

ESTTA Tracking number: **ESTTA78530**

Filing date: **04/28/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91168664
Party	Defendant THE FREECYCLE NETWORK THE FREECYCLE NETWORK 901 NORTH PERRY AVENUE TUCSON, AZ 85705
Correspondence Address	JAMES L. VANA PERKINS COIE LLP 1201 3RD AVENUE SEATTLE, WA 98101-3099 UNITED STATES pctrademarks@perkinscoie.com
Submission	Motion to Suspend for Civil Action
Filer's Name	James L. Vana
Filer's e-mail	pctrademarks@perkinscoie.com
Signature	/James L. Vana/
Date	04/28/2006
Attachments	SFX6F14.pdf (3 pages)(53729 bytes) CA US Fed Court summons.pdf (58 pages)(2453054 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Freecycle Network

Applicant

v.

Freecyclesunnyvale

Opposer

Opposition No. 91168664

MOTION TO SUSPEND FOR CIVIL ACTION

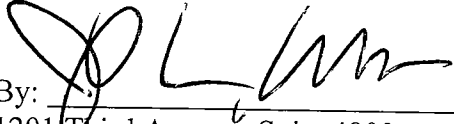
Pursuant to Trademark Trial and Appeal Board Manual of Procedure Rule 510.02(a) and 37 CFR 2.117(a), Applicant hereby requests that Opposition Proceeding No. 91168664 (the "Opposition") be suspended pending the outcome of civil action Case No. C 06-00324 CW, pending before the United States District Court, Northern District of California between the Opposer and Applicant as set forth below. Applicant believes that the issues set forth in the civil action will have direct bearing on the issues presented in the Opposition.

Attached is a true and correct confirmed copy of the Civil Complaint filed by Opposer on January 18, 2006, in the United States District Court, Northern District of California (the "Complaint"). As the issues that are the subject of the civil action bear directly on the issues and allegations in the Opposition, Applicant respectfully requests that the Opposition be suspended immediately.

A copy of this Motion with all attachments is being served on Opposer's counsel of record by first class mail on April 28, 2006.

Respectfully submitted this 28st day of April, 2006.

PERKINS COIE LLP

By: 

1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

Telephone: (206) 359-8000

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jvana@perkinscoie.com

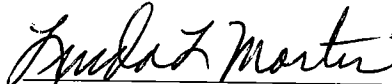
Attorneys for The Freecycle Network

CERTIFICATE OF MAILING

I hereby certify that on April 28, 2006, I filed via the Electronic System for Trademark Trials and Appeals this MOTION TO SUSPEND FOR CIVIL ACTION with the U.S. Patent and Trademark Office:

with a copy via First Class Mail to:

Ian N. Feinberg
Mayer Brown Rowe & Maw LLP
Two Palo Alto Square, Suite 3003000 El Camino Real
Palo Alto, CA 94306
ifeinberg@mayerbrownrowe.com
(Attorneys for Opposer)



Linda L. Martin

United States District Court
NORTHERN DISTRICT OF CALIFORNIA

FreecycleSunnyvale

SUMMONS IN A CIVIL CASE

CASE NUMBER:

V.

C06-00324 CW

The Freecycle Network

TO: (Name and address of defendant)

E-Filing

ADR

The Freecycle Network
P.O. Box 294
Tucson AZ 85702-0294
c/o Statutory Agent for Service of Process
James A. Jutry
2525 N. Broadway #200
Tucson AZ 85716

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Ian N. Feinberg (SBN 88324)
ifeinberg@mayerbrownrowe.com
MAYER, BROWN, ROWE & MAW LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
Telephone: (650) 331-2000

an answer to the complaint which is herewith served upon you, within 40 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking
CLERK

DATE JAN 18 2006

DATA DETANCOUNT
(BY) DEPUTY CLERK

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹		DATE
Name of SERVER		TITLE
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served Personally upon the Defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Executed on _____ <div style="text-align: center; margin-top: 5px;"><i>Date</i></div> </div> <div style="width: 45%;"> _____ <div style="text-align: center; margin-top: 5px;"><i>Signature of Server</i></div> </div> </div> <div style="margin-top: 20px; text-align: right;"> _____ <div style="text-align: center;"><i>Address of Server</i></div> </div>		
(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure		

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

FreecycleSunnyvale

DEFENDANTS

The Freecycle Network

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Santa Clara

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

MAYER, BROWN, ROWE & MAW LLP ((650) 331-2000)
Two Palo Alto Square, Suite 300, Palo Alto, CA 94306-2112

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PTF DEF PTF DEF
- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 6
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
- ☐ Removed from State Court
- ☐ Remanded from Appellate Court
- ☐ Reinstated or Reopened
- ☐ Transferred from Another district (specify)
- ☐ Multidistrict Litigation
- ☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 660 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 780 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Plaintiff seeks declaratory judgment of non-infringement under Lanham Act (17 U.S.C. § 1051 et seq.) of defendant's alleged trademark rights in generic term "freecycle" and/or logo licensed to Plaintiff

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

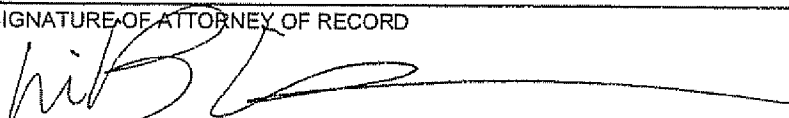
(PLACE AN "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

1/18/2006



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I (a) Plaintiffs - Defendants Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a) F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings (1) Cases which originate in the United States district courts.

Removed from State Court (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL FILED

JAN 18 2006

ROBERT W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

FREecycle SUNNYVALE ,

Plaintiff (s),

v.

THE FREecycle NETWORK,
Defendant(s).

No. C 06-00324 CW

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Claudia Wilken. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California" and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE -ADR MULTI-OPTION PROGRAM

Date	Event	Governing Rule
1/18/2006	Complaint Filed	
3/31/2006	Last day to: <ul style="list-style-type: none">meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery planfile Joint ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone Conference	<u>FRCivP 26(f) & ADR L.R. 3-5</u> <u>Civil L.R. 16-8</u>
4/14/2006	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file Case Management Statement and file/serve Rule 26(f) Report	<u>FRCivP 26(a) (1)</u> <u>Civil L.R. 16-9</u>
4/21/2006	CASE MANAGEMENT CONFERENCE (CMC) in Courtroom 2, Oakland at 1:30 PM	<u>Civil L.R. 16-10</u>

NOTICE

Criminal Law and Motion calendar is conducted on Mondays at 2:00 p.m. Civil Law and Motion calendar is conducted on Fridays at 10:00 a.m. Case Management Conferences and Pretrial Conferences are conducted on Fridays at 1:30 p.m. Order of call is determined by the Court. Counsel need not reserve a hearing date for civil motions; however, counsel are advised to check the legal newspapers or the Court's website at www.cand.uscourts.gov for unavailable dates.

Motions for Summary Judgment: All issues shall be contained within one motion and shall conform with Civil L.R. 7-2. Separate statements of undisputed facts in support of or in opposition to motions for summary judgment will not be considered by the Court. (See Civil Local Rule 56-2(a)). All briefing on motions for summary judgment must be included in the memoranda of points and authorities in support of, opposition to, or reply to the motion, and must comply with the page limits of Civil Local Rule 7-4. The memoranda should include a statement of facts supported by citations to the declarations filed with respect to the motion. Cross or counter-motions shall be contained within the opposition to any motion for summary judgment and shall conform with Civil L.R. 7-3. The Court may, *sua sponte* or pursuant to a motion under Civil L.R. 6-3, reschedule the hearing so as to give a moving party time to file a surreply to the cross or counter-motion.

All DISCOVERY MOTIONS are referred to a Magistrate Judge to be heard and considered at the convenience of his/her calendar. All such matters shall be noticed by the moving party for hearing on the assigned Magistrate Judge's regular law and motion calendar, or pursuant to that Judge's procedures.

In all "E-Filing" cases when filing papers in connection with any motion for determination by the judge, the parties shall, in addition to filing papers electronically, lodge with chambers a printed copy of the papers by the close of the next court day following the day the papers are filed electronically. These printed copies shall be marked "Chambers Copy" and shall be submitted to the Clerk's Office, in an envelope clearly marked with the judge's name, case number and "E-Filing Chambers Copy." Parties shall not file a paper copy of any document with the Clerk's Office that has already been filed electronically.

1 Ian N. Feinberg (SBN 88324)
ifeinberg@mayerbrownrowe.com
2 Eric B. Evans (SBN 232476)
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5 Telephone: (650) 331-2000
Facsimile: (650) 331-2060
6

7 Attorneys for Plaintiff
FREECYCLESUNNYVALE

8
9 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
10
11 SAN JOSE DIVISION

ORIGINAL FILED

JAN 18 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

E-Filing

12 FREECYCLESUNNYVALE,
13 a California unincorporated association,

14 Plaintiff,

15 v.

16 THE FREECYCLE NETWORK,
17 an Arizona corporation,

18 Defendant.

CASE NO. - 00324 CW

COMPLAINT FOR DECLARATORY
JUDGMENT OF TRADEMARK NON-
INFRINGEMENT AND TORTIOUS
INTERFERENCE WITH BUSINESS
RELATIONS

CERTIFICATION OF INTERESTED
PARTIES

1 Plaintiff FreecycleSunnyvale ("FreecycleSunnyvale"), through its *pro bono* attorneys
2 Mayer, Brown, Rowe & Maw LLP, alleges upon knowledge as to itself and its own actions, and
3 on information and belief as to all other matters, against Defendant The Freecycle Network as
4 follows:

5 THE PARTIES

6 1. Plaintiff FreecycleSunnyvale is an unincorporated non-profit association with its
7 principal place of business in Sunnyvale, California, which is located in the Northern District of
8 California. FreecycleSunnyvale promotes freecycling by providing support and advice to
9 freecyclers.

