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8 Attorneys for Plaintiff
FREECYCLESUNNYVALE,

9
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,
17 an Arizona corporation,

18 Defendant.

19 THE FREECYCLE NETWORK, INC., an
20 Arizona Corporation,

21 Counterclaimant,

22 v.

23 FREECYCLESUNNYVALE, a California
unincorporated association,

24 Counterdefendant.
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27
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Case No. C06-00324 CW

**DECLARATION OF TIMOTHY OEY IN
SUPPORT OF PLAINTIFF AND
COUNTERDEFENDANT
FREECYCLESUNNYVALE'S MOTION
FOR SUMMARY ADJUDICATION**

Date: August 23, 2007
Time: 2:00 p.m.
Before: Hon. Claudia Wilken
Location: Courtroom 2

1 I, Timothy Oey, declare as follows:

2 1. I am a resident of Sunnyvale, California, and I am a member of
3 FreecycleSunnyvale, a California unincorporated association that is the Plaintiff and
4 Counterclaimant in the above-captioned lawsuit. I know the following facts of my own
5 knowledge and, if called as a witness, could and would competently testify to the following facts.

6 2. I first heard about freecycling in January 2004. As a strong environmental
7 advocate, I knew that freecycling was a great thing and I wanted to get involved.

8 3. Freecycling is a practice where someone, who has an item that he or she no longer
9 wants, gives that item for free to someone who wants the item so that the item continues to be
10 used rather than ending up as trash in a landfill. A true and correct copy of World Wide Word's
11 definition of freecycling as of February 21, 2004 is attached to this Declaration as Exhibit A. A
12 true and correct copy of Answers.com's definition of freecycling as of October 17, 2004 is
13 attached to this Declaration as Exhibit B. A true and correct copy of Langmaker.com's definition
14 of freecycle as of April 7, 2006 is attached to this Declaration as Exhibit C. A true and correct
15 copy of Wiktionary's definition of freecycle as of March 25, 2007 is attached to this Declaration
16 as Exhibit D.

17 4. Freecycling is predominantly a local activity. Items that are freecycled can be
18 large, such as furniture. Because of the difficulty of transporting some items that are freecycled,
19 exchanges often are made between people who live in the same local area.

20 5. Using an online group or email discussion list to conduct freecycling makes it
21 easier. One challenge in freecycling is to find a person who will take an unwanted item or who
22 wants to freecycle a particular kind of item. With an online group or email discussion group, you
23 can inform many people at the same time about what is available or wanted. An online group
24 provides an easy way to send email to a large group of people without needing to know each
25 person's email address.

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1 6. It is relatively easy to participate in an online freecycling group. Anyone can find
2 a local online freecycle group by using Google or another internet search engine and using
3 search terms "freecycle" and the name of the local community.

4 7. Once a person finds an online freecycling group, that person can participate by
5 becoming either a member, a moderator, or an owner. Members of an online group are people
6 who chose to belong to the group or email list. Members receive all of the email messages that
7 are posted by other members to the group.

8 8. Moderators of a group or email list are more experienced members who watch
9 over the group -- helping members with questions and helping the group stay on topic -- in the
10 case of freecycling groups this means to help ensure posts to the group are about offering or
11 wanting things for free. Moderators often help reduce spam on the group by adjusting group
12 settings. Based upon my experience as a member and moderator of many online discussion
13 groups since the late 1980s, my understanding is that the usual practice for moderators of
14 Internet online groups is to make up or adopt rules or guidelines as they see fit for their own
15 groups.

16 9. Owners of a group are moderators with full access rights to all group settings.
17 Owners promote members of their choosing to be moderators of a group so that they have help in
18 moderating the group. Owners can also promote members or moderators to owner status. The
19 terms "member" and "moderator" are widely used by many people on the Internet who
20 participate in online discussion groups or email lists. The term "owner" is used more specifically
21 in this context by the "Yahoo! Group" online group service provided by Yahoo! Inc.

22 10. I joined the online freecycling movement when I became a member of
23 freecyclesunnyvale, an online freecycling group, on January 28, 2004.

