

Exhibit A

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

STD

**U.S. District Court
DISTRICT OF ARIZONA (Tucson Division)
CIVIL DOCKET FOR CASE #: 4:06-cv-00173-RCC**

The Freecycle Network, Inc. v. Oey et al
Assigned to: Judge Raner C Collins
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 04/04/2006
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

The Freecycle Network, Inc.
an Arizona non-profit organization

represented by **Esha Bandyopadhyay**
Perkins Coie LLP
101 Jefferson Dr
Menlo Park, CA 94025-1114
US
650-838-4355
Fax: 650-838-4555
Email:
EBandyopadhyay@perkinscoie.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lisa Kobialka
Perkins Coie LLP
101 Jefferson Dr
Menlo Park, CA 94025-1114
US
650-838-4447
Fax: 650-838-4647
Email: LKobialka@perkinscoie.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lisa Anne Smith
DeConcini McDonald Yetwin & Lacy PC
2525 E Broadway Blvd
Ste 200
Tucson, AZ 85716-5300
520-322-5000
Fax: 520-322-5585
Email: lasmith@dmyl.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean M Boyle
Perkins Coie LLP
101 Jefferson Dr
Menlo Park, CA 94025-1114
US

650-838-4335
 Fax: 650-838-4535
 Email: SBoyle@perkinscoie.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Shefali Milczarek-Desai
 DeConcini McDonald Yetwin & Lacy PC
 2525 E Broadway Blvd
 Ste 200
 Tucson, AZ 85716-5300
 520-322-5000
 Fax: 520-322-5585
 Email: smdesai@dmyl.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Tim Oey

represented by **Ashley Lynn Kirk**
 Hayes Soloway PC
 3450 E Sunrise Dr
 Ste 140
 Tucson, AZ 85718
 520-882-7623
 Fax: 520-882-7643
 Email: akirk@hayes-soloway.com
ATTORNEY TO BE NOTICED

Defendant

Jane Doe Oey

represented by **Ashley Lynn Kirk**
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/04/2006	1	COMPLAINT, filed by The Freecycle Network, Inc.. (Attachments: # 1Civil cover sheet # 2Index and ExhA # 3ExhB # 4ExhC # 5ExhD # 6ExhE # 7ExhF # 8ExhG)(Milczarek-Desai, Shefali) Attachments named Modified on 4/4/2006 (TAD,). (Entered: 04/04/2006)
04/04/2006		Filing fee paid, receipt number TUC005781. This case has been assigned to the Honorable Raner Collins. All future pleadings or documents should bear the correct case number: 06-CV-173-TUC-RCC.*Filer to provide courtesy copy to assigned judge. This is a text entry only, no PDF attached.* (GPA,) (Entered: 04/04/2006)
04/04/2006	2	Summons Issued as to Tim Oey. (GPA,) (Entered: 04/04/2006)
04/04/2006	3	Summons Issued as to Jane Doe Oey. (GPA,) (Entered: 04/04/2006)
04/04/2006		Notice of sending magistrate consent form to filer by The Freecycle Network,

		Inc. (GPA,) (Entered: 04/04/2006)
04/19/2006	<u>4</u>	MINUTE ENTRY/ORDER Preliminary/Permanent Injunction Hearing set for 4/24/2006 02:00 PM before Judge Raner C Collins. Temporary Restraining Order Hearing set for 4/24/2006 02:00 PM before Judge Raner C Collins. Signed by Judge Raner C Collins on 4/19/06. (ARS) (Entered: 04/19/2006)
04/19/2006	<u>5</u>	MOTION for Protective Order <i>Notice and Motion for Temporary Restraining Order</i> by The Freecycle Network, Inc.. (Milczarek-Desai, Shefali) (Entered: 04/19/2006)
04/19/2006	<u>6</u>	MOTION for Preliminary Injunction <i>Notice and Motion for Preliminary Injunction</i> by The Freecycle Network, Inc.. (Milczarek-Desai, Shefali) (Entered: 04/19/2006)
04/19/2006	<u>7</u>	MEMORANDUM re: Memorandum of Points and Authorities re <u>6</u> MOTION for Preliminary Injunction <i>Notice and Motion for Preliminary Injunction</i> , <u>5</u> MOTION for Protective Order <i>Notice and Motion for Temporary Restraining Order</i> by Plaintiff The Freecycle Network, Inc.. (Milczarek-Desai, Shefali) (Entered: 04/19/2006)
04/19/2006	<u>8</u>	DECLARATION of Declaration of Esha Bandyopadhyay in Support of Motion for Temporary Restraining Order and Motion for Preliminary Injunction re <u>6</u> MOTION for Preliminary Injunction <i>Notice and Motion for Preliminary Injunction</i> , <u>5</u> MOTION for Protective Order <i>Notice and Motion for Temporary Restraining Order</i> by Plaintiff The Freecycle Network, Inc.. (Attachments: # <u>1</u>) (Milczarek-Desai, Shefali) (Entered: 04/19/2006)
04/19/2006	<u>9</u>	DECLARATION of Declaration of Deron Beal in Support of Motion for Temporary Restraining Order and Motion for Preliminary Injunction re <u>6</u> MOTION for Preliminary Injunction <i>Notice and Motion for Preliminary Injunction</i> , <u>5</u> MOTION for Protective Order <i>Notice and Motion for Temporary Restraining Order</i> by Plaintiff The Freecycle Network, Inc.. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u>) (Milczarek-Desai, Shefali) (Entered: 04/19/2006)
04/20/2006	<u>10</u>	MOTION for Admission Pro Hac Vice by Sean M Boyle on behalf of The Freecycle Network, Inc.. (BAS,) (Entered: 04/24/2006)
04/20/2006	<u>12</u>	MOTION for Admission Pro Hac Vice by Esha Bandyopadhyay on behalf of The Freecycle Network, Inc.. (BAS,) (Entered: 04/24/2006)
04/20/2006	<u>14</u>	MOTION for Admission Pro Hac Vice by Lisa Kobialka on behalf of The Freecycle Network, Inc.. (BAS,) (Entered: 04/24/2006)
04/24/2006	<u>11</u>	ORDER pursuant to General Order 05-25 granting <u>10</u> Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 04/24/2006)
04/24/2006	<u>13</u>	ORDER pursuant to General Order 05-25 granting <u>12</u> Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf

		document associated with this entry.) (Entered: 04/24/2006)
04/24/2006	15	ORDER pursuant to General Order 05-25 granting <u>14</u> Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 04/24/2006)
04/24/2006	16	NOTICE of Appearance by Ashley Lynn Kirk on behalf of all defendants (Kirk, Ashley) (Entered: 04/24/2006)
04/24/2006	17	Minute Entry for proceedings held before Judge Raner C Collins. Motion Hearing held on 4/24/2006 re <u>5</u> MOTION for Temporary Restraining Order filed by The Freecycle Network, Inc.. Taken under advisement. Copy of minute entry mailed to counsel in firm of Perkins Cole and Mayor Brown Rowe and Mau this date. (Court Reporter Bonnie Brunotte.) (MEG,) (Entered: 04/24/2006)
04/25/2006	18	ORDER granting <u>6</u> Motion for Preliminary Injunction . Signed by Judge Raner C Collins on 4/24/06. (ARS) (Entered: 04/25/2006)
04/25/2006	19	Minute Order Preliminary/Permanent Injunction Hearing set for 5/9/2006 03:00 PM before Judge Raner C Collins. (ARS) (Entered: 04/25/2006)
05/02/2006	20	MOTION to Enforce TEMPORARY RESTRAINING ORDER <i>AND FOR ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING CONTEMPT DUE TO FAILURE TO COMPLY WITH SAME AND SANCTIONS</i> by The Freecycle Network, Inc.. (Bandyopadhyay, Esha) (Entered: 05/02/2006)
05/02/2006	21	MEMORANDUM re: POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING ORDER AND SANCTIONS re <u>20</u> MOTION to Enforce TEMPORARY RESTRAINING ORDER <i>AND FOR ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING CONTEMPT DUE TO FAILURE TO COMPLY WITH SAME AND SANCTIONS</i> by Plaintiff The Freecycle Network, Inc.. (Bandyopadhyay, Esha) (Entered: 05/02/2006)
05/02/2006	22	DECLARATION of ESHA BANDYOPADHYAY IN SUPPORT OF THE FREECYCLE NETWORK, INC'S EX PARTE MOTION FOR ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING ORDER AND SANCTIONS re <u>20</u> MOTION to Enforce TEMPORARY RESTRAINING ORDER <i>AND FOR ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING CONTEMPT DUE TO FAILURE TO COMPLY WITH SAME AND SANCTIONS</i> by Plaintiff The Freecycle Network, Inc.. (Bandyopadhyay, Esha) (Entered: 05/02/2006)
05/02/2006	23	Additional Attachments to Main Document re <u>20</u> MOTION to Enforce TEMPORARY RESTRAINING ORDER <i>AND FOR ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING CONTEMPT DUE TO FAILURE TO COMPLY WITH SAME AND SANCTIONS - PROPOSED ORDER</i> by Plaintiff The Freecycle Network, Inc.. (Bandyopadhyay, Esha) (Entered: 05/02/2006)

PACER Service Center			
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05/04/2006 09:40:13			
PACER Login:	mb0951	Client Code:	05165907
Description:	Docket Report	Search Criteria:	4:06-cv-00173-RCC
Billable Pages:	3	Cost:	0.24

Exhibit B

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

1 **DECONCINI McDONALD**
2 **YETWIN & LACY, P.C.**
3 2525 East Broadway, Suite 200
4 Tucson, Arizona 85716-5300
5 Telephone: 520-322-5000
6 Facsimile: 520-322-5585

7 LISA ANNE SMITH, AZ Bar No. 016762
8 (lsmith@dmyl.com)
9 SHEFALI MILCZAREK-DESAI, AZ Bar. No. 021237
10 (smdesai@dmyl.com)

11 **PERKINS COIE LLP**
12 101 Jefferson Drive
13 Menlo Park, California 94025-1114
14 Telephone: (650) 838-4300
15 Facsimile: (650) 838-4350
16 *Pro hac vice admission pending*

17 PAUL J. ANDRE, CA Bar No. 196585
18 (pandre@perksincoie.com)
19 LISA KOBIALKA, CA Bar No. 191404
20 (lkobialka@perkinscoie.com)
21 ESHA BANDYOPADHYAY, CA Bar No. 212249
22 (ebandyopadhyay@perkinscoie.com)
23 SEAN BOYLE, CA Bar No. 238128
24 (sboyle@perkinscoie.com)

25 Attorneys for Plaintiff
26 THE FREECYCLE NETWORK, INC.

27 IN THE UNITED STATES DISTRICT COURT
28 DISTRICT OF ARIZONA

29 THE FREECYCLE NETWORK, INC.,
30 an Arizona non-profit organization,

31 Plaintiff,

32 v.

33 TIM OEY and JANE DOE OEY,

34 Defendants.

35 Case No.

36 COMPLAINT FOR TRADEMARK
37 DISPARAGEMENT, INJURIOUS
38 FALSEHOOD, DEFAMATION,
39 INTENTIONAL INTERFERENCE
40 WITH BUSINESS RELATIONS

41 DEMAND FOR JURY TRIAL

42 Assigned to:

43 Plaintiff The Freecycle Network, Inc. ("Plaintiff" or "The Freecycle Network")
44 hereby alleges for its Complaint against Defendant Tim Oey ("Defendant" or "Mr. Oey")

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1 and Defendant Jane Doe Oey ("Mrs. Oey"), on personal knowledge as to its own
2 activities and on information and belief as to the activities of others, as follows:

3 **The Parties**

4 1. The Freecycle Network is an incorporated Arizona non-profit organization
5 with its principal place of business in Tucson, Arizona. The Freecycle Network promotes
6 recycling by providing support to and acting as a central organizing point for local
7 community-based recycling efforts throughout the United States and several countries
8 abroad.

9 2. Defendants are residents of Sunnyvale, California. Defendant is a former
10 member of The Freecycle Network. Defendant Jane Doe Oey is, on information and
11 belief, the spouse of Defendant Mr. Oey, and all actions taken by Defendant were taken
12 on behalf of the marital community.

13 **Jurisdiction and Venue**

14 3. This Court has jurisdiction over the subject matter of this action pursuant to
15 28 U.S.C. §§ 1331 and 1338, as this action arises under the trademark laws of the United
16 States.

17 4. This Court has further jurisdiction under 28 U.S.C. § 1332, in that The
18 Freecycle Network and Defendant are citizens of different states and the matter in
19 controversy exceeds the sum of \$75,000, exclusive of interests and costs.

20 5. This Court has original jurisdiction over The Freecycle Network's state law
21 claims under 28 U.S.C. § 1332(a), as well as supplemental jurisdiction over these claims
22 under 28 U.S.C. § 1367(a).

23 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a), as this is a
24 district in which a substantial part of the events giving rise to the claims occurred.

25 **Background Facts**

26 7. The Freecycle Network is a non-profit organization that provides local,
27 community-based recycling and gifting forums throughout the United States. Starting
28 with a single recycling community in Tucson, The Freecycle Network has grown to a

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1 worldwide organization with thousands of local recycling, reusing, and gifting groups
2 and more than two million individual members. The Freecycle Network maintains an
3 Internet Web site, located at www.freecycle.org, which maintains a directory of local
4 recycling groups throughout the world and provides resources for volunteers to create
5 new local recycling groups.

6 8. The Freecycle Network has been using the distinctive and famous
7 trademarks FREECYCLE, THE FREECYCLE NETWORK, and the distinctive and
8 famous "The Freecycle Network" logo (collectively "The Freecycle Network's Marks")
9 exclusively and continuously since at least May 1, 2003. The Freecycle Network's
10 Marks comprise the core of The Freecycle Network's intellectual property.

11 9. In addition to The Freecycle Network's long and continuous use of The
12 Freecycle Network's Marks, registration of The Freecycle Network's Marks is currently
13 pending before the United States Patent and Trademark Office.

