

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)
www.flsb.uscourts.gov

In re:

CASE NO. 09-19921 BKC-RAM
Chapter 11 Case

Psystar Corporation,

Debtor.

**DECLARATION OF MEHRNAZ BOROUMAND SMITH IN SUPPORT OF MOTION
BY APPLE INC. FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. § 362(d)**

I, Mehrnaz Boroumand Smith, declare and state as follows:

1. I am an attorney and partner at Townsend and Townsend and Crew LLP in San Francisco, California, counsel of record to Apple Inc. ("Apple") in the action entitled *Apple Inc. v. Psystar Corporation*, Case No. CV 08-03251 WHA (the "Infringement Action"). The Infringement Action commenced on July 3, 2008 and is pending before the Honorable Judge William Alsup in the United States District Court for the Northern District of California, and is the subject of the Motion by Apple Inc. for Relief From Stay Pursuant to 11 U.S.C. § 362(d) (the "Motion"). I have personal knowledge of the facts stated herein and if called as a witness, would and could testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the complete docket of the Infringement Action.

3. Attached hereto as **Exhibit B** is a true and correct copy of Apple's Amended Complaint in the Infringement Action.

4. Attached hereto as **Exhibit C** is a true and correct copy of Debtor Psystar Corporation's ("Psystar" or "Debtor") First Amended Counterclaim in the Infringement Action.

5. Attached hereto as **Exhibit D** is a true and correct copy of Judge Alsup's June 1, 2009 order staying the Infringement Action.

6. Apple and Debtor have engaged in extensive fact discovery in the Infringement Action, including responding to document requests, interrogatories, requests for admissions and conducting depositions. Psystar commenced this bankruptcy case just weeks before the June 26, 2009 close of all fact discovery and the affirmative expert report deadline in the Infringement Action, shortly after the May 8, 2009 granting of Apple's motion to compel additional documents from Psystar, and just prior to a June 4, 2009 scheduled deposition resulting from the motion to compel.

7. A Court Link search performed on June 2, 2009 of cases assigned to Judge Alsup that involve(d) copyright, trademark or DMCA issues indicates that Judge Alsup has been assigned at least 169 such cases. Attached hereto as **Exhibit E** is a true and correct copy of this Court Link search.

8. Discovery to date in the Infringement Action shows that in excess of 80 percent of Psystar's computer sales volume results from the sale of computers making unauthorized use of Apple's Mac OS X Leopard operating system.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of June, 2009 at San Francisco, California.



Mehrnaz Boroumand Smith

EXHIBIT A TO DECLARATION
Complete Docket of the Infringement Action

ADRMOP, E-Filing, PRVADR, STAYED

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:08-cv-03251-WHA

Apple Inc. v. Psystar Corporation
Assigned to: Hon. William H. Alsup
Cause: 17:501 Copyright Infringement

Date Filed: 07/03/2008
Jury Demand: Both
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

Apple Inc.
a California corporation

represented by **James G. Gilliland**
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V.

Defendant

Psystar Corporation

represented by **Christine S. Watson**
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ATTORNEY TO BE NOTICED

Counter-claimant

Psystar Corporation

represented by **Christine S. Watson**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Joseph Yorio
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Colby B. Springer
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter-defendant

Apple Inc.
a California corporation

represented by **James G. Gilliland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeb Bacon Oblak
(See above for address)
ATTORNEY TO BE NOTICED

Megan M Chung
(See above for address)
ATTORNEY TO BE NOTICED

Mehrnaz Boroumand Smith
(See above for address)
ATTORNEY TO BE NOTICED

Counter-claimant

Psystar Corporation

represented by **Christine S. Watson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Joseph Yorio
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Colby B. Springer
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter-defendant

Apple Inc.
a California corporation

represented by **Megan M Chung**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/03/2008	1	COMPLAINT; summons issued against Psystar Corporation (Filing fee \$ 350, receipt number 34611020943). Filed by Apple Inc. (slh, COURT STAFF) (Filed on 7/3/2008) (ga, COURT STAFF). (Entered: 07/08/2008)
07/03/2008	2	ADR SCHEDULING ORDER: Case Management Statement due by 10/15/2008. Case Management Conference set for 10/22/2008 10:30 AM. (Attachments: # 1 Standing Order)(slh, COURT STAFF) (Filed on 7/3/2008) (Entered: 07/08/2008)
07/03/2008		CASE DESIGNATED for Electronic Filing. (slh, COURT STAFF) (Filed on 7/3/2008) (Entered: 07/08/2008)
07/15/2008	3	Declination to Proceed Before a U.S. Magistrate Judge by Apple Inc.. (Gilliland, James) (Filed on 7/15/2008) (Entered: 07/15/2008)
07/16/2008	4	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (wh, COURT STAFF) (Filed on 7/16/2008) (Entered: 07/16/2008)
07/17/2008	5	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. William H. Alsup for all further proceedings. Judge Magistrate Judge James Larson no longer assigned to the case. Signed by Executive Committee on 7/17/08. (mab, COURT STAFF) (Filed on 7/17/2008) (Entered: 07/17/2008)
07/18/2008	6	SUMMONS Returned Executed by Apple Inc.. Psystar Corporation served on 7/8/2008, answer due 7/28/2008. (Gilliland, James) (Filed on 7/18/2008) (Entered: 07/18/2008)
07/21/2008	7	CLERK'S NOTICE Case Management Conference set for 10/23/2008 11:00 AM. Case Management Statement due by 10/16/2008. (fj, COURT STAFF) (Filed on 7/21/2008) (Entered: 07/21/2008)
07/21/2008	8	SUPPLEMENTAL ORDER TO ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE re 7 Clerk's Notice. Signed by Judge William Alsup on 7/21/08. (fj, COURT STAFF) (Filed on 7/21/2008) (Entered: 07/21/2008)
07/28/2008	9	STIPULATION TO EXTEND TIME FOR DEFENDANT TO RESPOND TO COMPLAINT FOR COPYRIGHT INFRINGEMENT, BREACH OF CONTRACT, TRADEMARK INFRINGEMENT, TRADE DRESS INFRINGEMENT, AND UNFAIR COMPETITION by Psystar Corporation. (Springer, Colby) (Filed on 7/28/2008) (Entered: 07/28/2008)
07/31/2008	10	CERTIFICATE OF SERVICE 7 8 by Apple Inc. of Clerk's Notice of Rescheduling Hearing and Supplemental Order to Order Setting Initial Case Management Conference in Civil Cases Before Judge William Alsup (Gilliland,

		James) (Filed on 7/31/2008) Modified on 8/1/2008 (sis, COURT STAFF). (Entered: 07/31/2008)
08/18/2008	11	STIPULATION (<i>SECOND</i>) TO EXTEND TIME FOR DEFENDANT TO RESPOND TO COMPLAINT FOR COPYRIGHT INFRINGEMENT, BREACH OF CONTRACT, TRADEMARK INFRINGEMENT, TRADE DRESS INFRINGEMENT, AND UNFAIR COMPETITION by Psystar Corporation. (Springer, Colby) (Filed on 8/18/2008) (Entered: 08/18/2008)
08/28/2008	12	ANSWER to Complaint with Jury Demand, COUNTERCLAIM FOR VIOLATIONS OF THE SHERMAN, CLAYTON, AND CARTWRIGHT ACTS, AND STATE AND COMMON UNFAIR COMPETITION LAW against Apple Inc. by Psystar Corporation. (Springer, Colby) (Filed on 8/28/2008) (Entered: 08/28/2008)
09/11/2008	13	Certificate of Interested Entities by Psystar Corporation (Watson, Christine) (Filed on 9/11/2008) (Entered: 09/11/2008)
09/12/2008	14	Certificate of Interested Entities by Apple Inc. (Boroumand Smith, Mehrnaz) (Filed on 9/12/2008) (Entered: 09/12/2008)
09/15/2008	15	STIPULATION TO EXTEND TIME FOR PLAINTIFF AND COUNTERDEFENDANT APPLE INC TO RESPOND TO COUNTERCLAIMS FOR VIOLATIONS OF THE SHERMAN, CLAYTON AND CARTWRIGHT ACTS, AND STATE AND COMMON UNFAIR COMPETITION LAW by Apple Inc.. (Boroumand Smith, Mehrnaz) (Filed on 9/15/2008) (Entered: 09/15/2008)
09/30/2008	16	MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> filed by Apple Inc.. Motion Hearing set for 11/6/2008 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Gilliland, James) (Filed on 9/30/2008) (Entered: 09/30/2008)
09/30/2008	17	Request for Judicial Notice re 16 MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> filed by Apple Inc.. (Attachments: # 1 Exhibit A-F)(Related document(s) 16) (Gilliland, James) (Filed on 9/30/2008) (Entered: 09/30/2008)
09/30/2008	18	NOTICE by Apple Inc. re 17 Request for Judicial Notice, <i>Manual Filing Notification of Exhibit B to Request for Judicial Notice</i> (Gilliland, James) (Filed on 9/30/2008) (Entered: 09/30/2008)
09/30/2008	19	Proposed Order re 16 MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> by Apple Inc.. (Gilliland, James) (Filed on 9/30/2008) (Entered: 09/30/2008)
09/30/2008	20	EXHIBIT B re 17 Request for Judicial Notice, filed by Apple Inc.. (Related document(s) 17) (sis, COURT STAFF) (Filed on 9/30/2008) (Entered: 10/02/2008)
10/02/2008	21	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Gilliland, James) (Filed on 10/2/2008) (Entered: 10/02/2008)
10/02/2008	22	STIPULATION and Proposed Order selecting Private ADR by Apple Inc. (Gilliland, James) (Filed on 10/2/2008) (Entered: 10/02/2008)

10/10/2008	23	CLERKS NOTICE Rescheduling Hearing. Case Management Conference set for 11/6/2008 08:00 AM. Case Management Statement due by 10/30/2008. (dt, COURT STAFF) (Filed on 10/10/2008) (Entered: 10/10/2008)
10/13/2008	24	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Springer, Colby) (Filed on 10/13/2008) (Entered: 10/13/2008)
10/16/2008	25	Memorandum in Opposition re 16 MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> filed by Psystar Corporation. (Grewe, Christopher) (Filed on 10/16/2008) (Entered: 10/16/2008)
10/16/2008	26	Declaration of Christopher P. Grewe, Esq. in Support of 25 Memorandum in Opposition to <i>Apple Inc.'s Motion to Dismiss</i> filed by Psystar Corporation. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Related document(s) 25) (Grewe, Christopher) (Filed on 10/16/2008) (Entered: 10/16/2008)
10/23/2008	27	Reply to Opposition re 16 MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> filed by Apple Inc.. (Attachments: # 1 Affidavit Reply Declaration of James G. Gilliland, Jr., # 2 Exhibit 1 to Reply Declaration of James G. Gilliland, Jr., # 3 Exhibit 2 to Reply Declaration of James G. Gilliland, Jr.)(Gilliland, James) (Filed on 10/23/2008) (Entered: 10/23/2008)
10/30/2008	28	CASE MANAGEMENT STATEMENT AND PROPOSED CASE MANAGEMENT ORDER filed by Apple Inc.. (Gilliland, James) (Filed on 10/30/2008) (Entered: 10/30/2008)
10/31/2008	29	CLERKS NOTICE Rescheduling Hearing Time. Motion hearing and Case Management Conference set for 11/6/2008 02:00 PM. (dt, COURT STAFF) (Filed on 10/31/2008) (Entered: 10/31/2008)
11/06/2008	32	Minute Entry: Initial Case Management Conference held on 11/6/2008 before William Alsup (Date Filed: 11/6/2008), Motion Hearing held on 11/6/2008 before William Alsup (Date Filed: 11/6/2008) re 16 MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> filed by Apple Inc. Jury Trial set for 11/9/2009 07:30 AM. Pretrial Conference set for 10/29/2009 02:00 PM. (Court Reporter Joan Columbini.) (dt, COURT STAFF) (Date Filed: 11/6/2008) (Entered: 11/14/2008)
11/06/2008	34	AMENDED Minute Entry: Initial Case Management Conference held on 11/6/2008 before William Alsup (Date Filed: 11/6/2008), Motion Hearing held on 11/6/2008 before William Alsup (Date Filed: 11/6/2008) re 16 MOTION to Dismiss <i>Psystar's Counterclaims; Memorandum of Points and Authorities in Support Thereof</i> filed by Apple Inc. Jury Trial set for 11/9/2009 07:30 AM. Pretrial Conference set for 10/26/2009 02:00 PM. (Court Reporter Joan Columbini.) (dt, COURT STAFF) (Date Filed: 11/6/2008) (Entered: 11/19/2008)
11/07/2008	30	CASE MANAGEMENT SCHEDULING ORDER: Discovery due by 6/26/2009. Jury Trial set for 11/9/2009 07:30 AM in Courtroom 9, 19th Floor, San Francisco. Motions due by 8/20/2009. Pretrial Conference set for 10/26/2009 02:00 PM in Courtroom 9, 19th Floor, San Francisco. Signed by

		Judge William Alsup on 11/7/2008. (whasec, COURT STAFF) (Filed on 11/7/2008) (Entered: 11/07/2008)
11/13/2008	31	Transcript of Proceedings held on November 6, 2008, before Judge William H. Alsup. Court Reporter/Transcriber Joan Marie Columbini, Telephone number 415-255-6842. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 2/9/2009. (Columbini, Joan) (Filed on 11/13/2008) (Entered: 11/13/2008)
11/18/2008	33	ORDER GRANTING MOTION TO DISMISS COUNTERCLAIMS by Judge Alsup granting 16 Motion to Dismiss (whalc2, COURT STAFF) (Filed on 11/18/2008) (Entered: 11/18/2008)
11/26/2008	35	MOTION for Leave to File <i>AMENDED COMPLAINT</i> filed by Apple Inc.. Motion Hearing set for 1/8/2009 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Attachments: # 1 Exhibit A)(Boroumand Smith, Mehrnaz) (Filed on 11/26/2008) (Entered: 11/26/2008)
11/26/2008	36	Proposed Order re 35 MOTION for Leave to File <i>AMENDED COMPLAINT</i> by Apple Inc.. (Boroumand Smith, Mehrnaz) (Filed on 11/26/2008) (Entered: 11/26/2008)
12/02/2008	37	STIPULATION <i>CONSENTING TO APPLE INC'S FILING OF AMENDED COMPLAINT AND [PROPOSED] ORDER VACATING HEARING ON APPLE INC.'S MOTION FOR LEAVE TO AMEND</i> by Apple Inc.. (Gilliland, James) (Filed on 12/2/2008) (Entered: 12/02/2008)
12/02/2008	38	<i>AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT, INDUCED COPYRIGHT INFRINGEMENT, VIOLATION OF DIGITAL MILLENNIUM COPYRIGHT ACT, BREACH OF CONTRACT, INDUCED BREACH OF CONTRACT, INDUCED BREACH OF CONTRACT, TRADEMARK INFRINGEMENT, TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION</i> against Apple Inc.. Filed by Apple Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Gilliland, James) (Filed on 12/2/2008) (Entered: 12/02/2008)
12/05/2008	39	ORDER VACATING HEARING ON APPLE INC.'S MOTION FOR LEAVE TO AMEND. Signed by Judge Alsup on December 4, 2008. (whalc1, COURT STAFF) (Filed on 12/5/2008) (Entered: 12/05/2008)
12/08/2008	40	MOTION for Leave to File <i>First Amended Counterclaim</i> filed by Psystar Corporation. Motion Hearing set for 1/15/2009 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Attachments: # 1 Exhibit First Amended Counterclaim, # 2 Proposed Order Proposed Order, # 3 Exhibit Annotated Counterclaim, # 4 Exhibit Law Review Article)(Springer, Colby) (Filed on 12/8/2008) (Entered: 12/08/2008)
12/16/2008	41	Answer to Amended Complaint 38 Amended Complaint, <i>Answer and</i>