24 11. I became a moderator and co-owner the freecyclesunnyvale online group on
25 January 29, 2004. A true and correct copy of the email notifying me of this is attached to this
26 Declaration as Exhibit E.

1 12. FreecycleSunnyvale (with an upper case "F" and "S") refers to the volunteers who
2 moderate a Yahoo! online group (group moderators) for Sunnyvale, California. I am one of those
3 volunteers. The online group itself was named freecyclesunnyvale (with a lower case "f" and
4 "s"). FreecycleSunnyvale operated the Yahoo! online group named freecyclesunnyvale until
5 November 21, 2005, when Yahoo! terminated this online group account at the behest of The
6 Freecycle Network ("TFN"). The freecyclesunnyvale group had approximately 2200 members
7 when it was deleted. A true and correct copy of freecyclesunnyvale's main page reflecting the
8 number of members as of September 30, 2005 is attached to this Declaration as Exhibit F.

9 13. The moderators who belong to FreecycleSunnyvale assist individuals in the local
10 Sunnyvale area by providing an online freecycling group where members of that group can
11 freecycle unwanted items. To freecycle an unwanted item on an online group such as
12 freecyclesunnyvale, an individual (a) sends an "offer" email to an online group, (b) the "offer"
13 email is posted on the group's home page and relayed to members, (c) individuals who want the
14 item reply to the "offer" email, (d) the individual offering the item arranges an exchange with
15 one of the individuals wanting the item, and (e) the exchange is done. These procedures are
16 described in an "etiquette" document -- a set of instructions as to how members can use an online
17 freecycling group. A true and correct copy of freecyclesunnyvale's freecycling etiquette as of
18 July 1, 2004 is attached to this Declaration as Exhibit G.

19 14. When I first joined freecyclesunnyvale as a member, I did not know that TFN
20 existed. Freecycling was simply a popular grassroots movement, involving numerous local
21 online freecycle groups.

22 15. When I became a moderator of freecyclesunnyvale, I was unaware of any
23 restrictions, requirements, or conditions to become a freecycle moderator; to use the word
24 "freecycle", the phrase "The Freecycle Network", or the TFN logo (a stylized presentation of the
25 word "freecycle" using the Ravie font, a bicycle and a guitar). I was also unaware of any
26 requirement for the group or myself to be inspected or monitored to make sure that we were
27 noncommercial or that all postings were free, legal, and appropriate for all ages.

1 16. After I became a moderator of freecycle sunnyvale, I learned about and was added
2 to the "freecycle modsquad" Yahoo! online discussion group -- generally known as the
3 "modsquad." The modsquad was where freecycle moderators discussed freecycling issues. I
4 received my first modsquad email on February 3, 2004. A true and correct copy of this email is
5 attached to this Declaration as Exhibit H.

6 17. The modsquad was a forum in which one freecycle moderator would raise a
7 discussion point, other moderators would chime in as they saw fit, and everyone would learn and
8 reach their own conclusion from what was discussed. Moderators shared their ideas and others
9 were free to use or not use what was discussed.

10 18. Moderators were not required to join the modsquad. It was optional.

11 19. The volume of email on the modsquad was frequently overwhelming. Although at
12 times I was a frequent participant on the modsquad, there were many modsquad emails that I
13 never read. Nonetheless, I probably have a copy of every email exchanged on the modsquad
14 from February 3, 2004 until September 23, 2005 because my email program automatically
15 downloaded them to my computer and I chose to retain them. Even this process might have
16 missed a few because occasionally Yahoo! Groups had email delivery problems where some
17 emails were lost.

18 20. Discussion of issues and guidelines occurred fairly frequently on the modsquad.
19 In particular, there was much confusion around the requirement that items posted for freecycling
20 should be "free, legal, and appropriate for all ages." This phrase often appeared in the etiquette
21 that was found on the home page of online freecycling groups. This phrase was more of a
22 guideline, as it was generally left to the moderators to figure out what was meant by "free, legal,
23 and appropriate for all ages" and to apply their own standard.

