freecycle logo are either registered trademarks or trademarks of The Freecycle Network in the United States and/or other countries.

Yahoo! Groups Sponsor
ADVERTISEMENT



Yahoo! Groups Links

- To visit your group on the web, go to:
<http://groups.yahoo.com/group/PenguinPatrol/>
- To unsubscribe from this group, send an email to:
PenguinPatrol-unsubscribe@yahoogroups.com
- Your use of Yahoo! Groups is subject to the [Yahoo! Terms of Service](#).

EXHIBIT 2

----- Original Message -----

From: Tim Oey
To: PenguinPatrol@yahooogroups.com
Sent: Wednesday, March 16, 2005 1:33 AM
Subject: [PenguinPatrol] My recommendations on Trademark policy

Hi all,

Below and posted in the Penguin files is my recommendation on what the plain text version of the Freecycle Trademark and Copyright policy should say so that it can sent cleanly by email.

Corrections:

- removed the html attribution, it just won't work cleanly, substituted a pointer to some html others can use
- removed the extra note about updating documents that also said moderators could not create documents
- changed "ascii version" to "symbol"
- did a few other minor typo corrections

Note that we cannot make this policy cover absolutely everything. But it must be clearly readable and understandable by everyone.

Cheers,
Tim

Freecycle(TM) Trademark and Copyright Policy

[Updated on 2005-03-15 b]

How to Use the Freecycle Trademark

We are doing a really good thing here. And, we are also learning as we go, which means there will always

be evolution and change. Because the Freecycle concept is unique and amazingly successful, there are many who have and who would try to use it for personal gain and profit. For that reason, The Freecycle Network is incorporated as a non-profit organization, and the Freecycle name and logo are trademark protected. We need to do our best to properly use the Freecycle trademark so that we don't lose the right to it.

In legalese, the use of the term "Freecycle" denotes a gifting service which is officially approved by the nonprofit organization "The Freecycle Network," and one that the public can expect to adhere to certain standards. The Freecycle Network must approve any email list or web site that uses the term "Freecycle" in its name and provides any sort of exchange service.

When using the term "Freecycle" please do the following:

1) While "The Freecycle Network" is a trade name, it also functions as a service mark -- i.e., a source indicator -- so it is ok to use a TM with it.

For example: The Freecycle Network(TM)

When used as a trade name (think proper name), the term "Freecycle" may be used in place of "The Freecycle Network" to allow sentences to be more concise.

For example: While The Freecycle Network has been growing by leaps and bounds, Freecycle also remains true to its core mission.

2) In all other cases, the term "Freecycle" must be used as an adjective, never as a noun or verb.

For example:

- Do not say "I'm a freecycler." Do say "I'm a Freecycle member."
- Do not say "Keep on freecyclin!" Do say "Keep on recyclin', my Freecycle friends!"
- Do not say "Freecycling group." Do say "Freecycle group"
- Do not say "Please Freecycle." Do say "Please join a Freecycle group."
- Do not say "There are 10 freecycles in this state." Do say "There are 10 Freecycle groups in this state."
- Do not say "freecycle's membership." Do say "The Freecycle Network's membership."

(Note: new groups may use the word Freecycle in their group name/title, but should not be approved with any variations of the word Freecycle in their name, title or description, like freecycler, freecycling, freecycles.)

3) Attribution Statement. (fancy-speak for a statement attributing ownership of a trademark to someone at the bottom of e-mails, etc.)

At the bottom or within the body of all official Freecycle web sites, articles, documents, press releases, automatic notices, and group home pages the following trademark attribution should appear:

Copyright (c) 2003-2005 The Freecycle Network
(<http://www.freecycle.org>). All rights reserved.

Freecycle and the Freecycle logo are trademarks of The Freecycle Network in the United States and/or other countries.

For an HTML version to include in your group's description, please see:
<http://groups.yahoo.com/group/freecyclesunnyvale/files/Special/>

In group email list footers use the following (in this case include the lines to set it apart):

Freecycle and the Freecycle logo are trademarks of The Freecycle Network in the United States and/or other countries.

To create a footer in your Yahoo group:

- a. Log into Yahoo and go to the group page
- b. Click on Management on the left
- c. Click on Messages on the right
- d. Next to Subject Tag and Footer, click Edit
- e. Enter the text above in the Footer box
- f. Click the Save Changes button

4) The term "Freecycle" in text must always be capitalized to set it off from the surrounding text.
Example: Freecycle groups are great!

5) If you want to use the official Freecycle logo, it must include a TM symbol and appear exactly as it does on <http://www.freecycle.org>.