		<i>Affirmative Defenses of Psystar Corporation to Apple Inc.'s First Amended Complaint</i> by Psystar Corporation. (Grewe, Christopher) (Filed on 12/16/2008) (Entered: 12/16/2008)
12/22/2008	42	STIPULATION re 40 MOTION for Leave to File <i>First Amended Counterclaim Joint Request and Stipulation to Reschedule Hearing on Psystar Corporation's Motion for Leave to Amend and [Proposed] Order Rescheduling Hearing on Psystar Corporation's Motion for Leave to Amend</i> by Psystar Corporation. (Grewe, Christopher) (Filed on 12/22/2008) (Entered: 12/22/2008)
12/23/2008	43	ORDER RESCHEDULING HEARING ON PSYSTAR'S MOTION FOR LEAVE TO AMEND. Signed by Judge Alsup on December 23, 2008. (whalc1, COURT STAFF) (Filed on 12/23/2008) (Entered: 12/23/2008)
12/23/2008		Set/Reset Deadlines as to 40 MOTION for Leave to File <i>First Amended Counterclaim</i> . Motion Hearing set for 1/22/2009 08:00 AM. (rcs, COURT STAFF) (Filed on 12/23/2008) (Entered: 12/29/2008)
12/30/2008	44	Memorandum in Opposition <i>Apple Inc.'s Opposition to Psystar Corporation's Motion for Leave To Amend Its Counterclaims</i> filed by Apple Inc.. (Boroumand Smith, Mehrnaz) (Filed on 12/30/2008) (Entered: 12/30/2008)
12/30/2008	45	STIPULATION <i>Stipulation to Extend Deadline to Complete Mediation and [Proposed] Order Amending the Case Management Order to Reflect the Same</i> by Apple Inc.. (Attachments: # 1 Exhibit A)(Boroumand Smith, Mehrnaz) (Filed on 12/30/2008) (Entered: 12/30/2008)
12/31/2008	46	STIPULATION AND ORDER TO EXTEND DEADLINE TO COMPLETE MEDIATION. Signed by Judge Alsup on December 31, 2008. (whalc1, COURT STAFF) (Filed on 12/31/2008) (Entered: 12/31/2008)
12/31/2008		CASE REFERRED to Private ADR with Hon. Daniel Weinstein (Ret.) Mediation deadline extended to 2/18/2009. (cmf, COURT STAFF) (Filed on 12/31/2008) (Entered: 01/05/2009)
01/07/2009	47	*** FILED IN ERROR. PLEASE SEE DOCKET # 48 . *** Reply to 44 <i>Opposition of Apple Inc. to Psystar Corporation's Motion for Leave to Amend its Counterclaims</i> filed by Psystar Corporation. (Attachments: # 1 Appendix Open Source Yoga (2005 WL 756558))(Springer, Colby) (Filed on 1/7/2009) Modified on 1/8/2009 (sis, COURT STAFF). Modified on 1/8/2009 (ewn, COURT STAFF). (Entered: 01/07/2009)
01/08/2009	48	Reply to <i>Opposition of Apple Inc. to Psystar Corporation's Motion for Leave to Amend its Counterclaims</i> CORRECTION OF DOCKET # 47 filed by Psystar Corporation. (Attachments: # 1 Appendix Open Source Yoga)(Springer, Colby) (Filed on 1/8/2009) (Entered: 01/08/2009)
01/14/2009	49	CLERKS NOTICE Rescheduling Motion Hearing. Motion Hearing set for 1/22/2009 02:00 PM in Courtroom 9, 19th Floor, San Francisco. (dt, COURT STAFF) (Filed on 1/14/2009) (Entered: 01/14/2009)
01/22/2009	50	Minute Entry: Motion Hearing held on 1/22/2009 before William Alsup (Date Filed: 1/22/2009) re 35 MOTION for Leave to File <i>AMENDED COMPLAINT</i> filed by Apple Inc., 40 MOTION for Leave to File <i>First Amended</i>

		<i>Counterclaim</i> filed by Psystar Corporation. (Court Reporter Kathy Wyatt.) (dt, COURT STAFF) (Date Filed: 1/22/2009) (Entered: 01/22/2009)
02/04/2009	51	Transcript of Proceedings held on 1-22-09, before Judge William Alsup. Court Reporter/Transcriber Katherine Wyatt, Telephone number 925-212-5224. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 5/4/2009. (kpw, COURT STAFF) (Filed on 2/4/2009) (Entered: 02/04/2009)
02/06/2009	52	ORDER RE PSYSTAR'S MOTION FOR LEAVE TO AMEND COUNTERCLAIMS by Judge Alsup granting in part and denying in part 40 Motion for Leave to File (whalc2, COURT STAFF) (Filed on 2/6/2009) (Entered: 02/06/2009)
02/12/2009	53	Amended COUNTERCLAIM <i>for Declaratory Relief</i> against Apple Inc.. Filed by Psystar Corporation. (Springer, Colby) (Filed on 2/12/2009) (Entered: 02/12/2009)
02/25/2009	54	Joint MOTION for Protective Order <i>Joint Motion to Enter Stipulated Protective Order</i> filed by Apple Inc.. (Attachments: # 1 Exhibit Exhibit 1 - Stipulated Protective Order and [Proposed] Order)(Chung, Megan) (Filed on 2/25/2009) (Entered: 02/25/2009)
03/03/2009	55	ORDER by Judge Alsup granting 54 Motion for Protective Order. (whalc1, COURT STAFF) (Filed on 3/3/2009) (Entered: 03/03/2009)
03/04/2009	56	ANSWER to Counterclaim <i>OF PSYSTAR CORPORATION FOR DECLARATORY RELIEF AS TO THE UNENFORCEABILITY OF COPYRIGHTS</i> by Apple Inc.. (Boroumand Smith, Mehrnaz) (Filed on 3/4/2009) (Entered: 03/04/2009)
04/29/2009	57	MOTION to Seal Document (<i>Miscellaneous Administrative Request For An Order Permitting The Filing Under Seal Of Confidential Portions Of Letter Brief Dated April 29, 2009</i>) filed by Apple Inc.(a California corporation). (Attachments: # 1 Proposed Order Permitting The Filing Under Seal Of Confidential Portions Of Letter Brief Dated April 29, 2009)(Chung, Megan) (Filed on 4/29/2009) (Entered: 04/29/2009)
04/29/2009	58	AFFIDAVIT re 57 MOTION to Seal Document (<i>Miscellaneous Administrative Request For An Order Permitting The Filing Under Seal Of Confidential Portions Of Letter Brief Dated April 29, 2009</i>) MOTION to Seal Document (<i>Miscellaneous Administrative Request For An Order Permitting The Filing Under Seal Of Confidential Portions Of Letter Brief Dated April 29, 2009</i>) (<i>Declaration of Megan M. Chung In Support of Administrative Request</i>) by Apple Inc.(a California corporation). (Chung, Megan) (Filed on 4/29/2009) (Entered: 04/29/2009)
04/29/2009	59	Letter Brief <i>Dated April 29, 2009</i> filed by Apple Inc.(a California corporation). (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under

		Seal), # 3 Exhibit C, # 4 Exhibit D (Filed Under Seal))(Chung, Megan) (Filed on 4/29/2009) (Entered: 04/29/2009)
04/29/2009	63	FILED UNDER SEAL Letter Brief filed by Apple Inc.(a California corporation). (sis, COURT STAFF) (Filed on 4/29/2009) (Entered: 05/06/2009)
04/29/2009	64	FILED UNDER SEAL EXHIBITS A, B & D re 63 Letter Brief filed by Apple Inc.(a California corporation). (Related document(s) 63) (sis, COURT STAFF) (Filed on 4/29/2009) (Entered: 05/06/2009)
05/01/2009	60	ORDER SETTING HEARING ON PLAINTIFF'S DISCOVERY DISPUTE [re 59 Letter Brief, filed by Apple Inc.]. Signed by Judge William Alsup on 5/1/2009. (whasec, COURT STAFF) (Filed on 5/1/2009) (Entered: 05/01/2009)
05/04/2009	61	Letter Brief dated May 4, 2009 in response to Plaintiff's Letter Brief Dated April 29, 2009 filed by Psystar Corporation. (Springer, Colby) (Filed on 5/4/2009) (Entered: 05/04/2009)
05/05/2009	62	ORDER by Judge Alsup granting 57 Motion to Seal Document. (whalc1, COURT STAFF) (Filed on 5/5/2009) (Entered: 05/05/2009)
05/05/2009	67	Minute Entry: Discovery Hearing held on 5/5/2009 before William Alsup (Date Filed: 5/5/2009). Dft shall attachments produced by 5//18/09. Deposition shall be held at 9am on 6/3/09. (Court Reporter Lydia Zinn.) (dt, COURT STAFF) (Date Filed: 5/5/2009) (Entered: 05/08/2009)
05/07/2009	65	Transcript of Proceedings held on 05/05/2009, before Judge William Alsup. Court Reporter/Transcriber Lydia Zinn, Telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction.After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 8/3/2009. (Zinn, Lydia) (Filed on 5/7/2009) (Entered: 05/07/2009)
05/08/2009	66	Proposed Order re 59 Letter Brief, 61 Letter Brief [<i>JOINT PROPOSED</i>] <i>ORDER COMPELLING PSYSTAR'S PRODUCTION OF FINANCIAL DOCUMENTS AND 30(B)(6) DEPOSITION</i> by Apple Inc.. (Chung, Megan) (Filed on 5/8/2009) (Entered: 05/08/2009)
05/08/2009	68	ORDER COMPELLING PSYSTAR'S PRODUCTION OF FINANCIAL DOCUMENTS AND 30(B)(6) DEPOSITION. Signed by Judge Alsup on May 8, 2009. (whalc1, COURT STAFF) (Filed on 5/8/2009) (Entered: 05/08/2009)
05/26/2009	69	SUGGESTION OF BANKRUPTCY Upon the Record as to Psystar Corporation by Psystar Corporation. (Springer, Colby) (Filed on 5/26/2009) (Entered: 05/26/2009)
06/01/2009	70	ORDER STAYING CASE. Signed by Judge Alsup on June 1, 2009. (whalc1, COURT STAFF) (Filed on 6/1/2009) (Entered: 06/01/2009)
06/01/2009		Set/Reset Deadlines:, Set/Reset Hearings: Case Management Statement due by 12/3/2009. Case Management Conference set for 12/10/2009 11:00 AM. (sis,

	COURT STAFF) (Filed on 6/1/2009) (Entered: 06/02/2009)
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EXHIBIT B TO DECLARATION
Apple's Amended Complaint in the Infringement Action

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15 APPLE INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 APPLE INC., a California corporation,

20 Plaintiff,

21 v.

22 PSYSTAR CORPORATION,
23 a Florida corporation, and DOES 1-10,
24 inclusive,

25 Defendants.

Case No. CV 08-03251 WHA

**AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT,
INDUCED COPYRIGHT
INFRINGEMENT, VIOLATION OF THE
DIGITAL MILLENNIUM COPYRIGHT
ACT, BREACH OF CONTRACT,
INDUCED BREACH OF CONTRACT,
TRADEMARK INFRINGEMENT,
TRADE DRESS INFRINGEMENT AND
UNFAIR COMPETITION**

JURY TRIAL REQUESTED

26 Plaintiff Apple Inc. ("Apple") hereby alleges as follows:

27 **BACKGROUND ALLEGATIONS**

28 1. Apple is a California corporation with its headquarters and principal place of business at 1 Infinite Loop, Cupertino, California. Apple makes and sells well-known computer hardware, software and consumer products and services including the Macintosh® computer, the iPod® music player and the iPhone™. Founded in 1976, Apple has been consistently ranked as one of the most innovative companies in the world. Apple currently employs approximately 28,000 people

1 worldwide, owns and operates over 200 retail stores, and sells its products online as well. In 2008,
2 *Fortune Magazine* named Apple "America's Most Admired Company."

3 2. A pioneer of the personal computer revolution, Apple launched its Macintosh line of
4 computers in 1984. Apple's Macintosh computers (or "Mac") introduced such novel innovations as
5 the mouse, computer icons and the graphical user interface. Apple's "perennially praised" Mac® line
6 of computers includes the Mac Pro®, iMac®, Mac® mini, MacBook®, MacBook Pro and MacBook
7 Air®. Since 2001, Apple has sold more than 29 million Macintosh computers.

8 3. Apple's Macintosh computers are famous for their reliability, ease-of-use and
9 innovative industrial design. Apple's development teams have seamlessly integrated the hardware and
10 software features of Macintosh computers such that the use of the computers is intuitive, efficient and
11 pleasurable. Moreover, the unified, integrated Mac system is simpler to service, update and maintain.
12 Indeed, for eight consecutive years *Consumer Reports* has ranked Apple's technical support for its
13 customers best in the nation for both desktop and laptop computers, surpassing Dell, Hewlett-Packard,
14 Sony, Toshiba, Gateway and Lenovo.

15 4. In 2001, Apple launched the tenth generation of its operating system - Mac OS X. Mac
16 OS X revolutionized operating system architecture, adding extraordinary capabilities, speed and
17 stability. Apple's most recent version of Mac OS X, version 10.5, known as "Leopard®," has been
18 described by reviewers as "visually stunning," "powerful, polished and carefully conceived," and
19 "elegant." Other reviewers have said the "grace of Leopard's interface elements makes productivity
20 more pleasurable with a Mac," all the result "of years of hard, diligent work by the development teams
21 at Apple."

22 5. The Mac OS X user interface combines the use of color, transparency and animation
23 together with the overall arrangement and set up of various icons in a unique and creative manner. In
24 addition, the Finder toolbar containing the famous Apple mark is combined with a distinctive three-
25 dimensional applications bar (or "dock") on which various icons reside. The distinctive nonfunctional
26 combination of elements that makes up the Mac OS X user interface is well known to consumers and
27 has become associated with Apple and Mac OS X Leopard. This combination of elements shall be
28 referred to hereafter as "Apple's Trade Dress."

1 6. Mac OS X, including the Leopard® version, has been the subject of numerous articles
2 in general circulation newspapers, magazines and online publications, as well as radio, television and
3 Internet broadcasts. The product has received significant acclaim and in recent years sales of Mac
4 computers have surged, growing at a faster pace than the personal computer market in general.

5 7. Apple also manufactures and sells the Xserve® rack-mount server for use in businesses
6 needing to connect multiple computers to a single server. The Xserve uses Mac OS X Leopard Server
7 as its operating system software. Mac OS X Leopard Server has also been the subject of numerous
8 articles, publications and media coverage both on television and radio and on the Internet.

9 8. The Apple brand, including its registered trademarks Apple® and Mac®, is one of the
10 most famous brands in the world. Since inception, Apple has continuously and extensively promoted,
11 offered and sold its Mac computers, and its related goods and services, in interstate commerce under
12 the various Apple and Mac trademarks. Since 1994, Apple has spent more than \$3 billion to promote
13 its brand, including the Apple and Mac trademarks. Apple's brand, including its various marks and
14 distinctive trade dress, have become synonymous with high quality, innovative, elegant and user-
15 friendly consumer electronics products. Indeed, among many other accolades over the years, for each
16 of the past three years *BusinessWeek Magazine* named Apple the "World's Most Innovative
17 Company." The Apple brand and trademarks consistently are ranked by independent research
18 organizations as being among the fifty most valuable brands on earth.

19 9. As a result of Apple's continuous and extensive use and promotion, the consuming
20 public nationwide understands that Apple's various marks and distinctive trade dress identify Apple's
21 goods and services, and associates the marks with Apple exclusively. Because of the consistent
22 quality of Apple's goods and services marketed under and in association with Apple's trademarks and
23 distinctive trade dress, Apple has established considerable good will and reputation with respect to its
24 goods and services.

25 10. Apple's use of its Apple, Mac, Leopard, Xserve and SuperDrive marks has been
26 exclusive and continuous in the computer industry since long prior to the date of Defendant's first
27 infringing acts described below. Furthermore, the Apple marks and distinctive trade dress became
28 famous among the general consuming public long before the date of Defendant's first infringing use.

1 The various Apple marks and distinctive trade dress are well known and are among the most important
2 assets of Apple.

3 11. On information and belief, Defendant Psystar Corporation ("Psystar" or "Defendant") is
4 a corporation organized and existing under the laws of the State of Florida with its principal place of
5 business at 10475 NW 28th Street, Doral, Florida 33172.

6 12. In April, 2008, without authorization from Apple, and in violation of the terms of the
7 Software License Agreement governing the use of Mac OS X software and Apple's intellectual
8 property, Psystar began selling in commerce a computer named the OpenMac which apparently runs a
9 modified, unauthorized, version of the Leopard operating system as well as modified and unauthorized
10 versions of other Apple software and firmware. Thereafter Psystar changed the name of its product to
11 Open Computer, but continued to sell it with the Leopard operating system, without authorization
12 from Apple. Psystar also began selling another computer model, the OpenPro, seemingly named after
13 Apple's Mac Pro®, without authorization from Apple, and in violation of the terms of the Software
14 License Agreement governing the use of Mac OS X software and Apple's intellectual property. Like
15 the Open Computer, the OpenPro apparently runs a modified, unauthorized, version of the Leopard
16 operating system as well as modified and unauthorized versions of other Apple software and
17 firmware. Psystar sells its computers online and ships them throughout the United States, including
18 into the Northern District of California. Psystar's Chief Executive Officer has been quoted as saying
19 that Psystar has sold "thousands" of these computers. In addition, without Apple's permission or
20 consent, Psystar makes copies of, and offers to customers for download from its website,
21 www.psystar.com, "updates" to the Leopard software that are either direct copies of Apple-generated
22 updates and/or unauthorized modified versions of software updates from Apple.