14 10. As a result of its use and promotion of The Freecycle Network's Marks,
15 The Freecycle Network has built up and now owns valuable goodwill that is symbolized
16 by these trademarks.

17 11. The Freecycle Network enters into contractual relationships with local
18 recycling organizations and with corporate sponsors. The Freecycle Network provides
19 corporate sponsors a limited non-exclusive license to use its intellectual property and
20 recycling know-how, in exchange for monetary donations.

21 12. The Freecycle Network provides local volunteers with a limited non-
22 exclusive license to use The Freecycle Network's Marks for local promotions. The
23 Freecycle Network's Marks are used to identify local recycling groups that belong
24 generally to The Freecycle Network organization. The Freecycle Network's Marks are
25 further used by The Freecycle Network to promote recycling and reuse of usable items
26 within a community. Individual recyclers rely on The Freecycle Network's Marks to
27 know that they are dealing with a local organization affiliated with The Freecycle
28 Network.

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1 13. Defendant was an active member of The Freecycle Network from early
2 2004 until late 2005, holding a variety of positions during this time including, but not
3 limited to, (1) membership in The Freecycle Network's intellectual property working
4 group, and (2) leader of the New Website Planning Group, tasked with developing The
5 Freecycle Network's next-generation Internet Web site.

6 14. Defendant vigorously defended The Freecycle Network's rights to The
7 Freecycle Network's Marks in public e-mail exchanges and various Internet fora while he
8 was a member of The Freecycle Network. Examples include:

9 (a) In an e-mail dated September 17, 2004, Defendant stated, in
10 pertinent part, "Everyone in the Freecycle network needs to protect the
11 "Freecycle" trademark." (See Exhibit A.)

12 (b) In an e-mail dated January 5, 2005, Defendant provided a list of
13 guidelines entitled "How To Protect the Freecycle Trademark" that includes
14 detailed instructions for proper use of the FREECYCLE mark. (See Exhibit B.)

15 (c) In an e-mail dated May 5, 2005, Defendant stated, in pertinent part,
16 "...the Freecycle trademark [] ...is real, Freecycle is using it, and has the right to
17 defend it to a degree even without registration. The reason that the Freecycle
18 trademark is important is that people are associating it with an excellent service.
19 People join The Freecycle Network because they trust it. So the more we work to
20 make Freecycle trustworthy, distinct, and useful, the more people recognize it, the
21 more people join it, and the more power the network has to generate gifts rather
22 than trash – which is THE goal." (See Exhibit C.)

23 15. On or around September 15, 2005, Defendant was asked to resign from his
24 position at The Freecycle Network due to behavior from Defendant contrary to the
25 mission of The Freecycle Network Organization. (See Exhibit D.)

26 16. Since terminating his membership in The Freecycle Network, Defendant
27 has engaged in a systematic campaign to destroy the value of The Freecycle Network's
28 intellectual property, particularly The Freecycle Network's Marks.

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1 17. Defendant has intentionally made false statements about The Freecycle
2 Network's operations and the validity of The Freecycle Network's intellectual property,
3 including The Freecycle Network's Marks. These statements include assertions that The
4 Freecycle Network does not possess valid trademark rights in The Freecycle Network's
5 Marks, assertions that The Freecycle Network's Marks, specifically the FREECYCLE
6 mark, is a generic term, and assertions that third parties can freely use The Freecycle
7 Network's Marks. Examples include:

8 (a) In a Yahoo! Groups message, Defendant stated, in pertinent part,
9 "...it is legal for everyone to use the term freecycle...so have fun with it!" (See
10 Exhibit E.)

11 (b) In an e-mail dated September 20, 2005, Defendant stated, in
12 pertinent part, "...I have encouraged people to use the term freecycle as a generic
13 term which would block The Freecycle Network (The Freecycle Network), and all
14 others, from holding a trademark..." (See Exhibit F.)

15 (c) In a Yahoo! Groups message dated February 23, 2006, Defendant
16 stated, in pertinent part, "...please contact all the freecycle groups in your state
17 and surrounding states to let them know that freecycle is a generic term..." (See
18 Exhibit G.)

19 18. Defendant has published false and misleading statements regarding The
20 Freecycle Network and The Freecycle Network's Marks to third parties, through public
21 e-mail lists and public Yahoo! Groups Web sites. (See generally Exhibits A-F).

22 19. Defendant has attempted to intentionally and maliciously induce local
23 recycling organizations to terminate their association with The Freecycle Network and
24 misuse The Freecycle Network's trademarks. Examples include:

25 (a) In a Yahoo! Groups message dated February 23, 2006, Defendant
26 maliciously encouraged others to misuse The Freecycle Network's Marks in a
27 manner that will "[d]rive The Freecycle Network nuts." (See Exhibit G.)
28

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1 (b) In the same Yahoo! Groups message, Defendant intentionally
2 encouraged others to misuse the Marks “[b]ecause [The Freecycle Network] are
3 doing bad things.” *Id.*

4 (c) In a Yahoo! Groups message dated September 20, 2005, Defendant
5 stated “I have actually encouraged people to use the term freecycle as a generic
6 term which would block The Freecycle Network (The Freecycle Network), and all
7 others, from holding a trademark....” (See Exhibit F.)

8 **FIRST CLAIM FOR RELIEF**

9 (Contributory Trademark Infringement, 15 U.S.C. § 1125(a))

10 20. The Freecycle Network repeats and re-alleges the allegations of paragraphs
11 1 through 19 of the Complaint as if fully set forth herein.

12 21. Defendant has been knowingly inducing third parties to infringe The
13 Freecycle Network’s Marks.

14 22. Such knowing inducement of infringement of The Freecycle Network’s
15 Marks by Defendant constitutes contributory trademark infringement in violation of
16 Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

17 23. The Freecycle Network is informed and believes that Defendant’s past and
18 continuing contributory trademark infringement of The Freecycle Network’s Marks has
19 been deliberate and willful, and was calculated to harm the goodwill of The Freecycle
20 Network’s Marks, and of The Freecycle Network’s reputation and goodwill.

21 24. Defendant’s contributory infringing conduct has damaged The Freecycle
22 Network in an amount to be determined at trial, and will continue to damage The
23 Freecycle Network, unless restrained by this Court. The Freecycle Network is entitled to
24 an injunction, as set forth below, and as a consequence of Defendant’s willful conduct, to
25 an award against Defendant in an amount of three times The Freecycle Network’s
26 damages, and The Freecycle Network’s attorneys’ fees and costs incurred in connection
27 with this action.

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The Freecycle Network v. Tim Oey

SECOND CLAIM FOR RELIEF

(Trademark Disparagement, 15 U.S.C. § 1125(a))

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3 25. The Freecycle Network repeats and re-alleges the allegations of paragraphs
4 1 through 24 of the Complaint as if fully set forth herein.

5 26. Defendant has intentionally made false statements about The Freecycle
6 Network's operations and the validity of The Freecycle Network's intellectual property,
7 including The Freecycle Network's Marks. These statements include assertions that The
8 Freecycle Network does not possess valid trademark rights in The Freecycle Network's
9 Marks, and assertions that The Freecycle Network's Marks, specifically the
10 FREECYCLE mark, is a generic term.

11 27. Defendant made such false statements with malice, in an attempt to harm
12 The Freecycle Network's right to its intellectual property, harm the goodwill of The
13 Freecycle Network's Marks, and harm The Freecycle Network's reputation and goodwill.

14 28. The Freecycle Network has suffered special damages due to Defendant's
15 false statements in an amount to be determined at trial, including, but not limited to, a
16 loss of goodwill, decreased membership, loss of potential corporate sponsorship, and
17 potential loss of intellectual property right in The Freecycle Network's Marks.
18 Defendant will continue to damage The Freecycle Network, unless restrained by this
19 Court. The Freecycle Network is entitled to an injunction, as set forth below, and as a
20 consequence of Defendant's willful conduct, to an award against Defendant in an amount
21 of three times The Freecycle Network's damages, and The Freecycle Network's
22 attorneys' fees and costs incurred in connection with this action.

THIRD CLAIM FOR RELIEF

(Injurious Falsehood, Arizona Common Law)

23
24
25 29. The Freecycle Network repeats and re-alleges the allegations of paragraphs
26 1 through 28 of the Complaint as if fully set forth herein.

27 30. Defendant has published false statements to third parties, through public e-
28 mail lists and public Yahoo! Groups Web sites, regarding The Freecycle Network and

The Freecycle Network v Tim Oey

1 The Freecycle Network's Marks. The Freecycle Network's false statements in this
2 regard include, but are not limited to, assertions that The Freecycle Network's Marks are
3 generic, that The Freecycle Network does not have valid trademark rights in The
4 Freecycle Network's Marks, and that third parties can freely use the FREECYCLE mark.

5 31. Defendant intentionally made such false statements with the knowledge
6 that they were false.

7 32. Defendant made such false statements in an effort to dissuade the readers of
8 these statements from entering into or maintaining business and volunteer relationships
9 with The Freecycle Network.

10 33. The Freecycle Network has suffered pecuniary loss due to Defendant's
11 false statements in an amount to be determined at trial, including, but not limited to, a
12 loss of goodwill, decreased membership, loss and/or reduction of potential corporate
13 sponsorship, and potential loss of intellectual property right in The Freecycle Network's
14 Marks. Defendant will continue to damage The Freecycle Network, unless restrained by
15 this Court. The Freecycle Network is entitled to an injunction, as set forth below, and as
16 a consequence of Defendant's willful conduct, to an award against Defendant in an
17 amount of three times The Freecycle Network's damages, and The Freecycle Network's
18 attorneys' fees and costs incurred in connection with this action.

19 **FOURTH CLAIM FOR RELIEF**

20 (Defamation, Arizona Common Law)

21 34. The Freecycle Network repeats and re-alleges the allegations of paragraphs
22 1 through 33 of the Complaint as if fully set forth herein.

23 35. Defendant has made false and misleading public statements concerning The
24 Freecycle Network and The Freecycle Network's Marks. The Freecycle Network's false
25 statements in this regard include, but are not limited to, assertions that The Freecycle
26 Network's Marks are generic, that The Freecycle Network does not have valid trademark
27 rights in The Freecycle Network's Marks, and that third parties can freely use the
28 FREECYCLE mark.

The Freecycle Network v Tim Oey

1 in privity or acting in concert with Defendant, from interfering with The Freecycle
2 Network's business relationships;

3 C. An award of damages to The Freecycle Network adequate to compensate
4 The Freecycle Network for Defendant's acts of infringement, disparagement,
5 interference, injurious falsehood, and defamation, together with interest thereon, and an
6 increase in the amount of damages to three times the amount found or assessed by this
7 Court because of the willful and deliberate nature of Defendant's acts, as provided by
8 35 U.S.C. § 284;

9 D. An award of The Freecycle Network's costs incurred in this action,
10 together with reasonable attorneys' fees;

11 E. Granting such other and further relief as this Court may deem just and
12 proper.

13 **DEMAND FOR JURY TRIAL**

14 The Freecycle Network demands a jury trial on all issues.

15 Dated this 4th day of April, 2006.

16 DECONCINI McDONALD
17 YETWIN & LACY, P.C., and
18 PERKINS COIE LLP

19 By: _____


20 Lisa Anne Smith
21 Shefali Milczarek-Desai

22 Paul J. Andre
23 Lisa Kobialka
24 Esha Bandyopadhyay
25 Sean Boyle

26 Attorneys for Plaintiff
27 The Freecycle Network, Inc.
28

VERIFICATION

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STATE OF ARIZONA)
) ss.
County of Pima)

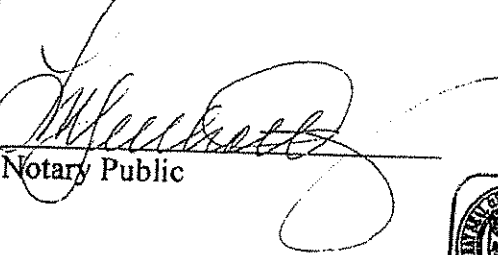
I, Deron Beal, upon penalty of perjury, depose and say that:

1. I am the Executive Director and Board Chair of The Freecycle Network, Inc.
2. I have reviewed The Freecycle Network, Inc.'s Complaint for Trademark Disparagement, Injurious Falsehood, Defamation, and Intentional Interference with Business Relations.
3. To the best of my knowledge, the contents of this document are true and correct.

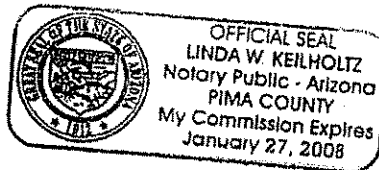
DATED this 4th day of April, 2006.



Subscribed and sworn to before me
this 4th day of April, 2006,
by Deron Beal.



Notary Public



My Commission Expires:

1-27-08

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona

Index of Exhibits to Complaint

Exhibit A	E-mail dated 9/17/04 from Tim Oey re Intellectual Property
Exhibit B	E-mail dated 1/5/05 from Tim Oey re How to Protect the Freecycle Trademark
Exhibit C	E-mail dated 5/5/05 from Tim Oey to Pauline M. Gabriel
Exhibit D	E-mail dated 9/16/05 to Tim Oey requesting resignation
Exhibit E	Yahoo Groups messages
Exhibit F	E-mail dated 9/20/05 from Tim Oey re Goodbye
Exhibit G	Yahoo Groups message

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
Exhibit A

4. Must follow the terms in its End User License Agreement (EULA).

Just for reference, I'm not a lawyer but I am in the software industry and I work very closely with many lawyers regarding how software may and may not be used.

Cheers,
Tim

*****From: Tim Oey <timoe@...>

Reduce_Reuse...

Date: Fri Sep 17, 2004 12:55 am

Offline

Subject: Freecycle -- intellectual property protection is important...
Since the Freecycle network is growing up, here are some recommendations for discussion and hopefully adoption (and general education).