24 21. On May 24, 2004 there was a discussion on the modsquad about whether
25 spanking paddles should be allowed. Participants on the modsquad known as Rhonda, Misty,
26 David, and shrikethe were either uncertain, in favor, or against the idea. A true and correct copy
27 of a part of this email exchange is attached to this Declaration as Exhibit I. I am unaware that
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1 TFN, Deron Beal (TFN's Executive Director), or any one on TFN's behalf ever stated that TFN
2 had a policy on whether spanking paddles were "appropriate for all ages."

3 22. On May 25, 2004 a new moderator was looking for help on the modsquad but no
4 one replied to this person to a post she had made 2 days earlier. A true and correct copy of this
5 email is attached to this Declaration as Exhibit J. Later that day, Deron Beal (TFN's Executive
6 Director), replied:

7 Dear new mod of Mt. Hood,
8 We're all volunteers doing the best we can.
9 It's easy to assume someone else has answered a question with so
10 many people. But, we are all busy too.
11 I highly recommend you also seek a one-on-one direct mentor with
12 a neighboring group mod who has been active for a while in
13 addition to the great help you will surely also find here.

14 A true and correct copy of this email is attached to this Declaration as Exhibit K.

15 23. On May 25, 2004, a discussion occurred on the modsquad around whether it was
16 ok to freecycle leather wrist straps. Some moderators thought it was ok, some did not. A true and
17 correct copy of a part of this email exchange is attached to this Declaration as Exhibit L. I am
18 unaware that TFN, Deron Beal (TFN's Executive Director), or any one on TFN's behalf ever
19 stated that TFN had a policy on whether leather wrist straps were "appropriate for all ages."

20 24. On Sept 14, 2004, a discussion occurred on the modsquad around whether it was
21 ok to freecycle a service from an artist. Some moderators thought it was ok, some did not. A true
22 and correct copy of a part of this email exchange is attached to this Declaration as Exhibit M. I
23 am unaware that TFN, Deron Beal (TFN's Executive Director), or any one on TFN's behalf ever
24 stated that TFN had a policy on whether an artist's services were appropriate for freecycling.

25 25. On May 30, 2005, a discussion occurred on the modsquad around whether it was
26 ok to freecycle syringes. Some moderators were not certain, others thought it was ok. A true and
27 correct copy of a part of this email exchange is attached to this Declaration as Exhibit N. I am
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1 unaware that TFN, Deron Beal (TFN's Executive Director), or any one on TFN's behalf ever
2 stated that TFN had a policy on whether syringes were "appropriate for all ages."

3 26. On May 30, 2005, a discussion occurred on the modsquad around whether it was
4 ok to freecycle archery equipment. Some moderators were not certain, some said no, others
5 thought it was ok. A true and correct copy of a part of this email exchange is attached to this
6 Declaration as Exhibit O. The following day, Deron Beal (TFN's Executive Director) sent an
7 email about archery equipment to the modsquad. A true and correct copy of this email reply is
8 attached to this Declaration as Exhibit P. From reading this email I am not certain whether
9 archery equipment was allowed or not. I am unaware that TFN, Deron Beal (TFN's Executive
10 Director), or any one on TFN's behalf ever positively stated that TFN had a policy on whether
11 archery equipment was "appropriate for all ages."

12 27. In approximately June of 2004, I updated files on the freecyclesunnyvale home
13 page to include the etiquette that appears in what has already been attached to this Declaration as
14 Exhibit G. This was the first etiquette on freecyclesunnyvale that included the phrase, "free,
15 legal, and appropriate for all ages," and that was sent to the entire membership on a monthly
16 basis, starting July 1, 2004.

17 28. During late 2004 and early 2005, I was a senior TFN volunteer helping out in
18 numerous ways: (i) New Group Approver ("NGA") for California, (ii) a member of Mr. Beal's
19 core planning team, (iii) leader of the New Webpage Planning Team ("NWPT"), (iv) leader of
20 FreecycleNext (an online discussion group about the future of freecycling), (v) primary author of
21 TFN's trademark guidelines, and (vi) core team member of the Penguin Patrol (a group that
22 helped to educate moderators on trademark matters).

