

EXHIBIT A

1 using a mark similar to a valid, protectable trademark of [plaintiff's]." *Brookfield*
2 *Communications, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999).
3 Freecycle argues that even though its trademark is still pending, it has established a
4 recognizable logo and name that is protectable through over three years of use as well as
5 the USPTO's approval of publication in its Principal Register.

6 Additionally, Freecycle argues that its legitimate trademark rights have been
7 recognized by Defendant when he was associated with The Freecycle Network. This is
8 born out by the record. While Defendant was associated with The Freecycle Network, he
9 actively undertook to protect its trademark and logo. *See* Complaint, Exh. A-C; *see also*
10 Beal Decl. ¶ 8. Then, after his separation from the organization, he began to publicly
11 encourage the disparagement of the Freecycle trademark. *See* Complaint, Exh. D-G; *see*
12 *also* Beal Decl. ¶ 9.

13 All of these factors lead to the conclusion that Plaintiff has a significant chance to
14 succeed on the merits of the case.

15 2. Irreparable Injury

16 Irreparable injury may be presumed by a showing of likelihood of success on the
17 merits of a trademark infringement claim. *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032,
18 1038 (9th Cir. 2003). Because The Freecycle Network has shown a likelihood of success
19 on the merits, a preliminary injunction is appropriate as to the trademark claims.

20 3. Balance of Hardships

21 The balance of hardships falls in Freecycle's favor. If a preliminary injunction is
22 granted, then Defendant is merely prohibited from making public comments that could
23 disparage Freecycle's trademark during the pendency of this case. There would be no or
24 very little cost to Defendant of not being able to do this. If the preliminary injunction is
25 not granted then The Freecycle Network could very well suffer loss of goodwill and
26 confusion with respect to its trademark rights (assuming it does in fact have those
27 trademark rights). It is clear though that currently, the balance of hardships clearly falls
28 within Freecycle's favor.

1 **III. CONCLUSION**

2 Accordingly IT IS HEREBY ORDERED that the motion for Preliminary
3 Injunction is GRANTED in Freecycle's Favor. Defendant is prohibited from making any
4 comments that could be construed as to disparage upon Freecycle's possible trademark
5 and logo. Additionally, Defendant IS FURTHER ORDERED to remove all postings
6 from the internet and any other public forums that he has previously made that disparage
7 Freecycle's possible trademark and logo. This Order specifically refers to, but is not
8 limited to, the exhibits used by Freecycle in this case.

9 Finally, IT IS ORDERED that Plaintiff The Freecycle Network, Inc.'s Notice of *Ex*
10 *Parte* Motion and *Ex Parte* Motion for Order to Show Cause Against Defendant Tim Oey
11 Regarding Contempt Due to Failure to Comply with Temporary Restraining Order
12 (Docket # 20) is DENIED. However, Defendant is forewarned that if he refused to
13 comply with the terms of this preliminary injunction and continues to publicly disparage
14 Freecylce's trademark rights and logo then he could be found to be held in contempt of
15 court.

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17 DATED this 11th day of May, 2006.
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Raner C. Collins
United States District Judge