Send Email

Please note that I'm not a lawyer but I've been involved with intellectual property issues for about 20 years (copyrights, trademarks, patents, etc). For "official" advice, please consult the appropriate type of attorney.

1) Everyone in the Freecycle network needs to protect the "Freecycle" trademark. Not only must trademarks be actively defended (as Deron is doing), they must also be used properly. Trademarks are adjectives, and must only be used as such (i.e., Freecycle moderators, Freecycle network, etc). Marks should never be used as nouns or verbs, nor should marks be pluralized or used in the possessive form. This is especially important in official Freecycle communications -- web sites, autosent emails, etc. Unfortunately this does crimp the use of "Keep on Freecyclin'" -- catchy, but risky.

2) What is the official full name of the Freecycle non-profit? Is it "The Freecycle Network"? or "Freecycle, Inc." or what?

3) As people create material for Freecycle, it would be useful to come up with some sort of concise copyright policy for everyone to use that references the

official full Freecycle name. For material of significant length, here is what I recommend:

a) Either the standard:
Copyright <year> The Freecycle Network, All Rights Reserved

or

b)
Copyright <year> The Freecycle Network, All Rights Reserved

official Freecycle sites may re-use, edit, extract, redistribute, and update this article as long as this copyright statement is retained.

If you redistribute, you may optionally give credit to whoever has contributed to it thus far.

Credits: <names of contributors>

The nice thing about (b) is that it is pretty clear that stuff can be updated by others in the Freecycle network -- this constitutes a simple mini-license that sticks to Freecycle copyrighted material and also gives contributors a way to be recognized.

Cheers,
Tim

From: Tim Oey <timoey@...>

Date: Fri Sep 17, 2004 4:05 am

Subject: Re: [freecyclemodsquad] RE: HOW DO I ADDRESS THIS?
(ADMIN: WEAPONS)

Reduce_Reuse...

Offline

Send Email

Umm, I hope we'll trust our moderators to achieve a rational balance (vs the type of screening you get at the airport these days). For instance the following items I'm ok with (and have seen) on a Freecycle list but would not give to a 4 year old (or leave a 4 year old around without supervision):

Matches
Lighters (for barbecues)
Barbecue grill
Sewing machine

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
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Exhibit B

Gmail - [freecyclemodsquad] How to Protect the Freecycle Trademark (was: Verbing a Noun - "To Freecycle") Page 1 of 2



[freecyclemodsquad] How to Protect the Freecycle Trademark (was: Verbing a Noun - "To Freecycle")

1 message

Tim Oey <timoe@yaho.com>

Wed, Jan 5, 2005 at 10:22 PM

To: freecyclemodsquad@yahoogroups.com

Cc: Sherry <bookworms@comcast.net>, Cynthia Armistead <freecycle@technozoo.org>

Sherry & Cynthia – Thanks for the excellent explanation about trademarks and the great links!

All – I'm glad Deron has finally published an official rule about use of the term "Freecycle" as used by The Freecycle Network. Below is further practical guidance on how to do the right thing.

My own local group (<http://groups.yahoo.com/group/freecyclesunnyvale/>) has been Freecycle trademark safe for several months now. It is a bit tricky but it is important. A big advantage that Freecycle has over commercial companies is that we have all of you out there to help guide everyone (particularly journalists) in the proper use of the Freecycle term. Journalists are usually quite happy to help as it is a common concern for them.

How to Protect the Freecycle Trademark

The Freecycle trademark is very important to The Freecycle Network. Use of the term "Freecycle" denotes a group that is officially approved by The Freecycle Network and one that the members can expect to adhere to a certain level of quality and security (as described by Freecycle etiquette).

To properly protect the Freecycle trademark, Freecycle staff, moderators, and journalists must do the following

1) The first or most prominent mention of Freecycle in a document (on the Freecycle.org site, in an article, on a Freecycle group home page) should include the (TM) designation, preferably as a superscript. The (TM) superscript is not needed in casual emails but should be used in posted documents and on web sites.

For example:

- See the current Freecycle logo graphic at <http://Freecycle.org>

- See how the words "The Freecycle (TM) Network" appear at:

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

- Here is a sentence example: "This Freecycle (TM) group supports Sunnyvale, California."

In HTML, the easiest way to add the TM superscript is to use the following HTML code (remove the periods from this example – they are included so this code is not interpreted as html in this email):

```
<sup><.font size="1">TM</font></sup>
```

2) Major official Freecycle publications (like the main Freecycle.org site, major official documents, and press releases) should say at the bottom:

"Freecycle is a trademark of The Freecycle Network."

3) The word "Freecycle" must always be capitalized or otherwise set off from the surrounding text.

Gmail - [freecyclemodsquad] How to Protect the Freecycle Trademark (was: Verbing a N... Page 2 of 2

4) The word "Freecycle" must always 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 use the term "freecyclin", say something else.
- Do not say "Please freecycle!", say "Please join a Freecycle group!" or "Please join The Freecycle Network"

Note: the term "Freecycle" may be used as a short name reference to "The Freecycle Network", just as "Adobe" is used as a short way to refer to "Adobe Systems Incorporated" (for examples see <http://www.adobe.com/aboutadobe/main.html> and Adobe's "Terms of Use" at <http://www.adobe.com/misc/copyright.html>)

For further details about trademarks, service marks, and how to use them properly, please see:

<http://www.inta.org/info/faqs.html>

and

<http://en.wikipedia.org/wiki/Trademark>

Enjoy!!

Cheers,

Tim

----- Yahoo! Groups Sponsor ----->

Take a look at donorschoose.org, an excellent charitable web site for anyone who cares about public education!

<http://us.click.yahoo.com/O.5XsA/8WnJAA/E2hLAA/rcToIB/TM>

Yahoo! Groups Links

<*> To visit your group on the web, go to:

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

<*> To unsubscribe from this group, send an email to:

freecyclemodsquad-unsubscribe@yahoogroups.com

<*> Your use of Yahoo! Groups is subject to:

<http://docs.yahoo.com/info/terms/>

The Freecycle Network, Inc. v. Tim Oey
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Exhibit C

Gmail - [freecyclemodsquad] ADMIN: TM Question

Page 4 of 6

the NGA for Saskatchewan, since I'm in pretty constant contact with most of the mods here, I have gone thru most of the groups myself, and made sure to help, or get them help to get their groups tm'd. Maybe, if the tmsupport (or someone else) doesn't do this already, it might be an idea.

With over 2000 groups, if we could made smaller, more manageable chunks to check, it shouldn't take too long to go thru all the official groups - and maybe even have time to check for rogues. I know in my travels I've spotted one or two that aren't tm'd correctly..... who should I be sending these to? If anyone.

Pauline Gabriel mmouse@sasktel.net
Regina-Freecycle listowner and busy PR person.....
FreecycleModSquadCanada and PrairieModSquad co-owner
and International and Saskatchewan Freecycle NGA.
<http://www.freecycle.org> for an official Freecycle(tm) group in your area!

----- Yahoo! Groups Sponsor ----->
Dying to be thin?
Anorexia. Narrated by Julianne Moore .
http://us.click.yahoo.com/FLQ_sC/gsnJAA/E2hLAA/rcToIB/TM
(Quoted text hidden)

Tim Oey <timoey@yahoo.com> Thu, May 5, 2005 at 6:25 PM
To: "Pauline M. Gabriel" <mmouse@sasktel.net>, freecyclederon@freecycle.org,
freecyclemodsquad@yahoo.com

Hmmm... tracking which groups are using the Freecycle trademark correctly seems like a good idea to me. It would be useful to know how many groups are doing a good job, how many not, and how many are unknown.

BTW, while registration of the trademark is pending, the Freecycle trademark itself is not pending -- it is real, Freecycle is using it, and has the right to defend it to a degree even without registration. If it becomes registered, than Freecycle will have more methods to defend its use as well as more solid backing.

The reason that the Freecycle trademark is important is because people are associating it with an excellent service. People join The Freecycle Network because they trust it. So the more we work to make Freecycle trustworthy, distinct, and useful, the more people recognize it, the more people join it, and the more power the network has to generate gifts rather than trash -- which is THE goal.

Cheers,
Tim

At 10:40 AM -0600 5/5/05, Pauline M. Gabriel wrote:
>Since not all groups keep current with info (it would be nice if they
>did, but we all know that not all our members keep up with list
>policies, so why expect all group moderators to do this), might it be
>wise to set up a temp position for each state, to go thru all the
>groups in that state, and bring forth those groups to the tmsupport@
>for contact, or contact them themselves, and nudge them along. As
>the NGA for Saskatchewan, since I'm in pretty constant contact with
>most of the mods here, I have gone thru most of the groups myself,
>and made sure to help, or get them help to get their groups tm'd.
>Maybe, if the tmsupport (or someone else) doesn't do this already, it

Gmail - [freecyclemodsquad] ADMIN: TM Question

Page 5 of 6

>might be an idea.

>

>With over 2000 groups, if we could made smaller, more manageable

>chunks to check, it shouldn't take too long to go thru all the

>official groups - and maybe even have time to check for rogues. I

>know in my travels I've spotted one or two that aren't tm'd

>correctly.....who should I be sending these to? If anyone.

[Quoted text hidden]

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
Exhibit D

Paula
pdspencer@earthlink.com
Be kind to each other.

No virus found in this incoming message.
Checked by AVG Anti-Virus.
Version: 7.0.344 / Virus Database: 267.11.1/104 - Release Date: 9/16/2005

****Step down letter from Paula, the GOA, to Tim.**

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

From: "Paula" <california@freecycle.org>
To: <oev@post.harvard.edu>
Cc: <deron@freecycle.org>
Sent: Friday, September 16, 2005 12:04 PM
Subject: Trademark Issues

Tim,
>
> As a volunteer representative of The FreecycleT Network you have publicly
> requested that members actively campaign against the organization
> obtaining the Trademark it has filed for. The following are quotes from
> your post:
>
> "The best way to keep freecycle in the public domain is for as many people
> and groups as possible to continue to use the term generically.
>
> If you feel that the term freecycle is generic, you can let the USPTO know
> by sending a letter to:
> Commissioner Of Trademarks" (address followed)
>
> "Yahoo listens to its customers, so if folks complain about groups being
> deleted for use of the term "freecycling" than members/moderators of those
> groups should complain to Yahoo "(email address followed)
>
> This is contrary to the mission of this organization to keep the trademark
> free from external corporate use and solely open to local members of The
> FreecycleT Network. Therefore, I must ask that you step down as the as
> a moderator of the Freecycle Sunnyvale list. I would appreciate your
> cooperation as soon as possible and confirming that you have done so.
>
> Sincerely,
> Paula
>
> All the best,
> Paula

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
Exhibit E

- >
 - > Be kind to each other.
 - > www.freecycle.org
 - >
 - > FreecycleT and the FreecycleT logo are trademarks of The FreecycleT
 - > Network in the United States and/or other countries.
 - >
 - > No virus found in this incoming message.
 - > Checked by AVG Anti-Virus.
 - > Version: 7.0.344 / Virus Database: 267.11.1/104 - Release Date: 9/16/2005
-

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

From: "Paula" <california@freecycle.org>
To: <timcafc@oeyweb.com>; <petritim123@yahoo.com>; <timoev@yahoo.com>
Sent: Friday, September 16, 2005 1:30 PM
Subject: Trademark Issues

- Tim,
- >
 - > As a volunteer representative of The FreecycleT Network you have publicly
 - > requested that members actively campaign against the organization
 - > obtaining the Trademark it has filed for. The following are quotes from
 - > your post:
 - >
 - > "The best way to keep freecycle in the public domain is for as many people
 - > and groups as possible to continue to use the term generically.
 - >
 - > If you feel that the term freecycle is generic, you can let the USPTO know
 - > by sending a letter to:
 - > Commissioner Of Trademarks" (address followed)
 - >
 - > "Yahoo listens to its customers, so if folks complain about groups being
 - > deleted for use of the term "freecycling" than members/moderators of those
 - > groups should complain to Yahoo "(email address followed)
 - >
 - > This is contrary to the mission of this organization to keep the trademark
 - > free from external corporate use and solely open to local members of The
 - > FreecycleT Network. Therefore, I must ask that you step down as the as
 - > a moderator of the Freecycle Sunnyvale list. I would appreciate your
 - > cooperation as soon as possible and confirming that you have done so.
 - >
 - > Sincerely,
 - > Paula
 - >

Tim Oey <timoev@gmail.com> to Freedomcycle

More options 4:40 am (3 hours ago) Good news -- it is legal for everyone to use the term freecycle, freecycling, freecycler, freecycled, etc -- there are no current viable registered trademark applications that cover the word -- so have fun with it!

1) The trademark application 78415420

(New Media Worlds, Inc.-- International Class: 042 An online service where users are able to give items away for free that they no longer need)

Their claim was for just the plain word "freecycle" but it is about to be denied based on abandonment as of a notice sent to this applicant on 8/22/2005.

Read it at: <http://portal.uspto.gov/external/portal/tow>

Serial Number: 78415420

2) The trademark application 78475113

(THE FREecycle NETWORK-- International Class: 042 DESIGN, CREATION, HOSTING AND MAINTENANCE OF A FREE WEBSITE THAT PROVIDES OTHERS WITH A

GLOBAL INTERNET BASED SYSTEM OF GIVING AND RECEIVING PERSONAL PROPERTY FOR FREE)

This claim was for the freecycle graphic logo only and does not cover the word in standard characters (plain text).

Read all about it at: <http://portal.uspto.gov/external/portal/tow>

Serial Number: 78475113

In particular read the application itself.

Please note that the original application includes a copy of the then current freecycle.org site which uses the word freecycle as freecycling, freecycles, etc.

Plus continued use of the word freecycle as a generic term by everyone will insure that it can never be trademarked by any corporation ever. So I hope you all will do your part to make this so. If you don't trust me, just read up on trademark law yourself or consult your own attorney.

Keep on freecycling!