10 2. Defendant The Freecycle Network is an Arizona non-profit corporation with its
11 principal place of business in Tucson, Arizona. The Freecycle Network also promotes
12 freecycling by providing support and advice to freecyclers who wish to create Internet fora for
13 freecycling. The Freecycle Network has provided support, advice and other services to
14 freecycling associations in California within the jurisdiction of this Court.

15 JURISDICTION AND VENUE

16 3. Jurisdiction is proper in this court because this litigation arises under federal law,
17 namely 17 U.S.C. § 1051 *et seq.* (Lanham Act). The Court has jurisdiction over this action under
18 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 28 U.S.C. § 2201
19 (Declaratory Judgment Act).

20 4. This Court has supplemental jurisdiction over FreecycleSunnyvale's state law
21 claims under 28 U.S.C. § 1367(a) because these claims are so related to FreecycleSunnyvale's
22 Lanham Act claims as to form part of a single case or controversy because they arise from the
23 same nucleus of operative facts and amount to a single judicial proceeding.

24 5. This Court has personal jurisdiction over The Freecycle Network because The
25 Freecycle Network conducts business in California by, among other things: (a) providing support,
26 advice and other services to freecycling associations in California within the jurisdiction of this
27 Court and (b) operating online services hosted by Yahoo! Inc. ("Yahoo!"), an online service
28 provider with its headquarters in California within the jurisdiction of this Court.

1 6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c).

2 7. An actual case or controversy has arisen between the parties. The Freecycle
3 Network has: (a) threatened litigation against FreecycleSunnyvale, (b) caused
4 FreecycleSunnyvale's online service provider, Yahoo!, to suspend FreecycleSunnyvale's Yahoo!
5 Group online service and (c) asserted that FreecycleSunnyvale's use of the generic term
6 "freecycle" constitutes trademark infringement. These statements have caused injury to
7 FreecycleSunnyvale and threaten further injury in the future.

8 **INTRA-DISTRICT ASSIGNMENT**

9 8. Because it arises under the Lanham Act, this action is an Intellectual Property
10 Action. Under Local Rule 3-2(c), it is therefore subject to assignment on a district-wide basis.

11 **NATURE OF THE ACTION**

12 9. FreecycleSunnyvale promotes freecycling—recycling by giving something away
13 to another for free. FreecycleSunnyvale, until recently, administered an Internet forum, hosted by
14 Yahoo!, its online service provider, where freecyclers could freecycle items.

15 10. The Freecycle Network claims trademark rights in the generic terms "freecycle"
16 and "freecycling" and in a logo it licensed to FreecycleSunnyvale. The Freecycle Network sent a
17 communication or communications to Yahoo! falsely asserting that FreecycleSunnyvale's use of
18 these terms and/or the logo constituted trademark infringement.

19 11. The Freecycle Network's false statements caused Yahoo! to terminate its contract
20 with FreecycleSunnyvale and stop providing online services.

21 12. FreecycleSunnyvale now seeks a declaration that use of the generic terms
22 "freecycle" and "freecycling" and/or the licensed logo is not trademark infringement, and
23 compensation for damages it has suffered

24 **GENERAL ALLEGATIONS**

25 **Freecycling**

26 13. Freecycling is the common or generic name for the practice of recycling by giving
27 something away to another, often a person who is poor or disadvantaged in some way, for free. A
28 person who freecycles is called a freecycler. Freecycling has two principal advantages for

1 society: (1) it reduces landfill by preventing or delaying the disposal of items unwanted by their
2 current owners; and (2) it gives those same items to others for free, who do want them and may
3 be unable to afford to purchase them.

4 14. Many freecyclers announce the availability of the items they wish to give away
5 online by, for example, sending an email message to an email distribution list. Many of the email
6 distribution lists freecyclers use are hosted by Yahoo! as part of its Yahoo! Groups online service.

7 15. Freecyclers who use the Yahoo! Groups online service to freecycle items enter
8 into a contract with Yahoo! In exchange for their compliance with Yahoo!'s conditions, the
9 freecyclers receive Yahoo!'s online services. These services allow freecyclers to reach many
10 other freecyclers in their area by sending a single email message.

11 16. The Freecycle Network was founded in May 2003. The Freecycle Network helped
12 popularize freecycling by assisting local freecycling groups, including FreecycleSunnyvale, in
13 using Yahoo!'s online services to freecycle items.

14 17. FreecycleSunnyvale was founded in October 2003. It entered into a contractual
15 relationship with Yahoo! and used Yahoo!'s online services to assist freecyclers in the Sunnyvale,
16 California area in freecycling items.

17 18. FreecycleSunnyvale used a Yahoo! Group with the name "freecyclesunnyvale."

18 19. FreecycleSunnyvale initially received enthusiastic support from The Freecycle
19 Network.

20 20. When a member of FreecycleSunnyvale requested assistance in creating a graphic
21 logo reading "FreecycleSunnyvale," the Board Chair and Executive Director of The Freecycle
22 Network, granted permission to do so, provided that the logo was not used for commercial
23 purposes. The text of the email granting permission reads: "Yeah, Sunnyvale! ... You can get the
24 neutral logo from <http://www.freecycle.org> , just don't use it for commercial purposes or maybe
25 Mark or Albert can help you to do your own fancy schmancy logo!"

26 21. Freecyclers and The Freecycle Network treated freecycling as the common or
27 generic name for giving something away to another for free. In August 2004, The Freecycle
28 Network's home page included, among others, the references to freecycling:

- (a) "Number of cities freecycling: 1,210"
- (b) "Number of people freecycling: 406,949"
- (c) "Have fun and keep on Freecyclin'!"
- (d) "How does Freecycling work?"
- (e) "Who can Freecycle?"

The Freecycle Network submitted a copy of the home page of its website, containing these uses of freecycle and freecycling in a generic sense, as a specimen to its pending application for registration of the mark FREECYCLE on the Principal Register on or about August 27, 2004. A copy of the application and specimen submitted is attached as Exhibit 1.

22. The Freecycle Network's use of the terms freecycle and freecycling in a generic sense is consistent with prevailing practice in the national media. Examination of publicly-accessible media sources reveals hundreds of newspaper and magazine articles that use freecycle and freecycling to refer to the practice of recycling by giving something away to another for free. Examples include:

- (a) "If a true packrat hordes [sic], a 'freecycler' can't stand to see something that might be useful to someone go to waste, languishing unused in a musty garage, attic, bottom dresser-drawer or—worse yet—a landfill." Katharine Mieszkowski, *From each according to his junk, to each according to her need*, Salon.com, Nov. 23, 2003, at <http://www.salon.com/tech/feature/2003/11/25/freecycle/print.html> (Attached as Exhibit 2);
- (b) "Freecyclers use Yahoo Groups as a free bulletin board, requiring registration only. Givers post their excess items on Yahoo and takers send an e-mail saying they will come and pick it up." Mike Cassidy, *Freecycling Movement Gains Ground in Valley*, San Jose Mercury News, Jan. 27, 2004, at C1 (Attached as Exhibit 3);
- (c) "Dusty but new exercise equipment, a five-person hot tub, and enough white Ikea bookshelves to furnish a small college town have been posted online through a new group that practices freecycling, the giving away of useful but unwanted

1 goods to keep them out of landfills and maybe help someone less fortunate in the
2 process.” Tina Kelley, *One Sock, With Holes? I'll Take It; Freecycling Brings*
3 *Castoff Goods Back From the Bin*, The New York Times, March 16, 2004, at B1
4 (Attached as Exhibit 4);

5 (d) “Known as ‘freecycling,’ the approach creates Web-based communities in cities
6 across the country that allow members to post by e-mail a listing of items they are
7 looking to unload. The catch? Everything much be given away free.” *Gambits*
8 *and Gambles in the World of Technology*, The Wall Street Journal, May 6, 2004
9 (Attached as Exhibit 5); and

10 (e) “And just how does one freecycle? . . . If there's an object, or even a service, you
11 want to give or receive, you post an e-mail, leave a contact and, if someone bites,
12 arrange for a pickup. The rules are simple: no politics or spam, and everything
13 must be free.” Richard Jerome and Strawberry Saroyan, *Free For All*, People,
14 May 10, 2004, at 195 (Attached as Exhibit 6).

15 **The Freecycle Network Attempts to Seize the Generic Term Freecycle**

16 23. Despite the generic nature of the terms freecycle and freecycling, The Freecycle
17 Network filed an application for the registration of the mark FREECYCLE and a graphic logo
18 using that mark on the Principal Register of trademarks on or about August 27, 2004. The
19 application is still pending.

20 24. In late 2004 or early 2005, The Freecycle Network altered the text of its website to
21 remove some, but not all, uses of freecycle and freecycling in a generic sense. The Freecycle
22 Network’s website continues to include many hundreds of instances where freecycle and
23 freecycling are used in the generic sense to refer to the practice of recycling by giving something
24 away to another for free.

25 25. In January or February 2005, The Freecycle Network began to assert the right to
26 exclusive use of the terms freecycle and freecycling.

1 26. The Freecycle Network has created usage guidelines for users of its services.
2 These guidelines direct users to avoid using the terms freecycle and freecycling in a generic
3 sense.

4 27. The Freecycle Network has not found an adequate substitute for the generic term
5 freecycling. “[A] gifting or exchange-oriented [web]site” or “gifting or exchanging unwanted
6 items with fellow users” have not achieved wide acceptance.

7 28. The Freecycle Network has replaced the simple question “How does Freecycling
8 work?” on its home page with “How does it work?”

9 **The Present Dispute**

10 29. On or about November 1, 2005, The Freecycle Network sent an email message to
11 FreecycleSunnyvale. The email message informed FreecycleSunnyvale that it must “stop using
12 the trademark-protected Freecycle name and logo, as well as any and all copyrighted texts,
13 graphics, rules, guidelines, title, or its URL (Yahoo group name).” A copy of this email message
14 is attached as Exhibit 7.

