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 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT**
 12 **OAKLAND DIVISION**

13 FREECYCLESUNNYVALE,
 a California unincorporated association,

14 Plaintiff,

15 v.

16 THE FREECYCLE NETWORK,
 an Arizona corporation,

17 Defendant.

Case No. C06-00324 CW

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF COUNTERDEFENDANT
 FREECYCLESUNNYVALE'S MOTION
 TO DISMISS COUNTERCLAIMS
 UNDER FED.R.CIV.P. 12(b)(6);
 MOTION TO STRIKE STATE-LAW
 COUNTERCLAIM UNDER CAL. CIV.
 PROC. § 425.16; AND MOTION TO
 STRIKE IMMATERIAL
 ALLEGATIONS UNDER FED.R.CIV.P.
 12(f)**

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 21 THE FREECYCLE NETWORK, INC., an
 Arizona Corporation,

22 Counterclaimant,

23 v.

24 FREECYCLESUNNYVALE, a California
 unincorporated association,

25 Counterdefendant.
 26

Date: October 6, 2006
 Time: 10:00 a.m..
 Before: Hon. Claudia Wilken
 Location: Courtroom 2, 4th Floor

INTRODUCTION

1
2 Plaintiff and Counterdefendant FreecycleSunnyvale respectfully requests this Court to
3 take judicial notice of court records from the United States Patent and Trademark Office under
4 FED.R.EVID. 201. In its amended counterclaims, Defendant and Counterclaimant The Freecycle
5 Network, Inc., (“TFN”) made allegations regarding the status of its trademark registration
6 application. The Freecycle Network, Inc.’s Answer to Plaintiff’s Amended Complaint and
7 Amended Counterclaims ¶¶ 68, 84 (filed Aug. 8, 2006; Document 46). TFN filed its trademark
8 registration application on August 27, 2004, seeking registration of a logo presenting a stylized
9 version of “freecycle.” Trademark/Service Mark Application, Principal Register, Serial No.
10 78/475,113 (administrative file available at <http://www.uspto.gov>). This Court should take
11 judicial notice of USPTO records in order to have the benefit of the administrative records to
12 which TFN referred in its amended counterclaims.

13 This Court may take judicial notice of USPTO records pertaining to these applications
14 under FED.R.EVID. 201(b), which permits judicial notice of facts that are not subject to
15 reasonable dispute because those facts are “generally known” or “capable of accurate and ready
16 determination.” The public record in the USPTO pertaining to TFN’s trademark registration
17 application is not reasonably subject to dispute. In addition, the Ninth Circuit has specifically
18 held that courts “may take judicial notice of records and reports of administrative bodies.”
19 *Interstate Natural Gas Co. v. southern California Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953).
20 *See also Transmission Agency of Northern California v. Sierra Pacific Power Co.*, 295 F.3d 918,
21 924 n.3 (9th Cir. 2002) (taking judicial notice of FERC decision still subject to administrative
22 and judicial review). *Cf. Hoganas AB v. Dresser Industries*, 9 F.3d 948, 954 n.27 (Fed. Cir.
23 1994) (taking judicial notice of patent not in appeal record but referenced at argument); *Standard*
24 *Havens Products, Inc. v. Gencor Industries, Inc.*, 897 F.2d 511, 514 n.3 (Fed. Cir. 1990) (taking
25 judicial notice of first office action in patent reexamination).

REQUEST FOR JUDICIAL NOTICE

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27 Appellants respectfully request that this court take judicial notice of the following
28 USPTO administrative records concerning TFN’s trademark registration application and