Cheers,

Tim Oey

Good news -- it is legal for everyone to use the term freecycle, freecycling, freecycler, freecycled, etc -- there are no current viable registered trademark applications that cover the word -- so have fun with

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

From: Tim Oey
To: freecyclenext@yahoogroups.com
Sent: Wednesday, September 14, 2005 2:03 AM
Subject: [freecyclenext] Gifting "freecycle" to the public

The best way to keep freecycle in the public domain is for as many people and groups as possible to continue to use the term generically.

If you feel that the term freecycle is generic, you can let the USPTO know by sending a letter to:
Commissioner Of Trademarks
P.O. Box 1451
Alexandria, Va. 22313-1451

In your letter, reference registered trademark application 78475113.

Yahoo listens to its customers, so if folks complain about groups being deleted for use of the term "freecycling" than members/moderators of those groups should complain to Yahoo at:
http://add.yahoo.com/fast/help/us/groups/cgi_abuse
or
copyright@yahoo-inc.com

Basically, if you all want something to happen you have to do something about it.

Power to the people...

Cheers,
Tim

- Visit your group "freecyclenext" on the web.
- To unsubscribe from this group, send an email to:
freecyclenext-unsubscribe@yahoogroups.com
- Your use of Yahoo! Groups is subject to the Yahoo! Terms of Service.

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
Exhibit F

We have already successfully defended it from a company in Canada and a company in Florida. We are fortunate to have a great deal of pro bono legal support as an organization from those who believe in us.

However, I was surprised to learn that you are actively not only encouraging moderators to misuse our trademark but also to write the US Patent & Trademark Office to contest our right to the trademark. You went so far as to provide the address and our case number. You have made your position a clear. This position is clearly in stark contrast to the goals of this organization.

I'm sorry that you have chosen this path and hope that you will reconsider. I wish you the best. No doubt you have good intentions in your heart which hopefully will not prove costly for The Freecycle Network as an organization overall down the road.

Sincerely yours,
Deron

Deron Beal
The Freecycle Network

No virus found in this incoming message.

Checked by AVG Anti-Virus.

Version: 7.0.344 / Virus Database: 267.11.3/106 - Release Date: 9/19/2005

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

From: "Tim Oey" <oev@post.harvard.edu>

To: "chandan mishra" <chandan@hotmail.com>; "Deron Beal" <deron@freecycle.org>; <freecyclesunnyvale-owner@yahoogroups.com>

Cc: <california@freecycle.org>

Sent: Tuesday, September 20, 2005 11:08 AM

Subject: RE: Goodbye

- > Actually on this point, I have encouraged people to
- > use the term freecycle as a generic term which would
- > block The Freecycle Network (TFN), and all others,
- > from holding a trademark on the term in the area of
- > freecycling services offered on the web.
- >
- > This would mean that everyone could use the term
- > freecycle and no one could stop anyone else from using
- > it. There are also lots of other consequences.
- >
- > In consultation with some trademark attorneys, I'm in
- > the process of writing up a more thorough analysis of
- > the pro's and con's of freecycle as a trademark vs
- > freecycle as a generic term.
- >

> The decision to pursue a trademark was made by Deron.
> Most of the network does not know what the
> consequences are of getting a trademark nor the
> consequences of having freecycle be a generic term.
> Deron did not want to allow discussion or voting in
> this space which lead us to the current situation.
>
> Cheers,
> Tim
>
> -- chandan mishra <chandan@hotmail.com> wrote:
>> 4. Also according to Tim, he never encouraged anyone
>> to misuse Freecycle
>> trademark. Could you please point us to instances
>> where he did that?
>
> --
> No virus found in this incoming message.
> Checked by AVG Anti-Virus.
> Version: 7.0.344 / Virus Database: 267.11.3/107 - Release Date: 9/20/2005

The Freecycle Network, Inc. v. Tim Oey
U.S. District Court
District of Arizona
Exhibit G

fcnext : Message: Let your voices be heard...

Yahoo! My Yahoo! Mail Make Yahoo! your home page

YAHOO! GROUPS


Search the Web Search

Groups Home - Help

\$7500 CREDIT CARD
Free Enrollment

NO CREDIT CHECK
 BUILD YOUR CREDIT
 FREE CREDIT LIMIT INCREASE
 NO EMPLOYMENT VERIFICATION

EXPRESS GOLD
 The Power of Debt
SIGNUP TODAY
 CLICK HERE



| Group Member - Edit Membership

fcnext · Free Recycling - The Next Generation

Start a Group | My Groups

- Home
- Messages
- Post
- Chat
- Files
- Photos
- Links
- Database
- Polls
- Calendar
- Promote

Messages

Message #

Search:

Messages Help

Up Thread | Message Index | View Source | Unwrap Lines

Post Message
Message 3171 of 4099 < Previous Message | Next Message >

From: Tim Oey <timooey@...>
Date: Thu Feb 23, 2006 9:55 am
Subject: Let your voices be heard...

- reduce_reuse...
- Offline
- Send Email
- Invite to Yahoo! 360°

Many of us know that TFN is already a bit crazy in trying to clamp down on free speech freedoms, but now is a great time to further the cause and keep freecycle free for everyone forever (and drive TFN even crazier).

What you can do on your own:

- 1) Using TFN's directory, please contact all the freecycle groups in your state and surrounding states to let them know that freecycle is a generic term. Ask them to visit <http://greenribbon.us> for more information. There is no need to be that organized about it but if you think you have a state well covered, please post a note to fcnext. You'll need to dribble the mails out a few at a time and by as many people as possible to get around Yahoo's intricate group owner spam catchers. Make all your emails unique -- don't repeat exactly the same contents

Yahoo! Groups Tips

Did you know...
You can create an FAQ for your group?

Yahoo! 360°

<http://groups.yahoo.com/group/fcnext/message/3171>

3/20/2006

fcnext : Message: Let your voices be heard...

Keep connected to your friends and family through blogs, photos and more. Create your own 360° page now.

or subject, etc.

2) If you currently have a group within TFN, either take it out of TFN and tell all your members that freecycling should stay free or do comply initially with TFN's request so that your group is not deleted but then later sprinkle freecycling around your group and other groups so the free grassroots movement continues to be free (this is likely to really drive TFN nuts). Let more people know about <http://greenribbon.us>

3) Do give TFN GOAS a hard time because they are doing bad things by limiting free speech. Free speech is very important. Let everyone know that TFN does not need to control freecycling for TFN to be successful.

4) Get your freecycling is free statements to Eric for posting on <http://greenribbon.us>

5) Let others know that freecycling is a wonderful thing that people can do via Google, Craigslist, Yahoo Groups, any email list, or however they wish -- even just leaving stuff out on the curb with a "Free" or "Freecycle this" note attached.

Spread the word and let the word be free.

Enjoy!

Cheers,
Tim

Replies	Author	Date
3190	Re: Let your voices be heard... I don't think any of that is a good idea. Why not let the courts decide it? By...	Feb 23, 2006 5:18 pm
	If I told ya.... bethaven_jass	

fcnext . Message: Let your voices be heard...

Page 3 of 3

3314	<p>Re: Let your voices be heard... Hi Lass, The courts will get to it eventually. How is encouraging others to...</p>	<p>Tim Oey reduce_reuse...</p>	<p>Feb 26, 2006 11:00 pm</p>
3336	<p>Re: Let your voices be heard... i second tim's post...educating others is a necessity in any grassroots ...</p>	<p>xina (freecycle mode... existentiellista</p>	<p>Feb 27, 2006 5:11 am</p>
3348	<p>Re: Let your voices be heard... I think I've made my intent known when it comes to FreeSpeech :-) FreeCyclo ...</p>	<p>Free cycle Recycle freecycos</p>	<p>Feb 27, 2006 6:47 am</p>

Up Thread | Message Index | View Source | Unwrap Lines

Message # Search:

YAHOO! SPONSOR RESULTS

Target.com: Blue Ribbon - Blue ribbon online. Save 10% - 20% at Target.com.
www.target.com

Blue Ribbon for Gift Wrapping - Blue ribbon plus many other assorted colors and sizes of gift wrapping ribbons, bows and raffia.
www.buygiftribbon.com

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Privacy Policy - Copyright/UP Policy - Terms of Service - Guidelines - Help

<http://groups.yahoo.com/group/fcnext/message/3171>

3/20/2006

Exhibit C

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

1 **DECONCINI McDONALD**
2 **YETWIN & LACY, P.C.**
3 2525 East Broadway, Suite 200
4 Tucson, Arizona 85716-5300
5 Telephone: 520-322-5000
6 Facsimile: 520-322-5585

7 LISA ANNE SMITH, AZ Bar No. 016762
8 (lsmith@dmyl.com)
9 SHEFALI MILCZAREK-DESAI, AZ Bar No. 021237
10 (smdesai@dmyl.com)

11 **PERKINS COIE LLP**
12 101 Jefferson Drive
13 Menlo Park, California 94025-1114
14 Telephone: (650) 838-4300
15 Facsimile: (650) 838-4350
16 *Pro hac vice admission pending*

17 PAUL J. ANDRE, CA Bar No. 196585
18 (pandre@perkinscoie.com)
19 LISA KOBIALKA, CA Bar No. 191404
20 (lkobialka@perkinscoie.com)
21 ESHA BANDYOPADHYAY, CA Bar No. 212249
22 (ebandyopadhyay@perkinscoie.com)
23 SEAN BOYLE, CA Bar No. 238128
24 (sboyle@perkinscoie.com)

25 Attorneys for Plaintiff
26 THE FREECYCLE NETWORK, INC.

27 IN THE UNITED STATES DISTRICT COURT
28 DISTRICT OF ARIZONA

29 THE FREECYCLE NETWORK, INC.,
30 an Arizona non-profit organization,

31 Plaintiff,

32 v.

33 TIM OEY,
34 an individual

35 Defendant.

CASE NO. 06-CV-00173-RCC

PLAINTIFF THE FREECYCLE
NETWORK, INC.'S NOTICE OF *EX*
PARTE MOTION AND MOTION FOR
TEMPORARY RESTRAINING ORDER

Date: April 24, 2006
Time: 2:00 p.m.
Before: Honorable Raner C. Collins
Location: Courtroom 5B

1 TO DEFENDANT TIM OEY AND HIS ATTORNEY OF RECORD:

2 Pursuant to Federal Rule of Civil Procedure 65, please take notice that on April 24, 2006,
3 or as soon thereafter as possible, Plaintiff The Freecycle Network, Inc. ("The Freecycle
4 Network") will move, and hereby moves, *ex parte*, for a temporary restraining order against
5 Defendant Tim Oey ("Defendant" or "Oey"), restraining and enjoining Defendant from inducing
6 infringement of The Freecycle Network's intellectual property, including its trademarks or any
7 variation or imitation thereof, disparaging The Freecycle Network's intellectual property,
8 including its trademarks or any variation or imitation thereof, and from disseminating false and
9 misleading statements regarding The Freecycle Network and its intellectual property, including
10 its trademarks or any variation or imitation thereof.

11 This motion is based upon the grounds that The Freecycle Network has demonstrated a
12 likelihood of success on the merits of its claims for contributory trademark infringement,
13 trademark disparagement, injurious falsehood, defamation, and intentional interference with
14 business relations; that The Freecycle Network is being irreparably harmed, and will continue to
15 be irreparably harmed, if the requested temporary restraining order is not granted; and that the
16 balance of hardships favors entry of the requested temporary restraining order.

17 This motion is based upon The Freecycle Network's Complaint filed with this Court on
18 April 4, 2006 (attached to the supporting Declaration of Esha Bandyopadhyay as Exhibit A), this
19 Notice of Motion and Motion, the Memorandum of Points and Authorities filed in support of this
20 Motion, the supporting Declaration of Esha Bandyopadhyay, the supporting Declaration of
21 Deron Beal, the [Proposed] Temporary Restraining Order, the materials currently on file in this
22 action, and such argument of counsel as the Court may request.

23 An *ex parte* hearing may be held. Should a hearing date and time be set, The Freecycle
24 Network will inform Defendant of the date and time of such hearing.

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Dated: April 19, 2006

DECONCINI McDONALD YETWIN & LACY, P.C.
& PERKINS COIE LLP

By: _____ /s/ _____

Attorneys for Plaintiff
The Freecycle Network, Inc.

Exhibit D

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

1 **DECONCINI McDONALD**
2 **YETWIN & LACY, P.C.**
3 2525 East Broadway, Suite 200
4 Tucson, Arizona 85716-5300
5 Telephone: 520-322-5000
6 Facsimile: 520-322-5585

7 **LISA ANNE SMITH, AZ Bar No. 016762**
8 (lsmith@dmyl.com)
9 **SHEFALI MILCZAREK-DESAI, AZ Bar No. 021237**
10 (smdesai@dmyl.com)

11 **PERKINS COIE LLP**
12 101 Jefferson Drive
13 Menlo Park, California 94025-1114
14 Telephone: (650) 838-4300
15 Facsimile: (650) 838-4350
16 *Pro hac vice admission pending*

17 **PAUL J. ANDRE, CA Bar No. 196585**
18 (pandre@perkinscoie.com)
19 **LISA KOBIALKA, CA Bar No. 191404**
20 (lkobialka@perkinscoie.com)
21 **ESHA BANDYOPADHYAY, CA Bar No. 212249**
22 (ebandyopadhyay@perkinscoie.com)
23 **SEAN BOYLE, CA Bar No. 238128**
24 (sboyle@perkinscoie.com)

25 Attorneys for Plaintiff
26 **THE FREECYCLE NETWORK, INC.**

27 **IN THE UNITED STATES DISTRICT COURT**
28 **DISTRICT OF ARIZONA**

29 **THE FREECYCLE NETWORK, INC.,**
30 an Arizona non-profit organization,

31 Plaintiff,

32 v.

