

EXHIBIT A

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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

**DECLARATION OF ASHLEY L.
KIRK IN SUPPORT OF MOTION
FOR RECONSIDERATION**

I, Ashley L. Kirk, declare as follows:

1. I am an attorney licensed to practice in Arizona. I am the managing attorney of the law firm of Hayes Soloway P.C., with offices at 3450 E. Sunrise Drive, Suite 140, Tucson, Arizona 85718.

2. I am an attorney who represents Tim Oey and Jane Doe Oey (Pat Oey), in a matter filed before the United States District Court for the District of Arizona. *The Freecycle Network, Inc., v. Tim Oey and Jane Doe Oey*, Case No CIV06-173-TUC-RCC on April 4, 2006. That lawsuit has been assigned to the Honorable Raner C. Collins, United States District Court Judge.

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APPENDIX A



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System(Tess)

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Word Mark FREECYCLE

Goods and Services IC 035. US 100 101 102. G & S: Providing a website which features advertisements for giving and receiving of free property of others on a global computer network. FIRST USE: 20030501. FIRST USE IN COMMERCE: 20030501

Mark

Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design 18.03.01 - Bicycles; Tricycles; Unicycles

Search Code 22.01.06 - Banjos; Guitars; Ukuleles
27.03.05 - Objects forming letters or numerals

Serial Number 78475113

Filing Date August 27, 2004

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition January 17, 2006

Owner (APPLICANT) THE FREECYCLE NETWORK CORPORATION ARIZONA 901 NORTH PERRY AVENUE TUCSON ARIZONA 85705

Attorney of Record JOHN C. LACY

Description of Mark The color(s) GREEN, TAN, BLACK, ORANGE, YELLOW is/are claimed as a feature of the mark. The mark consists of the word "freecycle" in green with a slight black shadow around the edges of the letter. The wheels and frame of the bicycle are tan and outlined in black. The guitar forms the letter "i" of the word "freecycle". The guitar headstock and fretboard are black with two white stripes suggesting strings. 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 a yellow 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.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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APPENDIX B

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/415420

APPLICANT: New Media Worlds, Inc.

78415420

CORRESPONDENT ADDRESS:
New Media Worlds, Inc.
P.O. Box 21382
St. Petersburg, FL 33742

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: FREECYCLE

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/415420

The assigned examining attorney has reviewed the referenced application and determined the following.

Search Results

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Recitation of Services

The recitation of services is unacceptable as indefinite because the nature of the online services is not clear. Do applicant intend to host, design, provide websites for others? The applicant may adopt the following recitation, if accurate: Providing a website for others to post any item they want to give away for free, Int. Cl. 42. TMEP §1402.11. If accurate, applicant may indicate that applicant is hosting, designing, maintaining websites for others to post any item they want to give away for free.

For assistance regarding an acceptable listing of goods and/or services, please see the on#line searchable *Manual of Acceptable Identifications of Goods and Services*, at [http://www.uspto.gov/web/offices/tac/doc/gsmannual/](http://www.uspto.gov/web/offices/tac/doc/gsmmanual/).

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any services that are not within the scope of the services recited in the present identification.

Significance of Mark

The applicant must indicate whether the wording "FREECYCLE" has any significance in the relevant trade or industry or as applied to the goods/services. 37 C.F.R. §2.61(b). It appears from a search in a computerized database that the designation FREECYCLE and variations FREECYCLING, AND FREECYCLER are terms of art that are widely used. The examining attorney refers to the excerpted articles from the examining attorney's search in a computerized data base in which references to FREECYCLE appeared in numerous stories. See attachments.

Drawing

Applicant must submit the following standard character claim: "The mark is presented in standard characters without claim to any particular font style, size, or color." 37 C.F.R. §2.52(a).

Please note that there is no required format or form for responding to this Office action. However, applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number.

When responding to this Office action, applicant must make sure to respond in writing to each refusal and requirement raised. If there is a refusal to register the proposed mark, then applicant may wish to argue against the refusal, i.e., explain why it should be withdrawn and why the mark should register. If there are other requirements, then applicant should simply set forth in writing the required changes or statements and request that the Office enter them into the application record. Applicant must also sign and date its response.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

NOTICE: TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

**Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451**

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

Priscilla Milton

Examining Attorney

Law Office 110

(571) 272-9199

How to respond to this Office Action:

You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://eteas.uspto.gov/V2.0/oa242/WIZARD.htm> and follow the instructions therein, but you must wait until at least 72 hours after receipt if the office action issued via e-mail). PLEASE NOTE: Responses to Office Actions on applications filed under the Madrid Protocol (Section 66(a)) **CANNOT** currently be filed via TEAS.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

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