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Attorneys for Plaintiffs EFORCITY
CORPORATION, ACCSTATION INC.
ITRIMMING INC. AND
EVERYDAYSOURCE INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EFORCITY CORPORATION, a
California corporation;
ACCSTATION INC., a California
corporation; ITRIMMING INC., a
California corporation;
EVERYDAYSOURCE INC., a
California corporation;

Plaintiffs,

v.

APPLE INC., a California
corporation,
Defendant.

Case No.

CV11-00808 SVW(FMO)

**COMPLAINT FOR
DECLARATORY JUDGMENT;
DEMAND FOR JURY TRIAL**

Plaintiffs, eForCity Corporation, Accstation, Inc., Itrimming, Inc. and
Everdaysource, Inc., (collectively "The eForCity Plaintiffs") hereby seek
declaratory relief, injunctive relief and other remedies against Defendant APPLE
INC. ("Apple") as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this claim under 28 U.S.C. §§1331,
1338(a), 2201 and 2202, under the Patents Laws of the United States, 35 U.S.C.
§101, et. seq., under the Copyright Laws of the United States, 17 U.S.C. § 501, et.

1 seq., and under the trademark laws of the United States, 15 U.S.C. § 1125. There is
2 a controversy between the parties concerning infringement of United States Patent
3 Nos. D589,491, D469,753, D 596,616, and D515,070, infringement of several of
4 Defendant's alleged trademarks, and infringement of a copyright in an image as
5 averred herein.

6 2. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and
7 15 U.S.C. § 1121, because this action arises under the patent, copyright and
8 trademark laws of the United States.

9 **PARTIES**

10 3. The eForCity Plaintiffs are all corporations with their principle place of
11 business at 12339 Denholm Dr., El Monte, CA 91732.

12 4. Upon information and belief, Apple is a California corporation with its
13 principal place of business located at 1 Infinite Loop, Cupertino, California

14 5. An actual controversy exists between the parties regarding
15 infringement of United States Patent Nos. D589,491, D469,753, D 596,616, and
16 D515,070, infringement of several of Defendant's alleged trademarks, and
17 infringement of a copyright in an image.

18 **FACTS RELATED TO ALL CLAIMS FOR RELIEF**

19 6. The eForCity Plaintiffs distribute and/or sell various iPod®, iPhone®
20 and/or iPad™ compatible accessories.

21 7. The eForCity Plaintiffs are informed and believe, and on that basis
22 allege that Apple is the owner of all right, title and interest in United States Patents
23 D589,491; D469,753; D596,616; and D515,070.

24 8. The eForCity Plaintiffs are informed and believe, and on that basis
25 allege that Apple is the owner of various trademarks including, but not limited to
26 Apple, iPad, iPhone, iPod and Mac.

1 9. The eForCity Plaintiffs are informed and believe, and on that basis
2 allege that Apple is the owner of an image of an iPad which Apple alleges appears
3 on The eForCity Plaintiffs' websites.

4 10. On or about November 30, 2010, Apple sent to The eForCity Plaintiffs
5 a cease and desist letter alleging several intellectual property violations. A copy of
6 the cease and desist letter, with certain portions not related to the cease and desist
7 demand redacted, is attached to this complaint as Exhibit "1".

8 11. The eForCity Plaintiffs believe that based on the Exhibit 1 demand
9 letter they have a reasonable apprehension of being sued for patent infringement,
10 copyright infringement, and trademark infringement by Apple.

11 **FIRST CLAIM FOR RELIEF**

12 **(Declaratory Judgment of Non-Infringement of Patent No. D589,491)**

13 12. The allegations of Paragraphs 1 through 11 are incorporated herein by
14 reference.

15 13. Apple has alleged that certain of the eForCity Plaintiff's Universal 3.5
16 mm Stereo Headset headphones, sold as SKU COTHXXXXHS75, infringe United
17 States Design Patent D589,491 ("the '491 patent").

18 14. The eForCity Plaintiffs' Universal 3.5 mm Stereo Headset headphones,
19 sold as SKU COTHXXXXHS75, do not infringe the '491 patent.