33 **TIM OEY,**
34 an individual

35 Defendant.

36 **CASE NO. 06-CV-00173-RCC**

37 **PLAINTIFF THE FREECYCLE**
38 **NETWORK, INC.'S NOTICE OF**
39 **MOTION AND MOTION FOR**
40 **PRELIMINARY INJUNCTION**

41 **Date:** April 24, 2006
42 **Time:** 2:00 p.m.
43 **Before:** Honorable Raner C Collins
44 **Location:** Courtroom 5B

1 TO DEFENDANT TIM OEY AND HIS ATTORNEY OF RECORD:

2 Pursuant to Federal Rule of Civil Procedure 65, please take notice that on April 24, 2006,
3 or as soon thereafter as possible, Plaintiff The Freecycle Network, Inc. ("The Freecycle
4 Network") will move, and hereby moves, for a preliminary injunction against Defendant Tim
5 Oey ("Defendant" or "Oey"), restraining and enjoining Defendant from inducing infringement of
6 The Freecycle Network's intellectual property, including its trademarks or any variation or
7 imitation thereof, disparaging The Freecycle Network's intellectual property, including its
8 trademarks or any variation or imitation thereof, and from disseminating false and misleading
9 statements regarding The Freecycle Network and its intellectual property, including its
10 trademarks or any variation or imitation thereof.

11 This motion is based upon the grounds that The Freecycle Network has demonstrated a
12 likelihood of success on the merits of its claims for contributory trademark infringement,
13 trademark disparagement, injurious falsehood, defamation, and intentional interference with
14 business relations; that The Freecycle Network is being irreparably harmed, and will continue to
15 be irreparably harmed, if the requested temporary restraining order is not granted; and that the
16 balance of hardships favors entry of the requested preliminary injunction.

17 This motion is based upon The Freecycle Network's Complaint filed with this Court on
18 April 4, 2006 (attached to the supporting Declaration of Esha Bandyopadhyay as Exhibit A), this
19 Notice of Motion and Motion, the Memorandum of Points and Authorities filed in support of this
20 Motion, the supporting Declaration of Esha Bandyopadhyay, the supporting Declaration of
21 Deron Beal, the [Proposed] Order for Entry of Preliminary Injunction, the materials currently on
22 file in this action, and such argument of counsel as the Court may request.

23
24 Dated: April 19, 2006

DECONCINI McDONALD YETWIN & LACY, P.C.
& PERKINS COIE LLP

25
26
27 By: _____ /s/

Attorneys for Plaintiff
The Freecycle Network, Inc.

28

Exhibit E

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

1 **DECONCINI McDONALD**
2 **YETWIN & LACY, P.C.**
3 2525 East Broadway, Suite 200
4 Tucson, Arizona 85716-5300
5 Telephone: 520-322-5000
6 Facsimile: 520-322-5585

7 **LISA ANNE SMITH, AZ Bar No. 016762**
8 (lsmith@dmyl.com)
9 **SHEFALI MILCZAREK-DESAI, AZ Bar No. 021237**
10 (smdesai@dmyl.com)

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13 Menlo Park, California 94025-1114
14 Telephone: (650) 838-4300
15 Facsimile: (650) 838-4350
16 *Pro hac vice admission pending*

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22 (ebandyopadhyay@perkinscoie.com)
23 **SEAN BOYLE, CA Bar No. 238128**
24 (sboyle@perkinscoie.com)

25 Attorneys for Plaintiff
26 **THE FREECYCLE NETWORK, INC.**

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20 THE FREECYCLE NETWORK, INC.,
21 an Arizona non-profit organization,
22
23 Plaintiff,
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25 v.
26 TIM OEY,
27 an individual
28
29 Defendant.

CASE NO. 06-CV-00173-RCC

THE FREECYCLE NETWORK, INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF *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

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1 I. INTRODUCTION

2 This is a case about revenge. Defendant Tim Oey, ("Defendant" or "Oey"), frustrated
 3 that he was asked to step down from a leadership position in The Freecycle Network, Inc. ("The
 4 Freecycle Network"), seeks to destroy its valuable trademarks, which The Freecycle Network
 5 owns after extensive use and development of valuable goodwill. The Freecycle Network
 6 coordinates programs throughout the world to promote the reusing, recycling, and gifting of
 7 goods. Protection of The Freecycle Network's trademark rights is essential in order to properly
 8 identify legitimate members of The Freecycle Network, and to accomplish its goal of centralized
 9 coordination of recycling services. Indeed, the Freecycle Network has strict guidelines as to the
 10 use of its trademarks. Additionally, The Freecycle Network actively polices potentially
 11 infringing uses of its trademarks. As a result, The Freecycle Network has been able to obtain
 12 corporate sponsorship and funding which enables it to cover its administrative costs.

13 Defendant publicly recognized the validity of The Freecycle Network's trademarks on
 14 numerous occasions while he was affiliated with The Freecycle Network. Upon being asked to
 15 step down from The Freecycle Network, however, Defendant began to misuse the trademarks,
 16 and consistently ignored requests to cease such misuse. Moreover, Defendant openly admits that
 17 he has encouraged others to infringe the marks by stating "...I have encouraged people to use the
 18 term freecycle as a generic term which would block The Freecycle Network (TFN), and all
 19 others, from holding a trademark..." See Complaint, Exh. F.¹ Additionally, Defendant has
 20 targeted individuals dedicated to the active promotion of reusing, recycling, and gifting, and has
 21 encouraged them to join an opposition filed by the Yahoo! group FreecycleSunnyvale with the
 22 Trademark Trial and Appeal Board ("TTAB") regarding the registration of The Freecycle
 23 Network's trademarks.² Furthermore, Defendant has made and disseminated false statements
 24 about The Freecycle Network and its trademarks.

25
 26 ¹ "Complaint" refers to The Freecycle Network's Complaint in this action, filed on April
 27 4, 2006. Declaration of Esha Bandyopadhyay in Support of The Freecycle Network, Inc.'s *Ex*
 28 *Parte* Motion for Temporary Restraining Order and Motion for Preliminary Injunction
 ("Bandyopadhyay Dccl."), ¶2, Exh. A.

² FreecycleSunnyvale filed its opposition on January 18, 2006. Declaration of Deron
 Beal (hereinafter "Beal Decl.") filed herewith, ¶6, Exh. H.

1 The Freecycle Network has compelling evidence that Defendant has contributorily
 2 infringed, and continues to contributorily infringe, upon The Freecycle Network's trademarks.
 3 The Freecycle Network has further compelling evidence that Defendant has engaged in
 4 disparagement of The Freecycle Network's valid trademarks, injurious falsehood, and
 5 defamation. Most notably, this evidence includes Defendant's own admissions of engaging in
 6 such conduct. Accordingly, The Freecycle Network respectfully requests entry of a preliminary
 7 injunction and temporary restraining order prohibiting Defendant from further engaging in this
 8 unlawful conduct.

9 II. STATEMENT OF FACTS

10 A. Plaintiff The Freecycle Network and its Marks

11 The Freecycle Network is a nonprofit Arizona corporation with member groups
 12 throughout the world dedicated to encouraging and coordinating the reusing, recycling, and
 13 gifting of goods. Beal Decl., ¶2. Starting with a single recycling community in Tucson, The
 14 Freecycle Network has grown to a worldwide organization with thousands of local recycling
 15 groups, and more than two million individual members. *Id.* The Freecycle Network maintains
 16 an Internet Web site, located at www.freecycle.org, which maintains a directory of local
 17 recycling groups throughout the world and provides resources for volunteers to create new local
 18 recycling groups. *Id.*, ¶3. Because of its efforts toward such laudable goals, The Freecycle
 19 Network has successfully obtained corporate sponsorship to cover its administrative expenses
 20 and enable it to continue promoting recycling, reusing, and gifting of goods. *Id.*, ¶4.

21 The Freecycle Network has been using the trademarks FREECYCLE, THE
 22 FREECYCLE NETWORK, and the distinctive "The Freecycle Network" logo (collectively "The
 23 Freecycle Network's Marks" or the "Marks") exclusively and continuously since at least May 1,
 24 2003. *Id.*, ¶5. The Freecycle Network has strict guidelines as to the use of the Marks, and
 25 expends much effort in policing potential infringement of the Marks. *Id.*, ¶5, Exhs. E-F.

26 As a result of its extensive use and promotion of the Marks, The Freecycle Network has
 27 built up and now owns valuable goodwill that is symbolized by these trademarks. For example,
 28 publications such as CNN.com, The Motley Fool, CBS News, and The Washington Post have

1 praised The Freecycle Network and its efforts in promoting the reusing, recycling, and gifting of
 2 goods. *Id.*, ¶2, Exhs. A-D. Furthermore, the Marks comprise an important portion of The
 3 Freecycle Network's intellectual property and are very important to The Freecycle Network's
 4 identity. *See id.*, ¶6. On November 22, 2005, The Freecycle Network's FREECYCLE
 5 trademark and distinctive logo were approved for publication on the Principal Register by the
 6 United States Patent and Trademark Office ("PTO"). *Id.*, ¶6, Exh. G. A notice of publication
 7 was issued on December 28, 2005. *Id.* Subsequently, however, an opposition proceeding was
 8 instituted on January 18, 2006, in regard to the registration of the FREECYCLE mark. *Id.*, ¶6,
 9 Exh. H. Accordingly, federal registration of The Freecycle Network's Marks is pending. *Id.*, ¶6.

10 The Freecycle Network gives its local groups permission to use the Marks for local
 11 promotions of programs that encourage reusing, recycling, and gifting. *Id.*, ¶7. Accordingly,
 12 The Freecycle Network's Marks are used to identify local recycling organizations which
 13 participate within The Freecycle Network organization. *Id.* The Freecycle Network's Marks are
 14 further used by The Freecycle Network to promote recycling of usable items within a
 15 community. *Id.* Individual recyclers rely on the Marks to know that they are dealing with a local
 16 organization affiliated with the well-known The Freecycle Network. *Id.*

17 **B. Defendant Tim Oey**

18 Defendant was an active member of The Freecycle Network from early 2004 until late
 19 2005. *Id.*, ¶8. During this time, Defendant held a variety of positions within The Freecycle
 20 Network, one of which involved participating in an intellectual property working group tasked
 21 with developing guidelines for protecting The Freecycle Network's intellectual property
 22 (including The Freecycle Network's Marks). *Id.* In fact, Defendant vigorously defended The
 23 Freecycle Network's rights to The Freecycle Network's Marks in public e-mail exchanges and
 24 various Internet for a while he was a member of The Freecycle Network. *Id.* For example, in an
 25 e-mail dated September 17, 2004, Defendant stated, in pertinent part, "Everyone in the Freecycle
 26 network needs to protect the "Freecycle" trademark." *See* Complaint, Exh. A. Additionally,
 27 Defendant prepared trademark protection guidelines in order to preserve The Freecycle
 28 Network's Marks. *Beal Decl.*, ¶8. In an e-mail dated January 5, 2005, he wrote a list of

1 guidelines entitled "How To Protect the Freecycle Trademark." *See* Complaint, Exh. B. In fact,
 2 there is no doubt Defendant believed The Freecycle Network's Marks are valid and worthy of
 3 protection. *See* Complaint, Exh. C ("...the Freecycle trademark...is real, Freecycle is using it,
 4 and has the right to defend it to a degree even without registration").

5 **C. Defendant's Unlawful Conduct and the Repercussions Therefrom**

6 On or around September 15, 2005, Defendant was asked to resign from his position at
 7 The Freecycle Network due to behavior contrary to The Freecycle Network's mission. *See*
 8 Complaint, Exh. D; *see also* Beal Decl., ¶9. Around this time, Defendant began to publicly
 9 disagree with the validity of The Freecycle Network's Marks and started to encourage the
 10 destruction of The Freecycle Network's Marks. *Id.* Specifically, Defendant has engaged in a
 11 systematic campaign to destroy the value of The Freecycle Network's Marks. *Id.* To this end,
 12 Defendant has intentionally made false statements about the validity of The Freecycle Network's
 13 intellectual property, including the Marks. *Id.* These statements include assertions that The
 14 Freecycle Network does not possess valid trademark rights in the Marks, assertions that at least
 15 one of the Marks (specifically the FREECYCLE mark) is a generic term, and assertions that third
 16 parties can freely use the Marks. For example, Defendant has stated, "...it is legal for everyone
 17 to use the term freecycle ...so have fun with it!" *See* Complaint, Exh. E. In a more bold
 18 admission, Defendant stated "...I have encouraged people to use the term freecycle as a generic
 19 term which would block The Freecycle Network (TFN), and all others, from holding a
 20 trademark..." *See* Complaint, Exh. F. Furthermore, Defendant has encouraged others to misuse
 21 the Marks by writing "...please contact all the freecycle groups in your state and surrounding
 22 states to let them know that freecycle is a generic term..." *See* Complaint, Exh. G.

23 Additionally, Defendant has made false public assertions regarding The Freecycle
 24 Network itself by stating that it is "doing bad things." *See id.* Despite requests from The
 25 Freecycle Network to cease from such false assertions, Defendant continues to misuse the Marks
 26 and make false, public statements. Beal Decl., ¶9. Moreover, Defendant has indicated publicly
 27 that his campaign against The Freecycle Network is intentional and motivated by malice. For
 28

1 To obtain injunctive relief, The Freecycle Network need not show that *it will necessarily*
 2 prevail on the merits, only that there is a *reasonable probability* of success. Dogloo, Inc. v.
 3 Doskocil Mfg. Co., Inc., 893 F.Supp. 911, 917 (C.D.Cal. 1995) citing Gilder v. PGA Tour, Inc.,
 4 936 F.2d 417, 422 (9th Cir. 1991); *see also* Wilson v. Watt, 703 F.2d 395 (9th Cir.1983). This
 5 standard has been interpreted to mean a “fair chance of success on the merits.” Johnson v.
 6 California State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995); Benda v. Grand Lodge
 7 of IAM, 584 F.2d 308, 315-16 (9th Cir.1978). As detailed below, The Freecycle Network has
 8 more than a fair chance of success on the merits.
 9

10 **1. The Freecycle Network is Likely to Succeed on the Merits of its**
 11 **Contributory Trademark Infringement Cause of Action**

12 One branch of contributory infringement encompasses instances when a defendant
 13 “intentionally induces a third party to infringe the plaintiff’s mark....” Lockheed Martin Corp.
 14 v. Network Solutions, Inc., 194 F.3d 980, 983-84 (9th Cir. 1999). Indeed, the Supreme Court
 15 has left little doubt that one who induces another to infringe a trademark will be liable for
 16 contributory infringement. Sealy, Inc. v. Easy Living, Inc., 743 F.2d 1378, 1382 (9th Cir. 1984);
 17 *see also* Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 853-54 (1982) (stating that “if a
 18 manufacturer or distributor intentionally induces another to infringe a trademark...the
 19 manufacturer or distributor is contributorily responsible. ...”).