15 30. On or about November 5, 2005, FreecycleSunnyvale sent an email message to
16 Yahoo! describing the generic nature of the term freecycle and informing Yahoo! of the license
17 The Freecycle Network had granted FreecycleSunnyvale to use a graphic logo derived from The
18 Freecycle Network’s graphic logo, so long as Freecycle Sunnyvale did not use the logo “for
19 commercial purposes.” A copy of this email message is attached as Exhibit 8.

20 31. On or about November 14, 2005, The Freecycle Network sent a second email
21 message to FreecycleSunnyvale. This message described itself as FreecycleSunnyvale’s “second
22 and final notification to cease and desist using the trademark-protected Freecycle(TM) name and
23 logo.” The message stated that FreecycleSunnyvale’s “use [of the term freecycle] is a violation
24 of the Yahoo Terms of Service, and a trademark and copyright infringement report will be filed
25 with Yahoo if we cannot verify that these materials have been removed with 48 hours of the
26 sending of this notice.” A copy of this email message is attached as Exhibit 9.

27 32. On or before November 21, 2005, The Freecycle Network sent a communication
28 or communications to Yahoo! falsely claiming that FreecycleSunnyvale had infringed The

1 Freecycle Network's trademark rights in the term freecycle and/or in its graphic logo and
2 requesting that Yahoo! terminate the FreecycleSunnyvale Yahoo! Group.

3 33. On or about November 21, 2005, Yahoo! terminated the FreecycleSunnyvale
4 Yahoo! Group.

5 34. On or about November 21, 2005, Yahoo! sent an email message to
6 FreecycleSunnyvale. The message asserted that FreecycleSunnyvale might have violated
7 Yahoo!'s Terms of Service. The message also stated that "If your use of your Yahoo! account is
8 brought to our attention again, and we believe that such use violates the [Terms of Service], then
9 we may terminate your account without further notice." A copy of this email message is attached
10 as Exhibit 10.

11 35. The termination of its Yahoo! Group rendered FreecycleSunnyvale unable to assist
12 freecyclers in freecycling items. FreecycleSunnyvale therefore suffered harm as a direct and
13 proximate result of The Freecycle Network's false assertions that FreecycleSunnyvale's use of
14 the word freecycle and/or the graphic logo The Freecycle Network had licensed to
15 FreecycleSunnyvale for non-commercial use infringed The Freecycle Network's trademark rights
16 in that term and/or that logo.

17 **CLAIMS FOR RELIEF**

18 **Declaratory Judgment of Non-Infringement of Trademarks**

19 **(15 U.S.C. § 1051 et seq.)**

20 36. FreecycleSunnyvale realleges and incorporates by reference paragraphs 1 through
21 35 hereof as if set forth herein in full.

22 37. Freecycle has claimed that FreecycleSunnyvale's use of the words "freecycle" and
23 "freecycling" and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale
24 for non-commercial use constitutes trademark infringement and has threatened to bring a lawsuit
25 against FreecycleSunnyvale on this basis

26 38. An actual, present and justiciable controversy has arisen between
27 FreecycleSunnyvale and Freecycle concerning FreecycleSunnyvale's right to use the words
28

1 “freecycle” and “freecycling” and/or the graphic logo The Freecycle Network had licensed to
2 FreecycleSunnyvale for non-commercial use.

3 39. FreecycleSunnyvale seeks a declaration from this Court that its use of the generic
4 terms “freecycle” and “freecycling” and/or the graphic logo The Freecycle Network had licensed
5 to FreecycleSunnyvale for non-commercial use does not constitute trademark infringement.

6 40. In the alternative, FreecycleSunnyvale seeks a declaration from this Court that The
7 Freecycle Network has dedicated the terms “freecycle” and “freecycling” and/or the graphic logo
8 The Freecycle Network had licensed to FreecycleSunnyvale for non-commercial use to the public
9 domain and that FreecycleSunnyvale’s use of those terms and/or that logo does not constitute
10 trademark infringement.

11 41. In the second alternative, FreecycleSunnyvale seeks a declaration from this Court
12 that The Freecycle Network has engaged in uncontrolled or naked licensing of the terms
13 “freecycle” and “freecycling” and/or the graphic logo The Freecycle Network had licensed to
14 FreecycleSunnyvale for non-commercial use and thereby abandoned any trademark rights it
15 might otherwise of acquired, and that therefore FreecycleSunnyvale’s use of those terms and/or
16 that logo does not constitute trademark infringement.

17 **Tortious Interference with Business Relations**

18 42. FreecycleSunnyvale realleges and incorporates by reference paragraphs 1 through
19 35 hereof as if set forth herein in full.

20 43. The Freecycle Network has tortiously interfered with FreecycleSunnyvale’s
21 contractual relations with Yahoo!, its online service provider.

22 44. FreecycleSunnyvale had a valid contract with Yahoo!

23 45. The Freecycle Network knew of FreecycleSunnyvale’s contract with Yahoo!

24 46. The Freecycle Network sent a communication or communications to Yahoo!
25 falsely alleging that FreecycleSunnyvale’s use of the generic terms “freecycle” and “freecycling”
26 and/or the graphic logo The Freecycle Network had licensed to FreecycleSunnyvale for non-
27 commercial use infringed The Freecycle Network’s trademark rights in those terms and/or that
28 logo.

1 47. By making this false allegation, The Freecycle Network intended to cause Yahoo!
2 to terminate its contractual relations with FreecycleSunnyvale.

3 48. The Freecycle Network's conduct actually disrupted FreecycleSunnyvale's
4 contract with Yahoo! because it induced Yahoo! to terminate that contract and to suspend the
5 online services it provided to FreecycleSunnyvale.

6 49. FreecycleSunnyvale has suffered damages as a proximate result of The Freecycle
7 Network's tortious interference with its contract with Yahoo! in an amount to be proven at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, FreecycleSunnyvale respectfully prays for:

- 10 1. Judgment granting FreecycleSunnyvale the declaratory relief it seeks;
11 2. An order awarding FreecycleSunnyvale damages to compensate for the harm suffered as a
12 result of The Freecycle Network's tortious interference with FreecycleSunnyvale's
13 contract with Yahoo!;
14 3. A declaration that this case is exceptional under 15 U.S.C. § 1115(a)(3);
15 4. An order awarding FreecycleSunnyvale its attorneys' fees in this action;
16 5. An order awarding FreecycleSunnyvale its costs in this action; and
17 6. Such other and further relief to which FreecycleSunnyvale may be entitled as a matter of
18 law or equity or which this Court deems just and proper.

19 Dated: January 18, 2006

MAYER, BROWN, ROWE & MAW LLP
IAN N. FEINBERG
ERIC B. EVANS

22 By: 
23

24 Ian N. Feinberg

25 Attorneys for Plaintiff
26 FREECYCLESUNNYVALE

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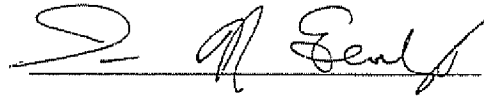
CERTIFICATION OF INTERESTED PARTIES

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: January 18, 2006

MAYER, BROWN, ROWE & MAW LLP
IAN N. FEINBERG
ERIC B. EVANS

By:



Ian N. Feinberg

Attorneys for Plaintiff
FREECYCLESUNNYVALE

Exhibit 1

Trademark/Service Mark Application, Principal Register

Serial Number: 78475113

Filing Date: 08/27/2004

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK FILE NAME	\\tictcs\EXPORT11\IMAGEOUT 11\784\751\78475113\xml1\ APP0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	FREECYCLE
COLOR MARK	YES
COLOR(S) CLAIMED	The color(s) GREEN, TAN, BLACK, ORANGE, YELLOW is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK	The mark consists of The word "freecycle" is in lower case Rave (Open Type) font in green with a slight black shadow. The double "ee" is superimposed over the spokes of the wheels of an old fashioned bicycle facing to the left. The wheels of the bicycle project below the "ee" to a level even with the bottom of the "y" and slightly above the "f" The wheels and frame of the bicycle are tan outlined in black. The letter "l" within the "freecycle" name has been replaced with the fretboard facing downward. The headstock and fretboard are black with two white stripes suggesting strings running along its length. The headstock with six tuning pegs is reflexed to the left and is level with the bottom of the letter "y." The body of the guitar is shaded in black around the edge with an insertion of a white and orange line running from the top left corner of the body to the neck of the guitar. The interior of the body is orange with an image of a gold reflection surrounding the left side of the bridge and completely surrounding the strings. Four black lines, suggesting strings, begin above the sound hole and stop below the bridge. The body of the guitar projects above the name approximately the same width as the type face for the name..
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	891 x 250
OWNER SECTION	
NAME	THE FREECYCLE NETWORK
STREET	901 NORTH PERRY AVENUE
CITY	TUCSON
STATE	AZ
ZIP/POSTAL CODE	85705
COUNTRY	United States

PHONE	520-631-2171
FAX	na
EMAIL	deron@freecycle.org
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	Arizona
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	042
DESCRIPTION	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
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	05/01/2003
FIRST USE IN COMMERCE DATE	05/01/2003
SPECIMEN FILE NAME(S)	\\tlers\EXPORT11\IMAGEOUT 11\784\751\78475113\xml1\ APP0003.JPG
SPECIMEN DESCRIPTION	HOMEPAGE FOR WEBSITE FREECYCLE.ORG
SIGNATURE SECTION	
SIGNATURE	/John C. Lacy/
SIGNATORY NAME	John C. Lacy
SIGNATORY DATE	08/27/2004
SIGNATORY POSITION	Attorney
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
ATTORNEY	
NAME	JOHN C. LACY
FIRM NAME	DeCONCINI McDONALD YETWIN & LACY, P.C.
INTERNAL ADDRESS	#200
STREET	2525 EAST BROADWAY
CITY	TUCSON

STATE	AZ
ZIP/POSTAL CODE	85716
COUNTRY	United States
PHONE	520-322-5000
FAX	520-322-5585
EMAIL	jlacy@dmyl.com
AUTHORIZED EMAIL COMMUNICATION	Yes
OTHER APPOINTED ATTORNEY(S)	JAMES A. JUTRY
CORRESPONDENCE SECTION	
NAME	JOHN C. LACY
FIRM NAME	DeCONCINI McDONALD YETWIN & LACY, P.C.
INTERNAL ADDRESS	#200
STREET	2525 EAST BROADWAY
CITY	TUCSON
STATE	AZ
ZIP/POSTAL CODE	85716
COUNTRY	United States
PHONE	520-322-5000
FAX	520-322-5585
EMAIL	jlacy@dmyl.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Fri Aug 27 17:40:02 EDT 2004
TEAS STAMP	USPTO/BAS-20616920282-200 40827174002213551-7847511 3-2004e31ac8bdab84df68ea0 3f888eca601d-CC-320-20040 827173421319417

Trademark/Service Mark Application, Principal Register

Serial Number: 78475113

Filing Date: 08/27/2004

To the Commissioner for Trademarks:

MARK: FREECYCLE (stylized and/or with design, see mark)

The literal element of the mark consists of FREECYCLE.