23 29. During 2004 and early 2005, I was unaware of any TFN officials inspecting
24 existing groups to make sure they were following any particular guidelines or rules concerning
25 remaining noncommercial, or only posting items that are free, legal, and appropriate for all ages.

26 30. During 2004 and early 2005, I was unaware of any TFN officials inspecting
27 existing groups to make sure they were operating in any particular way. For example, on May
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1 31, 2004, Deron Beal, the lead TFN volunteer at the time and later the Executive Director of
2 TFN, sent an email to the modsquad that reflected the then current reality around setting up and
3 running freecycle groups saying: "2) One new mod currently can still start up several new groups
4 at once and it ends up a mess. 3) A new mod is pretty much on their own now." A true and
5 correct copy of this email is attached to this Declaration as Exhibit Q.

6 31. On September 6, 2004, I received an email from Mr. Beal notifying me that I had
7 been selected as the New Group Approver ("NGA") for California. A true and correct copy of
8 this email is attached to this Declaration as Exhibit R.

9 32. This email marked the start of the NGA program. An NGA was a person who
10 reviewed new groups to see if the group was ok to be listed on freecycle.org. OK meant (a) no
11 group already covered the new group's geographic area already, (b) the new group did not cover
12 too large or small an area, (c) no typos in the TFN database entry pointing to the group (state
13 spelled correctly, and the internet address, or "URL," to the group was correct), (d) group
14 already up and running according to freecycle standards (which did not entail reviewing posts to
15 make sure they were "free, legal, and appropriate for all ages"), (e) ersatzfriend@freecycle.org (a
16 fictitious person who, in reality, was TFN) was a co-owner in case the original owner gets locked
17 out of his or her own group for some reason.

18 33. While I served as an NGA, most new groups I reviewed already had been running
19 prior to me reviewing them.

20 34. On September 17, 2004, I received my first email from the FreecycleSNGA
21 online discussion group that was set up to facilitate communication among NGAs. A true and
22 correct copy of this email is attached to this Declaration as Exhibit S. The discussion on the
23 SNGA list paralleled many discussions on the modsquad -- volunteers were often confused about
24 what they should be doing and people elected to follow what they themselves considered most
25 reasonable. Many of us made up our own materials and shared it with others via the SNGA
26 group.

1 35. On September 25, 2004, I received my first email from the freecycle group
2 tracking database with instructions about how to list a new group (OakhurstFreecycle) in the
3 group directory on TFN's web site, which is located at www.freecycle.org. A true and correct
4 copy of this email is attached to this Declaration as Exhibit T.

5 36. On October 14, 2004, I emailed the owner of OakhurstFreecycle with my
6 understanding of what he needed to do to have his already established group be listed in the
7 freecycle directory on TFN's web site at www.freecycle.org. A true and correct copy of this
8 email is attached to this Declaration as Exhibit U. Sometime later, I approved
9 OakhurstFreecycle to be listed on freecycle.org by clicking the appropriate button in the online
10 freecycle group tracking database, which also is located on freecycle.org. As soon as I approved
11 a group, it would automatically appear on freecycle.org. In the process of approving
12 OakhurstFreecycle for the list of freecycling groups on freecycle.org, I did not review online
13 postings to make sure that the emails were noncommercial or, for that matter, "free, legal, and
14 appropriate for all ages." Nor did I mentor or otherwise instruct the owner of OakhurstFreecycle
15 regarding any requirements to be noncommercial or for posted items to be "free, legal, and
16 appropriate for all ages."

17 37. Most but not all freecycling groups that applied to be listed on freecycle.org used
18 the word "freecycle" or some form of it such as "freecyclers" in their group name and had added
19 the TFN logo to their group prior to my review of the group.