20 Here, Defendant has intentionally induced third parties to infringe the Marks by
 21 encouraging misuse of the Marks, and by writing in numerous e-mails and postings that the
 22 Marks are not valid, and that The Freecycle Network’s claim to them is erroneous. As described
 23 above, Defendant’s inducement includes intentionally erroneous assertions that The Freecycle
 24 Network’s Marks are generic and may be freely used by others. *See* Complaint, Exh. E (“...it is
 25 legal for everyone to use the term freecycle...so have fun with it!”), Exh. F (“...I have
 26 encouraged people to use the term freecycle as a generic term which would block The Freecycle
 27 Network (TFN), and all others, from holding a trademark....”), Exh. G (“...please contact all the
 28 freecycle groups in your state and surrounding states to let them know that freecycle is a generic

1 term..."). If individuals and entities other than The Freecycle Network begin freely using the
 2 Marks in relation to services other than those offered by The Freecycle Network, this will
 3 inevitably result in a likelihood of confusion as to the origin of the services. As further detailed
 4 above, Defendant's systematic campaign to intentionally destroy The Freecycle Network's
 5 intellectual property has resulted in a loss of good will and reputation, as well as a loss in
 6 corporate sponsorship. Beal Decl., ¶10.

7 Given Defendant's own admissions that (1) he has encouraged others to misuse and
 8 infringe The Freecycle Network's Marks, (2) he has told others that The Freecycle Network has
 9 no right to The Freecycle Network's Marks, and (3) he has organized a coordinated attack on
 10 The Freecycle Network's Marks which is resulting in massive infringement and damage, there is
 11 no doubt that The Freecycle Network will succeed on its claim for contributory trademark
 12 infringement.

13 **2. The Freecycle Network is Likely to Succeed on the Merits of its**
 14 **Trademark Disparagement Claim**

15 To prevail on its claim for trademark disparagement, the Freecycle Network is required to
 16 establish that (i) Defendant made a false statement in regard to The Freecycle Network; (ii) that
 17 this false statement was made with malice; and (iii) that The Freecycle Network suffered special
 18 damages as a result of the false statement. Big O Tire Dealers, Inc. v. The Goodyear Tire &
 19 Rubber Co., 561 F.2d 1365, 1373-74 (10th Cir. 1977).

20 Here, Defendant has intentionally made numerous false statements about The Freecycle
 21 Network's intellectual property, including The Freecycle Network's Marks. These statements
 22 include open assertions that the Marks are generic, and that The Freecycle Network does not
 23 possess valid rights in these Marks. See Complaint, Exh. E ("...it is legal for everyone to use the
 24 term freecycle...so have fun with it!"), Complaint, Exh. F ("...I have encouraged people to use
 25 the term freecycle..."). These statements are undoubtedly false because The Freecycle Network
 26 owns valid rights in the Marks which cannot freely be infringed by the public at large. As stated
 27
 28

1 above, the PTO has recognized the validity of The Freecycle Network's FREECYCLE
2 trademark by approving it for publication on the Principal Register. Beal Decl., ¶6, Exh. C.

3 Additionally, there is no doubt that Defendant acted with malice in attempting to
4 disparage the Marks. In fact, Defendant admits his malicious intent by acknowledging that his
5 goal is to "block The Freecycle Network (TFN), and all others, from holding a trademark...."
6 Complaint, Exh. F. Similarly, Defendant admits that his intention is to "[d]rive [The Freecycle
7 Network] nuts." Complaint, Exh. G.

9 Furthermore, The Freecycle Network has and will continue to suffer significant
10 irreparable harm due to Defendant's malicious, false statements. These special damages include,
11 but are not limited to, a loss of goodwill, decreased membership in The Freecycle Network, loss
12 of potential corporate sponsorship, and potential loss of intellectual property rights in The
13 Freecycle Network's Marks. See Beal Decl., ¶10.

14 As such, The Freecycle Network will succeed on the merits on its trademark
15 disparagement claim. And importantly, it appears that Defendant will continue to recklessly
16 disparage The Freecycle Network's Marks with malice unless restrained by this Court.

17
18 **3. The Freecycle Network is Likely to Succeed on the Merits of its**
19 **Injurious Falsehood Claim**

20 Injurious falsehood entails an intentional publication of an injurious falsehood
21 disparaging another's property. See Gee v. Pima County, 126 Ariz. 116, 116 (Ariz.Ct.App.
22 1980). Generally, injurious falsehood is the publication of matter derogatory to the plaintiff's
23 business which is calculated to prevent others from dealing with him. See Western Techs., Inc.
24 v. Sverdrup & Parcel, Inc., 154 Ariz.1, 4 (Ariz.Ct.App. 1986). To prevail on its claim for
25 injurious falsehood, The Freecycle Network must show (i) that Defendant published an injurious
26 falsehood to a third party; (ii) that Defendant knew of the falsity of its statement; (iii) that
27 Defendant made an effort to dissuade a third party from dealing with The Freecycle Network;
28 and (iv) that Defendant's actions resulted in a pecuniary loss to The Freecycle Network.

1 Fillmore v. Maricopa Water Processing Systems, Inc., 211 Ariz. 269 (2005) citing Western
2 Techs., 154 Ariz. at 4.

3 As describe above, Defendant has published numerous false statements concerning The
4 Freecycle Network and its Marks. *See* Complaint, Exh. E (“...it is legal for everyone to use the
5 term freecycle...so have fun with it!”), Complaint, Exh. G (“[The Freecycle Network] are doing
6 bad things”). Additionally, given Defendant’s prior acknowledgement that “...the Freecycle
7 trademark [] ...is real, Freecycle is using it, and has the right to defend it to a degree even
8 without registration” (*see* Complaint, Exh. C), it is clear that Defendant has actual knowledge of
9 the falsity of his statements. Defendant cannot now be permitted to make the Marks generic by
10 encouraging others to destroy the distinctiveness simply because he no longer wants the Marks to
11 be enforced.

12 Furthermore, in intentionally trying to prevent The Freecycle Network from retaining its
13 valid trademark rights (*see* Complaint, Exh. F, “...I have encouraged people to use the term
14 freecycle as a generic term which *would block The Freecycle Network (TFN), and all others,*
15 *from holding a trademark...*” (emphasis added)), Defendant is attempting to terminate The
16 Freecycle Network’s contracts and relationships with its corporate sponsors. *See* Beal Decl, ¶10.
17 Because corporate sponsorship is the sole source of funding for The Freecycle Network to
18 continue its work both nationally and internationally, Defendant’s intentional interference with
19 such agreements, and an ultimate dissolution of the agreements, would result in a devastating
20 pecuniary loss for The Freecycle Network.

1 **4. The Freecycle Network is Likely to Succeed on the Merits of its**
 2 **Defamation Claim**

3 The crux of a defamation claim under Arizona law is whether the statement makes or
 4 implies a provable false assertion of fact. See Miller v. Servicemaster By Rees, 174 Ariz. 518,
 5 520 (Ariz.Ct.App. 1993). To prevail on such a claim, The Freecycle Network must establish (i)
 6 a false and defamatory statement made by Defendant concerning The Freecycle Network; (ii) a
 7 nonprivileged publication of that false statement to a third party; (iii) at least negligence on the
 8 part of the Defendant; (iv) and harm to The Freecycle Network as a result of the false statement.
 9 *Id.*

10 As set forth above, Defendant has made, and continues to make, false public statements
 11 concerning The Freecycle Network and its Marks. See Complaint, Exh. E ("...it is legal for
 12 everyone to use the term freecycle...so have fun with it!"), Complaint, Exh. G ("[The Freecycle
 13 Network] are doing bad things"). Additionally, Defendant was not given permission to make
 14 such assertions, and was specifically asked to stop making these false, public assertions. Indeed,
 15 Defendant has no right whatsoever to publish these statements. See Beal Decl., ¶9. Further,
 16 given Defendant's prior acknowledgement that "...the Freecycle trademark [] ...is real,
 17 Freecycle is using it, and has the right to defend it to a degree even without registration" (see
 18 Complaint, Exh. C), it is clear that Defendant now makes these false assertions with actual
 19 knowledge (not just mere negligence) of the falsity of the statement.

20 Finally, there can be no doubt that The Freecycle Network is suffering harm from the
 21 negative repercussions of Defendant's false statements. The goodwill of the Marks is being
 22 eroded, and Defendant's false statements are harming the reputation of The Freecycle Network.
 23 Moreover, The Freecycle Network has already suffered a reduction in corporate sponsorship.
 24 Beal Decl., ¶10. Accordingly, there is more than a reasonable probability that The Freecycle
 25 Network will succeed on its claim of defamation

1 **B. The Irreparable Harm to The Freecycle Network Strongly Favors Issuing a**
 2 **Temporary Restraining Order**

3 It is well established in this Circuit that in cases under the Lanham Act, once a plaintiff
 4 establishes likelihood of success on the merits, there arises a presumption that the plaintiff will
 5 suffer irreparable harm unless an injunction is entered. See Brookfield, 174 F.3d at 1066; see
 6 also El Pollo Loco, Inc. v. Hashim, 316 F.3d 1032, 1038 (9th Cir. 2003) (quoting GoTo.com,
 7 Inc. v. Walt Disney Co., 202 F.3d 1199, 1205 n.4 (9th Cir. 2000)) (“[i]n a trademark
 8 infringement claim, ‘irreparable injury may be *presumed* from a showing of likelihood of success
 9 on the merits.’”) (emphasis added). Given The Freecycle Network’s strong showing of a
 10 likelihood of success on the merits, this presumption is sufficient to support entry of an
 11 immediate injunction.

12 However, even without the presumption, there is more than enough evidence that The
 13 Freecycle Network will suffer irreparable harm unless Defendant is immediately enjoined from
 14 inducing others to infringe upon The Freecycle Network’s Marks. As stated above, here
 15 Defendant publicly announced his intention to infringe The Freecycle Network’s Marks and
 16 encouraged others to do so. Among other examples, Defendant has publicly stated “...I have
 17 encouraged people to use the term freecycle as a generic term which would block The Freecycle
 18 Network (TFN), and all others, from holding a trademark....” See Complaint, Exh. F.
 19 Additionally, Defendant has intentionally, knowingly, and maliciously made false and
 20 defamatory statements about The Freecycle Network and its Marks. See, e.g., Complaint, Exh.
 21 G (“[The Freecycle Network] is doing bad things.”). Further, Defendant has publicly admitted
 22 that he has chosen to pursue this course of action in order to “[d]rive [The Freecycle Network]
 23 nuts.” See *id.*

24 Such conduct is detrimental to the reputation and goodwill of the distinctive Marks,
 25 developed over years of using The Freecycle Network’s Marks to identify its reusing, recycling
 26 and gifting efforts. Moreover, Defendant’s actions (as he himself admits) are aimed at
 27 destroying the value of The Freecycle Network’s Marks. See Complaint, Exhs. E, F, and G.
 28 Furthermore, as stated above, The Freecycle Network has already suffered a decrease in

1 corporate sponsorship and faces the possibility of a complete withdrawal of all such sponsorship
 2 due to Defendant's defamation campaign. Accordingly, it is clear that The Freecycle Network is
 3 suffering, and will continue to suffer, irreparable harm as a result of Defendant's conduct. *See*,
 4 *e.g.*, Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th
 5 Cir. 1991) (stating that "[d]amage to...goodwill qualif[ies] as irreparable harm.")

6 In contrast to the irreparable harm faced by The Freecycle Network as a result of
 7 Defendant's contributory infringement of The Freecycle Network's Marks, there is no potential
 8 harm to Defendant. As detailed below, Defendant will not be any less able to engage in and
 9 promote legitimate reusing, recycling, and gifting efforts, even if it cannot utilize The Freecycle
 10 Network's Marks. Additionally, there will be no chilling effect to Defendant's right to free
 11 speech; all that The Freecycle Network is seeking is to prevent Defendant from making
 12 defamatory statements that are detrimental to its hard-earned reputation and the goodwill of The
 13 Freecycle Network's distinctive Marks.

14 In short, the irreparable harm that The Freecycle Network will sustain absent an
 15 immediate injunction far outweighs any inconvenience that Defendant may experience, and
 16 therefore, a temporary restraining order and preliminary injunction should be granted in The
 17 Freecycle Network's favor.

18 **C. The Balance of Hardships Weighs Strongly in Favor of The Freecycle
 19 Network**

20 Although there is no defined test for determining the balance of hardships, the Ninth
 21 Circuit has looked to the goodwill and reputation embodied in a trademark as relevant factors
 22 that affect the balance. *See Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394,
 23 1406 (9th Cir. 1997). As detailed above, The Freecycle Network has suffered, and continues to
 24 suffer, significant loss of goodwill and reputation due to Defendant's intentional inducement of
 25 others to infringe upon The Freecycle Network's distinctive Marks. Additionally, the Freecycle
 26 Network faces the possibility of losing its corporate sponsorship. *Beal Decl.*, ¶10 In contrast to
 27 the irreparable harm caused to The Freecycle Network should Defendant be allowed to continue
 28 his infringing activity, the proposed temporary restraining order and preliminary injunction will

1 cause Defendant only minimal inconvenience. In particular, Defendant will, in no way, be
2 prevented from engaging in further promotion of reusing, recycling, and gifting efforts even if he
3 cannot utilize The Freecycle Network's Marks. If this Court grants The Freecycle Network's
4 request for a preliminary injunction and temporary restraining order, Defendant will only be
5 prohibited from making false and defamatory statements that affect the hard-earned reputation
6 and goodwill of The Freecycle Network and its distinctive Marks. The Freecycle Network asks
7 only that Defendant be enjoined from intentionally misusing The Freecycle Network's Marks in
8 public fora, and from inducing others to do so with improper and tortious statements and
9 conduct. Accordingly, The Freecycle Network requests that the Court grant a temporary
10 restraining order and preliminary injunction in its favor.