23 13. In June, 2008, Psystar began selling in commerce rack-mount servers called the
24 OpenServ 1100 and OpenServ 2400. Subsequently, in October, 2008, Psystar added yet another
25 server, the OpenServ 800, to its line of products and began selling it in commerce. Without
26 authorization from Apple, and in violation of the terms of the Software License Agreement governing
27 the use of the Mac OS X Leopard Server software and Apple's intellectual property, Psystar has
28 offered for sale and, on information and belief, sold OpenServ 800, OpenServ 1100 and OpenServ

1 2400 servers utilizing the Mac OS X Leopard Server software.

2 14. In August, 2008, without authorization from Apple, Psystar began distributing a
3 "restore disk" which allows for the installation of Mac OS X, in violation of the terms of the Software
4 License Agreement governing the use of Mac OS X software and Apple's intellectual property. On
5 information and belief, without authorization from Apple, Psystar intentionally provides specific
6 instructions to its customers that allow customers to install Mac OS X software on non-Apple-labeled
7 hardware, in violation of the terms of the Software License Agreement. On information and belief,
8 Psystar also provides technical support and assists its customers to install Mac OS X software in
9 violation of the terms of the Software License Agreement.

10 15. On information and belief, in fall 2008, Psystar worked to develop a laptop product that
11 runs Mac OS X and in October, 2008, Psystar announced that it is planning to sell in commerce
12 additional computers, servers, laptops, and/or hard drives that are preinstalled with or which will run a
13 modified, unauthorized, version of Mac OS X operating system, including but not limited to a product
14 referred to on Psystar's website as the "mobile Open Computer."

15 16. Online commentators have reported that Psystar's Open Computer is "missing stuff like
16 iLife, Bluetooth, an IR receiver, DVD burning and the ability to update your computer," is "LOUD,
17 Crazy Loud," it "breaks the OS' automatic updates," and that "video was DOA right out of the box.
18 No signal going to monitor. Boot up is moot point as there is nothing to see." For the OpenPro,
19 online commentators have stated that the OpenPro's "internal [hardware] design is only average
20 compared with that of a Mac Pro," and it has been reported that Psystar failed to properly connect the
21 graphics card. Of Psystar itself reviewers have written, "they have no quality control," "lousy tech
22 support," and "All I want to do is return the computer and get a refund." Likewise, it has been
23 reported that Psystar has repeatedly changed locations, that its office could not be found, and that its
24 first on-line payment processor terminated Psystar's account.

25 17. As alleged more fully below, by misappropriating Apple's proprietary software and
26 intellectual property for its own use, Psystar's actions harm consumers by selling to them a poor
27 product that is advertised and promoted in a manner that falsely and unfairly implies an affiliation
28 with Apple. Psystar's actions also have caused, and are causing, harm to Apple and constitute a

1 misuse of Apple's intellectual property. To prevent this continued unfair and unlawful exploitation of
2 Apple's proprietary technology, and to avoid further consumer confusion and injury, Apple seeks an
3 injunction against further misappropriation and infringement of its intellectual property, an award of
4 damages, treble damages and its attorneys' fees and costs of suit.

5 18. On information and belief, persons other than Psystar are involved in Psystar's
6 unlawful and improper activities described in this Amended Complaint. The true names or capacities,
7 whether individual, corporate, or otherwise, of these persons are unknown to Apple. Consequently
8 they are referred to herein as John Does 1 through 10 (collectively the "John Doe Defendants"). On
9 information and belief, the John Doe Defendants are various individuals and/or corporations who have
10 infringed Apple's intellectual property rights, breached or induced the breach of Apple's license
11 agreements and violated state and common law unfair competition laws. Apple will seek leave to
12 amend this complaint to show the unknown John Doe Defendants' true names and capacities when
13 they are ascertained.

14 **JURISDICTION AND VENUE**

15 19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 1331, 1332,
16 and 1338 because this action arises under the copyright and trademark laws of the United States, there
17 is complete diversity of citizenship between the parties, and the amount in controversy exceeds
18 \$75,000.

19 20. Venue is proper in this judicial district pursuant to 28 U.S.C. section 1391 because
20 Psystar has done business in this judicial district, has committed acts of copyright and trademark
21 infringement in this district, has breached a contract with a substantial impact in this district, has
22 engaged in unfair competition in this district, and continues to commit such acts in this district.
23 Because this is an Intellectual Property case, it is not subject to the intra-District venue provisions of
24 Northern District of California Local Rule 3-2(c).

25 **GENERAL ALLEGATIONS**

26 21. Apple licenses the use of its Macintosh operating system ("Mac OS") software for use
27 only on Apple-labeled hardware. Indeed, an original version of the Mac OS is available only with the
28 purchase of a Macintosh computer. Upgrades to the Mac OS may be licensed separately, but the

1 terms of the license prohibit use of the Mac OS or its upgrades on non-Apple hardware.

2 22. The Software License Agreement for Mac OS X Leopard (and Mac OS X Leopard
3 Server) ("License Agreement") provided with each version of Mac OS X Leopard and Mac OS X
4 Leopard Server are attached hereto as Exhibits 1 and 2, and are incorporated herein by reference. The
5 Mac OS X Leopard License Agreement specifies *inter alia*:

6 "1. **General.** The software (including Boot ROM Code)... accompanying
7 this License whether preinstalled on Apple-labeled hardware, on disk, in
8 read only memory, or any other media or in any other form (collectively,
9 the "Apple Software") are licensed, not sold, to you by Apple Inc.
("Apple") for use only under the terms of this License, and Apple reserves
all rights not expressly granted to you....

10 **2. Permitted License Uses and Restrictions.**

11 A. Single Use. This license allows you to install, use and run one (1)
12 copy of the Apple Software on a single Apple-labeled computer at a time.
You agree not to install, use, or run the Apple Software on any non-Apple-
labeled computer or enable another to do so.

13 * * *

14 C. You may make one copy of the Apple Software (excluding the Boot
15 ROM code and other Apple firmware that is embedded or otherwise
16 contained in Apple-labeled hardware) in machine-readable form for
17 backup purposes only....Apple Boot ROM code and firmware is provided
only for use on Apple-labeled hardware and you may not copy, modify or
redistribute the Apple Boot ROM code or firmware, or any portions
thereof....

18 D. Certain components of the Apple Software, and third party open
19 source programs included with the Apple Software, have been or may be
20 made available by Apple on its Open Source web site
(<http://www.opensource.apple.com/>) (collectively the "Open-Sourced
21 Components"). You may modify or replace only these Open-Sourced
22 Components; provided that: (i) the resultant modified Apple Software is
used, in place of the unmodified Apple Software, on a single Apple
labeled computer; and (ii) you otherwise comply with the terms of this
License and any applicable licensing terms governing use of the Open-
Sourced Components.

23 * * *

24 F. Except as and only to the extent permitted by applicable licensing
25 terms governing use of the Open-Sourced Components, or by applicable
26 law, you may not copy, decompile, reverse engineer, disassemble, modify,
or create derivative works of the Apple Software or any part thereof.

27 * * *

28 **3. Transfer.** You may not rent, lease, lend, redistribute or sublicense the
Apple Software. Subject to the restrictions set forth below, you may,

1 however, make a one-time permanent transfer of all of your license rights
2 to the Apple Software (in its original form as provided by Apple) to
3 another party, provided that: (a) the transfer must include all of the Apple
4 Software, including all its component parts (excluding Apple Boot ROM
5 code and firmware), original media, printed materials and this License; (b)
6 you do not retain any copies of the Apple Software, full or partial,
7 including copies stored on a computer or other storage device; and (c) the
8 party receiving the Apple Software reads and agrees to accept the terms
9 and conditions of this License. You may not rent, lease, lend, redistribute,
10 sublicense or transfer any Apple Software that has been modified or
11 replaced under Section 2D above....

12 Updates: If an Apple Software update completely replaces (full install) a
13 previously licensed version of the Apple Software, you may not use both
14 versions of the Apple Software at the same time nor may you transfer
15 them separately.

* * *

16 **5. Termination.** This License is effective until terminated. Your rights
17 under this License will terminate automatically without notice from Apple
18 if you fail to comply with any term(s) of this License. Upon the
19 termination of this License, you shall cease all use of the Apple Software
20 and destroy all copies, full or partial, of the Apple Software."

21 The Mac OS X Leopard Server License Agreement includes essentially the same terms.

22 23. Psystar claims the "Open Computer is a PC that works just like a Mac with Apple's
23 latest operating system OS X 10.5 a.k.a. Leopard." Psystar claims its product "is ready to run out of
24 the box when you purchase it with Leopard included. If you buy Leopard with your Open Computer
25 we'll install it for free." Psystar also says "The Open Computer can now be purchased with Leopard
26 included and pre-installed" (emphasis in original), the OpenPro is ready to run "right out of the box"
27 with "Mac OS X Leopard 10.5 preinstalled," and that OpenServ computers run "Mac OS X Leopard
28 Server."

29 24. Apple has never authorized Psystar to install, use, or sell the Mac OS software on any
30 non-Apple-labeled hardware.

**FIRST CLAIM FOR RELIEF
(Copyright Infringement)
(17 U.S.C. Sections 501 et seq.)**

31 25. Plaintiff incorporates herein by reference each and every allegation in the preceding
32 paragraphs.

1 26. Mac OS, Mac OS X, Mac OS X version 10.5, and Mac OS X Server, individual files
2 constituting components of Mac OS, Mac OS X, Mac OS X version 10.5, and Mac OS X Server, as
3 well as various files constituting components of other Apple software and firmware found on Apple-
4 labeled computers are each original works of authorship created by Apple constituting copyrightable
5 subject matter (hereafter, "the Copyrighted Works"). Apple is the owner of, among others, United
6 States copyright registrations TX4-669-971 (Mac OS); TX5-401-457 (Mac OS X); TX6-849-489
7 (Mac OS X Leopard Version 10.5); TX4-991-736 (Mac OS X Server); and TX6-849-684 (Mac OS X
8 Server Version 10.5 Leopard). The effective date of Apple's copyright registrations predates the
9 commencement of infringement by Psystar.

10 27. Defendant has created derivative works from, reproduced, distributed and/or displayed
11 the Copyrighted Works in violation of Apple's exclusive rights under the Copyright Act. Apple has
12 not licensed or otherwise authorized Defendant's creation of derivative works from, reproduction,
13 distribution or display of the Copyrighted Works.

14 28. Apple is informed and believes, and on that basis alleges, that Defendant's infringement
15 of Apple's copyrights in the Copyrighted Works is, and continues to be, intentional, willful and in
16 conscious disregard of Apple's rights.

17 29. Apple is informed and believes, and on that basis alleges, that Defendant has realized
18 profit by virtue of its infringement of Apple's copyrights.

19 30. Apple has sustained economic damage as a result of Defendant's infringement of
20 Apple's copyrights in an amount to be proven at trial.

21 31. Apple is entitled to recover the actual damages it has suffered and/or any profits gained
22 by Defendant that are attributable to its acts of copyright infringement pursuant to 17 U.S.C. § 504(b).
23 Alternatively, Apple is entitled to the maximum statutory damages allowed under 17 U.S.C. § 504(c)
24 based on Defendant's willful acts of copyright infringement. Apple will make its election at the
25 appropriate time before final judgment is rendered.

26 32. Pursuant to 17 U.S.C. § 502, Apple is entitled to an injunction against Defendant's
27 continuing reproduction, distribution and display of Apple's copyrighted materials.

28 ///

1 33. Apple is further entitled to recover its full costs and reasonable attorneys' fees pursuant
2 to 17 U.S.C. § 505.

3 **SECOND CLAIM FOR RELIEF**
4 **(Contributory and Induced Copyright Infringement)**
5 **(17 U.S.C. § 501, et seq.)**

6 34. Plaintiff incorporates herein by reference each and every allegation in the preceding
7 paragraphs.

8 35. Defendant is aware that its actions as described above infringed and continue to
9 infringe Apple's copyrights and exclusive rights to create derivative works from, reproduce, display
10 and distribute Apple's copyrighted materials.

11 36. By offering for sale copies of Apple software to actual and potential purchasers for use
12 on non-Apple-labeled computers, and by providing services to install, update, and/or modify Apple
13 software to cause it to operate on non-Apple-labeled computers, Defendant has induced, caused or
14 materially contributed to the infringing conduct of purchasers.

15 37. Apple is informed and believes, and on that basis alleges, that Defendant's inducement
16 of infringement of Apple's copyrights in the Copyrighted Works is, and continues to be, intentional,
17 willful and in conscious disregard of Apple's rights.

18 38. Apple is informed and believes, and on that basis alleges, that Defendant has realized
19 profit by virtue of its inducement of infringement of Apple's copyrights.

20 39. Apple has sustained economic damage as a result of Defendant's inducement of
21 infringement of Apple's copyrights in an amount to be proven at trial.

22 40. Apple is entitled to recover the actual damages it has suffered and/or any profits gained
23 by Defendant that are attributable to its acts of copyright infringement pursuant to 17 U.S.C. § 504(b).
24 Alternatively, Apple is entitled to the maximum statutory damages allowed under 17 U.S.C. § 504(c)
25 based on Defendant's willful acts of copyright infringement. Apple will make its election at the
26 appropriate time before final judgment is rendered.

27 41. Pursuant to 17 U.S.C. § 502, Apple is entitled to an injunction against Defendant's
28 continuing reproduction, distribution and display of Apple's copyrighted materials.

1 42. Apple is further entitled to recover its full costs and reasonable attorneys' fees pursuant
2 to 17 U.S.C. § 505.

3
4 **THIRD CLAIM FOR RELIEF**
5 **(Violation of Digital Millennium Copyright Act)**
6 **(17 U.S.C. § 1201, *et seq.*)**

7 43. Plaintiff incorporates herein by reference each and every allegation in the preceding
8 paragraphs.

9 44. Apple employs technological protection measures that effectively control access to
10 Apple's Copyrighted Works.

11 45. Defendant has illegally circumvented Apple's technological copyright protection
12 measures that control access to Apple's Copyrighted Works.

13 46. Defendant has admitted that Apple's Mac OS X normally "will not operate on anything
14 other than Apple-labeled computer hardware" but that Defendant has "developed [its] own code that
15 allows it to operate on a non-Apple-labeled computer system" and that such code overrides or gets
16 around Apple's embedded codes.

17 47. Apple is informed and believes, and on that basis alleges, that Defendant's "code" is
18 used to circumvent a technological protection measure since it avoids, bypasses, removes,
19 descrambles, decrypts, deactivates, or impairs a technological protection measure without Apple's
20 authority for the purpose of gaining unauthorized access to Apple's Copyrighted Works.

21 48. Apple is informed and believes, and on that basis alleges, that Defendant has
22 manufactured, imported, offered to the public, provided or otherwise trafficked a product, device,
23 component, technology, software, or "code" ("the Circumvention Devices") that are primarily
24 designed or produced for the purpose of either circumventing Apple's technological protection
25 measures that effectively control access to Copyrighted Works, or allowing third parties to access
26 Apple's Copyrighted Works without authorization.

27 49. Apple is informed and believes that that the Circumvention Devices have only limited
28 commercially significant purpose or use other than to circumvent a technological protection measure
that effectively controls access to Copyrighted Works, or are marketed by Defendant for use in

1 circumventing a technological protection measure that effectively controls access to Copyrighted
2 Works.

3 50. Apple is informed and believes, and on that basis alleges, that Defendant has realized
4 profit by virtue of its circumvention of Apple’s technological protection measure and trafficking in
5 circumvention devices.

6 51. Apple has sustained economic damage as a result of Defendant's circumvention of
7 technological protection measures and trafficking in the Circumvention Devices in an amount to be
8 proven at trial.

9 52. Apple is entitled to recover the actual damages it has suffered and/or any profits gained
10 by Defendant that are attributable to its circumvention of access controls and trafficking in the
11 Circumvention Devices pursuant to 17 U.S.C. § 1203(c)(1). Alternatively, Apple is entitled to the
12 maximum statutory damages allowed under 17 U.S.C. § 1203(c)(2). Apple will make its election at
13 the appropriate time before final judgment is rendered.

14 53. Pursuant to 17 U.S.C. § 1203(b), Apple is entitled to an injunction against Defendant's
15 continuing circumvention of access controls and trafficking in the Circumvention Devices.

16 54. Apple is further entitled to recover its full costs and reasonable attorneys' fees pursuant
17 to 17 U.S.C. § 1203(b).

18 **FOURTH CLAIM FOR RELIEF**
19 **(Breach of Contract)**

20 55. Plaintiff incorporates herein by reference each and every allegation in the preceding
21 paragraphs.

22 56. Apple is informed and believes, and on that basis alleges, that Psystar has acquired
23 Mac OS X version 10.5 software, that Psystar opened the box in which the software disk and license
24 were packaged, opened the seal on the shrink-wrapped software disk, and thereafter installed the
25 Leopard operating system and/or Leopard Server software on computers. By so doing Psystar
26 accepted the terms and conditions of the applicable License Agreement.