The color(s) GREEN, TAN, BLACK, ORANGE, YELLOW is/are claimed as a feature of the mark.

The mark consists of The word "freecycle" is in lower case Rave (Open Type) font in green with a slight black shadow. The double "ee" is superimposed over the spokes of the wheels of an old fashioned bicycle facing to the left. The wheels of the bicycle project below the "ee" to a level even with the bottom of the "y" and slightly above the "f." The wheels and frame of the bicycle are tan outlined in black. The letter "l" within the "freecycle" name has been replaced with the fretboard facing downward. The headstock and fretboard are black with two white stripes suggesting strings running along its length. The headstock with six tuning pegs is reflexed to the left and is level with the bottom of the letter "y." The body of the guitar is shaded in black around the edge with an insertion of a white and orange line running from the top left corner of the body to the neck of the guitar. The interior of the body is orange with an image of a gold reflection surrounding the left side of the bridge and completely surrounding the strings. Four black lines, suggesting strings, begin above the sound hole and stop below the bridge. The body of the guitar projects above the name approximately the same width as the type face for the name..

The applicant, THE FREECYCLE NETWORK, a corporation of Arizona, residing at 901 NORTH PERRY AVENUE, TUCSON, AZ, United States, 85705, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

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

In International Class 042, the mark was first used at least as early as 05/01/2003, and first used in commerce at least as early as 05/01/2003, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) HOMEPAGE FOR WEBSITE FREECYCLE.ORG

Specimen - 1

The applicant hereby appoints JOHN C. LACY and JAMES A. JUTRY of DeCONCINI McDONALD YETWIN & LACY, P.C., #200, 2525 EAST BROADWAY, TUCSON, AZ, United States, 85716 to submit this application on behalf of the applicant.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: jlacy@dmyl.com.

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John C. Lacy/ Date: 08/27/2004

Signatory's Name: John C. Lacy

Signatory's Position: Attorney

Mailing Address:

JOHN C. LACY

#200

2525 EAST BROADWAY

TUCSON, AZ 85716

RAM Sale Number: 320

RAM Accounting Date: 08/30/2004

Serial Number: 78475113

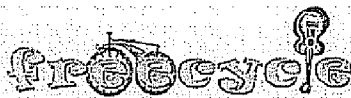
Internet Transmission Date: Fri Aug 27 17:40:02 EDT 2004

TEAS Stamp: USPTO/BAS-20616920282-200408271740022135

51-78475113-2004e31ac8bdab84df68ea03f888

eca601d-CC-320-20040827173421319417

freecycle



Changing the world one gift at a time.

[Home](#) | [Frequently Asked Questions](#) | [Start a Group](#) | [Other Resources](#)

Make a Donation

Freecycle Groups:

Canada
International
US Northeast
US Central
US Southern
US Southwest
US West Coast
US Pacific
All Groups

Newest Freecycles

Cedar Springs
Waterford
Howard County

Biggest Freecycles

freecycleportland(8263)
AustinFreecycle(5542)
freecyclenewyorkcity
(5391)
chicagoFreecycle(5354)
DFWFreecycle(5042)
prfreecycle(4703)
FreecycleDC(4596)
FreecycleSeattle(3711)

1203 Cities! Others coming soon! If you want to start one, visit our [Start-A-Group](#) page.

If you know of one that isn't listed, let us know.



1650406

THE COUNTER:

Number of cities freecycling: 1203
Number of people freecycling: 392,416

Welcome!

The worldwide (!) Freecycle Network is made up of many individual groups across the globe. It's a grassroots movement of people who are giving (& getting) stuff for free in their own towns. Each local group is run by a local volunteer moderator (them's good people). Membership is free. To sign up, find your city by clicking on the region on the right. It will generate a automatic e-mail which, when sent, will sign you up for your local group and send you an response with instructions on how it works. Or, go directly to the webpage for your city's group by clicking on your city's link on the left. Can't find your city? It takes about ten minutes to start your own (click on "Start your own" for instructions). Have fun and keep on Freecycling!

The Freecycle Network is a project of RISE, Inc., a 501(c)(3) nonprofit organization whose mission includes reducing waste, generating employment training, and fostering cooperation between other nonprofit organizations and the public.

RISE started the Freecycle Network in May 2003 to promote waste reduction in Tucson's downtown and help save desert landscape from being taken over by landfills. Freecycle provides individuals and non-profits an electronic forum to "recycle" unwanted items. One person's trash can truly be another's treasure!

How does Freecycling work?

One rule: everything posted must be free. Whether it's a chair, a fax machine, piano, or an old door to be given away, it can be posted on the network. Or, maybe you're looking to acquire something yourself? Respond to the posting directly and you just might get it. After that it is up to the giver to set up a pickup time for passing on the treasure.

Non-profit organizations also benefit from the Freecycle Network. Post the item or items you want to give away and a local organization can help you get it to someone in need.

Who can Freecycle?

As Abe Lincoln once said, "Think globally, recycle locally." The Freecycle Network is open to all cities and to all individuals who want to participate. Freecycle groups are run by local volunteer moderators from across the globe who facilitate each local group. - Grassroots at its best!

Freecycle Newswire

Freecycling the Alphabet!
(08/18)
...slow the flow of trash!
(08/17)
What is Freecycle?
(08/14)
News Channel 10 - Freecycle...
(08/13)
FREE market rules
(08/12)
Free for all
(08/11)

Sign Up!

To sign up for a Freecycle Yahoo!group, choose your region below. And then find the closest freecycle to your location. If you click [here](#), you will be taken to the website of your freecycle group. If you click [here](#), an email window will pop up. Send a blank email to the address in the 'to' field and you will be signed up shortly for that freecycle group. If you have any questions, please let us know!

Canada
International
US Northeast
US Central
US Southern
US Southwest
US West Coast
US Pacific

What Information is on this website

Frequently Asked Questions - This is accumulated answers to questions, advice and general etiquette that you should read before joining the list.

Start A Freecycle Group - If you are interested in starting a Freecycle group in your area, this page will help you find out how we can help you.

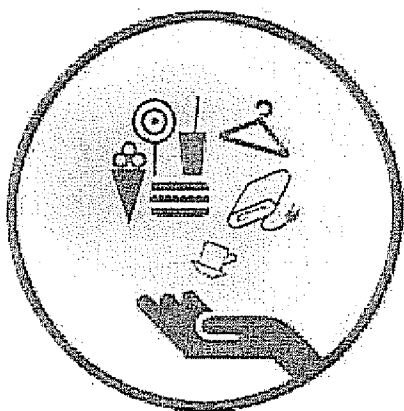
Other Resources - A list of websites and other resources that are related to what Freecycle is doing. Recycling, trading, free resources, etc.



Exhibit 2



To print this page, select "Print" from the File menu of your browser



From each according to his junk, to each according to her need

Need a pile of dirt? Got a pile of dirt? It's Christmas every day in the new world of freecycling.

By Katharine Mieszkowski



Nov. 25, 2003 | Brad Wallis, 42, an erotic photographer who lives in Portland, Ore., works part time remodeling houses to support his art.

But over the past two months the self-described "starving artist" has developed a taste for giving his possessions away to strangers. "I don't have any money. I'm unemployed, but if I am able to give things to other people that make them happy and that they need, what a wonderful gift that is -- to me," he says.

On the Freecycle Portland mailing list, Wallis has offered up a bizarre accumulation of freebies that include large mirrors, art prints, tires, firewood, bike helmets, bicycle racks, trees, a sump pump, 12 Cuban cigars and even a whole computer.

"I was going to give away a computer case, but I ended up putting a hard drive in and an operating system to make it a completely working system," he says. "Because I could, because I didn't really need it, and I could make it a nicer gift to give to somebody."

Via Freecycle, Wallis has also received his share of gifts from people he'd never met before: a little tabletop fountain, a 35-millimeter camera, a toaster-oven and a mini-fridge.

"I grew up poor, and growing up poor you collect stuff, because you're never sure when you're going to need it and you can't buy it," says Wallis, who admits he has "packrat tendencies."

If a true packrat hordes, a "freecycler" can't stand to see something that might be useful to someone else go to waste, languishing unused in a musty garage, attic, bottom dresser-drawer or -- worse yet -- a landfill. That type of person has always existed, but today, thanks to the efficient distribution capabilities of the Internet, Wallis has joined forces with an entire tribe of thrifty givers. At Freecycle everything is free, and you can get rid of practically anything, from a pile of dirt to a beading loom.

In the face-to-face world, it's often hard to find that deserving person who needs your specific load of useless castoffs. Enter the Internet, which not only makes such networking easy but also has long been suffused with an ethic that promotes gift giving. Since May 2003, the Freecycle concept has exploded, spreading from city to city with the speed of a grass (roots) fire.

"A gift economy is different from anything that most people have ever experienced," says Albert Kaufman, 42, an unemployed activist and musician who is the moderator of the Portland freecycle list. With more than 2,000 members, it is one of the largest created so far. "It's pretty wonderful," Kaufman says. "It's sort of like Christmas all the time." Best of all: You don't have to buy anything new.