20 38. Several older groups that existed before the NGA process was put in place even
21 called themselves a "Freecycle Network." A few examples of this are the Houston Freecycle
22 Network, Austin Freecycle Network, and Red Stick Freecycle Network (RSFN) of Greater Baton
23 Rouge. True and correct copies of the home pages for these groups as retrieved from the Internet
24 Archives at <http://archive.org> are attached collectively to this Declaration as Exhibit V.

25 39. I became involved in writing TFN's trademark guidelines when I became aware
26 that TFN wanted to protect a trademark on the word "freecycle." Around that time, on
27 September 16, 2004, I posted an email to the modsquad recommending that TFN adopt a
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1 trademark usage policy. A true and correct copy of that email is attached to this Declaration as
2 Exhibit W. As far as I know, TFN took no action at this time to put a trademark policy in place.

3 40. On September 21, 2004, Mr. Beal sent me an email indicating I was a key
4 member of his core planning team. A true and correct copy of that email is attached to this
5 Declaration as Exhibit X.

6 41. During October and November 2004, I was a leader of the New Webpage
7 Planning Team ("NWPT"). The purpose of this team was to come up with a design for a new
8 system to replace the use of Yahoo! Groups by online freecycling groups. Mr. Beal
9 acknowledged my contribution in this role in an email on November 15, 2004. A true and correct
10 copy of that email is attached to this Declaration as Exhibit Y.

11 42. From October 2004 onward I was the owner, primary moderator, and leader of a
12 Yahoo! Group called FreecycleNext. FreecycleNext was an online discussion group for all
13 moderators to share ideas about the next generation freecycle system.

14 43. On October 16, 2004, I sent an email about TFN's trademark claim to the word
15 "freecycle" to the New Webpage Planning Team ("NWPT"). In that email, I said, "the word
16 Freecycle is very likely to turn into the common use modern word 'freecycle'. This is good for
17 promoting the environment, but not good if The Freecycle Network wishes to protect how the
18 word is used." I also included an article about freecycling from the Associated Press that Mr.
19 Beal previously sent to the modsquad on October 16, 2004. A true and correct copy of that email
20 is attached to this Declaration as Exhibit Z.

21 44. On November 10, 2004, I sent an email to the NWPT group again and discussed
22 leaving "freecycle" as a common language word versus seeking to protect "freecycle" as a
23 trademark. I said, "If we let it to become a new generic term, it can go into dictionaries, can be
24 used by everyone, spreads the movement even further, and no one can prevent anyone from
25 being able to use the term. This will require no extra work as we are already on this path." A true
26 and correct copy of that email is attached to this Declaration as Exhibit AA.

1 45. On November 10, 2004, I received an email, sent by Ms. Traci Dale to the NWPT
2 group, questioning the viability of claiming trademark rights in “freecycle” given the extensive
3 use of “freecycle” as a generic term. A true and correct copy of that email is attached to this
4 Declaration as Exhibit BB.

5 46. On January 5, 2005, Mr. Beal sent an email to the modsquad, acknowledging that
6 the “freecycle” trademark strategy was at risk. A true and correct copy of that email is attached
7 to this Declaration as Exhibit CC.

8 47. During January 2005, I was the primary author for TFN’s trademark policies.

9 48. From February 2005 to May 2005, I helped people with trademark issues as a part
10 of a team called the Penguin Patrol. The Penguin Patrol was responsible for educating TFN
11 moderators about proper trademark use among other things. In February 2005, I first became
12 aware that TFN was attempting to enforce a trademark policy by controlling how freecycling
13 groups could use the word “freecycle.”

14 49. From February 2005 to May 2005, I helped people with trademark issues as a part
15 of a team called the Penguin Patrol. The Penguin Patrol was responsible for:

16 (a) “rogue group pursuit” - sent cease and desist letters to groups that used the
17 word freecycle but were not on the official TFN approved group list.

18 (b) “database work” - one person handled administrative chores in the
19 database that generated the TFN group list on freecycle.org, tracked group approvals in
20 process, and tracked rogue groups.

21 (c) “Trademark & policy support” - established the trademark policy and
22 answered trademark questions for people.