11 **D. The Freecycle Network is Entitled to a Temporary Restraining Order**

12 A temporary restraining order is designed to preserve the status quo and prevent
13 irreparable injury until a Court can conduct a preliminary injunction hearing. See Granny Goose
14 Foods, Inc. v. Bhd. of Teamsters, 415 U.S. 423, 439 (1974). Accordingly, The Freecycle
15 Network has moved for a temporary restraining order covering the time between a hearing on
16 that request and a hearing on its motion for a preliminary injunction.

17 Because a temporary restraining order burdens a defendant less than a preliminary
18 injunction, the standard for issuing a temporary restraining order is equally or less stringent than
19 that for the granting of a preliminary injunction. See Stuhlberg Int'l Sales Co. v. John D. Brush
20 & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001). For the reasons explained above, The Freecycle
21 Network meets the requirements for a preliminary injunction, and is therefore entitled to a
22 temporary restraining order covering the time until the Court is able to schedule a hearing on the
23 motion for a preliminary injunction.

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IV. CONCLUSION

For the foregoing reasons, The Freecycle Network respectfully requests that this Court grant its *Ex Parte* Motion for Temporary Restraining Order and Motion for Preliminary Injunction.

Dated: April 19, 2006

DECONCINI MCDONALD YETWIN
& LACY, P.C. & PERKINS COIE LLP

By: _____ /s/

Attorneys for Plaintiff
The Freecycle Network, Inc.

Exhibit F

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

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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

~~PROPOSED~~

ORDER GRANTING THE FREecycle NETWORK, INC.'S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER

Date: April 24, 2006
Time: 2:00 p.m.
Before: Hon. Raner C. Collins
Location: Courtroom 5B

Upon considering Plaintiff The Freecycle Network, Inc.'s ("The Freecycle Network") *Ex Parte* Motion for Temporary Restraining Order ("Motion"), the Court having considered the materials and arguments presented to the Court in connection with the Motion, and it appearing from those materials and arguments that:

1. Defendant Tim Oey ("Defendant" or "Oey") has induced infringement of The Freecycle Network's intellectual property, including its trademarks.

2. Defendant has disparaged the Freecycle Network's intellectual property, including its trademarks.

3. Defendant has disseminated false and misleading statements regarding The Freecycle Network and its intellectual property, including its trademarks.

4. Defendant's conduct is causing immediate and irreparable harm to The

Counsel, RCC Copies _____

1 Freecycle Network's reputation, its ability to protect its trademarks, its goodwill, and its
2 ability to retain corporate sponsorship, and will continue to cause such immediate and
3 irreparable harm unless and until Defendant is temporarily restrained and enjoined from
4 continuing the acts complained of in the Motion.

5 IT IS HEREBY ORDERED that The Freecycle Network's Motion is granted as
6 follows:

7 Pursuant to Federal Rule of Civil Procedure 65, Defendant and his agents, servants
8 and employees and those persons in active concert and participation with Defendant who
9 received actual notice of this Temporary Restraining Order, are restrained and enjoined from
10 directly or indirectly inducing infringement of The Freecycle Network's intellectual property,
11 including its trademarks or any variation or imitation thereof, disparaging The Freecycle
12 Network's intellectual property, including its trademarks or any variation or imitation
13 thereof, and from disseminating false and misleading statements regarding The Freecycle
14 Network and its intellectual property, including its trademarks or any variation or imitation
15 thereof, for a period of time not to exceed ten (10) days, pending further briefing and oral
16 argument in this Court by The Freecycle Network's concurrently filed Motion for
17 Preliminary Injunction..

18 Dated this 24 day of April, 2006.



19
20
21 Presented by:
22 DeConcini McDonald Yetwin & Lacy, P.C.
23 & Perkins Coie LLP

24 By: _____ /s/
25 Attorneys for Plaintiff
26 The Freecycle Network, Inc.

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Exhibit G

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(CIVIL ORDER - MINUTE ENTRY)

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Case No.: CIV 06-173-TUC-RCC Date: April 24, 2006

Title: The Freecycle Network v. Tim Oey

HONORABLE RANER C. COLLINS

The Court has granted Plaintiff a Temporary Restraining Order pursuant to Rule 65(b) Fed.R.Civ.P. A hearing on whether the Court shall grant a preliminary injunction is set for Tuesday, May 9, 2006, at 3:00 p.m.



Raner C. Collins
United States District Judge


Counsel, RCC 

Exhibit H

FreecycleSunnyvale Request for Judicial Notice

Case No. C06-00324 CW
United States District Court
Northern District of California

**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
(Admitted pro hac vice)
PAUL J. ANDRE, CA Bar No. 196585
(pandre@perksincoie.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 and JANE DOE OEY,

Defendants.

CASE NO. 06-CV-00173-RCC

**DECLARATION OF ESHA
BANDYOPADHYAY IN SUPPORT OF
THE FREECYCLE NETWORK, INC.'S
EX PARTE MOTION FOR ORDER TO
SHOW CAUSE AGAINST
DEFENDANT TIM OEY REGARDING
CONTEMPT DUE TO FAILURE TO
COMPLY WITH TEMPORARY
RESTRAINING ORDER AND
SANCTIONS**

Date: May 9, 2006
Time: 3:00 p.m.
Before: Honorable Raner C. Collins
Location: Courtroom 5B

I, ESHA BANDYOPADHYAY, declare:

1. I am an attorney with the law firm of Perkins Coie LLP, counsel of record for plaintiff The Freecycle Network, Inc. ("The Freecycle Network"). I have personal knowledge of the facts set forth in this Declaration and can testify competently to those facts.
2. On April 24, 2006, this Court granted The Freecycle Network's *Ex Parte* Motion for Temporary Restraining Order. Specifically, this Court ordered that defendant Tim Oey ("Defendant" or "Oey") and his agents, servants and employees and those persons in active concert and participation with Oey are "restrained and enjoined from directly or indirectly inducing infringement of The Freecycle Network's intellectual property, including its trademarks or any variation or imitation thereof, disparaging The Freecycle Network's intellectual property, including its trademarks or any variation or imitation thereof, and from disseminating false and misleading statements regarding The Freecycle Network and its intellectual property, including its trademarks or any variation or imitation thereof." Attached to this Declaration as Exhibit 1 is a true and correct copy of the April 24, 2006 Order Granting The Freecycle Network's *Ex Parte* Motion for Temporary Restraining Order ("Order").
3. On April 28, 2006, I wrote to counsel for Oey, indicating that Oey had refused and failed to comply with this Court's Order, and requesting that Oey immediately comply with this Court's Order. Attached to this declaration as Exhibit 2 is a true and correct copy of my April 28, 2006, letter to Ian Feinberg (without attachments). With my letter, I included a posting from the Yahoo! group FCNext, moderated by Oey, in which Oey encourages others to infringe upon The Freecycle Network's trademarks and disparages the marks. Attached to this Declaration as Exhibit 3 is a true and correct copy of the posting from the Yahoo! group FCNext.
4. On May 1, 2006, I received a response from Mr. Dennis Corgill of Mr. Feinberg's office, indicating that their firm is not representing Oey as an individual. Attached to this declaration as Exhibit 4 is a true and correct copy of Mr. Corgill's May 1, 2006 letter.
5. On May 2, 2006, I wrote to Oey's local counsel, reiterating that Oey had refused and failed to comply with this Court's Order, and requesting that Oey immediately comply with

this Court's Order. Attached to this declaration as Exhibit 5 is a true and correct copy of my May 2, 2006, letter to Ashley Lynn Kirk. With my letter, I included a copy of the posting discussed above.

6. To date, Oey's posting on the Yahoo! group FCNext encouraging others to misuse The Freecycle Network's trademarks remains posted on the Yahoo! group. Attached to this Declaration as Exhibit 6 is a true and correct copy of the posting from the Yahoo! group FCNext with a date stamp of May 2, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Menlo Park, California on May 2, 2006.

By: _____/s/
Esha Bandyopadhyay

Attorney for Plaintiff
The Freecycle Network, Inc.

EXHIBIT 1

BANDYOPADHYAY DECLARATION IN SUPPORT OF *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OEY REGARDING
CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING
ORDER AND SANCTIONS

1 Freecycle Network's reputation, its ability to protect its trademarks, its goodwill, and its
2 ability to retain corporate sponsorship, and will continue to cause such immediate and
3 irreparable harm unless and until Defendant is temporarily restrained and enjoined from
4 continuing the acts complained of in the Motion.

5 IT IS HEREBY ORDERED that The Freecycle Network's Motion is granted as
6 follows:

7 Pursuant to Federal Rule of Civil Procedure 65, Defendant and his agents, servants
8 and employees and those persons in active concert and participation with Defendant who
9 received actual notice of this Temporary Restraining Order, are restrained and enjoined from
10 directly or indirectly inducing infringement of The Freecycle Network's intellectual property,
11 including its trademarks or any variation or imitation thereof, disparaging The Freecycle
12 Network's intellectual property, including its trademarks or any variation or imitation
13 thereof, and from disseminating false and misleading statements regarding The Freecycle
14 Network and its intellectual property, including its trademarks or any variation or imitation
15 thereof, for a period of time not to exceed ten (10) days, pending further briefing and oral
16 argument in this Court by The Freecycle Network's concurrently filed Motion for
17 Preliminary Injunction..

18 Dated this 24 day of April, 2006.



19
20
21 Presented by:
22 DeConcini McDonald Yetwin & Lacy, P.C.
23 & Perkins Coie LLP

24 By: _____ /s/
25 Attorneys for Plaintiff
The Freecycle Network, Inc.

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EXHIBIT 2

BANDYOPADHYAY DECLARATION IN SUPPORT OF *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM O'LEY REGARDING
CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING
ORDER AND SANCTIONS



Esha Bandyopadhyay
PHONE: 650.838.4355
FACSIMILE: 650.838.4555
EMAIL: ebandyopadhyay@perkinscoie.com

101 Jefferson Drive
Menlo Park, CA 94025-1114
PHONE: 650.838.4300
FAX: 650.838.4350
www.perkinscoie.com

April 28, 2006

Via Facsimile (650-331-2060) and U.S. Mail

Ian N. Feinberg
MAYER, BROWN, ROWE & MAW LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, California 94306-2112

Re: *The Freecycle Network, Inc. v. Tim Oey*, Case No. 06-CV-00173-RCC

Dear Ian:

I am writing to address your client Tim Oey's ("Mr. Oey") failure to comply with the Court's Order Granting The Freecycle Network, Inc.'s *Ex Parte* Motion for Temporary Restraining Order ("Order") in the above-captioned case. As you are aware, the Court has specifically ordered that Mr. Oey and his agents, servants and employees and those persons in active concert and participation with Mr. Oey are "restrained and enjoined from directly or indirectly inducing infringement of The Freecycle Network's intellectual property, including its trademarks or any variation or imitation thereof, disparaging The Freecycle Network's intellectual property, including its trademarks or any variation or imitation thereof, and from disseminating false and misleading statements regarding The Freecycle Network and its intellectual property, including its trademarks or any variation or imitation thereof."

It has been brought to our attention that Mr. Oey has failed to comply with the Court's order, and continues to engage in activity from which he has been restrained and enjoined on at least the following Web sites: Mr. Oey's home page, located at <http://oeyweb.com/timoey/>, Mr. Oey's Web log ("blog"), located at <http://www.blogger.com/profile/19380816>, the Yahoo! group FreecycleSunnyvale, located at <http://groups.yahoo.com/group/freecyclesunnyvale/>, the Yahoo! group SunnyvaleFree, located at <http://groups.yahoo.com/group/sunnyvalefree/>, and the Yahoo! group FCNext, located at <http://groups.yahoo.com/group/fcnext/>. Copies of these Web pages and/or posts from these Web pages are hereby attached for your convenience.

Since Mr. Oey has the ability to remove or modify the above-mentioned Web sites, or posts contained on these Web sites, we request that Mr. Oey immediately comply with the Court's order by removing the aforementioned Web sites, or postings contained on these Web sites, and any other similar publications or Web pages. Should Mr. Oey fail to comply

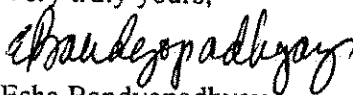
[BY061180.096]

Ian N. Feinberg
MAYER, BROWN, ROWE & MAW LLP
April 28, 2006
Page 2

with the Court's Order immediately, we will have no choice but to request relief from the Court.

We look forward to your anticipated cooperation. Please feel free to contact me should you have any questions or concerns regarding this or any other matter.

