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PSYSTAR CORPORATION

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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 AND  
STATUTORY UNFAIR  
COMPETITION**

18 AND RELATED COUNTERCLAIMS

**JURY TRIAL REQUESTED**

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20 **Nature of this Action**

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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 4. PSYSTAR also seeks a corresponding declaration as to APPLE having violated Section  
14 17200 of the California Business & Professions Code. PSYSTAR seeks this declaration of relief  
15 with respect to APPLE’s unfair and anticompetitive conduct in securing the aforementioned  
16 exclusive rights in contravention of the policy and spirit of not only the United States copyright  
17 laws but state and federal antitrust law.

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19 **Jurisdiction and Venue**  
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21 5. The First and Second counterclaims set forth in this First Amended Counterclaim are  
22 brought pursuant to 28 U.S.C. § 2201. This Court is thereby vested with subject matter jurisdiction  
23 pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case presents a federal question under the  
24 United States Copyright Act.

25 6. The Third and Fourth counterclaims set forth in this First Amended Counterclaim are  
26 brought pursuant to California Business and Professions Code § 17200 *et seq.* to seeks redress for  
27 APPLE’s unfair and unlawful conduct in violation of state law.  
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