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

Plaintiff,

v.

TIM OEY and JANE DOE OEY,

Defendants.

Case No.

COMPLAINT FOR TRADEMARK
DISPARAGEMENT, INJURIOUS
FALSEHOOD, DEFAMATION,
INTENTIONAL INTERFERENCE
WITH BUSINESS RELATIONS

DEMAND FOR JURY TRIAL

Assigned to:

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

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

3 **The Parties**

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

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

13 **Jurisdiction and Venue**

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

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

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

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

25 **Background Facts**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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SECOND CLAIM FOR RELIEF

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Injurious Falsehood, Arizona Common Law)

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

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

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

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

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

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

19 **FOURTH CLAIM FOR RELIEF**

20 (Defamation, Arizona Common Law)

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

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

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

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

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

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

13 **DEMAND FOR JURY TRIAL**

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

15 Dated this 4th day of April, 2006.

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

19 By: _____


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