20 **SECOND CLAIM FOR RELIEF**

21 **(Declaratory Judgment of Non-Infringement of Patent No. D469,753)**

22 15. The allegations of Paragraphs 1 through 14 are incorporated herein by
23 reference.

24 16. Apple has alleged that certain of the eForCity Plaintiff's Universal 3.5
25 mm Stereo Headset headphones, sold as SKU COTHXXXXHS53, infringe United
26 States Design Patent D469,753 ("the '753 patent").

27 17. The eForCity Plaintiffs' Universal 3.5 mm Stereo Headset headphones,
28 sold as SKU COTHXXXXHS53, do not infringe the '753 patent.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of Patent No. D596,616)

18. The allegations of Paragraphs 1 through 17 are incorporated herein by reference.

19. Apple has alleged that certain of the eForCity Plaintiff's Stereo Headset headphones, sold as SKUs COTHXXXXHS82, COTHXXXXHS86, CAPIPHOHS02 and CAPIPHOHS02, infringe United States Design Patent D596,616 ("the '616 patent").

20. The eForCity Plaintiffs' Stereo Headset headphones, sold as SKUs COTHXXXXHS82, COTHXXXXHS86, CAPIPHOHS02 and CAPIPHOHS02 headphones do not infringe the '616 patent.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of Patent No. D515,070)

21. The allegations of Paragraphs 1 through 20 are incorporated herein by reference.

22. Apple has alleged that certain of the eForCity Plaintiff's Stereo Headset headphones, sold as SKUs COTHXXXXHS58, COTHXXXXHS60, COTHXXXXHS76 and COTHXXXXHS61, infringe United States Design Patent D515,070 ("the '070 patent").

23. The eForCity Plaintiffs' Stereo Headset headphones, sold as SKUs COTHXXXXHS58, COTHXXXXHS60, COTHXXXXHS76 and COTHXXXXHS61, do not infringe the '070 patent.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of Copyright)

24. The allegations of Paragraphs 1 through 23 are incorporated herein by reference.

25. The eForCity Plaintiffs' iPad image found on page 5 of Exhibit A does not infringe the copyright in Apple's alleged iPad image.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of Trademark)

26. The allegations of Paragraphs 1 through 25 are incorporated herein by reference.

27. The eForCity Plaintiffs' use of the terms Apple, iPad, iPhone, iPod, and Mac in product descriptions is not a violation of Apple's trademark rights.

WHEREFORE, the eForcity Plaintiffs pray as follows:

1. That judgment be entered in favor of The eForCity Plaintiffs and against Apple on all claims set forth in the complaint;

2. That declaratory judgment be entered in favor of The eForCity Plaintiffs and against Apple declaring that the eForCity Defendants have not infringed the '491 patent.

3. That declaratory judgment be entered in favor of The eForCity Plaintiffs and against Apple declaring that the eForCity Defendants have not infringed the '753 patent.

4. That declaratory judgment be entered in favor of The eForCity Plaintiffs and against Apple declaring that the eForCity Defendants have not infringed the '616 patent.

5. That declaratory judgment be entered in favor of The eForCity Plaintiffs and against Apple declaring that the eForCity Defendants have not infringed the '070 patent.

6. That declaratory judgment be entered in favor of The eForCity Plaintiffs and against Apple declaring that the eForCity Defendants have not infringed Apple's copyrighted image as Apple alleged on page 5 of Exhibit A.

7. That declaratory judgment be entered in favor of The eForCity Plaintiffs and against Apple declaring that the eForCity Defendants have not infringed Apple's trademarks in Apple, iPad, iPhone, iPod, and Mac.

1 8. For attorneys fees incurred by The eForCity Plaintiffs as this is an
2 exceptional case under 35 U.S.C §285 and 15 U.S.C. §1117(a) and for fees incurred
3 by The eForCity Plaintiffs as the prevailing party under 17 U.S.C. § 505.

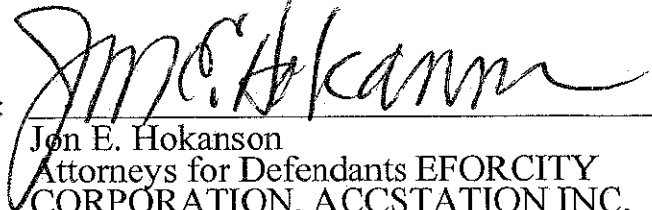
4 7. For The eForCity Plaintiffs' costs of suit herein; and

5 8. For such other relief as the Court deems just and proper.