23 (d) “Safety concerns” - one person to identify safety & security issues and
24 educate moderators about those issues.

25 (e) “General sleuthing” - tracking down TFN dissidents, that is, group owners
26 or moderators who objected to TFN’s increasing efforts to control local groups and who
27 expressed that opinion publicly or on lists critical to TFN. The sleuthing involved using
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1 identifying information that sometimes appears in email headers. Email headers are
2 usually hidden from most email users but contain information about where the email
3 came from, what systems it passed through, and other forensic information about the
4 email.

5 50. As a member of the Penguin Patrol team, I did not review groups to check that the
6 groups were noncommercial or that items posted were "free, legal, and appropriate for all ages."
7 I was not aware that any other members of the Penguin Patrol team reviewed groups to check
8 that the groups were noncommercial or that items posted were "free, legal, and appropriate for
9 all ages." A true and correct copy of an email on February 7, 2005 introducing the Penguin
10 Patrol and its duties is attached to this Declaration as Exhibit DD.

11 51. In March 2005, I began to have doubts about my earlier decision to support
12 TFN's pursuit of trademark rights in the word "freecycle" after I received an email sent to the
13 freecyclesunnyvale online group on March 19, 2005. A true and correct copy of that email is
14 attached to this Declaration as Exhibit EE. Although I had doubts, I chose at that time to
15 continue to publicly support TFN's pursuit of trademark rights.

16 52. From approximately January 2005, to August 2005, TFN steadily lost a number of
17 volunteers. My understanding is that many of these volunteers left over TFN's decision to
18 pursue trademark rights in the word "freecycle" and TFN's treatment of local freecycling groups.
19 I admired these volunteers (particularly Pastor Ken Hedden and David Neeley), and I grew to
20 regret my support of TFN's efforts to obtain trademark rights on the word "freecycle."

21 53. On April 9, 2005, I sent The Freecycle Network an email letting them know that I
22 wished to resign as NGA for California. On April 10, 2005, Deron Beal acknowledged this
23 email. A true and correct copy of this email exchange is attached to this Declaration as Exhibit
24 FF.

25 54. On May 23, 2005, I finally stepped down as the NGA for California and two other
26 people took my place. A true and correct copy of an email acknowledging this transition is
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1 attached to this Declaration as Exhibit GG. This email also includes the NGA guidelines current
2 at that time.

3 55. As of May 2005, I had disengaged from all of my senior TFN volunteer roles: (i)
4 New Group Approver ("NGA") for California, (ii) a member of Mr. Beal's core planning team,
5 (iii) leader of the New Webpage Planning Team ("NWPT"), (iv) leader of FreecycleNext (an
6 online discussion group about the future of freecycling), (v) primary author of TFN's trademark
7 guidelines, and (vi) core team member of the Penguin Patrol

8 56. During the period I was an NGA, from 9/17/2004 to 5/23/2005, people previously
9 unknown to me would set up their own freecycle groups and later I would review the groups and
10 approve them for listing. During this same period, I was unaware of any contractual obligations
11 that required TFN affiliated groups to be inspected or supervised to assure that the groups were
12 noncommercial or that items posted were "free, legal, and appropriate for all ages." NGAs were
13 not responsible for checking on groups once they were approved.

14 57. Prior to 9/17/2004, in the practice of which I am aware, people previously
15 unknown to Mr. Beal would set up their own freecycle group first and send an email to Mr. Beal
16 to get it added to the list on TFN's website, which is located at www.freecycle.org. Later, Mr.
17 Beal would add them to the freecycle group directory. During this earlier period I am also
18 unaware of any contractual obligations that required TFN affiliated groups to be inspected or
19 supervised to assure that the groups were noncommercial or that items posted were "free, legal,
20 and appropriate for all ages."

21 58. GOAs or Group Outreach and Assistance volunteers were responsible for giving
22 advice and handling situations when moderators asked for help. Nancy Castleman, the head of
23 the modsquad at the time, described this position on December 30, 2004 in an email to the
24 modsquad. A true and correct copy this email is attached to this Declaration as Exhibit HH. This
25 role started roughly in September 2004, after the NGA role was established. I was unaware that
26 GOAs ever monitored or supervised TFN affiliated groups to assure that the groups were
27 noncommercial or that items posted were "free, legal, and appropriate for all ages."