27 57. Psystar breached the License Agreement(s) by, *inter alia*:

28 ///

1 Apple's trademarks has been and continues to be intentional, willful and without regard to Apple's
2 trademark rights.

3 70. Apple is informed and believes and on that basis alleges that Psystar has gained profits
4 by virtue of its infringement of Apple's trademarks.

5 71. Apple also has sustained damages as a direct and proximate result of Psystar's
6 infringement of Apple's trademarks in an amount to be proven at trial.

7 72. Apple will suffer and is suffering irreparable harm from Psystar's infringement of the
8 Apple trademarks insofar as Apple's invaluable good will is being eroded by Defendant's continuing
9 infringement. Apple has no adequate remedy at law to compensate it for the loss of business
10 reputation, customers, market position, confusion of potential customers and good will flowing from
11 Psystar's infringing activities. Pursuant to 15 U.S.C. § 1116, Apple is entitled to an injunction against
12 Defendant's continuing infringement of Apple's trademarks. Unless enjoined, Defendant will continue
13 its infringing conduct.

14 73. Because Psystar's actions have been committed with intent to damage Apple and to
15 confuse and deceive the public, Apple is entitled to treble its actual damages or Defendant's profits,
16 whichever is greater, and to an award of costs and, this being an exceptional case, reasonable
17 attorneys' fees pursuant to 15 U.S.C. § 1117(a) and 1117(b). Alternatively, Apple is entitled to the
18 maximum statutory damages allowed under 15 U.S.C. § 1117(c). Apple will make its election at the
19 appropriate time before final judgment.

20 **SEVENTH CLAIM FOR RELIEF**
21 **(Trademark Infringement)**
22 **(15 U.S.C. § 1125(a))**

23 74. Plaintiff incorporates herein by reference each and every allegation of the preceding
24 paragraphs.

25 75. Through Plaintiff's use in interstate commerce, Apple also owns common law
26 trademark rights throughout the United States in unregistered trademarks and other source identifiers
27 in and in connection with the Mac and its OS X Leopard software.

28 76. Apple never consented to Psystar's use of Apple's various marks or its distinctive trade
dress.

1 77. Apple is informed and believes, and on that basis alleges that Defendant chose to use
2 the name Open Mac, Apple's various other trademarks and its distinctive trade dress, to cause
3 confusion or mistake, or to deceive the public as to the origin, sponsorship, association or approval of
4 the goods and services of Defendant and/or to falsely imply an association with Apple.

5 78. Defendant's unauthorized use of Apple's trademarks and its distinctive trade dress is
6 likely, if not certain, to cause confusion or to deceive customers as to the affiliation, connection or
7 association of Psystar with Apple.

8 79. Defendant's unauthorized use of the Apple's various trademarks and its distinctive trade
9 dress is also likely, if not certain, to cause confusion or to deceive customers as to the origin,
10 sponsorship, association or approval of the goods and services of the Defendant.

11 80. Defendant's unauthorized use of Apple's various trademarks and its distinctive trade
12 dress also facilitates the acceptance of Defendant's computers and related services not based on the
13 quality of the goods and services provided by Defendant, but on the association that the public is
14 likely to make with Apple and the reputation for outstanding quality and goodwill associated with
15 Apple's goods and services.

16 81. Defendant's conduct deprives Apple of the ability to control the quality of the goods
17 and services marketed under the Infringed Marks and Apple's unregistered common law trademarks
18 and, instead, places Apple's valuable reputation and goodwill into the hands of Defendant, over which
19 Apple has no control.

20 82. Apple is informed and believes, and on that basis alleges, that Psystar's infringement of
21 Apple's trademarks has been and continues to be intentional, willful and without regard to Apple's
22 trademark rights.

23 83. Apple is informed and believes, and on that basis alleges, that Psystar has gained
24 profits by virtue of its infringement of Apple's trademarks.

25 84. Apple also has sustained damages as a direct and proximate result of Psystar's
26 infringement of Apple's trademarks in an amount to be proven at trial.

27 85. Apple will suffer and is suffering irreparable harm from Psystar's infringement of the
28 Apple trademarks insofar as Apple's invaluable good will is being eroded by Defendant's continuing

1 infringement. Apple has no adequate remedy at law to compensate it for the loss of business
2 reputation, customers, market position, confusion of potential customers and good will flowing from
3 Psystar's infringing activities. Pursuant to 15 U.S.C. § 1116, Apple is entitled to an injunction against
4 Defendant's continuing infringement of Apple's trademarks. Unless enjoined, Defendant will continue
5 its infringing conduct.

6 86. Because Psystar's actions have been committed with intent to damage Apple and to
7 confuse and deceive the public, Apple is entitled to treble its actual damages or Defendant's profits,
8 whichever is greater, and to an award of costs and, this being an exceptional case, reasonable
9 attorneys' fees pursuant to 15 U.S.C. § 1117(a) and 1117(b). Alternatively, Apple is entitled to the
10 maximum statutory damages allowed under 15 U.S.C. § 1117(c). Apple will make its election at the
11 appropriate time before final judgment.

12 **EIGHTH CLAIM FOR RELIEF**
13 **(Trade Dress Infringement)**
14 **(15 U.S.C. § 1125(a))**

15 87. Plaintiff incorporates herein by reference each and every allegation of the preceding
16 paragraphs.

17 88. Apple is the owner of common law rights throughout the United States in Apple's
18 Trade Dress through their use and promotion in interstate commerce.

19 89. Apple's Trade Dress has been prominently displayed in the Mac OS X Leopard, is well-
20 known among consumers and has come to be associated exclusively with Apple and the Leopard
21 version of the Mac OS X.

22 90. Apple's Trade Dress has become distinctive of Apple's Mac OS X Leopard operating
23 system, and distinguishes Apple's goods and services from those offered by others.

24 91. Apple's Trade Dress was distinctive long before Defendant began offering its product
25 for sale.

26 92. Apple's Trade Dress is non-functional.

27 93. Defendant's unauthorized use, sale and distribution of goods displaying Apple's Trade
28 Dress is likely to cause confusion, to cause mistake, or to deceive as to the source of goods and
services provided by Defendant, or as to affiliation, connection, association, sponsorship, or approval

1 of such goods and services.

2 94. Defendant's unauthorized use, sale and distribution of good displaying Apple's Trade
3 Dress constitutes trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
4 § 1125(a).

5 95. Apple is informed and believes, and on that basis alleges, that Psystar's infringement of
6 Apple's Trade Dress has been and continues to be intentional, willful and without regard to Apple's
7 trademark rights.

8 96. Apple is informed and believes, and on that basis alleges, that Psystar has gained
9 profits by virtue of its infringement of Apple's Trade Dress.

10 97. Apple also has sustained damages as a direct and proximate result of Psystar's
11 infringement of Apple's Trade Dress in an amount to be proven at trial.

12 98. Pursuant to 15 U.S.C. § 1116, Apple is entitled to an injunction against Defendant's
13 continuing infringement of Apple's trademarks. Unless enjoined, Defendant will continue its
14 infringing conduct.

15 99. Because Psystar's actions have been committed with intent to damage Apple and to
16 confuse and deceive the public, Apple is entitled to treble its actual damages or Defendant's profits,
17 whichever is greater, and to an award of costs and, this being an exceptional case, reasonable
18 attorneys' fees pursuant to 15 U.S.C. § 1117(a) and 1117(b). Alternatively, Apple is entitled to the
19 maximum statutory damages allowed under 15 U.S.C. § 1117(c). Apple will make its election at the
20 appropriate time before final judgment.

21 **NINTH CLAIM FOR RELIEF**
22 **(Trademark Dilution)**
23 **(15 U.S.C. § 1125(c))**

24 100. Plaintiff incorporates herein by reference each and every allegation of the preceding
25 paragraphs.

26 101. Apple possesses exclusive trademark rights associated with the Apple, Mac, and
27 Mac OS X trademarks as well as other source identifiers found in the Mac OS X software. The Apple,
28 Mac and Mac OS trademarks are famous in the United States and all were famous prior to the
commencement of Psystar's infringing activities.

1 102. By its conduct, Psystar has diluted Apple's marks in violation of 15 U.S.C. § 1125(c).

2 103. Psystar willfully intends and intended to trade on Apple's reputation for excellence.

3 104. Apple will suffer and is suffering irreparable harm from Psystar's dilution of the Apple
4 trademarks.

5 105. Pursuant to 15 U.S.C. § 1116, Apple is entitled to an injunction against Defendant's
6 continuing infringement of Apple's trademarks.

7 106. Because Psystar's actions have been committed with intent to damage Apple and to
8 confuse and deceive the public, Apple is entitled to treble its actual damages or Defendant's profits,
9 whichever is greater, and to an award of costs and, this being an exceptional case, reasonable
10 attorneys' fees pursuant to 15 U.S.C. § 1117(a) and 1117(b). Alternatively, Apple is entitled to the
11 maximum statutory damages allowed under 15 U.S.C. § 1117(c). Apple will make its election at the
12 appropriate time before final judgment.

13 **TENTH CLAIM FOR RELIEF**
14 **(State Unfair Competition)**
15 **(Cal. Bus. & Prof. Code §17200)**

16 107. Plaintiff incorporates herein by reference each and every allegation of the preceding
17 paragraphs.

18 108. Psystar's business practices as alleged above constitute unfair competition and unfair
19 business practices and business acts in violation of Section 17200 *et seq.* of the California Business &
20 Professions Code.

21 109. Pursuant to California Business and Professions Code §17203, Apple is entitled to
22 enjoin these practices. Without injunctive relief, Apple has no means by which to control Psystar's
23 unlawful copying and distribution of Apple's copyrighted works. Similarly, Apple has no way to
24 control the confusion created by Psystar's infringement of Apple's trademarks. Apple is therefore
25 entitled to injunctive relief prohibiting Psystar from continuing such acts of unfair competition
26 pursuant to California Business and Professions Code §17203.

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**ELEVENTH CLAIM FOR RELIEF
(Common Law Unfair Competition)**

110. Plaintiff incorporates herein by reference each and every allegation of the preceding paragraphs.

111. Psystar's business practices as alleged above constitute unfair competition and unfair business practices under state common law. As a direct and proximate result of Psystar's infringing conduct, Apple has suffered and will continue to suffer lost sales and profits in an amount not yet fully ascertained in an amount to be proven at trial. In addition, Apple has suffered and continues to suffer injury to its business reputation and goodwill for which no adequate remedy exists at law and for which Apple is entitled to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, in consideration of the foregoing, Plaintiff prays for judgment as follows:

1. Awarding Apple actual damages and/or any profits gained by defendants and/or statutory damages for direct and/or contributory copyright infringement as determined at trial;
2. Awarding Apple a preliminary and/or permanent injunction against the sale or distribution of any software or device, including but not limited to the Psystar Open Computer, OpenPro computer, and OpenServ server products, that allows for the installation or running of Apple software on non-Apple computers, and requiring Psystar to recall all such products and software sold or distributed to the public as a result of Psystar's infringement of Apple's copyrights;
3. Awarding Apple actual damages and/or any profits gained by defendants and/or statutory damages for circumvention of an access control measure and/or trafficking in circumvention devices as determined at trial;
4. Awarding Apple a preliminary and/or permanent injunction against the sale or distribution of any software or device, including but not limited to the Psystar Open Computer, OpenPro computer, and OpenServ server products, that allows for the installation or running of Apple Software on non-Apple computers, and requiring Psystar to recall all such products and software sold or distributed to the public as a result of Psystar's circumvention of an access control measure and/or trafficking in circumvention devices;

1 5. Awarding damages as a result of Psystar's breach of Apple's Software License
2 Agreement for Mac OS X and Mac OS X Server;

3 6. Awarding damages, including punitive damages, as a result of Psystar's inducement of
4 others to breach Apple's Software License Agreement for Mac OS X and Mac OS X Server;

5 7. Awarding a preliminary and/or permanent injunction against Psystar's inducement of
6 third parties to breach Apple's License Agreement;

7 8. Awarding Apple actual and statutory damages for trademark infringement and/or
8 dilution as determined at trial;

9 9. Awarding Apple actual and statutory damages for trade dress infringement as
10 determined at trial;

11 10. Awarding Apple a preliminary and/or permanent injunction against sales of the Psystar
12 Open Computer, OpenPro computer, and OpenServ server products with Apple software and requiring
13 Psystar to recall all such products sold to the public as a result of Psystar's infringement of Apple's
14 trademarks and trade dress;

15 11. Awarding Apple a preliminary and/or permanent injunction against sales of the Psystar
16 Open Computer, OpenPro computer, and OpenServ server products with Apple software and
17 requiring Psystar to recall all such products sold to the public as a result of Psystar's dilution of
18 Apple's trademarks;

19 12. Awarding Apple a preliminary and/or permanent injunction against sales of the Psystar
20 Open Computer, OpenPro computer, and OpenServ server products with Apple software and
21 requiring Psystar to recall all such products sold to the public as a result of its statutory and common
22 law unfair competition;

23 13. Ordering Apple actual damages as a result of Psystar's common law unfair competition;

24 14. Awarding Apple treble damages for Psystar's willful acts;

25 15. Awarding Apple its reasonable attorneys' fees and costs; and

26 16. Awarding Apple such other relief as the Court deems appropriate.

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DEMAND FOR JURY TRIAL

Plaintiff Apple Inc. hereby demands a trial by jury of all issues triable by jury pursuant to Federal Rule of Civil Procedure 38(b) and Civil Local Rule 3-6(a).

DATED: December 2, 2008

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

By: /s/ James G. Gilliland, Jr.
JAMES G. GILLILAND, JR.
Attorneys for Plaintiff
APPLE INC.

61710693 v1

Exhibit 1 to Amended Complaint

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Exhibit 2 to Amended Complaint

English

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EA0395
Rev. 7/24/07

Exhibit 3 to Amended Complaint

Int. Cl.: 9

Prior U.S. Cl.: 26

United States Patent Office

Reg. No. 1,078,312
Registered Nov. 29, 1977

TRADEMARK
Principal Register

APPLE

Apple Computer, Inc. (California corporation)
20863 Stevens Creek Blvd.
Cupertino, Calif. 95014

For: COMPUTERS AND COMPUTER PROGRAMS
RECORDED ON PAPER AND TAPE, in CLASS 9
(U.S. CL. 26).

First use during April 1976; in commerce during April
1976.

Ser. No. 120,444, filed Mar. 25, 1977.

G. T. GLYNN, Examiner

Int. Cl.: 9

Prior U.S. Cl.: 26, 38

United States Patent and Trademark Office

Reg. No. 1,114,431

Registered Mar. 6, 1979

TRADEMARK

Principal Register



Apple Computer, Inc. (California corporation)
10260 Bandley Drive
Cupertino, Calif. 95014

For: COMPUTERS AND COMPUTER PROGRAMS
RECORDED ON PAPER AND TAPE, in CLASS 9
(U.S. CLS. 26 and 38).

First use during January 1977; in commerce January
1977.

The mark consists of a silhouette of an apple with a
bite removed.

Owner of Reg. No. 1,078,312.

Ser. No. 162,799, filed Mar. 20, 1978.