It is OK to put adornments around it and behind it. Never put anything over any portion of the logo or otherwise obscure or change the basic form of the logo or the TM symbol. The graphic logo's use of lowercase "freecycle" is ok as its design sets it apart. (Note: new groups must use the official logo, though they are welcomed to adorn it within these parameters.)

6) E-Mail addresses with the word "Freecycle" in them. One should consider using something explanatory in

addition to the word "Freecycle" in their e-mail address or ID for clarity's sake. Example:
FreecycleSpringfield@hotmail.com.

7) On your local Yahoo group sites, articles, press releases & automatic notices: The first "prominent display" or introduction of the mark (i.e., the first time you use the term Freecycle in a document) needs to be distinguished from other text with a TM (to be replaced with an (R) eventually, once the trademark is registered). This is in addition to the above attribution statement (the footer-note statement in point 3). So, a Freecycle group site should have a TM by the logo at the top and a TM by the first use of The Freecycle Network (or of the word Freecycle, whichever comes first. The other instances of Freecycle can be without a TM marking, though it is still important to capitalize or color them to show they are not just common words.

A great example of how to set up a group correctly can be found at:

<http://groups.yahoo.com/group/freecyclesunnyvale/>

- A. In HTML, use the HTML code "Freecycle™" (without the quotes).
- B. For plain ASCII text documents, in email, and in files in a Yahoo group, use "Freecycle(TM)" (without the quotes).
- C. Other documents, use any method available to create the TM superscript
- D. There's no need to use the TM mark more than once per document.
- E. Do not use the TM mark in email addresses, email subject tag lines (such as [freecyclemytown]), group names, or URLs.
- F. Do be sure to include the footer in item 3 above, whenever possible.

TIP: If you are sending an email and wish to add the TM, it makes sense to use the (TM) version rather than the superscript TM symbol (even if you know how to generate the symbol) because many email programs will not display it right to the recipient.

8) OPTIONAL: For further information about trademarks and how to use them properly, see:

<http://www.inta.org/info/faqs.html>
<http://www.uspto.gov/main/trademarks.htm>

9) A current copy of this trademark use document may be obtained at:

<http://freecycle.org/tmfaq.php>

Question and Answers:

What happened to the Freecycle service mark (SM)?
 Freecycle formerly used the SM (Service Mark) designation, but for better worldwide uniformity and recognition, we are now using TM instead of SM.

Is it ok for individual email addresses or URLs to include the term "freecycle"?
 Yes, but please make sure the word is accompanied by something explanatory, like FreecycleMytownMod.

Do personal emails about Freecycle need to use the TM mark or trademark attribution?
 No. Having the trademark attribution in email list footers is enough.

Where are the most common places that "Freecycle" use should be checked?

- Group description/home page
 (Management / Description and Appearance / Description - Edit)
- Group email footer text (Management / Messages / Subject Tag and Footer - Edit)
- Group welcome message (Management / Membership / Welcome Message - Edit)
- All automatically sent notices -- especially the Freecycle Etiquette document
- Press releases or other stand-alone documents
- Flyers

What changes should I make to my group's Freecycle Etiquette document?

Make sure all instances of Freecycle are used as an adjective or trade name. Look at the Freecycle etiquette text at <http://freecycle.org/faq.php> for good examples.

Are modified local logo graphics with our TM still ok?
 Adding graphics around the official logo is fine and fun. We do need to leave the logo itself unaltered (so you're OK as long as the logo and TM are not covered or obscured in any way).

What happens when the Freecycle mark becomes registered?

When this happens, all occurrences of Freecycle(TM) must change to Freecycle(R), and HTML code "Freecycle™" to "Freecycle®".

Copyright (c) 2004-2005 The Freecycle Network
 (<http://www.Freecycle.org>). All rights reserved.

Freecycle and the Freecycle logo are trademarks of The Freecycle Network in the United States and/or other countries.

Please note that this email message is intended only for the addressee(s) and contains information that may be confidential and/or copyrighted. If you are not the intended recipient please notify the sender by reply email and immediately delete this email. Disclosure, distribution or reproduction of this email by anyone is strictly prohibited.

Freecycle and the Freecycle logo are either registered trademarks or trademarks of The Freecycle Network in the United States and/or other countries.

Yahoo! Groups Sponsor
ADVERTISEMENT



Yahoo! Groups Links

- To visit your group on the web, go to:
<http://groups.yahoo.com/group/PenguinPatrol/>
- To unsubscribe from this group, send an email to:
PenguinPatrol-unsubscribe@yahoogroups.com
- Your use of Yahoo! Groups is subject to the [Yahoo! Terms of Service](#).