

1 PSYSTAR is informed and believes, and thereon alleges, that the Mac Mini offers poorer  
2 performance, smaller storage space, and RAM. Furthermore, the Mac Mini does not have the  
3 option for an alternative video card such as an NVIDIA GeForce 8600, which is supported by the  
4 PSYSTAR Open Computer.

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6 **General Allegations**  
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8 13. For the purposes of this First Amended Counterclaim, PSYSTAR refers to the following  
9 products: the Mac OS, Mac OS Capable Computer Hardware Systems, and Apple-Labeled  
10 Computer Hardware Systems. The Mac OS has been briefly referenced above with respect to the  
11 Mac OS X Operating System. Computer hardware capable of executing the Mac OS is referred to  
12 herein as Mac OS Capable Computer Hardware Systems such as the Open Computer from  
13 PSYSTAR. Apple-Labeled Computer Hardware Systems are those hardware systems  
14 manufactured exclusively by APPLE and belonging to a subsidiary market of Mac OS Capable  
15 Computer Hardware Systems. That subsidiary market—the Apple-Labeled Computer Hardware  
16 Systems market—is artificially created, dominated, and maintained by APPLE. All of the  
17 aforementioned products are sold in the United States of America.

18  
19 **The Mac OS**

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

26 15. APPLE is the exclusive manufacturer and/or master licensor of the Mac OS.

27 16. PSYSTAR is informed and believes, and thereon alleges, that there are substantial barriers  
28 to entry in the market for operating systems, including the Mac OS market. It is prohibitively

1 difficult, time-consuming, and expensive to create any operating system much less one that would  
2 offer substantially identical functionality, security, stability, and other aspects offered by the Mac  
3 OS. In general, a new operating system manufacturer faces an almost insurmountable barrier to  
4 successful entry to the operating system market. Those barriers would be raised even higher with  
5 respect to an operating system that would directly compete with the Mac OS.

### 7 **Mac OS Capable Computer Hardware Systems**

8 17. Computer hardware systems, in general, perform central processing unit functions.  
9 Operating systems—like the Mac OS—manage the interaction between various pieces of hardware  
10 such as a monitor or printer. The operating system also manages various software applications  
11 running on a computing device.

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

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

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

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