While eBay recasts clutter as a collection of valuable commodities to be marketed to the highest bidder, Freecycle magically transforms junk into presents, allowing almost anyone a chance to play Santa Claus channeling St. Francis. Which raises the question, what's really more valuable: Selling that 1980 Strawberry Shortcake lunchbox you've been carting around for decades for the best price possible? Or knowing that your much-neglected ice-cream maker, bread machine and transcription device have been given away to good homes where they may actually be turned on occasionally?

Besides the lofty altruism, freecycling is also about trying to get rid of junk: an old washing machine that may work but hasn't been hooked up in years, a jumbo dog-carrying cage for a dearly departed pooch, those coffee mugs that seem to breed and multiply in the kitchen cabinet. Lurking on the lists are the detritus of many abandoned projects and long-forsaken hobbies: On the Tucson list on Nov. 17 a woman's 10-pound bowling ball was up for grabs with this caveat: "It's grey marble color and unfortunately I had my name etched into it but I hope someone can use it and is a better bowler than I was!" The ball, along with a blue bowling-ball carrying case and a pair of "almost new" size 6 and a half bowling shoes, was spoken for in just 13 minutes.

Picture a vast junk box floating in the ether, spilling over with an inflatable raft, a clothesline, a 12-inch radial-arm saw, an Elmo sandbox, 18 post-mastectomy bras, three squashes, two rats, a rat cage and all sorts of other battered treasures, all flanked by a giant sign: FREE STUFF.

"We all have something that we don't want to admit that we're not using and will never use," says Deron Beal, 36, who started the very first Freecycle list in May 2003 in Tucson, Ariz., where he works part time for a nonprofit recycling group called Rise. Beal created the list as a way to hook other nonprofits up with the used couches, computers, office chairs, desks and file folders that the businesses he worked with no longer needed. Since then, the Tucson list has grown beyond the nonprofit world to include more than 1,600 members, and the concept has been adopted in more than 82 cities, including Kansas City, Orlando, Washington, Bangalore and Tokyo, with new lists now starting at the rate of 10 per week.

The ground rules are simple: Posts to the list indicate whether an item is an "offer" or "wanted" in the subject line, and there's no cash, barter or trade allowed. While offloading free stuff on the Net certainly isn't new to local community sites, Freecycle has spawned a mini-movement devoted to giving. Some people may get on the lists solely in search of freebies, but they soon start feeling the itch to part with their own extra filing cabinets, hearing aids and plasterboard.

Sometimes the goal of wasting-not is taken to extremes. Bryan Cordova, 24, a recycling education coordinator for a nonprofit environmental organization who has given away cacti, towels and a twin bed on the Tucson list, recently found himself mailing a dog food coupon to a fellow freecycler. "It was a coupon for a free bag of dog food," he says. "It wasn't a brand that I was planning on purchasing for my dog. It was just a few dollars' value, but why let it go to waste?"

Unlike donating to a charity such as Goodwill, freecycling puts the giver in touch with the people who will be benefiting from his or her largesse: "You deal with them directly so you know that the person who is getting what you're giving away is somebody who needs it," says Anna Harrison Griessel, a 39-year-old video and film producer who lives in Green Valley, Ariz. Griessel has given away five bags of clothes, a Microsoft keyboard, piano books and cookbooks on the Tucson list.

There's the added incentive that it takes less effort to shoot an e-mail out offering a single item than mustering up the energy to clean out a whole closet to justify a trip to the Salvation Army. And freecyclers argue that they do reach the needy who can't afford to log on for freebies via the many nonprofits that frequent the lists.

Once you start giving things away on the list and meeting the people who want them, the game of giving can become an end in itself. "It's just sort of fun now to walk through my house one room at a time and see what I can get rid of," says Griessel.

"Paying it forward" and "karma" pervade the way freecyclers think about their lists. "People are always talking about doing the right thing and helping your fellow man and saving the environment," says Martha Blake, 36, a stay-at-home mother in White Salmon, Wash., who is the moderator for the [Columbia Gorge Freecycle list](#), which has 203 members. "We all have really good intentions and have all these dreams of things we want to do to help, but we always seem to be stuck in our everyday things and never get to those. This is kind of handed to them on a silver platter: This is your chance." She received an old bookshelf from the list, which she converted into a ferret playground, and gave away a fish and a fish tank to a local 7-year-old boy whose mother didn't want him to have a more labor-intensive animal as his first pet.

The spread of freecycling, however eco-friendly a way it may be to relieve chronic overconsumption, does raise the not-so-ideal prospect of perpetual junk shuffling -- as soon as you get rid of your clutter, you take on someone else's. But maybe that will turn out to be the Internet's greatest gift -- in the future, there will be *no* junk, because every last thing will have found its way to a person who truly needs and appreciates it.

About the writer

[Katharine Mieszkowski](#) is a senior writer for Salon Technology.

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Is online shopping good for the environment or just a better way to be as wasteful as we want to be?

By Katharine Mieszkowski

12/07/00



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Exhibit 3

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Page 1

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1/27/04 San Jose Mercury News 1C
2004 WLNR 2960583

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January 27, 2004

Section: Business

FREECYCLING MOVEMENT GAINS GROUND IN VALLEY FROM TRASH TO TREASURE: GOODS GIVEN AWAY, PUT
TO NEW USES

MIKE CASSIDY column

We are a consumer nation. Update. Upgrade. Buy. Buy. Buy.

Which leaves us with stuff. Lots of stuff. Stuff in the garage, under our beds, in the back yard. Stuff headed for the landfills, which themselves are stuffed with stuff.

"And I have all this stuff," says Lissy Abraham, of Sunnyvale, "and I want to get rid of it. I just have to find the person who wants it."

So in October, she started Silicon Valley's first freecycling community.

Yes, freecycling (www.freecycle.org). The movement started in Tucson, Ariz., last year and is now sweeping the nation. Really.

Think of it as eBay without the money and with a dose of "think globally, act locally." Freecyclers use Yahoo Groups as a free bulletin board, requiring registration only. Givers post their excess items on Yahoo and takers send an e-mail saying they will come and pick it up.

The Internet is how we do things -- sell cars, music, books, plane tickets. But it's also how many seek to change the world in big ways and small.

Freecycling is hardly earth-shattering. Of course it isn't the only way to give stuff away. There are trucks from charities to pick up what you don't need. There are cardboard "free" signs attached to couches, computers and filing cabinets on our curbs.

And there are other Internet-enabled giveaway programs, such as the "free stuff" area on Craig's List.

But freecycling is hot.

"We think it's great," says Mark Bowers, who manages Sunnyvale's solid waste program and is therefore well-acquainted with the disposal of excess. "We love this kind of

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grass-roots stuff, where people are exchanging those items.'

The movement is growing through viral marketing. Since the Tucson chapter started in May, nearly 200 groups have formed throughout the United States and in Canada, Australia, India, Britain, South Korea, Singapore, Japan and Romania.

The array of unwanted items is vast. Desks, bikes, books, lamps, couches, sure. But also a diaper genie, 10 pounds of batteries, succulent plants and gravel. Yes, rocks.

Together, the groups provide a study of the human condition, materially and more. Some of the older and larger groups have gone beyond the basic give and take.

In Portland, freecyclers collected Christmas presents and distributed them to the unemployed and their families, Rosemary Meyer, of Portland, writes by e-mail.

The spirit is contagious.

Aseem Das, of Palo Alto, heard about freecycling through an e-mail from an acquaintance. He jumped all over the idea and started Freecycle Palo Alto in December.

'It kind of tied in with that whole idea of consuming less, or if you have stuff, you might give it to other people who need it,' Das says.

Other groups targeting San Jose and the greater South Bay also have formed, together attracting more than 200 members so far.

Das, whose group has 75 members, says membership has been building slowly. But he's an optimist. Besides, he already has moved a 13-inch television and a neighbor's baby stroller.

Abraham, whose Sunnyvale group has 264 members, says local founders are talking about combining their groups.

In the meantime, the groups are open to all regardless of where they live.

And one thing you can be sure about: There is plenty of stuff to go around.

Photos (2)

PHOTO JOANNE HOYOUNG LEE -- MERCURY NEWS\Aseem Das started Freecycle Palo Alto in December. He is offering old carpeting, and already has moved a 13-inch television and a neighbor's baby stroller.\ PHOTO JOANNE HOYOUNG LEE -- MERCURY NEWS\Sylvia Dolce and her husband, Aseem Das, are using freecycle.org to find a new home for a roll of surplus carpet and other items.

Silicon Valley Dispatches

---- INDEX REFERENCES ----

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3/16/04 N.Y. Times B1

2004 WLNR 5578559

New York Times (NY)

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March 16, 2004

Section: B

One Sock, With Holes? I'll Take It; Freecycling Brings Castoff Goods Back From the Bin

TINA KELLEY

Web site freecycle.org was created by Deron Beal to give people opportunity to exchange unwanted items that are still usable, with proviso that everything is free; Beal hopes site will grow and become nonprofit group, with idea of freecyclers meeting international needs (M)

Wanted: old socks, "ripped, without partners, and of any size or color." Offered: a telephone pole. Wanted: a chicken coop, a doghouse, a barn. Offered: "Excellent quality landscaping rocks. Organic lemons will be given away to those who take the rocks as an extra bonus."

The Internet has fed dreams of unimaginable wealth, a hope that in many cases turned out to be as fleeting as an instant message. It began as a way for the military and then academia to communicate, with little thought to profit, before evolving into a worldwide marketplace. Now one group is using the Internet as a way to make connections and fall into riches at the same time. In this case, the treasure comes in the form of someone else's trash.

Dusty but new exercise equipment, a five-person hot tub, and enough white Ikea bookshelves to furnish a small college town have been posted online through a new group that practices freecycling, the giving away of useful but unwanted goods to keep them out of landfills and maybe help someone less fortunate in the process.

The Web site has become a haven for newlyweds with empty homes, and retirees with full ones. In New York City, there's the added incentive of freeing space in minivan-size apartments, where a spice rack can take up too much room.