J. TINGLEY, Examiner

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,715,578

United States Patent and Trademark Office

Registered May 13, 2003

**TRADEMARK
PRINCIPAL REGISTER**



APPLE COMPUTER, INC. (CALIFORNIA CORPORATION)

1 INFINITE LOOP
CUPERTINO, CA 95014

FOR: COMPUTERS HARDWARE; COMPUTER HARDWARE, NAMELY, SERVER, DESKTOP, LAPTOP, NOTEBOOK AND SUBNOTEBOOK COMPUTERS; HAND HELD AND MOBILE COMPUTERS; COMPUTER TERMINALS AND MONITORS; PERSONAL DIGITAL ASSISTANTS; PORTABLE DIGITAL AUDIO PLAYERS; ELECTRONIC ORGANIZERS; COMPUTER KEYBOARDS, CABLES, MODEMS; AUDIO SPEAKERS; COMPUTER VIDEO CONTROL DEVICES, NAMELY, COMPUTER MICE, TRACKBALLS, JOYSTICKS AND GAMEPADS; A FULL LINE OF COMPUTER SOFTWARE FOR BUSINESS, HOME, EDUCATION, AND DEVELOPER USE; COMPUTER PROGRAMS FOR PERSONAL INFORMATION MANAGEMENT; DATABASE MANAGEMENT SOFTWARE; CHARACTER RECOGNITION SOFTWARE; TELEPHONY MANAGEMENT SOFTWARE; ELECTRONIC MAIL AND MESSAGING SOFTWARE; TELECOMMUNICATIONS SOFTWARE, NAMELY FOR PAGING; DATABASE SYNCHRONIZATION SOFTWARE; COMPUTER PROGRAMS FOR ACCESSING, BROWSING AND SEARCHING ONLINE DATABASES; OPERATING SYSTEM SOFTWARE; APPLICATION DEVELOPMENT TOOL PROGRAMS; BLANK COMPUTER STORAGE MEDIA; FONTS, TYPEFACES, TYPE DESIGNS AND SYMBOLS RECORDED ON MAGNETIC MEDIA; COMPUTER SOFTWARE FOR USE IN PROVIDING MULTIPLE USER ACCESS TO A GLOBAL COMPUTER INFORMATION NETWORK FOR SEARCHING, RETRIEVING,

TRANSFERRING, MANIPULATING AND DISSEMINATING A WIDE RANGE OF INFORMATION; COMPUTER SOFTWARE FOR USE AS A PROGRAMMING INTERFACE; COMPUTER SOFTWARE FOR USE IN NETWORK SERVER SHARING; LOCAL AND WIDE AREA NETWORKING SOFTWARE; COMPUTER SOFTWARE FOR MATCHING, CORRECTION, AND REPRODUCTION OF COLOR; COMPUTER SOFTWARE FOR USE IN DIGITAL VIDEO AND AUDIO EDITING; COMPUTER SOFTWARE FOR USE IN ENHANCING TEXT AND GRAPHICS; COMPUTER SOFTWARE FOR USE IN FONT JUSTIFICATION AND FONT QUALITY; COMPUTER SOFTWARE FOR USE TO NAVIGATE AND SEARCH A GLOBAL COMPUTER INFORMATION NETWORK, AS WELL AS TO ORGANIZE AND SUMMARIZE THE INFORMATION RETRIEVED; COMPUTER SOFTWARE FOR USE IN WORD PROCESSING AND DATABASE MANAGEMENT; WORD PROCESSING SOFTWARE INCORPORATING TEXT, SPREADSHEETS, STILL AND MOVING IMAGES, SOUNDS AND CLIP ART; COMPUTER SOFTWARE FOR USE IN AUTHORIZING, DOWNLOADING, TRANSMITTING, RECEIVING, EDITING, EXTRACTING, ENCODING, DECODING, PLAYING, STORING AND ORGANIZING AUDIO, VIDEO, STILL IMAGES AND OTHER DIGITAL DATA; COMPUTER SOFTWARE FOR ANALYZING AND TROUBLESHOOTING OTHER COMPUTER SOFTWARE; CHILDREN'S EDUCATIONAL SOFTWARE; COMPUTER GAME SOFTWARE; COMPUTER GRAPHICS SOFTWARE; COMPUTER SEARCH ENGINE SOFTWARE; WEB SITE DEVELOPMENT SOFTWARE; COMPUTER PROGRAM WHICH PROVIDES REMOTE VIEWING, REMOTE CONTROL, COMMUNICATIONS

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 1,964,391

United States Patent and Trademark Office Registered Mar. 26, 1996

**TRADEMARK
PRINCIPAL REGISTER**

MAC

APPLE COMPUTER, INC. (CALIFORNIA CORPORATION)
20525 MARIANI AVENUE
CUPERTINO, CA 95014

FOR: COMPUTERS; COMPUTER PRINTERS; COMPUTER MONITORS; COMPUTER PERIPHERALS; COMPUTER OPERATING SYSTEM SOFTWARE; NETWORK TRANSMISSION ACCELERATOR FOR ACCELERATING THE TRANSMISSION OF DATA IN A LOCAL AREA NETWORK; ELECTRONIC MAIL AND MESSAGE DELIVERY APPARATUS; MULTIME-

DIA AUTHORIZING COMPUTER PROGRAMS FOR USE IN THE FIELDS OF BUSINESS, GOVERNMENT, EDUCATION, AND SCIENCE; LOCAL AREA NETWORKS AND WIDE AREA NETWORKS; CD-ROM DRIVES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-31-1994; IN COMMERCE 12-31-1994.

SN 74-357,318, FILED 2-9-1993.

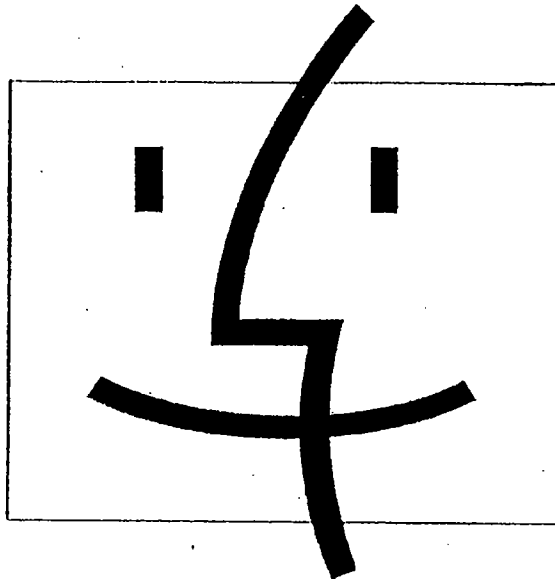
MARY CRAWFORD, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office Reg. No. 1,931,078
Registered Oct. 31, 1995

**TRADEMARK
PRINCIPAL REGISTER**



APPLE COMPUTER, INC. (CALIFORNIA CORPORATION)
20525 MARIANI AVENUE
CUPERTINO, CA 95014

FOR: COMPUTERS, COMPUTER PERIPHERALS AND PRE-RECORDED COMPUTER PROGRAMS, NAMELY SOFTWARE AND FIRMWARE IN THE NATURE OF OPERATING SYS-

TEMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-1-1994; IN COMMERCE 11-1-1994.

SER. NO. 74-552,639, FILED 7-25-1994.

ALAN ATCHISON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,000,282

United States Patent and Trademark Office Registered Sep. 10, 1996

**TRADEMARK
PRINCIPAL REGISTER**

MAC OS

APPLE COMPUTER, INC. (CALIFORNIA CORPORATION)
ONE INFINITE LOOP
CUPERTINO, CA 95014

FOR: COMPUTERS, COMPUTER OPERATING SYSTEM SOFTWARE, AND A FULL LINE OF PRERECORDED COMPUTER PROGRAMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-1-1994; IN COMMERCE 11-1-1994.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OS", APART FROM THE MARK AS SHOWN.

SN 74-547,403, FILED 7-8-1994.

JAMES A. RAUEN, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 3,386,175

United States Patent and Trademark Office

Registered Feb. 19, 2008

**TRADEMARK
PRINCIPAL REGISTER**

LEOPARD

APPLE INC. (CALIFORNIA CORPORATION)
1 INFINITE LOOP
CUPERTINO, CA 95014

FIRST USE 10-26-2007; IN COMMERCE 10-26-2007.

SN 78-270,003, FILED 7-2-2003.

FOR: COMPUTER OPERATING SYSTEM SOFTWARE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

KELLY BOULTON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,697,680

United States Patent and Trademark Office

Registered Mar. 18, 2003

**TRADEMARK
PRINCIPAL REGISTER**

XSERVE

APPLE COMPUTER, INC. (CALIFORNIA CORPORATION)
1 INFINITE LOOP
CUPERTINO, CA 95014

PRIORITY CLAIMED UNDER SEC. 44(D) ON
SWITZERLAND APPLICATION NO. 033632002,
FILED 4-15-2002.

FOR: COMPUTER HARDWARE, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

SER. NO. 76-407,499, FILED 5-14-2002.

FIRST USE 5-14-2002; IN COMMERCE 5-14-2002.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 3,217,368

Registered Mar. 13, 2007

**TRADEMARK
PRINCIPAL REGISTER**

SUPERDRIVE

APPLE COMPUTER, INC. (CALIFORNIA CORPORATION)
1 INFINITE LOOP
CUPERTINO, CA 95014

FOR: COMPUTER MEMORY HARDWARE;
COMPUTER DISC DRIVES; OPTICAL DISC DRIVES,
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 8-10-1989; IN COMMERCE 8-10-1989.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F).

SER. NO. 78-783,091, FILED 12-30-2005.

MEGAN WHITNEY, EXAMINING ATTORNEY

EXHIBIT C TO DECLARATION

Psystar Corporation's First Amended Counterclaim in the Infringement Action

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PSYSTAR CORPORATION

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

12 APPLE INC., a California corporation,

13 Plaintiff,

14 v.

15 PSYSTAR CORPORATION, a Florida
16 corporation,

17 Defendant.

CASE NO. CV-08-03251-WHA

**PSYSTAR CORPORATION'S
FIRST AMENDED
COUNTERCLAIM FOR
DECLARATORY RELIEF AS TO
THE UNENFORCEABILITY OF
COPYRIGHTS**

JURY TRIAL REQUESTED

18 AND RELATED COUNTERCLAIMS
19

20 **Nature of this Action**

- 21
22
23 1. This is an action for declaratory relief under the Declaratory Judgment Act (28 U.S.C. §
24 2201) (hereinafter referred to as the "First Amended Counterclaim").
25 2. PsyStar Corporation ("PSYSTAR") seeks a declaration as to the unenforceability of certain
26 copyrights held and asserted by Apple Inc. ("APPLE") in its July 3, 2008 Complaint ("Complaint")
27 and December 2, 2008 Amended Complaint ("First Amended Complaint"). PSYSTAR's request
28 for declaratory relief as to unenforceability of these copyrights is predicated upon APPLE having

1 leveraged (and APPLE continuing to leverage) the limited monopoly granted by the U.S. Copyright
2 Office under the U.S. Copyright Act to areas outside that statutory grant. APPLE’s leveraging
3 conduct therefore constitutes copyright misuse, which renders the corresponding copyrights
4 unenforceable.

5 3. APPLE leverages its asserted copyrights in the Macintosh OS X Operating System (the
6 “Mac OS”) to secure exclusive rights not granted by the U.S. Copyright Office. APPLE has
7 secured—and continues to seek to secure—exclusive rights in certain hardware components
8 referred to herein as Apple-Labeled Computer Hardware Systems vis-à-vis the Mac OS. APPLE
9 illicitly and improperly secured and continues to secure these rights to the exclusion of Mac OS
10 Capable Computer Hardware Systems. APPLE leverages its asserted copyrights through its End
11 User License Agreement (“EULA”) and the misapplication of the Digital Millennium Copyright
12 Act (“DMCA”).

13
14 **Jurisdiction and Venue**

15
16 4. The First and Second counterclaims set forth in this First Amended Counterclaim are
17 brought pursuant to 28 U.S.C. § 2201. This Court is thereby vested with subject matter jurisdiction
18 pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case presents a federal question under the
19 United States Copyright Act.

20 5. This First Amended Counterclaim is a compulsory counterclaim brought in accordance with
21 Federal Rule of Civil Procedure 13(a)(1). The aforementioned causes of action arise out of the
22 transactions or occurrences that are the subject matter of APPLE’s Complaint and First Amended
23 Complaint and do not require adding another party over which the Court cannot acquire
24 jurisdiction.

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The Parties

6. APPLE is a California Corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014. APPLE markets the Macintosh Computer and the OS X Operating System.

7. Counterclaimant PSYSTAR is a Florida Corporation with its principal place of business at 10475 NW 28th Street, Doral, Florida, 33172.

8. PSYSTAR manufactures and distributes computers tailored to customer choosing. As a part of its devotion to supporting customer choice, PSYSTAR supports a wide range of operating systems including Microsoft Windows XP and XP 64-bit, Windows Vista and Vista 64-bit, Linux (32 and 64-bit kernels), and the Mac OS. PSYSTAR generally refers to this custom tailored line of computers as Open Computers.

9. Open Computers are personal computers that, in the case of the Mac OS, work like a Macintosh including the latest Macintosh operation system—OS X.5 (a.k.a. Leopard). PSYSTAR Open Computers, again in the case of the Mac OS, run the OS X like that of a Macintosh from APPLE albeit on a computer hardware system offered at a considerably lower price and with considerably higher performance. For example, one of the least expensive Macintosh machines on the market is for the Mac Mini, which costs more than that of an Open Computer from PSYSTAR. PSYSTAR is informed and believes, and thereon alleges, that the Mac Mini offers poorer performance, smaller storage space, and RAM. Furthermore, the Mac Mini does not have the option for an alternative video card such as an NVIDIA GeForce 8600, which is supported by the PSYSTAR Open Computer.

General Allegations

10. For the purposes of this First Amended Counterclaim, PSYSTAR refers to the following products: the Mac OS, Mac OS Capable Computer Hardware Systems, and Apple-Labeled Computer Hardware Systems. The Mac OS has been briefly referenced above with respect to the

1 Mac OS X Operating System. Computer hardware capable of executing the Mac OS is referred to
2 herein as Mac OS Capable Computer Hardware Systems such as the Open Computer from
3 PSYSTAR. Apple-Labeled Computer Hardware Systems are those hardware systems
4 manufactured exclusively by APPLE and belonging to a subsidiary market of Mac OS Capable
5 Computer Hardware Systems. That subsidiary market—the Apple-Labeled Computer Hardware
6 Systems market—is artificially created, dominated, and maintained by APPLE. All of the
7 aforementioned products are sold in the United States of America.

8

9 **The Mac OS**

10 11. More specifically, the Mac OS is a graphical user interface-based operating system that
11 (prior to the emergence of PSYSTAR) was operable exclusively on the Macintosh line of computer
12 hardware and other computer hardware made by and available only from APPLE—Apple-Labeled
13 Computer Hardware Systems. Operating systems like the Mac OS control and direct the interaction
14 between software applications such as word processors, Internet browsers, and applications and the
15 central processing unit of the computer and its various hardware components.

16 12. APPLE is the exclusive manufacturer and/or master licensor of the Mac OS.

17 13. PSYSTAR is informed and believes, and thereon alleges, that there are substantial barriers
18 to entry in the market for operating systems, including the Mac OS market. It is prohibitively
19 difficult, time-consuming, and expensive to create any operating system much less one that would
20 offer substantially identical functionality, security, stability, and other aspects offered by the Mac
21 OS. In general, a new operating system manufacturer faces an almost insurmountable barrier to
22 successful entry to the operating system market. Those barriers would be raised even higher with
23 respect to an operating system that would directly compete with the Mac OS.

24

25 **Mac OS Capable Computer Hardware Systems**

26 14. Computer hardware systems, in general, perform central processing unit functions.
27 Operating systems—like the Mac OS—manage the interaction between various pieces of hardware

28

1 such as a monitor or printer. The operating system also manages various software applications
2 running on a computing device.

3 15. A seemingly infinite list of manufacturers may be found in the computer hardware system
4 marketplace. These manufacturers construct entire hardware systems (*i.e.*, computers) marketed
5 and sold to the consumer either directly or via an authorized re-seller. The participants in the
6 computer hardware system marketplace include Dell, Acer, Lenovo, Sony, and Hewlett-Packard to
7 name but a few.

8 16. Any number of companies dedicated to manufacturing and sourcing various components
9 used by the aforementioned manufacturers (*e.g.*, hard drives (Western Digital), processors (Intel
10 and AMD), and graphics processing cards (NVIDIA)) also exist.

11 17. PSYSTAR is informed and believes, and thereon alleges, that one or more of these
12 manufacturers of computer hardware systems are capable and desirous of manufacturing computer
13 hardware systems that host, execute, and run the Mac OS. There is no compelling technological
14 reason that any one of the aforementioned computer hardware system manufacturers could not
15 accumulate and assemble the hardware components in an Apple-Labeled Computer Hardware
16 System such that said system would be capable of hosting, executing, and running the Mac OS. As
17 noted above, PSYSTAR refers to the computer systems that could and would be manufactured by
18 these entities as Mac OS Capable Computer Hardware Systems.

19 18. As there is no technical reason that a third-party could not accumulate and assemble the
20 hardware components in an Apple-Labeled Computer Hardware System such that said system
21 would be capable of running the Mac OS, on information and belief PSYSTAR alleges that but for
22 the exclusionary and leveraging conduct of APPLE—said conduct amounting to unfair
23 competition—a third-party (as evidenced by the activities of PSYSTAR) could and would
24 accumulate, assemble, and market the hardware components capable of running the Mac OS.

25 26 **Apple-Labeled Computer Hardware Systems**

27 19. Notwithstanding the various computer hardware manufacturers in the marketplace, none of
28 the aforementioned companies currently manufacture computer hardware systems that support the

1 Mac OS. APPLE is the only manufacturer of systems operating the Mac OS. APPLE's exclusive
2 line of hardware systems that support the Mac OS include the Mac Pro, the Mac Mini, the
3 MacBook, the MacBook Air, MacBook Pro, and iMac. PSYSTAR, as noted above, refers to the
4 exclusive line of APPLE hardware systems that support the Mac OS as Apple-Labeled Computer
5 Hardware Systems. PSYSTAR is informed and believes, and thereon alleges, that but for the
6 anticompetitive conduct of APPLE as outlined herein, Apple-Labeled Computer Hardware Systems
7 would be a competing member of the otherwise diverse Mac OS Capable Computer Hardware
8 Systems market.

