

# EXHIBIT C

1 "freecycle" term and logo.

2 Plaintiff has a legitimate interest in clarifying its right to  
3 use the term "freecycle." Plaintiff's business involves supporting  
4 freecycling in the Bay Area, but currently it cannot operate its  
5 original online group service account as "FreecycleSunnyvale"  
6 because Defendant caused Yahoo! to revoke its contract with  
7 Plaintiff for this internet service. Plaintiff's interest in  
8 clarifying the right to use "freecycle" is especially important  
9 given that Defendant claims Plaintiff violated its terms of use  
10 regarding the "freecycle" name and logo without providing  
11 information as to how Plaintiff has done so.

12 Defendant incorrectly claims that Plaintiff must first exhaust  
13 administrative remedies by waiting for the results of its  
14 opposition to the trademark application before filing this  
15 declaratory relief action in district court. The PTO cannot decide  
16 issues of trademark infringement; this is a matter that must be  
17 decided in a court. See e.g. Goya Foods, Inc. v. Tropicana  
18 Products, Inc., 846 F.2d 848, 853-54 (2d Cir. 1988) (outcome of PTO  
19 proceeding does not affect legal determination of infringement  
20 claim; district court must still independently decide validity and  
21 priority of marks and likelihood of consumer confusion.).

22 Because the PTO cannot resolve infringement claims, it was  
23 reasonable for Plaintiff to believe, irrespective of the PTO's  
24 decision, that it was likely to be subject to litigation.  
25 Furthermore, there is no indication of how long the application to  
26 register the trademark will take, or if it will ever be granted.  
27 Thus, Plaintiff is not acting incorrectly by bringing this action

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