Like many staples of the Internet, this pretty much came about by accident. Deron Beal, 36, who works at a recycling nonprofit group in Tucson, sent an e-mail message in May to everyone he knew, to see if they wanted a queen-size bed and some packing peanuts he no longer needed. He subsequently set up a Web site where people could exchange unwanted items, the only constraint being that the items had to be free. "Legal and appropriate for all ages" was added later. The Web site, www.freecycle.org, was born, and 10 months later,

more than 35,000 people have signed up in cities all over the world.

Postings are moderated by volunteers in local groups, who have mulled over the ethics of posting Playboys, puppies and pistols. They have had to deal with suspicions that perhaps the people who were posting too many "wanted" listings in one Arizona city were taking goods south of the border to sell in Mexico. ("We figured we were working for a good cause by keeping things out of the landfill," Mr. Beal said. "That was the main thing, and beyond that let the gifter beware.") And they have pondered what to do with people who occasionally forget to stop by to pick up the couch left on the porch for them.

Mr. Beal recalls a favorite post, with the heading, "OFFER: black hair dye, tonight only." It continued, "Clairol Balsam permanent hair dye in black, already mixed up and ready to go. My hair is short, so the bottle is still mostly full. But it needs to be used really soon, so if anyone has an urge to go darker, tonight is the night!"

Mr. Beal said: "Every once in a while someone will try to freecycle themselves -- "OFFER: nice guy to good home" or "WANTED: cure for a lonely heart."

But others don't see the humor in it. "I think personally, in this day and age, it would probably be too frightening to post things online to have strangers to come to your home," said Ivy Lester, who is from Dallas but was visiting New York City, where she grew up.

Although she could see freecycling for a good cause, the idea of a stranger coming by to pick up an item, even from a doorstep, did not appeal to her. "The Internet is so impersonal, and you have to be so careful nowadays," she said. But mostly, members of the New York City freecycling group have been pleased with the cross-country skis they received just before a snowstorm, or happy to have met the need of the guy who refurbishes computer systems for use in day care centers.

That man, Cornell D. Green, posted, "If you're looking at that old 486 in the basement and can't stop laughing, please contact me." Nancy Schubiger, one of the six people who responded to his request, delivered a vanload of computer components to him at a park-and-ride lot in New Jersey on a recent Friday, then wrote to him, "Glad that they won't be dust-gathering paperweights!"

The New York City freecycling group has about 300 members, but the Portland, Ore., group has 10 times as many.

"I'm not sure it has a limit," said Christina Salvi, 28, who estimated she has spent half an hour a night moderating the New York group, making sure the postings were marked as Wanted or Offered, and keeping spam, politics and crankiness out of the discourse.

Of course, there are other ways to find free or cheap things in the city, like walking down the street in many neighborhoods the night before trash day. Thrift stores provide bargains. Also online is Craigslist.org, which includes a section of free items, and New York WasteMatch, sponsored by the Department of Sanitation, which matches valuable

commercial waste and surplus goods with organizations that need them. The city also runs Material for the Arts, which collects reusable items and distributes them to nonprofit arts groups.

Robin Nagle, who teaches a graduate anthropology class on garbage at New York University, said that the curb has been the destination of choice for unwanted items only since the end of World War II.

"You never simply got rid of something because you didn't like it anymore," she said. "You'd turn it into something else." Old adult clothes, for instance, would be resewn into children's clothes, then made into cushions or dolls or rags, then sold as "shoddy" to peddlers, who used old fabric to make paper. Scavengers would travel the city in rented carts in search of useful items.

Mr. Beal hopes to incorporate freecycle.org as a nonprofit group and raise money for its own Web page independent of Yahoo.com's group mail function, which it currently uses. He hopes the new site can help freecyclers meet international needs -- for instance, to send computers to Iran after an earthquake.

"We get it drilled into us on television ads: 'Consume, consume, consume. You want more, you need more,' and do we really?" Mr. Beal asked. "I think what's coming out with freecycling is, 'Gee, it's kind of fun not to be into all this.'"

As for the wanted old socks, they were destined to be made into puppets in a class for adults with developmental disabilities. The telephone pole, at last inquiry, was still available, in Oregon. So were the rocks and lemons, together, in San Francisco.

Photos (Photos by Left, Associated Press; Above: Jim Cummins for The New York Times)

---- INDEX REFERENCES ----

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Exhibit 5



Digits

The Wall Street Journal, 941 words
May 6, 2004

Document Text

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[Gambits & Gadgets in the World of Technology]

Octopus Opulence

Microsoft Corp. co-founder Paul Allen typically likes to keep a low profile, but he made a big splash at this week's convention of the National Cable and Telecommunications Association in New Orleans by hosting several lavish parties aboard his new 413-foot yacht, Octopus.

Mr. Allen docked it on the Mississippi River behind the convention center and hosted receptions for several of his companies that serve the cable industry, including Digeo Inc. and Oxygen Media Inc. Mr. Allen's security force kept a watchful eye to make sure the media stayed onshore. But guests reported that the boat was over the top — even by billionaire-yacht standards. Details include: teak floors, a theater and basketball court, two helicopter pads and a sound-mixing studio large enough, guests were told, to produce a major motion picture. For times when Mr. Allen feels like roughing it, the yacht ports a 60-foot yacht and eventually will boast a 10-person submarine that will run on fuel cells so it can stay under water for as long as two weeks.

The opulence of Octopus — estimates of its price started at \$200 million — may have stirred a bit of yacht-envy on the part of some of the other moguls at the gathering. Take the exchange that happened at one session that featured Mr. Allen, Comcast Corp. Chief Executive Brian Roberts and Time Warner Inc. Chief Executive Richard Parsons. Asked whether Time Warner would bid for Adelphia Communications Corp., Mr. Parsons stopped in the middle of confirming his interest and said: "I've changed my mind. We're going for a boat."

"I can help you on that," chimed in Mr. Allen, who also owns at least one other yacht.

Mothers Online

As any busy mother will tell you, the Internet can be a huge time saver when it comes to tasks like getting homework help and paying bills.

A new survey shows women are turning to the Web for more than that: Forty-eight percent of those who responded to a survey by Opinion Research Corp. for America Online Inc. said they stay in touch with loved ones by sending photos online. Fully 75% use the Web to plan trips. Seventy-one percent get news, 63% look for recipes, 55% click for coupons and discounts, and 42% pay their taxes online.

Nearly 55% of the 1,653 women who opted to respond to the survey play games online, most frequently with their children. Thirty-nine percent use the Web to help with homework, and 38% to shop.

That doesn't surprise Lynne Builta, who four years ago launched an online site Mommyshop.com. Ms. Builta is projecting sales of \$1 million this year, up from \$27,000 in 2000. She says many new mothers find they need lots of new gear. They can go online and have the products delivered to their doorstep. Once she had her second child, Ms. Builta said, "I shopped online for everything."

Spring Sweep

With the dreaded spring-cleaning season under way, there is a new, Internet-based alternative for getting rid of all that clutter in the basement and garage.

Known as "freecycling," the approach creates Web-based communities in cities across the country that allow members to post by e-mail a listing of items they are looking to unload. The catch? Everything must be given away free.

The freecycle movement has gained a modest measure of success since it was launched in May 2003 by Deron Beal of Rise Inc., a nonprofit organization in Tucson, Ariz. that promotes recycling initiatives. There are now

freecycling groups in 412 cities with 61,000 members. The largest, in Portland, Ore., has 4,723 members.

There are few limits on the kinds of items given away or sought. Typical items offered up include unused exercise equipment and storage boxes. Other items are more obscure. Recent listings in the Tucson area included someone looking for a reptile enclosure for their sick water dragon; another person offering up left-handed garden gloves and someone looking to unload a hot tub.

Membership is free and is organized through Yahoo groups. Information about freecycling is available at www.freecycle.org.

Big Blue Fights Back

International Business Machines Corp.'s investor-relations Web site featured something new on Monday — an attack on a Wall Street analyst's view of its future. The message: "We believe [investors] should question the report's conclusions."

IBM didn't identify the analyst, but competitors quickly realized it was Toni Sacconaghi of Sanford C. Bernstein & Co., a research house. Mr. Sacconaghi has been saying for months that IBM's long-term growth of per-share earnings will be 7% to 9% annually, significantly lower than the "double digit" growth that IBM publicly targets. Barron's magazine cited Mr. Sacconaghi's forecast over the weekend, and that apparently triggered IBM's uncharacteristic outburst. Other Wall Street analysts who generally are more bullish on IBM said they couldn't recall a similar published refutation of an analyst's work. IBM's statement said the Bernstein report was based on historical analysis that doesn't consider the "increased competitiveness of IBM's products."

Mr. Sacconaghi says IBM hadn't contacted him and he was surprised to learn of the Web-site message. He noted that he has been saying for more than a year that IBM's long-term growth in sales will be around 5% and per-share earnings will be less than 10%. He added: "It's unclear why it elicited an unprecedented response."

An IBM spokesman said "it's good governance to keep investors informed." He added that the "statement speaks for itself" and said Herve Parks, IBM's veteran investor-relations chief, wouldn't be available to comment.

Digits was compiled by Ann Grimes, with contributions from Peter Grant, David Armstrong and William Bulkeley.

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PEOPLE

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May 10, 2004

Volume 61

Section: TrendsNo. 18 Special Double Issue/The 50

Most Beautiful People

Free For All

Got a used hot tub to unload? Or a stuffed armadillo? Givers find takers on Deron Beal's "freecycling" Web site

Richard Jerome Strawberry Saroyan In Los Angeles

In November 2002 Deron Beal hired on as a manager for RISE, a non-profit that provides a recycling service for local businesses in Tucson. It didn't take long to realize he had a problem. "The businesses started giving us all this stuff that's not recyclable but that they don't want to throw away," he says. "Computers, desks. I didn't know what to do with it, but I couldn't bear to say no."

