DECONCINI McDONALD YETWIN & 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
Pro hac vice admission pending

PAUL J. ANDRE, CA Bar No. 196585
(pandre@perkinscoie.com)
LISA KOBIALKA, CA Bar No. 191404
(lkobialka@perkinscoie.com)
ESHA BANDYOPADHYAY, CA Bar No. 212249
(ebandyopadhyay@perkinscoie.com)
SEAN BOYLE, CA Bar No. 238128
(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, an individual Defendant.	CASE NO. 06-CV-00173-RCC DECLARATION OF DERON BEAL IN SUPPORT OF THE FREECYCLE NETWORK, INC.'S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION Date: April 24, 2006 Time: 2:00 p.m. Before: Honorable Raner C. Collins Location: Courtroom 5B

Dockets.Justia.com

I, Deron Beal, declare as follows:

1. I am the founder, Executive Director and Board Chair of The Freecycle Network, Inc. ("The Freecycle Network"). I make this declaration in support of The Freecycle Network's *Ex Parte* Motion for Temporary Restraining Order and Motion for Preliminary Injunction. 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 encourages and helps to coordinate the efforts of member groups throughout the world to reuse, recycle, and gift goods. The organization was started in Tucson, Arizona, with a single recycling center. Today, The Freecycle Network is a worldwide organization, with thousands of local recycling groups and more than an estimated two million individual members. Publications such as CNN.com, The Motley Fool, CBS News, and The Washington Post have heavily praised The Freecycle Network and its promotion of the reusing, recycling, and gifting of goods. True and correct copies of news articles from CNN.com, The Motley Fool, CBS News, and The Washington Post, respectively, are attached hereto as Exhibits A-D.

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. The Freecycle Network has received corporate sponsorship since February 2005 to enable it to cover its administrative costs and continue promoting the reusing, recycling, and gifting of goods.

5. The Freecycle Network has been using the trademarks FREECYCLE, THE FREECYCLE NETWORK, and the distinctive "The Freecycle Network" logo (collectively "The Freecycle Network's Marks" or the"Marks") continuously since at least May 1, 2003. The Freecycle Network has strict guidelines as to the use of the Marks, and expends much effort in

policing potential infringement of the Marks. A true and correct copy of The Freecycle Network's Trademark and Copyright Policy, as of March 15, 2005, is attached hereto as Exhibit E. A true and correct copy of The Freecycle Network's guidelines for appropriate use of its Marks, as of April 3, 2006, is attached hereto as Exhibit F.

6. The Freecycle Network is currently registering these marks with the United States Patent and Trademark Office ("PTO"). The Freecycle Network's FREECYCLE trademark and distinctive logo were approved for publication on the Principal Register on November 22, 2005. A notice of publication was issued on December 28, 2005. Subsequently, an opposition was filed with the Trademark Trial and Appeal Board ("TTAB") on January 18, 2006, challenging the registration of these marks. A true and correct copy of a current status report from the PTO for The Freecycle Network's trademark application is hereto attached as Exhibit G. A true and correct copy of the opposition filed with the TTAB is attached as Exhibit H.

7. The Freecycle Network gives member groups permission to use the Marks in order to help facilitate the goals of recycling, reusing, and gifting of goods. The Marks are used to identify local groups who wish to promote the recycling, reusing, and gifting of goods to the public, and also to identify local recycling organizations which participate within The Freecycle Network. The Freecycle Network itself uses the Marks to help promote the goals of The Freecycle Network, including promotion of recycling of usable items within a community. Individual recyclers rely on the Marks to know that they are dealing with a local organization affiliated with The Freecycle Network.

8. Defendant Tim Oey ("Defendant" or "Oey") was an active member of The Freecycle Network from early 2004 until late 2005, during which time he held various positions within The Freecycle Network. Defendant was a member of a group tasked with developing guidelines for the protection of The Freecycle Network's intellectual property, including copyright and trademark protection. Defendant, in fact, personally helped develop these guidelines, and published these guidelines to the member groups. Defendant frequently and

vigorously defended and attempted to protect the Marks in public e-mail exchanges and various Internet fora.

9. Due to behavior contrary to the goals of The Freecycle Network, Defendant was asked to step down from his position at The Freecycle Network on September 15, 2005. Subsequently, Defendant made false statements regarding The Freecycle Network and the Marks, and began to publicly encourage the destruction of The Freecycle Network's Marks. In particular, Defendant made statements calling into question the ownership and validity of the Marks. Defendant continues making such statements despite having been asked to refrain from such conduct.

10. Waste Management has reduced its corporate sponsorship of The Freecycle Network from $120,000 in the previous year to $100,000 for the year beginning in February 2006 and ending in January 2007. Additionally, Defendant's statements have adversely affected the hard-earned reputation and goodwill of The Freecycle Network.

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 April 19th 2006.

By: _____
Deron Beal