9 20. PSYSTAR alleges that by virtue of APPLE's leveraging of copyrights in the context of
10 APPLE's EULA, spurious litigation via the DMCA, and various other anti- and unfair competitive
11 conduct, there is no viable alternative to the purchase and use of Apple-Labeled Computer
12 Hardware Systems for users who wish to use the Mac OS, for a prospective buyer of the Mac OS,
13 or for a user of an older version of the Mac OS. Without an operating system, a computer hardware
14 system can perform virtually no useful tasks thus making the installation of the Mac OS a necessity.
15 The Mac OS—at least according to APPLE—can only be installed on Apple-Labeled-Computer
16 Hardware Systems, a restriction that APPLE enforces through the aforementioned misuse of its
17 copyrights. Mac OS users are—through APPLE's copyright misuse—thereby locked in to a
18 component not otherwise covered by any APPLE copyright—an Apple-Labeled Computer
19 Hardware System.

20

21 **Apple's Anticompetitive Conduct**

22 21. PSYSTAR, on information and belief, alleges that APPLE is content with the knowledge
23 that it has exclusive rights to the Mac OS and that nearly insurmountable barriers exist with respect
24 to any other entity introducing a Mac OS-like operating system. PSYSTAR is informed and
25 believes, and thereon alleges, that the most significant competitive threat to APPLE is not from a
26 new operating system but from computer hardware system manufacturers that may offer a
27 competing hardware platform upon which to run the Mac OS—Mac OS Capable Computer
28 Hardware Systems. Any such hardware platform would compete directly with Apple-Labeled

1 Computer Hardware Systems, which are manufactured by APPLE and available for purchase only
2 from APPLE and/or its authorized resellers.

3 22. PSYSTAR is informed and believes, and thereon alleges, that in order to protect itself from
4 potential competitive threats, APPLE has engaged in a series of anticompetitive activities
5 involving, *inter alia*, its copyrights. PSYSTAR is further informed and believes, and thereon
6 alleges, that APPLE's conduct includes contractual agreements tying the Mac OS to—and only to—
7 Apple-Labeled Hardware Systems, exclusionary agreements precluding customers or would be
8 competitors from installing, running, or using the Mac OS on any computer hardware system that is
9 not an Apple-Labeled Computer Hardware System, that is, Mac OS Capable Computer Hardware
10 Systems. These contractual ties are backed with the threat of litigation for infringement of one or
11 more APPLE copyrights.

12 23. PSYSTAR is informed and believes, and thereon alleges, that manufacturers of Mac OS
13 Capable Computer Hardware Systems that could run the Mac OS and that are not Apple-Labeled
14 Computer Hardware Systems pose a significant competitive threat to APPLE with respect to the
15 quality of such hardware systems and the pricing of such systems. If Mac OS Capable Computer
16 Hardware Systems that are not Apple-Labeled Systems were introduced into the overall
17 marketplace, APPLE would be forced to engage in significant research, development, and quality
18 improvement in computer hardware; APPLE would, further, be forced into price competition with
19 other Mac OS Capable Computer Hardware System manufacturers.

20
21 **The Demise of the Clone Program**

22 24. On information and belief, PSYSTAR alleges that in or around 1995, APPLE launched an
23 official clone program (the “Clone Program”). On information and belief, PSYSTAR alleges that
24 as a part of APPLE’s Clone Program, Macintosh ROMs and system software were licensed to other
25 computer hardware manufacturers who agreed to pay a royalty for each ‘cloned’ computer sold.

26 25. On information and belief, PSYSTAR alleges that from 1995 to 1997, it was possible to buy
27 a PowerPC-based computer running the Mac OS from, at the least, Power Computing Corporation.

28

1 On information and belief PSYSTAR alleges that other licensees and members of the Clone
2 Program included Motorola, Radius, APS Technologies, DayStar Digital, and UMAX.

3 26. PSYSTAR, on information and belief, alleges that in what was to be the start of a trend of
4 increasingly anticompetitive conduct with respect to excluding others in the marketplace from
5 selling computer hardware systems capable of operating the Mac OS and otherwise evidencing
6 APPLE's distaste for legitimate competition in the hardware marketplace, APPLE elected to end
7 the Clone Program in or about 1997. APPLE's election to end the Clone Program accelerated at
8 about the same time as the return of Steve Jobs to APPLE as its Chief Executive Officer.

9 27. On information and belief, PSYSTAR alleges that the APPLE Clone Program came to a *de*
10 *facto* end with the release of Mac OS 8, which, unlike certain prior iterations of the Mac OS, had no
11 official licensee program.

12 28. On information and belief, PSYSTAR alleges that APPLE further sought to discontinue the
13 Clone Program through the purchase of Power Computing Corporation, a very successful and
14 viable manufacturer of a computer hardware system capable of running the Mac OS.

15 29. On information and belief, PSYSTAR alleges that the Mac OS 9 was released on or about
16 October 23, 1999 without any official licensee program. On information and belief, PSYSTAR
17 alleges that updates to the Mac OS 9—up to and including Mac OS 9.2.2 on December 6, 2001—
18 were also released without any official licensee program.

19 **Mac OS X Tied to Apple-Labeled Computer Hardware Systems**

20 30. PSYSTAR is informed and believes, and thereon alleges, that APPLE's trend of releasing
21 subsequent iterations of the Mac OS without an official licensee program continued with respect to
22 the Mac OS X. In June 2005 at the 2005 Worldwide Developer Conference, APPLE CEO Steve
23 Jobs announced the planned release of the aforementioned Mac OS X for late 2006 or early 2007.
24 At the same conference, APPLE Senior Vice President Phil Schiller noted that APPLE had no plans
25 of running the Windows OS on a Macintosh but noted "[t]hat doesn't preclude someone from
26 running it" and that APPLE "won't do anything to preclude that."

27 31. In contrast to allowing (and all but inviting) others to run a competing OS on a Macintosh
28 and, further, openly stating that APPLE would not do anything to preclude the same, Schiller stated

1 that APPLE did not plan to let people run the Mac OS X on other computer makers' hardware; said
2 Schiller: "[w]e will not allow running Mac OS X on anything other than an Apple Mac."

3 32. True to its word, and by its own admission in paragraph 21 of APPLE's First Amended
4 Complaint, APPLE "prohibit[s] use of the Mac OS or its upgrades on non-Apple hardware."

5

6 **Kernel Panic and Infinite Loops**

7 33. On information and belief, PSYSTAR alleges that APPLE intentionally embeds code in the
8 Mac OS that causes the Mac OS to malfunction on any computer hardware system that is not an
9 Apple-Labeled Computer Hardware System. Upon recognizing that a computer hardware system is
10 not an Apple-Labeled Computer Hardware System, the Mac OS will not operate properly, if at all,
11 and will go into what is colloquially known as 'kernel panic.'

12 34. In kernel panic, the operating system believes that it has detected an internal and fatal error
13 from which the operating system cannot safely recover. As a result, the operating system
14 discontinues operation. As noted above, without a functioning operating system, functionality of
15 the corresponding computer is reduced to near zero.

16 35. In Unix style operating systems like that of the Mac OS, the kernel routines that handle
17 panics are generally known as panic(). Panic() routines are generally designed to output an error
18 message to the display device of the computer, dump an image of kernel memory to disk for
19 post-mortem debugging, and then await either manual reboot of the system or automatically initiate
20 the same. Attempts by the operating system to read an invalid or non-permitted memory address
21 are a common source of kernel panic. Panic may also occur as a result of a hardware failure or a
22 bug in the operating system. While the operating system, in some instances, could continue
23 operation after occurrence of a memory violation, the system is in an unstable state and often
24 discontinues operation to prevent further damage and to allow for diagnosis of the error rather than
25 risk security breaches and data corruption.

26 36. As of the release of Mac OS 10.5, PSYSTAR is informed and believes and thereon alleges
27 that APPLE has continued to cause interoperability issues in its xnu kernel on generic Intel
28 hardware including kernel panics. A sample kernel panic situation in the 10.5.5 xnu kernel

1 artificially arises during the initialization process if the Mac OS detects that the processor of the
2 corresponding computing device is not in a certain family. PSYSTAR is informed and believes and
3 thereon alleges that that ‘certain family’ is the Intel Dual Core/Core/Core2 series of processors,
4 which is inclusive of Apple-Labeled Computer Hardware Systems.

5 37. PSYSTAR is informed and believes and thereon alleges that there is no specific reason as to
6 why this “check” should be present in the code as the kernel is capable of booting on a much
7 broader range of hardware, specifically Mac OS Capable Computer Hardware Systems. PSYSTAR
8 is informed and believes and thereon alleges that when the check is patched out, either by binary
9 patching the kernel or source patching and then compiling, the kernel can easy be booted on a
10 Pentium 4 processor. This is something that is currently restricted by the “check” in current
11 versions of the xnu kernel and for no functional reason. This “check” stops the execution of the
12 Mac OS on any x86 processor not sold by Apple—that is, the “check” stops the execution of the
13 Mac OS on any computer that is not an Apple-Labeled Computer Hardware System.

14 38. PSYSTAR is informed and believes and thereon alleges that APPLE embeds further code in
15 the Mac OS that causes the Mac OS to malfunction on any computer hardware system that is not an
16 Apple-Labeled Computer Hardware System. PSYSTAR is informed and believes and thereon
17 alleges that upon recognizing that a computer hardware system is not an Apple-Labeled Computer
18 Hardware System, the Mac OS will not operate properly, if at all, and will enter into what is
19 colloquially known as an ‘infinite loop.’

20 39. An infinite loop is a sequence of instructions in a computer program that endlessly loops.
21 This infinite loop is due either to the loop having no terminating condition or having one that can
22 never be met. Infinite loops cause a program to consume all available processor time.

23 40. As of the release of Mac OS 10.5, PSYSTAR is informed and believes and thereon alleges
24 that APPLE has continued to cause interoperability issues in its xnu kernel on generic Intel
25 hardware including infinite loops. PSYSTAR is informed and believes and thereon alleges that a
26 sample infinite loop arises during restart/reboot after calling modular restart functions. PSYSTAR
27 is informed and believes and thereon alleges that most x86 hardware (*i.e.*, non-Apple-Labeled
28 Computer Hardware Systems) fail to reboot with the stock xnu kernel due to this infinite loop.

1 41. There is no specific reason as to why this infinite loop is present in the code as the kernel
2 is capable of restating/rebooting on a much broader range of hardware, specifically Mac OS
3 Capable Computer Hardware Systems. Thus, the restart/reboot infinite loop exists for no functional
4 reason. This loop stops the execution of the Mac OS on any x86 processor not sold by Apple—that
5 is, an Apple-Labeled Computer Hardware System.

6 42. PSYSTAR is informed and believes and thereon alleges that the Mac OS need not go into
7 kernel panic or an infinite loop. The Mac OS is capable of operating on any number of computer
8 hardware systems that are not Apple-Labeled Computer Hardware Systems (*i.e.*, Mac OS Capable
9 Computer Hardware Systems). PSYSTAR is informed and believes, and thereon alleges, that the
10 instances of kernel panic and infinite loop as described above are self-induced by APPLE's
11 embedding of code to induce kernel panic and infinite loops to thereby prevent interoperability on
12 computer hardware systems that are not Apple-Labeled Computer Hardware Systems (*i.e.*, Mac OS
13 Capable Computer Hardware Systems).

14 43. PSYSTAR is informed and believes, and thereon alleges, that APPLE is engaged in
15 anticompetitive conduct that prevents the proper operation of the Mac OS on any computer
16 hardware system that is not an Apple-Labeled Computer Hardware System—a Mac OS Capable
17 Computer Hardware System—thereby forcing customers of the Mac OS to purchase—and only
18 purchase—an Apple-Labeled Computer Hardware System if they wish to have the Mac OS operate
19 sans kernel panic or an infinite loop.

20 21 **APPLE's Misuse of Copyrights via the EULA**

22 44. In addition to technically preventing the Mac OS from operating on any Mac OS Capable
23 Computer Hardware System and that is not an Apple-Labeled Computer Hardware System, the
24 EULA for the Mac OS X Leopard and MAC OS X Leopard Server (collectively referenced herein
25 as the aforementioned Mac OS), specifically—and, again, by APPLE's own admission in paragraph
26 22 of its First Amended Complaint—states:

27 "1. General. The software (including Boot ROM Code) . . . accompanying this
28 License whether preinstalled on Apple-labeled hardware, on disks, in read only

1 memory, or any other media or in any other form (collectively the ‘Apple Software’)
2 are licensed, not sold, to you by Apple Inc. (‘Apple’) for use **only under the terms**
3 **of this License”**

4 2. Permitted License Uses and Restrictions.

5 A. Single Use. This license allows you to install, use and run (1) copy of the Apple
6 Software on a single **Apple-labeled computer** at a time. **You agree not to install,**
7 **use, or run the Apple Software on any non-Apple-Labeled computer or enable**
8 **another to do so.**

8 (emphasis added).

9 45. Thus, as a pre-condition of a license to the Mac OS, APPLE leverages its copyrights in the
10 Mac OS to require customers to agree to install, use, or run the Mac OS on—and only on—Apple-
11 Labeled Computer Hardware Systems. As such, a customer is prohibited from seeking out and
12 choosing any other computer hardware system that is not an Apple-Labeled Computer Hardware
13 System—including but not limited to a Mac OS Capable Computer Hardware System—on which to
14 install, use, and run the Mac OS.

15 46. PSYSTAR is informed and believes, and thereon alleges, that APPLE misuses its copyrights
16 in the Mac OS to force purchases of Apple-Labeled Computer Hardware Systems for use in
17 conjunction with the Mac OS. APPLE, therefore, has attempted to (and continues to) leverage the
18 rights granted under any valid copyright to areas outside the exclusive rights granted by the
19 Copyright Act (*i.e.*, forcing purchases of Apple-Labeled Computer Hardware Systems). APPLE
20 has thus engaged in certain anticompetitive behavior and/or other actions that are in violation of the
21 public policy underlying the federal copyright laws including, but not limited to, a failure to abide
22 by the fair use and first sale doctrines.

23 47. APPLE has leveraged and thereby misused its copyrights through the use of its EULA and
24 the requirement that the Mac OS be used exclusively on Apple-Labeled Computer Hardware
25 Systems notwithstanding the lack of any copyright interest in that hardware. By enforcing this
26 provision in its EULA, APPLE is attempting to obtain, maintain, and/or enjoy rights not granted by
27 the Copyright Act including, but not limited to, destroying competition in the Mac OS Capable
28 Computer Hardware Systems market, which is wholly unrelated to any valid copyright.

1 48. APPLE has further engaged in copyright misuse by utilizing any valid copyright in the Mac
2 OS to maintain exclusive control of the Apple-Labeled Computer Hardware System market. By
3 enforcing its EULA as it pertains to any valid copyright, APPLE is attempting to obtain, maintain,
4 and/or enjoy rights not granted by the Copyright Act including, but limited to, maintaining its
5 control of the Apple-Labeled Computer Hardware Systems market to the exclusion of Mac OS
6 Capable Computer Hardware Systems, which is wholly unrelated to any valid copyright.

7

8 **APPLE’s Misuse of Copyrights via the DMCA**

9 49. APPLE purports to use “technological protection measures” to “control access to Apple’s
10 copyrighted works.” APPLE has accused PSYSTAR of having engaged in the manufacture,
11 importation, offering to the public, provisioning, or trafficking of an as yet unidentified
12 “Circumvention Device” primarily designed or produced for the purpose of circumventing
13 APPLE’s technological protection measures and/or allowing third parties to access APPLE
14 copyrights without authorization. APPLE makes these assertions in the context of 17 U.S.C. §
15 1201 *et seq.* (the DMCA).

16 50. PSYSTAR is informed and believes and thereon alleges that APPLE is leveraging rights
17 granted under any valid copyright to areas outside the exclusive rights granted by the Copyright
18 Act (*i.e.*, forcing purchases of Apple-Labeled Computer Hardware Systems). APPLE has thus
19 engaged in certain anticompetitive behavior and/or other actions that are in violation of the public
20 policy underlying the federal copyright laws including, but not limited to, a failure to abide by the
21 fair use and first sale doctrines.

22 51. APPLE accomplishes this leveraging through the assertion of claims under the DMCA.
23 Through the use of the DMCA, APPLE attempts to leverage its copyright-granted limited
24 monopoly in the Mac OS into a broad monopoly in the independent manufacture of Mac OS
25 Capable Computer Hardware Systems by forcing purchases of Apple-Labeled Computer Hardware
26 Systems. Specifically, APPLE alleges that any party utilizing the Mac OS on any computer system
27 that is not an Apple-Labeled Computer Hardware System has engaged in a violation of the DMCA.
28 By attempting to apply the DMCA in this manner, APPLE is attempting to obtain, maintain, and/or

1 enjoy rights not granted by the Copyright Act including, but not limited to, destroying competition
2 in the Mac OS Capable Computer Hardware Systems market, which is wholly unrelated to any
3 valid copyright.