1 59. The I-Mods or interim moderators were volunteers responsible for temporarily
2 moderating groups where the moderators had abandoned or wanted to abandon (stop moderating)
3 their group. This volunteer position was started and announced by Mr. Beal in a January 10,
4 2005 email to the modsquad. A true and correct copy of this email is attached to this Declaration
5 as Exhibit II. I was unaware that I-Mods ever monitored or supervised TFN affiliated groups to
6 assure that the groups were noncommercial or that items posted were “free, legal, and
7 appropriate for all ages.”

8 60. The major volunteer roles that interacted directly with groups at some level were
9 the NGAs (for new groups), the GOAs (for existing groups asking for help), and the I-Mods (for
10 existing groups where moderators had left). I am unaware of other volunteer roles as of May
11 2005 where the volunteers interacted directly with online freecycling groups and, therefore,
12 might have had an opportunity to monitor and supervise groups to assure that the groups were
13 noncommercial or that items posted were “free, legal, and appropriate for all ages.”

14 61. On September 15, 2005, I created a mostly complete snapshot of the web pages
15 on freecycle.org for historical purposes. Included in this snapshot was the moderator FAQ
16 (Frequently Asked Questions). It is my understanding that this FAQ covered all of the
17 requirements for moderators and groups at that time. There is no mention of a requirement about
18 moderators or groups being required to be monitored or supervised to assure that the groups were
19 noncommercial or that items posted were “free, legal, and appropriate for all ages.” A true and
20 correct copy of the Moderator FAQ is attached to this Declaration as Exhibit JJ. Please note that
21 the snapshot capture process blackened out some regions on some pages.

22 62. Also from this September 2005 snapshot, I captured step 1 of the “Start your own
23 Freecycle group” process. In step 1 it states “Please note that use of the materials provided to you
24 in this process (including files, emails, and the Freecycle™ logo and name) is reserved for
25 approved Freecycle groups. You may use them freely while involved in the approval process, ...”
26 A true and correct copy of step 1 is attached to this Declaration as Exhibit KK. Please note that
27 the snapshot capture process blackened out some regions on some pages.

1 63. Again from this September 2005 snapshot, I captured the staff list for TFN at that
2 time. It is my understanding that none of the following positions listed in the staff list was
3 responsible for supervising or monitoring TFN affiliated groups to assure that the groups were
4 noncommercial or that items posted were "free, legal, and appropriate for all ages." Here is the
5 list of these positions along with my understanding of their focus area in parentheses after each
6 one: Mr. Deron Beal, the Executive Director (focused on top level organization issues like fund
7 raising, not group monitoring); Ms. Stephanie, the Hub Coordinator (focused on coordinating
8 lead volunteers from each staff area); the Trademark Team (dedicated solely to educating groups
9 about displaying of trademarks and avoiding generic use, without any role in monitoring or
10 supervising groups operations); the ModSquad coordinators (only handled modsquad
11 moderation); the GOAs (supposed to help only when called in by a group owner); the NGAs
12 (restricted to approving new groups, not monitoring existing ones); the tech team (handled
13 technical issues on freecycle.org and the database that generates the group list on freecycle.org);
14 the I-Mod team (took over groups when an original owner left); the Back Office (handled
15 questions from moderators and members); or Mr. Jeff Davis, the TFN web site programmer
16 (handled programming of the freecycle.org web site and database). A true and correct copy of
17 the staff list from freecycle.org is attached to this Declaration as Exhibit LL.

18 64. In August 2005, a large group of very active volunteers, all of whom I respected
19 (including a person known in discussion groups as Deanna, as well as Judy Ruzich, Lynnne
20 Jones, Charlotte Hess, and especially Nancy Castleman who was sometimes known as the
21 'mother of freecycling'), left TFN suddenly. My understanding is that these individuals left TFN
22 because of TFN's trademark policies and treatment of local freecycling groups.

