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

13
 14 FREECYCLESUNNYVALE, a California
 unincorporated association,

15
 16 Plaintiff/Counterdefendant,

17 v.

18 THE FREECYCLE NETWORK, INC., an
 Arizona corporation,

19
 20 Defendant/Counterclaimant.

CASE NO. C 06-00324 CW

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF THE FREECYCLE
 NETWORK, INC.'S OPPOSITION TO
 FREECYCLESUNNYVALE'S MOTIONS TO
 DISMISS COUNTERCLAIMS UNDER
 FED.R.CIV.P. 12(b)(6) AND TO STRIKE
 STATE-LAW COUNTERCLAIM UNDER
 CAL. CODE CIV. PROC. § 425.16**

21
 22 AND RELATED COUNTERCLAIMS
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INTRODUCTION

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2 Defendant/Counterclaimant The Freecycle Network, Inc. ("The Freecycle Network")
3 respectfully requests this court to take judicial notice of court records from the United States
4 Patent and Trademark Office under FED. R. EVID. 201. In its Request for Judicial Notice (Docket
5 No. 49), Plaintiff/Counterdefendant FreecycleSunnyvale ("Counterdefendant") did not present the
6 complete file history of the Trademark/Service Mark Application, Principal Register, Serial No.
7 78/475,113 (administrative file available at <http://www.uspto.gov>). Also, Counterdefendant has
8 raised an issue of materiality with respect to the PTO's proceedings and seeking to strike The
9 Freecycle Network's allegations made in its counterclaims. In order to have the benefit of the
10 complete file history and in order for The Freecycle Network to adequately respond to
11 Counterdefendant's motion, this Court should take judicial notice of PTO records.

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

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REQUEST FOR JUDICIAL NOTICE

The Freecycle Network respectfully requests this Court that take judicial notice of the PTO administrative records concerning The Freecycle Network's trademark registration application file history attached to this request as Exhibit 1.

DATED: September 15, 2006

PERKINS COIE LLP

By /s/ Lisa Kobialka
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