4 52. PSYSTAR is further informed and believes and thereon alleges that APPLE does not
5 actually employ a technological copyright protection measure that controls access to the Mac OS.
6 PSYSTAR is also informed and believes and thereon alleges that any purported technological
7 copyright protection measure does not necessarily control access to a copyrighted work.
8 PSYSTAR further alleges that any PSYSTAR product or technology has a commercially significant
9 purpose or use other than to circumvent a technological measure that effectively controls access to
10 a copyrighted work.

11 53. PSYSTAR is informed and believes and thereon alleges that APPLE is aware of one or
12 more of the foregoing allegations set forth in paragraph 55. PSYSTAR alleges that notwithstanding
13 such knowledge, APPLE brought the foregoing DMCA claim in an attempt to chill innovation
14 whereby third-parties such as PSYSTAR would not engage in legal and legitimate development of
15 products that compete with Apple-Labeled Computer Hardware Systems. PSYSTAR is informed
16 and believes and thereon alleges that APPLE made the foregoing DMCA claims solely to prevent
17 and/or stymie the continued development of a competitive threat to Apple-Labeled Computer
18 Hardware Systems—that is, Mac OS Capable Computer Hardware Systems.

19

20 **Apple Benefits from Misuse of its Copyrights**

21 54. On information and belief, PSYSTAR alleges that as a result of the aforementioned
22 conduct, competition in the Mac OS Capable Computer Hardware System market with respect to
23 the contractually tied Mac OS and Apple-Labeled Computer Hardware Systems is, notwithstanding
24 PSYSTAR, essentially non-existent. PSYSTAR is informed and believes, and thereon alleges, that
25 APPLE has eliminated all but a few competitors (*e.g.*, PSYSTAR) and continues to ensure that no
26 competition arises in the Mac OS Capable Computer Hardware System market with respect to the
27 Mac OS and Apple-Labeled Computer Hardware Systems. APPLE ensures this lack of competition
28 vis-à-vis illicit contractual and licensing practices and the misuse of its intellectual property,

1 including its copyrights and spurious litigation under the DMCA, both of which include attempts to
2 obtain, maintain, and/or enjoy rights not granted by the Copyright Act including, extension and/or
3 maintenance of monopoly power in certain of the defined markets.

4 55. PSYSTAR is informed and believes, and thereon alleges, that with competition all but
5 eliminated in the Mac OS Capable Computer Hardware System market as it pertains to the Mac OS
6 and Apple-Labeled Computer Hardware Systems, APPLE is free to control and charge customers
7 supra-competitive prices. For example, APPLE CEO Steve Jobs announced in an October 2008
8 investor's conference call that "[w]e don't know how to make a \$500 computer that's not a piece of
9 junk, and our DNA will not let us ship that."

10 56. PSYSTAR is informed and believes, and thereon alleges, that APPLE's conduct with
11 respect to the Mac OS requires its end users, therefore, to deal exclusively with APPLE through the
12 purchase and use of only Apple-Labeled Computer Hardware Systems.

13 57. Through APPLE's requirement that end users exclusively utilize Apple-Labeled Computer
14 Hardware Systems to the exclusion of all other Mac OS Capable Computer Hardware Systems in
15 the marketplace, PSYSTAR is informed and believes, and thereon alleges, that APPLE has, at the
16 least, substantially lessened competition in the Mac OS Capable Computer Hardware Systems
17 marketplace if not eliminated it in its entirety.

18 58. PSYSTAR is informed and believes, and thereon alleges, that APPLE's pattern of conduct
19 makes it clear that unless restrained, APPLE will continue to misuse the EULA for the Mac OS and
20 various intellectual properties including copyrights related to the Mac OS and spurious litigation
21 under the DMCA to artificially exclude competition from Mac OS Computer Hardware System
22 manufacturers thereby depriving customers of a free choice between Mac OS Capable Computer
23 Hardware Systems that would otherwise be capable of running the Mac OS.

24 59. On information and belief, PSYSTAR alleges that APPLE would enjoy significant
25 advantages with respect to maintaining its exclusivity in the contractually tied Mac OS Apple-
26 Labeled Computer Hardware Systems markets. On information and belief, PSYSTAR alleges that
27 APPLE would further enjoy a benefit by preventing competition from the Mac OS Capable
28 Computer Hardware Systems market by contractually tying the Mac OS to Apple-Labeled

1 Computer Hardware Systems and otherwise misusing its intellectual property including copyrights
2 with respect to the same. On information and belief, PSYSTAR alleges that APPLE would further
3 enjoy a benefit by technically and/or contractually excluding other manufacturers from
4 manufacturing Mac OS Capable Computer Hardware Systems market rather than having to
5 compete on the merits with Apple-Labeled Computer Hardware Systems. APPLE would enjoy a
6 similar benefit through the spurious threat of litigation under the DMCA.

7 60. PSYSTAR is informed and believes, and thereon alleges, that the anticompetitive
8 technological and contractual conduct of APPLE in conjunction with the misuse of its intellectual
9 properties reduce the incentives and abilities of Mac OS Capable Computer Hardware System
10 manufacturers that would otherwise compete with Apple-Labeled Computer Hardware Systems on
11 the merits from innovating and differentiating their products in ways that would further facilitate
12 competition in the Mac OS Capable Computer Hardware System market.

13 61. The present Counterclaim does not seek to inhibit APPLE from competing on the merits by
14 innovation, but does challenge APPLE's concerted attempts to unfairly achieve dominance in other
15 markets, not by innovation and other competition on the merits, but by tie-ins, exclusive dealing
16 contracts, copyright misuse, spurious litigation under the DMCA, and other anticompetitive
17 agreements that deter innovation, exclude competition, and deny customers of their right to choose
18 among competing alternatives

19 62. PSYSTAR is informed and believes, and thereon alleges, that APPLE's conduct adversely
20 affects innovation, including by impairing the incentive of APPLE's would-be competitors in the
21 Mac OS Capable Computer Hardware Systems market and potential competitors to undertake
22 research and development, because they know that APPLE can limit and has in the past limited the
23 rewards from any resulting innovation; impairing the ability of APPLE's competitors and potential
24 competitors to obtain financing for research and development; inhibiting APPLE's competitors that
25 nevertheless succeed in developing promising innovations from effectively marketing their
26 improved products to customers of the Mac OS; reducing the incentive and ability of Computer
27 Hardware Systems manufacturers to innovate and differentiate their products in ways that would
28

1 appeal to customers; and reducing competition and the spur to innovation by APPLE and others
2 that only competition can provide.

3 63. PSYSTAR is informed and believes, and thereon alleges, that the purpose and effect of
4 APPLE's conduct with respect to the Mac OS and Mac OS Capable Computer Hardware Systems
5 that are not Apple-Labeled Computer Hardware Systems have been and, if not restrained, will be to
6 preclude competition on the merits between Apple-Labeled Computer Hardware Systems and other
7 Mac OS Capable Computer Hardware System manufacturers and to maintain APPLE's Mac OS
8 exclusivity in the Apple-Labeled Computer Hardware System market. PSYSTAR, at the very least,
9 has been harmed through such anticompetitive conduct.

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Claims for Relief

First Claim for Relief

(Declaration of Unenforceability for Copyright Misuse (EULA))

64. PSYSTAR hereby incorporates by reference all of the allegations of paragraphs 1-66 of this First Amended Counterclaim as if fully set forth herein.

65. APPLE possesses one or more copyrights related to the Mac OS.

66. APPLE licenses the Mac OS and any copyrights corresponding to the Mac OS through APPLE’s EULA.

67. As a part of APPLE’s EULA, APPLE requires the end-user to “agree not to install, use, or run the Apple Software on any non-Apple-Labeled Computer.”

68. Apple-Labeled Computer Hardware Systems are not covered by any copyright corresponding to the Mac OS.

69. APPLE has leveraged and continues to leverage the limited monopoly granted by the Copyright Act through the copyrights corresponding to the Mac OS to areas outside the copyright monopoly or otherwise granted by the Copyright Act including the requirement that end-users only install the Mac OS on Apple-Labeled Computer Hardware Systems.

70. APPLE’s use of the EULA in conjunction with its copyrights in this manner is anticompetitive.

71. APPLE’s use of the EULA in conjunction with its copyrights in this manner violates the underlying public policy of the federal copyright laws.

72. APPLE’s use of the EULA in conjunction with its copyrights to expand its monopoly to areas outside the copyright grant in a manner that is anticompetitive and contrary to public policy constitutes a misuse of APPLE’s copyrights.

73. PSYSTAR has been directly harmed by APPLE’s use of the EULA in conjunction with APPLE’s misuse of its copyrights.

1 74. PSYSTAR is therefore entitled to a declaratory judgment finding APPLE's copyrights to be
2 unenforceable until that time that APPLE discontinues the use of the EULA in conjunction with the
3 misuse of its copyrights.

4
5 **Second Claim for Relief**

6 **(Declaration of Unenforceability for Copyright Misuse (DMCA))**

7
8 75. PSYSTAR hereby incorporates by reference all of the allegations of paragraphs 1-77 of this
9 First Amended Counterclaim as if fully set forth herein.

10 76. APPLE possesses one or more copyrights related to the Mac OS.

11 77. APPLE causes the Mac OS to malfunction on non-Apple-Labeled Computer Hardware
12 Systems by embedding code that cause kernel panic and/or infinite loop.

13 78. The code that causes kernel panic and/or infinite loop does not constitute a technological
14 copyright protection measure.

15 79. The code that causes kernel panic and/or infinite loop does not effectively control access to
16 a copyrighted work.

17 80. PSYSTAR products have a commercially significant purpose or use other than to
18 circumvent a technological measure that effectively controls access to a copyrighted work.

19 81. Notwithstanding the foregoing, APPLE has asserted the DMCA against PSYSTAR in an
20 attempt to leverage the limited monopoly granted by the Copyright Act through the copyrights
21 corresponding to the Mac OS to areas outside the copyright monopoly or otherwise granted by the
22 Copyright Act including the installation and/or operation of the Mac OS on Apple-Labeled
23 Computer Hardware Systems.

24 82. Apple-Labeled Computer Hardware Systems are not covered by any copyright
25 corresponding to the Mac OS.

26 83. APPLE's use of the DMCA in conjunction with its copyrights in this manner is
27 anticompetitive.

28

1 84. APPLE's use of the DMCA in conjunction with its copyrights in this manner violates the
2 underlying public policy of the federal copyright laws.

3 85. APPLE's use of the DMCA in conjunction with its copyrights to expand its monopoly to
4 areas outside the copyright grant in a manner that is anticompetitive and contrary to public policy
5 constitutes a misuse of APPLE's copyrights.

6 86. PSYSTAR has been directly harmed by APPLE's use of the DMCA in conjunction with
7 APPLE's misuse of its copyrights.

8 87. PSYSTAR is therefore entitled to a declaratory judgment finding APPLE's copyrights to be
9 unenforceable until that time that APPLE discontinues the use of the DMCA in conjunction with
10 the misuse of its copyrights.

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Prayer for Relief

WHEREFORE, PSYSTAR PRAYS FOR RELIEF AS FOLLOWS:

- 1. Entering judgment for PSYSTAR against APPLE on all counts;
- 2. Declare APPLE’s actions with respect to its EULA to be a misuse of copyrights thereby making said copyrights unenforceable so long as the misuse of those copyrights with respect to its EULA continues;
- 3. Declare APPLE’s actions with respect to its claims under the DMCA to be a misuse of copyrights thereby making any copyright purportedly protected through enforcement of the DMCA unenforceable so long as to the misuse of those copyrights continues;
- 4. Enter such other preliminary and permanent injunctive relief as is necessary and appropriate to prohibit attempts to enforce otherwise unenforceable copyrights as those copyrights concern APPLE’s misuse of the same;
- 5. That the Court enter such additional relief as it may find just and proper.

Dated: February 12, 2009

CARR & FERRELL *LLP*

By: /s/ Colby B. Springer
 ROBERT J. YORIO
 COLBY B. SPRINGER
 CHRISTOPHER P. GREWE
 Attorneys for Defendant/Counterclaimant
 PSYSTAR CORPORATION

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DEMAND FOR JURY TRIAL

Defendant and Counterclaimant PSYSTAR hereby demands a jury trial of all issues in the above-captioned action that are triable to a jury.

Dated: February 12, 2009

CARR & FERRELL *LLP*

By: /s/ Colby B. Springer
ROBERT J. YORIO
COLBY B. SPRINGER
CHRISTOPHER P. GREWE
Attorneys for Defendant/Counterclaimant
PSYSTAR CORPORATION

EXHIBIT D TO DECLARATION
Order Staying the Infringement Action

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPLE INC., a California corporation,

No. C 08-03251 WHA

Plaintiff,

v.

ORDER STAYING CASE

PSYSTAR CORPORATION, a Florida corporation,


Defendant.

AND RELATED COUNTERCLAIMS.

In light of the bankruptcy filing, all proceedings are hereby **STAYED** until the automatic stay lifts at which time the parties must immediately notify the Court and arrange for a case management conference. A case management conference will be held in any event on **DECEMBER 10, 2009 AT 11 A.M.** to survey the status.

IT IS SO ORDERED.

Dated: June 1, 2009



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

EXHIBIT E TO DECLARATION
Court Link Search

Search Result List							
Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - California Northern	3:92cv1539	Triad Systems Corp v. Southeastern Express, et al	n/a	04/22/1992	10/31/2007	Closed	NOS: (820) Copyrights; Cause: Diversity-Breach of Contract
U.S. District - California Northern	3:97cv3673	Event Entertainment v. Bronson, et al	n/a	10/07/1997	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:98cv1100	Cinebase Software v. Media Guaranty Trust, et al	n/a	03/20/1998	12/20/2000	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:98cv1865	Greene v. Pathway Comm	n/a	05/07/1998	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:98cv4357	Microsoft Corp v. Cheung	n/a	11/09/1998	02/10/2004	Closed	NOS: (820) Copyrights; Cause: Trademark Infringement
U.S. District - California Northern	3:98cv4768	Wenz v. Rodale Press, Inc, et al	n/a	12/14/1998	12/20/2000	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:99cv70	Sony Computer v. JVG, Inc, et al	n/a	01/11/1999	11/30/2001	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:99cv886	Discovery Foods Co v. Ling Ling Foods, Inc	n/a	02/25/1999	12/20/2000	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:99cv1101	Hetland v. Frank Howard Allen, et al	n/a	03/10/1999	12/20/2000	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:99cv1539	Pizzeria Uno Corp v. West Coast Restoran, et al	n/a	03/31/1999	12/21/1999	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:99cv1995	Monster Cable v. TMP Worldwide Inc	n/a	04/27/1999	03/30/2005	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:99cv2084	Poulin v. Williams, et al	n/a	04/30/1999	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District -	3:99cv3218	Microsoft Corp v. Starlight Computer, et al	n/a	07/01/1999	02/10/2004	Closed	NOS: (820) Copyrights;

California Northern							Cause: Copyright Infringement
U.S. District - California Northern	3:99cv3467	Naxon Corporation v. Nichols, et al	n/a	07/16/1999	12/20/2000	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:99cv4508	AKA Saunders, Inc v. Bath & Body Works	n/a	10/08/1999	12/20/2000	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:99cv4750	Warner Bros Records, et al v. Michael Fischer, et al	n/a	10/27/1999	11/02/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:99cv4879	Brown & Bigelow, Inc v. Vancas, et al	n/a	11/09/1999	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:99cv5453	Christopher, et al v. Dailey, et al	n/a	12/30/1999	12/20/2000	Closed	NOS: (840) Trademark; Cause: Petition for Removal
U.S. District - California Northern	3:00cv156	Heffernan v. Sportmark, Inc	n/a	01/13/2000	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:00cv380	Levi Strauss & Co v. North Shore, et al	n/a	02/02/2000	12/20/2000	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv758	Smartmail, LLC v. Lexica Holdings LLC, et al	n/a	03/03/2000	12/20/2000	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv965	Evoke Software Corp v. Evoke Communications, et al	n/a	03/17/2000	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv973	Cost Plus Inc v. WORLD2MARKET.COM Inc	n/a	03/17/2000	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv1985	Cost Plus Inc v. Myworldmarketplace	n/a	06/02/2000	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv2005	Interplay Entertain, et al v. Cabot	n/a	06/05/2000	05/13/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:00cv2297	Osco Oil USA Corp v. Tosco Corporation	n/a	06/29/2000	07/03/2000	Active	NOS: (840) Trademark; Cause: Petition for Removal
U.S. District -	3:00cv2711	Gator.com Corp v. Drugstore.com, Inc	n/a	07/31/2000	09/25/2003	Closed	NOS: (840) Trademark;