Beal tried giving the items to charity but after hours of calls scarcely made a dent. Then, last May, an epiphany: Why not set up a Web group where people can unload trash that might be someone else's treasure? A kind of cyber curbside. "I thought, 'If I give this a nifty name,'" says Beal, 36, "who knows?"

One year later Beal's site (www.freecycle.org) has become an Internet phenomenon with 53,000 members in 360 cities--including London, Tokyo, Sao Paulo and Melbourne. And just how does one freecycle? For starters, the network is broken down into local groups, each with its own volunteer moderator (collectively known as the "mod squad"). If there's an object, or even a service, you want to give or receive, you post an e-mail, leave a contact and, if someone bites, arrange for a pickup. The rules are simple: no politics or spam, and everything must be free. Some popular goods offered up: exercise equipment, moving boxes and anything related to gardening.

But the site attracts some decidedly uncommon offers and requests. There was the offer of a "'63-'64 schoolbus motorhome...NO Brakes." And a plea for wings, feathers and a stuffed armadillo for "extreme art purposes." One woman offered a mixed bottle of partially used hair dye: "It needs to be used really soon, so if anyone has an urge to go darker, tonight is the night." An Austin, Texas, freecycler who asked to be identified only by his user name "dancetoblue" offered fishing tackle--but only to someone who once had tackle stolen. "As a kid 34 years ago, give or take, I stole a tackle box," he explains. "There's no way

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I can find the person and make it right, so I'm trying to do the next best thing."

In many cases local freecycling groups have developed into Web-based communities where members help each other out. Oregonians Livia Vande and Larry Thompson scored not only a free photo album for their April 24 wedding, but free photography from a fellow freecycler. But they also gave back. "We helped a refugee family at Christmastime," says Vande. "We inherited a lot of stuff from Larry's grandmother and tried to give them as much as we could to start a little household."

Beal is thrilled by the response. "It's inspiring," he says, "to see someone driving off with something of yours that they really need." Born in Lancaster, Ohio, he arrived at a career in recycling via a circuitous route. After earning a degree in foreign service at Georgetown University in Washington, D.C., and later an M.B.A., he worked as a finance manager for Procter & Gamble and studied literature in Germany. He considered teaching, then switched to environmentalism and settled in Tucson in 1999. An admitted "computer illiterate," he started his freecycling venture with an e-mail to just 30 or 40 friends. When he set up the site in Tucson, the group snowballed, and he got some tech help. At the bungalow home he shares with his wife of nine months, pastry chef Jennifer Columbus, 37, Beal tries to live the freecycling life--with mixed results. Sure, Columbus would like him to clear out the shed. "But there's a difference between a weird pack rat and Deron," she says. "He has everything splayed out, but it's not, like, gross." Though he makes no income from freecycling, Beal has reaped rewards. "We got this great kitchen table," Columbus says, "and a neat old 1930s couch." It has given him some big ideas too, such as rallying his tens of thousands of members for good causes. "It has to grow up by itself," he says. "I'm just helping it along."

By Richard Jerome. Strawberry Saroyan in Los Angeles

NEED A PLUMBER? A SHRINK? A SATURDAY NIGHT DATE? MILLIONS ARE FINDING IT ON CRAIGSLIST

"I need a wife," begins one candid personal ad. Others troll for jobs and apartments. One guy wants a stooge to take the CPA ethics test for him. Welcome to the eclectic world of the daddy of online community bulletin boards: craigslist--Irreverent cyber-classifieds that attract millions of viewers in 35 cities. "Craig" is Craig Newmark, 51, a self-styled computer nerd who one day in 1995 innocently sent out e-mails about upcoming events in San Francisco to a bunch of friends. "People started sending me more stuff to put on the list, and more people asked to be added to it," he says. Newmark charges only job posters in the Bay Area to make a living and pay his staff of 14. The rest post for free. "Everyone else can make as much as they want," he says. "But nerd values suggest you live comfortably--then try to change the world."

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(Cite as: 2005 WL 929089, *12 (E.P.A.))

COLOR PHOTO: COMPOSITE PHOTO "There's something radical about getting something for nothing," says Beal (at his recycling job in Tucson, with items posted on his site).

TWO COLOR PHOTOS: PHOTOGRAPHS BY WERNER SEGARRA

COLOR PHOTO: PHOTOGRAPH BY DAVID PAUL MORRIS Craig Newmark (in San Francisco) added a barter section to his site.

---- INDEX REFERENCES ----

COMPANY: PROCTER AND GAMBLE CO (THE)

REGION: (USA (1US73); Americas (1AM92); Ohio (1OH35); Arizona (1AR13); North America (1NO39); California (1CA98))

Language: EN

OTHER INDEXING: (CPA; GEORGETOWN UNIVERSITY; OREGONIANS LIVIA VANDE; PLUMBER; PROCTER GAMBLE; SHRINK; VANDE) (Beal; Born; Craig; Craig Newmark; DAVID PAUL; Deron; Larry; Larry Thompson; Newmark; Richard Jerome; Strawberry Saroyan; WERNER SEGARRA)

KEYWORDS: (Trend); (Internet)

Word Count: 1029

5/10/04 PPLEMAG 195

END OF DOCUMENT

Exhibit 7

Authentication-Results: mta329.mail.scd.yahoo.com
 from=freecycle.org; domainkeys=neutral (no sig)
 X-YahooFilteredBulk: 209.68.5.9
 X-pair-Authenticated: 67.52.36.178
 From: "Freecycle Database Admin" <database@freecycle.org>
 To: <freecyclesunnyvale-owner@yahoogroups.com>
 Subject: [Bulk] [spam] 1st request freecyclesunnyvale
 Date: Tue, 1 Nov 2005 09:48:17 -0600
 Organization: Freecycle.org
 X-eGroups-Moderators: freecyclesunnyvale

 Yahoo! Groups SpamGuard has detected that the attached message to the owner of the Yahoo! Group freecyclesunnyvale is likely to be spam. For more information about SpamGuard, please visit our help pages: <http://groups.yahoo.com/local/spamguard.html>

Received: (qmail 96375 invoked from network); 1 Nov 2005 15:49:14 -0000
 Received: from unknown (66.218.66.218)
 by m31.grp.scd.yahoo.com with QMQP; 1 Nov 2005 15:49:14 -0000
 Received: from unknown (HELO relay.pair.com) (209.68.5.9)
 by mta3.grp.scd.yahoo.com with SMTP; 1 Nov 2005 15:49:13 -0000
 Received: (qmail 95981 invoked from network); 1 Nov 2005 15:48:55 -0000
 Received: from unknown (HELO WP1) (unknown)
 by unknown with SMTP; 1 Nov 2005 15:48:55 -0000
 X-pair-Authenticated: 67.52.36.178
 Message-ID: <00d101c5defb5c71c10b054501a8c0@WP1>
 Reply-To: "Freecycle Database Admin" <database@freecycle.org>
 From: "Freecycle Database Admin" <database@freecycle.org>
 To: <freecyclesunnyvale-owner@yahoogroups.com>
 Subject: 1st request freecyclesunnyvale
 Date: Tue, 1 Nov 2005 09:48:17 -0600
 Organization: Freecycle.org
 MIME-Version: 1.0
 Content-Type: multipart/alternative;
 boundary="-----_NextPart_000_00C5_01C5DEC9.62C3A970"
 X-Priority: 3
 X-MSMail-Priority: Normal
 X-Mailer: Microsoft Outlook Express 6.00.2900.2180
 X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2900.2180
 X-eGroups-Remote-IP: 209.68.5.9

Dear Owner of the Yahoo group "freecyclesunnyvale",

I am writing on behalf of The Freecycle Network(TM) to notify you that your link has been removed from www.freecycle.org. This was done at the request of the Group Outreach and Assistance Coordinator for your region because your group is not currently set up in accordance with the basic requirements for all approved Freecycle(TM) groups which include, but are not limited to:

- items posted must be free, legal, and appropriate for all ages
- the group must not be set to full moderation.

We have invested considerable time and resources in insuring that our organization is associated with only appropriately moderated, legal, and totally free services that have a common source of origin from The Freecycle Network(TM). This is why we only allow approved groups to associate with us in each community--to avoid any confusion among the public as who they are dealing with when the Freecycle name is used. Accordingly, please consider this your official notice to stop using the trademark-protected Freecycle name and logo, as well as any and all copyrighted texts, graphics, rules, guidelines, title, or its URL (Yahoo group name).

Please understand that our intent is not to stop your or your group from gifting or exchanging unwanted items with fellow users. Should you wish to remain independent of our organization, you are, of course, free to start your own gifting-based site under a name that is not confusingly similar to Freecycle. However, if there is another group listed on www.freecycle.org that covers the area that your group hoped to serve, please consider offering your help to that group as a co-moderator. We can all use the help!

For those of your members who are looking to join a local Freecycle group, you may simply refer them to www.freecycle.org where they can find all approved Freecycle groups.

Please let me know when either the group has been deleted or the above-listed Freecycle materials have been completely removed from your group. We appreciate your commitment to furthering the overall mission of promoting the local gift community in your area while keeping good stuff out of landfills.

Sincerely,

Database Admin
Freecycle.org
database@freecycle.org

Exhibit 8

Authentication-Results: mta222.mail.mud.yahoo.com
from=post.harvard.edu; domainkeys=neutral (no sig)
Date: Sat, 5 Nov 2005 23:00:41 -0800
To: copyright@yahoo-inc.com
From: Tim Oey <oey@post.harvard.edu>
Subject: IMPORTANT: freecyclesunnyvale group request
Cc: freecyclesunnyvale-owner@yahoogroups.com
X-eGroups-Moderators: freecyclesunnyvale

Dear copyright@yahoo-inc.com,

It has come to our attention that The Freecycle Network (TFN) may ask that the group:
<http://groups.yahoo.com/group/freecyclesunnyvale/>
be deleted.

Below is the email we recently received from one of their administrators -- database@freecycle.org.

We have inspected our group in detail and have never violated any of the requirements they list. Furthermore we are not using any materials that are under a TFN copyright. All the materials in our group were originally authored by the moderators of the Sunnyvale group and we have even placed them into the public domain. Please inspect our group to verify this.