23 65. In response to these departures, on August 18, 2005, I sent an email to the
24 freecyclemodsquad regarding these developments. This is the point at which I went public with
25 my revised view on whether TFN should pursue trademark rights on the word "freecycle." A true
26 and correct copy of that email is attached to this Declaration as Exhibit MM.

1 66. On September 9, 2005, Mr. Beal sent an email to the modsquad announcing the
2 results of a poll of modsquad members and indicating that Ersatzfriend was no longer required
3 on every online freecycling group listed on TFN's Web site. The email also announced a change
4 for the Interim Moderation Team. A true and correct copy of that email is attached to this
5 Declaration as Exhibit NN.

6 67. On September 16, 2005, Paula Spencer, on behalf of TFN, sent me an email
7 requesting that I resign as a moderator of freecyclesunnyvale. A true and correct copy of that
8 email is attached to this Declaration as Exhibit OO.

9 68. On September 17, 2005, Chandan Mishra, a FreecycleSunnyvale volunteer
10 moderator, forwarded an email to me that Paula Spencer had sent to her on September 16, 2005.
11 A true and correct copy of that email is attached to this Declaration as Exhibit PP.

12 69. On September 23, 2005, Paula Spencer, on behalf of TFN, sent an email to the
13 FreecycleSunnyvale moderators, including myself, stating, "Having reach the deadline and not
14 having received a reply from you, I have asked that the Sunnyvale link be removed from the
15 Freecycle.org page." A true and correct copy of that email is attached to this Declaration as
16 Exhibit QQ.

17 70. On November 1, 2005, the owners of freecyclesunnyvale received their first
18 notice from TFN saying "please consider this your official notice to stop using the trademark-
19 protected Freecycle name and logo." A true and correct copy of that email is attached to this
20 Declaration as Exhibit RR.

21 71. FreecycleSunnyvale operated a Yahoo! online group named freecyclesunnyvale
22 until November 21, 2005, when Yahoo! terminated this online group account at the behest of
23 TFN. The freecyclesunnyvale group had approximately 2200 members when it was deleted.

24 72. On November 22, 2005, FreecycleSunnyvale obtained and now operates another
25 Yahoo! online group account that is named, "sunnyvalefree." The sunnyvalefree group had
26 grown to about 600 members as of May 1, 2006 and 782 members as of March 25, 2007.

1 73. On March 16, 2004, the New York Times published an article about freecycling
2 and this article was sent to the modsquad in an email. A true and correct copy of that email is
3 attached to this Declaration as Exhibit SS.

4 74. Up to January 2005, Mr. Beal, the Executive Director of TFN, commonly used
5 "freecycle" as a generic term. Examples of Mr. Beal's use of the word "freecycle" include:

6 (a) Mr. Beal used "freecycle" as a noun in emails dated June 23, 2004 and
7 September 20, 2004. True and correct copies of these two emails are attached
8 collectively to this Declaration as Exhibit TT.

9 (b) Mr. Beal used "freecycling" as a gerund in emails dated March 28, 2004
10 and July 27, 2004. True and correct copies of these two emails are attached collectively
11 to this Declaration as Exhibit UU.

12 (c) Mr. Beal used "freecycler" as a noun in emails dated June 7, 2004,
13 August 14, 2004, and January 4, 2005. True and correct copies of these three emails are
14 attached collectively to this Declaration as Exhibit VV.

15 (d) Mr. Beal used "freecycle" as an adjective in emails dated September 29,
16 2004 and October 5, 2004. True and correct copies of these two emails are attached
17 collectively to this Declaration as Exhibit WW.

18 (e) Mr. Beal used "freecycle" as a verb in emails dated June 17, 2004, and
19 August 4, 2004. True and correct copies of these two emails are attached collectively to
20 this Declaration as Exhibit XX.

21
22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Executed in Sunnyvale, California, on July 1, 2007.

24
25
26 
27 Timothy Oey
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