California Northern							Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:00cv3255	Microsoft Corp v. A&A Technology Inc, et al	n/a	09/08/2000	02/10/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:00cv3710	Snowball.com, Inc v. Buffer, et al	n/a	10/10/2000	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv4025	Shakur, et al v. Barranco, et al	n/a	10/31/2000	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:00cv4516	Wholelife, Inc v. Pacific Spirit Corp	n/a	12/04/2000	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:01cv97	Shakur v. Blue, et al	n/a	01/09/2001	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:01cv584	Tufenkian Import EXP v. Oriental Carpet Inc	n/a	02/06/2001	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:01cv652	Activision, Inc, et al v. Sterling	n/a	02/12/2001	05/13/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:01cv775	Ayala, et al v. Yu, et al	n/a	02/21/2001	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:01cv1274	The Wine Group v. Canandaigua Wine, et al	n/a	03/29/2001	08/22/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:01cv1593	Blue Mountain Coffee, Inc et al v. Trader Joe's Company	n/a	04/24/2001	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:01cv2131	Caymus Vineyards v. Lisa Frank, Inc et al	n/a	05/31/2001	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:01cv2218	Pope v. Amerecord Records	n/a	06/06/2001	12/12/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California	3:01cv2216	Pope v. Hilltop Records	n/a	06/06/2001	12/12/2003	Closed	NOS: (820) Copyrights; Cause: Copyright

Northern							Infringement
U.S. District - California Northern	3:01cv2326	Dimmick v. Miller et al	n/a	06/15/2001	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:01cv3342	Klimenko v. Russian-American Company et al	n/a	09/04/2001	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Fed. Question
U.S. District - California Northern	3:01cv3422	Candido v. Advanced Graphics	n/a	09/07/2001	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:01cv3647	JVW Corporation v. Jordan et al	n/a	09/26/2001	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:01cv3805	Levi Strauss & Co v. Guess?, Inc	n/a	10/09/2001	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:01cv4027	Larkspur Data Resources, Inc v. Trust Administrators, Inc Et A	n/a	10/25/2001	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:01cv4191	Shakur et al v. DJ Cochise et al	n/a	11/09/2001	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:02cv180	Britanne Corporation v. Roemar Inc et al	n/a	01/10/2002	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv1031	Aldec Inc v. Xilinx, Inc	n/a	03/04/2002	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:02cv2074	The Miller Family v. Miller Brewing Company	n/a	04/29/2002	12/03/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:02cv2533	Thomas Publishing Company v. Does 1 Through 10, Inclusive	n/a	05/24/2002	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:02cv2658	Brocket v. Kramer	n/a	06/03/2002	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv3493	Willitts Designs International, Inc v. Cotton Gift Company, Ltd	n/a	07/22/2002	08/01/2002	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District -	3:02cv3794	Mapworks v. National Color et al	n/a	08/06/2002	12/15/2003	Closed	NOS: (820) Copyrights;

California Northern							Cause: Copyright Infringement
U.S. District - California Northern	3:02cv3970	Levi Strauss & Co v. Guy	n/a	08/16/2002	08/22/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv4245	Microsoft Corporation v. Chan et al	n/a	09/06/2002	04/15/2003	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv4277	Cam Commerce Solutions, Inc v. Ash Systems, Inc et al	n/a	09/09/2002	07/13/2007	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:02cv5190	Philip Morris USA Inc v. Murad et al	n/a	10/25/2002	03/20/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv5374	Guardian Angel Holdings, Inc v. Applied Science Group, Inc	n/a	11/12/2002	10/08/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv5611	Conifer Securities, LLC v. Conifer Capital, LLC	n/a	11/26/2002	08/22/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:02cv5724	Philip Morris USA Inc v. Yeher et al	n/a	12/06/2002	10/02/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:02cv5869	Meta-WA-Wake Lonewalker Morris v. the Regents of the University of California et al	n/a	12/19/2002	12/15/2003	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:03cv1303	United Supply, Inc v. ISI GMBH et al	n/a	03/26/2003	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:03cv1402	Habeas Inc v. Intermark Communications, Inc et al	n/a	04/02/2003	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv1888	Wasylyna v. Hunter et al	n/a	04/25/2003	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv2663	Folkmanis, Inc v. Scholastic, Inc et al	n/a	06/06/2003	02/23/2005	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:03cv2981	IIP, Inc v. Varsity Spirit Fashions & Supplies, Inc	n/a	06/26/2003	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S.	3:03cv3149	Levi Strauss & Co v. Lifted	n/a	07/08/2003	12/15/2003	Closed	NOS: (840)

District - California Northern		Research Group, Inc					Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv3221	Syntiro Healthcare, Inc v. Dental Connect, Inc	n/a	07/10/2003	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv3250	Monster Cable Products, Inc., v. Discovery Communications, Inc.,	n/a	07/11/2003	09/18/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:03cv4371	Levi Strauss & Co v. Milkcrate Athletics, Inc	n/a	09/26/2003	12/15/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv4372	Levi Strauss & Co v. Adriano Goldschmied, LLC et al	n/a	09/26/2003	12/30/2006	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv4731	Dolby Laboratories Licensing Corporation v. Dolby Enterprise Inc et al	n/a	10/21/2003	10/24/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv5051	Levi Strauss & Co v. Salvi Enterprises Corp	n/a	11/14/2003	11/21/2003	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:03cv5814	Chimney Safety Institute of America v. Chimney King et al	n/a	12/24/2003	01/05/2004	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:04cv582	PMC-Sierra, Inc et al v. Programmable Microelectronics Corporatio	n/a	02/11/2004	09/26/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:04cv1717	Informatica Corporation v. Peoplesoft, Inc	n/a	05/03/2004	06/26/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv2135	Intuit Inc v. Darkmatter Communications, Inc	n/a	05/28/2004	06/03/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv2236	HCL Technologies (Illinois), Inc v. Insevo, Inc et al	n/a	06/10/2004	12/30/2006	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv2569	Sony Computer Entertainment America Inc v. Hall	n/a	06/25/2004	12/30/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv2842	First Franklin Financial Corporation v. Franklin First Financial, Ltd	n/a	07/14/2004	04/14/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement

							(Lanham Act)
U.S. District - California Northern	3:04cv3654	Carmel Media Corporation v. Buydomains, LLC et al	n/a	08/27/2004	12/30/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:04cv4480	LCW Automotive Corporation v. Restivo Enterprises	n/a	10/22/2004	10/25/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv4862	Twentieth Century Fox Film Corporation et al v. Does 1-12	n/a	11/16/2004	11/17/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv5239	Paramount Pictures Corporation v. John Doe (68.127.126.159)	n/a	12/10/2004	12/16/2004	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:04cv5328	Brock v. Honeywell International, Inc	n/a	12/16/2004	12/30/2006	Closed	NOS: (840) Trademark; Cause: Petition for Removal
U.S. District - California Northern	3:04cv5515	Academy of Motion Picture Arts and Sciences v. Ma et al	n/a	12/30/2004	12/30/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:05cv229	Qwest Communications International Inc v. at & T Corp	n/a	01/14/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Fed. Question: Trademark
U.S. District - California Northern	3:05cv894	Goetz v. American Express Company	n/a	03/02/2005	07/27/2005	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:05cv1202	Loud Records, LLC et al v. Does 1-251	n/a	03/24/2005	04/24/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:05cv1741	Sony BMG Music Entertainment et al v. Galatolo	n/a	04/27/2005	12/30/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:05cv1750	Warner Bros Records Inc et al v. Molinaro	n/a	04/27/2005	12/30/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	M:05cv1673	In Re Circular Thermostat Antitrust Litigation	n/a	05/03/2005	12/31/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:05cv2076	Fullam v. Honeywell International, Inc,	n/a	05/20/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Petition for Removal
U.S. District - California	3:05cv2103	Silicon Storage Technology, Inc v. Solid Silicon Technology, LL	n/a	05/23/2005	08/22/2005	Closed	NOS: (840) Trademark; Cause: Trademark

Northern							Infringement
U.S. District - California Northern	3:05cv2483	Starbridge Art, Inc v. XU et al	n/a	06/17/2005	12/30/2006	Closed	NOS: (820) Copyrights; Cause: Petition for Removal
U.S. District - California Northern	3:05cv2920	McKinnon v. Honeywell International Inc	n/a	07/19/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Fed. Question
U.S. District - California Northern	3:05cv2986	Bailey v. Honeywell International, Inc	n/a	07/22/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Petition for Removal
U.S. District - California Northern	3:05cv3025	Wright v. Honeywell International, Inc	n/a	07/26/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Fed. Question: Trademark
U.S. District - California Northern	3:05cv3847	Elektra Entertainment Group Inc et al v. Defeeitas	n/a	09/23/2005	02/14/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:05cv4271	Melendez v. Oliveira et al	n/a	10/20/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:05cv4809	Lumascap USA, Inc et al v. Vertex Lighting, Inc et al	n/a	11/23/2005	12/30/2006	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:05cv4954	Mullenweg et al v. Johnson et al	n/a	11/30/2005	04/20/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:05cv5169	Ange et al v. Templer et al	n/a	12/13/2005	12/30/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv407	Atlantic Recording Corporation et al v. Johnson	n/a	01/23/2006	06/13/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv1347	Fagan et al v. Honeywell International, Inc	n/a	02/23/2006	03/05/2007	Closed	NOS: (840) Trademark; Cause: Petition for Removal
U.S. District - California Northern	3:06cv1663	Artis Capital Management, LLC v. Artisan Partners Limited Partnershi	n/a	03/02/2006	02/02/2007	Closed	NOS: (840) Trademark; Cause: Declaratory Judgement
U.S. District - California Northern	3:06cv1836	Kimpton Hotel and Restaurant Group Inc v. St Tropez Homes for America Holdings, LLC et al	n/a	03/09/2006	12/30/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement

U.S. District - California Northern	3:06cv1990	Williams-Sonoma, Inc v. Estyle, Inc	n/a	03/15/2006	06/08/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv2359	Image Comics, Inc v. Harry N Abrams, Inc	n/a	04/04/2006	08/24/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv2396	Amaru-AWA Merchandising Inc et al v. Air Wear NYC, Inc et al	n/a	04/05/2006	08/24/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv2918	Central Garden & Pet Company v. World Marketing Group, Inc	n/a	04/28/2006	09/17/2006	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv3504	Express Media Group, LLC et al v. Express.com	n/a	05/31/2006	06/11/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:06cv3882	Wing Le Import & Export, Inc v. Wah Yat Import & Export, Inc	n/a	06/21/2006	06/01/2009	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv4006	American Automobile Association v. Auto Glass Experts, Inc	n/a	06/28/2006	04/03/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv4340	Riverdeep Inc, LLC v. Cokem International Ltd	n/a	07/14/2006	12/29/2006	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv5059	Marshal Limited v. Secconone Inc	n/a	08/22/2006	01/14/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:06cv5336	U2 Home Entertainment, Inc et al v. World Books et al	n/a	08/30/2006	01/18/2007	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv5962	Fiesta Palms LLC v. 555 Fourth Street Associates LLC et al	n/a	09/26/2006	07/28/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv6470	Advanced Rotorcraft Technology, Inc v. L-3 Communications Corporatio	n/a	10/16/2006	10/24/2008	Closed	NOS: (820) Copyrights; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:06cv6717	Microsoft Corporation v. Crouse	n/a	10/27/2006	04/20/2009	Active	NOS: (820) Copyrights; Cause: Trademark Infringement (Lanham Act)
U.S.	3:06cv6710	Microsoft Corporation v.	n/a	10/27/2006	04/19/2009	Active	NOS: (820)

District - California Northern		Sofsky et al					Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6707	Microsoft Corporation v. E&M Internet Bookstore Inc et al	n/a	10/27/2006	04/21/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6700	Microsoft Corporation v. Mazek	n/a	10/27/2006	03/19/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6701	Microsoft Corporation v. Coppola	n/a	10/27/2006	03/19/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6704	Microsoft Corporation v. Nguyen	n/a	10/27/2006	02/02/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6712	Microsoft Corporation v. Ricketts	n/a	10/27/2006	06/12/2007	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6713	Microsoft Corporation v. Gilbey	n/a	10/27/2006	06/13/2007	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:06cv6714	Microsoft Corporation v. Ciet Systems, Inc et al	n/a	10/27/2006	02/13/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6715	Microsoft Corporation v. Anaraki	n/a	10/27/2006	06/13/2007	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6716	Microsoft Corporation V- Aliaksandr Vasileuski	n/a	10/27/2006	03/26/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6718	Microsoft Corporation v. Tsunami Trading Inc et al	n/a	10/27/2006	03/19/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6719	Microsoft Corporation v. Wade et al	n/a	10/27/2006	03/19/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:06cv6893	Woodside Hotels and Resorts Group Services Corporation, et al v. Custom House Hotel, LP Et A	n/a	11/03/2006	12/11/2006	Active	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	3:06cv7730	Taylor v. Hilton Hotels Corporation	n/a	12/18/2006	02/27/2007	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S.	3:07cv134	Law v. Harvey et al	n/a	01/09/2007	03/21/2007	Active	NOS: (840)

District - California Northern							Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:07cv4353	Sindharella, Inc v. VU	n/a	08/23/2007	05/20/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:07cv4868	BMG Music et al v. Doe	n/a	09/20/2007	02/14/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:07cv5055	Autodesk, Inc v. Flanders/CSC, LLC et al	n/a	10/01/2007	05/14/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:07cv5360	Vallavista Corporation v. Amazon.com, Inc et al	n/a	10/19/2007	05/08/2009	Active	NOS: (840) Trademark; Cause: Federal Trade Commission Act
U.S. District - California Northern	3:07cv5671	Chimney Sweeping Log, LLC v. Meeco Manufacturing Co, Inc Et A	n/a	11/07/2007	05/01/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:07cv6028	Interscope Records et al v. Doe	n/a	11/29/2007	03/01/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:07cv6141	Petroliam Nasional Berhad v. Earthlink, Inc	n/a	12/05/2007	03/04/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv331	Zvue Corporation v. Vuze, Inc	n/a	01/17/2008	06/08/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv937	Adobe Systems Incorporated v. Baptiste	n/a	02/13/2008	05/18/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv1040	Warner Bros Records Inc et al v. Elena Bowen	n/a	02/21/2008	11/20/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv1192	UMG Recordings, Inc et al v. Freeman	n/a	02/28/2008	08/31/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv1288	Torres, SA v. Anguix, SL	n/a	03/05/2008	07/23/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv1303	REBEL8 Inc v. MOB Inc et al	n/a	03/06/2008	03/01/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S.	3:08cv1577	Gallup, Inc v. Business	n/a	03/24/2008	05/03/2009	Active	NOS: (840)

District - California Northern		Research Bureau et al					Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv1639	Levi Strauss & Co v. Jeans City USA Inc	n/a	03/26/2008	05/09/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv1667	Atlantic Recording Corporation et al v. John Doe	n/a	03/27/2008	09/27/2008	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv2100	Brackett v. Hilton Hotels Corporation et al	n/a	04/22/2008	01/17/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv2475	Channel Enablers USA, LLC v. EH Publishing, Inc et al	n/a	05/14/2008	08/18/2008	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv2624	Levi Strauss & Co v. Kooks Co, Ltd	n/a	05/23/2008	01/08/2009	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv3251	Apple Inc v. Psystar Corporation	n/a	07/03/2008	05/20/2009	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv3437	Herman Miller, Inc v. Alphaville Design, Inc et al	n/a	07/16/2008	06/02/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv4351	Atlantic Recording Corporation et al v. Doe	n/a	09/17/2008	01/30/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv4397	Autodesk Inc v. Dassault Systemes Solid Works Corporation	n/a	09/19/2008	05/06/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv5063	Craigslist, Inc V Zheng Peng	n/a	11/05/2008	04/08/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv5068	Craigslist, Inc v. John Doe D/B/A 24HRPOSTING.COM	n/a	11/05/2008	05/08/2009	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:08cv5416	Sun Microsystems, Inc v. Unix Surplus et al	n/a	12/02/2008	04/16/2009	Closed	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:08cv5514	Adobe Systems Incorporated v. Marmoletos	n/a	12/09/2008	04/25/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District -	3:08cv5761	Yelp! Inc v. Instaplak, Inc et al	n/a	12/24/2008	05/13/2009	Active	NOS: (840) Trademark;

California Northern							Cause: Trademark Infringement
U.S. District - California Northern	3:09cv228	Adobe Systems Incorporated v. Applian Technologies, Inc	n/a	01/20/2009	06/02/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:09cv397	Autodesk, Inc-V-Cardwell Architects, Inc	n/a	01/28/2009	03/20/2009	Closed	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:09cv646	Skyy Spirits, LLC v. Ruby, LLC	n/a	02/12/2009	05/19/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:09cv1084	Adobe Systems Incorporated v. Michelson et al	n/a	03/11/2009	04/29/2009	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	3:09cv1443	Wellmark International v. Zocor, Inc	n/a	04/02/2009	05/17/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement

Search Title Untitled Search 6/2/2009

Client Matter Code 09071.00001

Notes Apple/Psystar

U.S. District Courts (Civil) (Civil)

Courts United States District Courts (Civil) - California Northern

Judges alsup

Case Types Civil

Nature Of Suit Copyrights (820)
Trademark (840)

Case Status ALL