Very truly yours,



Esha Bandyopadhyay

EB:ls

Enclosures

EXHIBIT 3

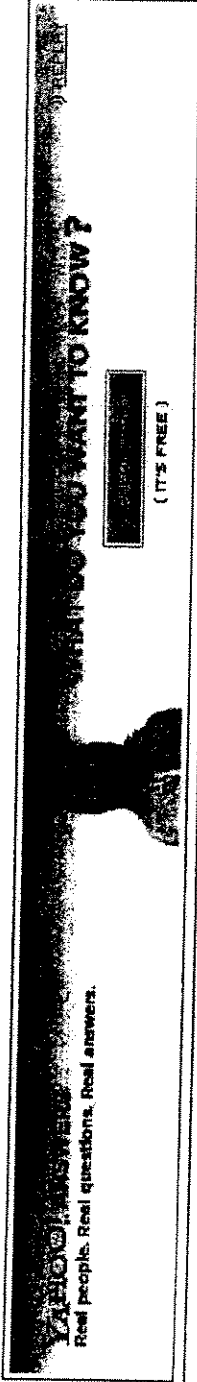
BANDYOPADHYAY DECLARATION IN SUPPORT OF *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM O'BY REGARDING
CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING
ORDER AND SANCTIONS

Yahoo! My Yahoo! Mail Make Yahoo! your home page

YAHOO! GROUPS Sign In New User? Sign Up

Search the Web

Groups Home - Help



fcnext · Free Recycling - The Next Generation

- Home
- Messages
- Members Only
- Post
- Chat
- Files
- Photos
- Links
- Database
- Polls
- Calendar
- Promote

Messages

Messages Help

Message # Search:

Up Thread | Message Index | View Source | Unwrap Lines

Message 3171 of 5309 < Previous | Next >

reduce_reuse...
Offline
Send Email

Reply Forward

From: Tim Oey <timoe@...>
Date: Thu Feb 23, 2006 5:55 pm
Subject: Let your voices be heard...

Many of us know that TFN is already a bit crazy in trying to clamp down on free speech freedoms, but now is a great time to further the cause and keep freecycle free for everyone forever (and drive TFN even crazier).

What you can do on your own:

1) Using TFN's directory, please contact all the freecycle groups in your state and surrounding states to let them know that freecycle is a generic term. Ask them to visit <http://greenribbon.us> for more information. There is no need to be that organized about it but if you think you have a state well covered, please post a note to fcnext. You'll need to dribble the mails out a few at a time and by as many people as possible to get around Yahoo's intricate group owner spam catchers. Make all your emails unique -- don't repeat exactly the same contents or subject, etc.

2) If you currently have a group within TFN, either take it out of TFN and tell all your members that freecycling should stay free or do comply initially with

Already a member?
Sign in to Yahoo!

Yahoo! Groups Tips
Did you know...
Commiserate with other parents. Find a Parents

Group:

Yahoo! 360°

Keep connected to your friends and family through blogs, photos and more. Create your own 360° page now.

TFN's request so that your group is not deleted but then later sprinkle freecycling around your group and other groups so the free grassroots movement continues to be free (this is likely to really drive TFN nuts). Let more people know about <http://greenribbon.us>

3) Do give TFN GOAs a hard time because they are doing bad things by limiting free speech. Free speech is very important. Let everyone know that TFN does not need to control freecycling for TFN to be successful.

4) Get your freecycling is free statements to Eric for posting on <http://greenribbon.us>

5) Let others know that freecycling is a wonderful thing that people can do via Google, Craigslist, Yahoo Groups, any email list, or however they wish -- even just leaving stuff out on the curb with a "Free" or "Freecycle this" note attached.

Spread the word and let the word be free.

Enjoy!

Cheers,
Tim

Replies	Author	Date
3190	If I told ya..... belhaven_lass	Feb 24, 2006 1:18 am
3314	Re: Let your voices be heard... Hi Lass, The courts will get to it eventually. How is encouraging others to...	Feb 27, 2006 7:00 am
3336	Re: Let your voices be heard...	Feb 27, 2006 1:11 pm

fcnext : Message: Let your voices be heard...

Page 3 of 3

3348

i second tim's post...educating others is a necessity in any grassroots ...

existentialista

Free cycle Recycle
freecycos

Feb 27, 2006
2:47 pm

Re: Let your voices be heard...
I think I've made my intent known when it comes to FreeSpeech :-) FreeCycos ...

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Message # Search:

Reply Forward

Message 3171 of 5309 < Previous | Next >

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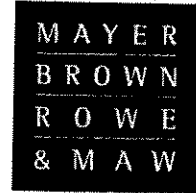
Blue Ribbon for Gift Wrapping - Blue ribbon plus many other assorted colors and sizes of gift wrapping ribbons, bows and raffia.
www.buygifribbon.com

Blue Ribbon Design - Letterpress greeting cards, invitations and announcements.
www.blueribbondesign.com

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EXHIBIT 4

BANDYOPADHYAY DECLARATION IN SUPPORT OF *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM OUY REGARDING
CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING
ORDER AND SANCTIONS



May 1, 2006

VIA FACSIMILE (650.838.4350) and U.S. MAIL

Esha Bandyopadhyay
Perkins Coie LLP
101 Jefferson Drive
Menlo Park, CA 94025-1114

Re: *The Freecycle Network, Inc. v. Tim Oey and
Jane Doe Oey*

Mayer, Brown, Rowe & Maw LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, California 94306-2112

Main Tel (650) 331-2000
Main Fax (650) 331-2060
www.mayerbrownrowe.com

Dennis S. Corgill
Direct Tel (650) 331-2058
Direct Fax (650) 331-4558
dcorgill@mayerbrownrowe.com

Dear Esha:

This letter responds to your letter dated April 28, 2006, concerning Tim Oey and the temporary restraining order issued by Judge Collins on April 24, 2006 ("TRO").

First, please understand that we represent FreecycleSunnyvale. We do not represent Tim Oey as an individual.

Second, as counsel for FreecycleSunnyvale, we can assure you that FreecycleSunnyvale and its members intend to comply fully with the TRO.

Third, as counsel for FreecycleSunnyvale, we disagree with your interpretation of the TRO. The TRO requires Tim Oey and persons who participate with him to refrain from future conduct. The TRO does not compel action or apply to past conduct. TFN knew about all of the internet postings attached to your letter before TFN filed its lawsuit in Arizona, but TFN failed to draft a proposed order that compels any action with respect to the TRO.

Fourth, on review, we do not understand how any of the contents of the attachments to your letter, even if attributed FreecycleSunnyvale, violate the TRO. We would appreciate your help in identifying which portions of which attachments violate which specific portions of the TRO.

I look forward to your response and to cooperating with you to assure that FreecycleSunnyvale and its members comply with the TRO. Or, we would be happy to take this matter up with Judge Collins before the hearing scheduled for May 9, 2006.

Very truly yours,

A handwritten signature in black ink that reads "Dennis S. Corgill".

Dennis S. Corgill

Berlin Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete y Nader S.C.

Mayer, Brown, Rowe & Maw LLP operates in combination with our associated English limited liability partnership in the offices listed above.
44020055

EXHIBIT 5

BANDYOPADHYAY DECLARATION IN SUPPORT OF *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM O'LEARY REGARDING
CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING
ORDER AND SANCTIONS



Esha Bandyopadhyay
PHONE: 650.838.4355
FACSIMILE: 650.838.4555
EMAIL: ebandyopadhyay@perkinscoie.com

101 Jefferson Drive
Menlo Park, CA 94025-1114
PHONE: 650.838.4300
FAX: 650.838.4350
www.perkinscoie.com

Via Facsimile (520-882-7643) and First Class Mail

May 2, 2006

Ashley Lynn Kirk
Hayes Soloway PC
3450 E Sunrise Dr
Ste 140
Tucson, AZ 85718

Re: *The Freecycle Network v. Tim Oey, et al.*
Case No. CV 06-173-RCC

Dear Ms. Kirk:

The substance of this letter repeats what was faxed to Ian Feinberg of Mayer, Brown, Rowe & Maw LLP ("Mayer Brown") on April 28, 2006, a copy of which is attached for your convenience. Today we received a letter from Dennis Corgill, also of Mayer Brown, stating that Mayer Brown does not represent Tim Oey in this action, although Mr. Feinberg appeared telephonically on Mr. Oey's behalf at the hearing on April 24, 2006. It is now our understanding that you are the sole legal representative of Tim Oey ("Mr. Oey") and Jane Doe Oey in the above-referenced action and on that basis, we reiterate to you what we have already communicated to Mr. Feinberg.

Specifically, I am writing to address Mr. Oey's failure to comply with the Court's Order Granting The Freecycle Network, Inc.'s *Ex Parte* Motion for Temporary Restraining Order ("Order") in the above-captioned case. As you are aware, the Court has specifically ordered that Mr. Oey and his agents, servants and employees and those persons in active concert and participation with Mr. Oey are "restrained and enjoined from directly or indirectly inducing infringement of The Freecycle Network's intellectual property, including its trademarks or any variation or imitation thereof, disparaging The Freecycle Network's intellectual property, including its trademarks or any variation or imitation thereof, and from disseminating false and misleading statements regarding The Freecycle Network and its intellectual property, including its trademarks or any variation or imitation thereof."

It has been brought to our attention that Mr. Oey has failed to comply with the Court's order, and continues to engage in activity from which he has been restrained and enjoined. In particular, as mentioned in my letter of April 28th, the Yahoo! group FCNext, located at <http://groups.yahoo.com/group/fcnext>, continues to include a posting from Mr. Oey encouraging others to infringe upon The Freecycle Network's marks. As you are aware,

BY061210.208

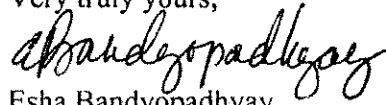
Ashley Lynn Kirk
Hayes Soloway PC
May 2, 2006
Page 2

a copy of this post was attached as Exhibit G to The Freecycle Network's underlying complaint against Tim Oey in this matter, and specifically raised by counsel for The Freecycle Network at the April 24th hearing. An additional copy of this post is hereby attached for your convenience.

Since Mr. Oey has the ability to remove or modify the above-mentioned Web site, or posts contained on this Web site, we request that Mr. Oey immediately comply with the Court's order by removing the aforementioned Web site, or postings contained on this Web site, and any other similar publications or Web pages. Should Mr. Oey fail to comply with the Court's Order immediately, we will have no choice but to request relief from the Court.

We look forward to your anticipated cooperation. Please feel free to contact me should you have any questions or concerns regarding this or any other matter.

Very truly yours,



Esha Bandyopadhyay

EB:ls

Enclosures

EXHIBIT 6

BANDYOPADHYAY DECLARATION IN SUPPORT OF *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE AGAINST DEFENDANT TIM O'LEY REGARDING
CONTEMPT DUE TO FAILURE TO COMPLY WITH TEMPORARY RESTRAINING
ORDER AND SANCTIONS

fcnext : Message: Let your voices be heard...

Page 1 of 3

Yahoo! My Yahoo! Mail Make Yahoo! your home page

YAHOO! GROUPS Sign In
New User? Sign Up

Search the Web

Search

Search the Web

Soft Rock
Coffeehouse
Love Songs

SEDUCTIVE

Y-MUSIC.COM

TUNE IN

fcnext · Free Recycling - The Next Generation

Messages

Home
Messages

Members Only

- Post
- Chat
- Files
- Photos
- Links
- Database
- Polls
- Calendar
- Promote

Already a member?
Sign up to Yahoo!

Yahoo! Groups Tips

Did you know...
Your group can all chat together with free online

Message # Go Search

Up Thread | Message Index | View Source | Unwrap Lines

Message 3171 of 5411

Reply Forward

From: Tim Oey <timooey@...>

Date: Thu Feb 23, 2006 5:55 pm

Subject: Let your voices be heard...

Many of us know that TFN is already a bit crazy in trying to clamp down on free speech freedoms, but now is a great time to further the cause and keep freecycle free for everyone forever (and drive TFN even crazier).

What you can do on your own:

1) Using TFN's directory, please contact all the freecycle groups in your state and surrounding states to let them know that freecycle is a generic term. Ask them to visit <http://greenribbon.us> for more information. There is no need to be that organized about it but if you think you have a state well covered, please post a note to fcnext. You'll need to dribble the mails out a few at a time and by as many people as possible to get around Yahoo's intricate group owner spam catchers. Make all your emails unique -- don't repeat exactly the same contents or subject, etc.

2) If you currently have a group within TFN, either take it out of TFN and tell all your members that freecycling should stay free or do comply initially with

reduce reuse...
Offline
Send Email

fcnext : Message: Let your voices be heard...

conferences in Yahoo!
Messenger with Voice.
2006-02-24 10:05:00 AM

TFN's request so that your group is not deleted but then later sprinkle freecycling around your group and other groups so the free grassroots movement continues to be free (this is likely to really drive TFN nuts). Let more people know about <http://greenribbon.us>

Yahoo! 360

Keep connected to your friends and family through blogs, photos and more.
Create your own 360 page now.

3) Do give TFN GOAs a hard time because they are doing bad things by limiting free speech. Free speech is very important. Let everyone know that TFN does not need to control freecycling for TFN to be successful.

4) Get your freecycling is free statements to Eric for posting on <http://greenribbon.us>

5) Let others know that freecycling is a wonderful thing that people can do via Google, Craigslist, Yahoo Groups, any email list, or however they wish -- even just leaving stuff out on the curb with a "Free" or "Freecycle this" note attached.

Spread the word and let the word be free.

Enjoy!

Cheers,
Tim

	Replies	Author	Date
3190	<p>Re: Let your voices be heard... I don't think any of that is a good idea. Why not let the courts decide it? By...</p>	<p>If I told ya..... beihaven_lass ☺</p>	<p>Feb 24, 2006 1:18 am</p>
3314	<p>Re: Let your voices be heard... Hi Lass, The courts will get to it eventually. How is encouraging others to...</p>	<p>Tim Oey reduce_reuse... ☺</p>	<p>Feb 27, 2006 7:00 am</p>
3336	<p>Re: Let your voices be heard...</p>	<p>xtina (freecycle mode...)</p>	<p>Feb 27, 2006 1:11 pm</p>

fcnext : Message: Let your voices be heard...

i second tim's post...educating others is a necessity in any grassroots ...

existentialistka

3348

Re: Let your voices be heard...
I think I've made my intent known when it comes to
FreeSpeech :-)) FreeCyclo ...

Free cycle Recycle

freecyclo

Feb 27, 2006
2:47 pm

Forward

Reply

Message 3171 of 5411

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Search

Go

Message #

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