The logo we currently have on our home page was licensed to us by TFN under the following conditions:

> On 10/9/03 11:05 AM, "Deron Beal" <dbeal@copebhs.com> wrote:
>
> > Yeah, Sunnyvale!
> > You can get the neutral logo from <http://www.freecycle.org> , just don't use
> > it for commercial purposes or you maybe Mark or Albert can help you to do
> > your own fancy schmancy logo!
> >
> > Good luck
> > Deron
> >
> > ----- Original Message -----
> > From: "Lissy Abraham" <lissy_a@earthlink.net>
> > To: <info@freecycle.org>
> > Sent: Tuesday, October 07, 2003 5:07 PM
> > Subject: logo?
> >
> >> Hi Deron, or Mark, or whoever:
> >>
> >> Is it possible you could make me a Freecycling Sunnyvale logo for mysite?
> >> Nothing unique -- just the one with the bicycle and the guitar.
> >>
> >> Thanks,
> >>
> >> Lissy

For the logo we have, we have not violated the loose term "just don't use it for commercial purposes" -- but this was the only "requirement" for using this logo. As you can see, TFN gave us a naked license for the logo and you probably know what that means.

On behalf of the general public and particularly other freecycling groups, I am personally pursuing legal action against The Freecycle Network regarding the generic term "freecycle" and their trademark claim to this term. We and thousands of other people believe this term is generic because it has been used generically in the public press, by The Freecycle Network itself, by moderators and freecyclers in freecycle groups, and by the general public for over 2 years. The term freecycle is just a relatively new word like blog or podcast.

Until this legal action is complete, please leave the freecyclesunnyvale group as is (if the only complaint is that we use the term "freecycle") or advise us of what we need to do to make the group fall within legal compliance and/or Yahoo's TOS. We are happy to make sure the group follows all TOS

and legal requirements in any way necessary.

Please note that it is perfectly legal for discussion groups to discuss trademarks as a matter of free speech. So if you take this approach, no Yahoo Group that mentions the term freecycle should be deleted solely on that basis even if their trademark claim is upheld.

Should you wish to contact me by phone, please call me at 408-536-4541 (work) or 408-749-1914 (home). I am also happy to meet with Yahoo staff in person as I drive by Yahoo's headquarters on a regular basis. If you wish to talk to my intellectual property lawyer that can be arranged as well.

The freecyclesunnyvale group has been a vibrant community for over two years -- supporting freecycling and helping freecyclers in the Sunnyvale, CA -- also home to Yahoo headquarters. It includes among its members a number of Yahoo employees. It is specifically mentioned in a number of Sunnyvale city publications including but not limited to Sunnyvale's Resource Reuses publication at: <http://sunnyvale.ca.gov/NR/rdonlyres/0FAB72E9-C2DB-49E3-83AC-5A8422D37EB0/0/Resources2005.pdf>

Your prompt attention and response in this matter is greatly appreciated.

Sincerely,
Tim Oey
Sunnyvale, CA

From: "Freecycle Database Admin" <database@freecycle.org>
To: <freecyclesunnyvale-owner@yahooogroups.com>
Subject: [Bulk] [spam] 1st request freecyclesunnyvale
Date: Tue, 1 Nov 2005 09:48:17 -0600
Organization: Freecycle.org

Yahoo! Groups SpamGuard has detected that the attached message to the owner of the Yahoo! Group freecyclesunnyvale is likely to be spam. For more information about SpamGuard, please visit our help pages: <http://groups.yahoo.com/local/spamguard.html>

Dear Owner of the Yahoo group "freecyclesunnyvale",

I am writing on behalf of The Freecycle Network(TM) to notify you that your link has been removed from <http://www.freecycle.org> This was done at the request of the Group Outreach and Assistance Coordinator for your region because your group is not currently set up in accordance with the basic requirements for all approved Freecycle(TM) groups which include, but are not limited to:

- items posted must be free, legal, and appropriate for all ages
- the group must not be set to full moderation.

We have invested considerable time and resources in insuring that our organization is associated with only appropriately moderated, legal, and totally free services that have a common source of origin from The Freecycle Network(TM). This is why we only allow approved groups to associate with us in each community--to avoid any confusion among the public as who they are dealing with when the Freecycle name is used. Accordingly, please consider this your official notice to stop using the trademark-protected Freecycle name and logo, as well as any and all copyrighted texts, graphics, rules, guidelines, title, or its URL (Yahoo group name).

Please understand that our intent is not to stop your or your group from gifting or exchanging unwanted items with fellow users. Should you wish to remain independent of our organization, you are, or

course, free to start your own gifting-based site under a name that is not confusingly similar to Freecycle. However, if there is another group listed on www.freecycle.org that covers the area that your group hoped to serve, please consider offering your help to that group as a co-moderator. We can all use the help!

For those of your members who are looking to join a local Freecycle group, you may simply refer them to www.freecycle.org where they can find all approved Freecycle groups.

Please let me know when either the group has been deleted or the above-listed Freecycle materials have been completely removed from your group. We appreciate your commitment to furthering the overall mission of promoting the local gift community in your area while keeping good stuff out of landfills.

Sincerely,

Database Admin
Freecycle.org
database@freecycle.org

Exhibit 9

Authentication-Results: mta103.mail.scd.yahoo.com
 from=freecycle.org; domainkeys=neutral (no sig)
 X-YahooFilteredBulk: 209.68.5.15
 X-pair-Authenticated: 67.52.36.178
 From: "Freecycle Database Admin" <database@freecycle.org>
 To: <freecyclesunnyvale-owner@yahoogroups.com>
 Subject: [Bulk] [spam] 2nd request freecyclesunnyvale
 Date: Mon, 14 Nov 2005 10:04:38 -0600
 Organization: Freecycle.org
 X-eGroups-Moderators: freecyclesunnyvale

 Yahoo! Groups SpamGuard has detected that the attached message to the owner of the Yahoo! Group freecyclesunnyvale is likely to be spam. For more information about SpamGuard, please visit our help pages: <http://groups.yahoo.com/local/spamguard.html>

Received: (qmail 25659 invoked from network); 14 Nov 2005 16:06:26 -0000
 Received: from unknown (66.218.66.218)
 by m28.grp.scd.yahoo.com with QMQP; 14 Nov 2005 16:06:26 -0000
 Received: from unknown (HELO relay01.pair.com) (209.68.5.15)
 by mta3.grp.scd.yahoo.com with SMTP; 14 Nov 2005 16:06:25 -0000
 Received: (qmail 87757 invoked from network); 14 Nov 2005 16:06:02 -0000
 Received: from unknown (HELO WP1) (unknown)
 by unknown with SMTP; 14 Nov 2005 16:06:02 -0000
 X-pair-Authenticated: 67.52.36.178
 Message-ID: <015b01c5e935\$512847e0\$4501a8c0@WP1>
 Reply-To: "Freecycle Database Admin" <database@freecycle.org>
 From: "Freecycle Database Admin" <database@freecycle.org>
 To: <freecyclesunnyvale-owner@yahoogroups.com>
 Subject: 2nd request freecyclesunnyvale
 Date: Mon, 14 Nov 2005 10:04:38 -0600
 Organization: Freecycle.org
 MIME-Version: 1.0
 Content-Type: multipart/alternative;
 boundary="-----_NextPart_000_0145_01C5E902.D2A1E980"
 X-Priority: 3
 X-MSMail-Priority: Normal
 X-Mailer: Microsoft Outlook Express 6.00.2900.2180
 X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2900.2180
 X-eGroups-Remote-IP: 209.68.5.15

Dear Owner of the Yahoo group "freecyclesunnyvale,"

This is your second and final notification to cease and desist using the trademark-protected Freecycle(TM) name and logo, any confusingly similar derivations thereof, and The Freecycle Network's(TM) copyrighted texts/rules/guidelines in your Yahoo group, including in the title/name of the group. Please do make the necessary changes to your group name, group URL, and applicable texts to avoid any confusion with Freecycle services or delete the group immediately.

Realize that unauthorized use of these protected materials is confusing to the public and may be damaging the Freecycle Network's reputation and goodwill. Moreover, your unauthorized use is a violation of the Yahoo Terms of Service, and a trademark and copyright infringement report will be filed with Yahoo if we cannot verify that these materials have been removed within 48 hours of the sending of this notice.

As we noted in our first letter, you are welcomed to continue the operation of a gifting or exchange-oriented site similar to that

operated by our organization. However, any Freecycle mark, logo or name, as well as any and all materials copyrighted by The Freecycle Network, must be removed before the end of the 48-hour period.

Thank you for your attention to this matter,

Database Admin
Freecycle.org
database@freecycle.org

Exhibit 10

Authentication-Results: mta198.mail.re2.yahoo.com
from=yahoo-inc.com; domainkeys=neutral (no sig)
Date: 21 Nov 2005 13:51:38 -0800
X-yahoo-newman-id: null
Date: Mon, 21 Nov 2005 13:25:04 -0800 (PST)
From: Yahoo! <yahoo-dev-null@yahoo-inc.com>
To: tim@oey.us
Subject: Yahoo! Administrative Notice
X-Spam-Track: 0: 100 ; SERVER=66.218.86.246

Dear Yahoo! account holder:

By creating and using your Yahoo! account, you agree to abide by Yahoo!'s Terms of Service (TOS). Pursuant to the TOS, Yahoo! reserves the right to terminate your account or otherwise prohibit use of your account in the event that, among other things, Yahoo! believes that you have violated or acted inconsistently with the letter or spirit of the TOS.

It has come to our attention that you may have violated the TOS. Please reread the TOS and cease any use of your account that may violate the TOS.

If your use of your Yahoo! account is brought to our attention again, and we believe that such use violates the TOS, then we may terminate your account without further notice.

Please do not reply to this email. Any questions concerning Yahoo!'s Services should be submitted through the on-line form in the help area (<http://help.yahoo.com>).

-Yahoo!