6 DATED: January 26, 2011

JON E. HOKANSON
DANIEL R. LEWIS
LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8
9 By:


Jon E. Hokanson
Attorneys for Defendants EFORCITY
CORPORATION, ACCSTATION INC.
ITRIMMING INC. AND
EVERYDAYSOURCE INC.

DEMAND FOR JURY TRIAL

TO THE COURT AND TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that The eForCity Plaintiffs, hereby demand a jury trial in this matter.

DATED: January 26, 2011

JON E. HOKANSON
DANIEL R. LEWIS
LEWIS BRISBOIS BISGAARD & SMITH LLP

By:



Jon E. Hokanson
Attorneys for Defendants EFORCITY
CORPORATION, ACCSTATION INC.
ITRIMMING INC. AND
EVERYDAYSOURCE INC.

EXHIBIT “1”

townsend.

Robert D. Tadlock
rdtadlock@townsend.com

November 30, 2010

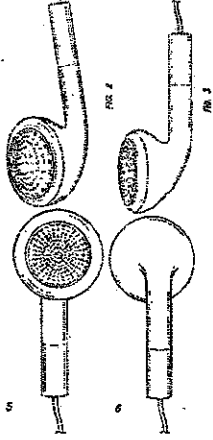
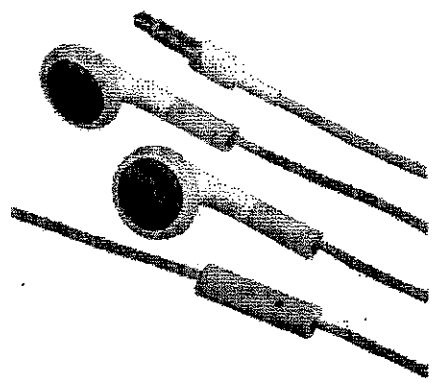
Via E-mail

Jon Hokanson
Lewis Brisbois Bisgaard & Smith LLP
221 N. Figueroa St., Suite 1200
Los Angeles, CA 90012

Dear Jon:

Apple has continued to monitor Eforcity's sales, including the several websites under Eforcity's control. Apple has identified additional products that Eforcity is marketing and selling on these sites in violation of Apple's patent rights. We therefore demand that Eforcity immediately cease and desist this additional infringing activity. We believe the following products infringe additional Apple patents:

- earphones that are substantially similar in appearance to the design claimed in U.S. Patent No. D589,491 including, but not limited to, the Universal 3.5MM Stereo Headset w/ On-off & Mic White.

U.S. Patent No. D589,491	Eforcity Headphones
	

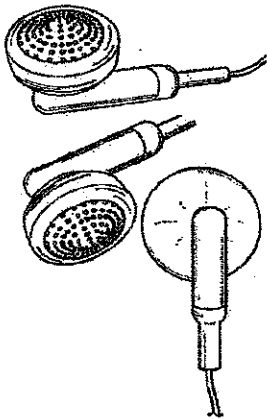
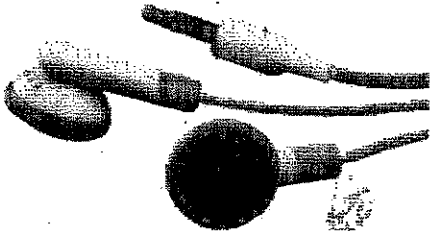
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Mr. ***ADDRESSEE NAME***

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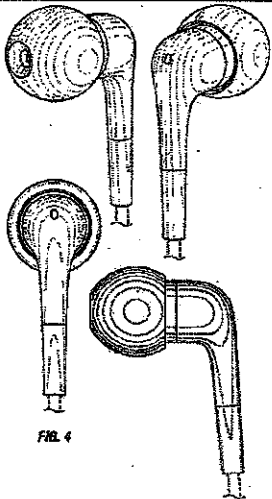
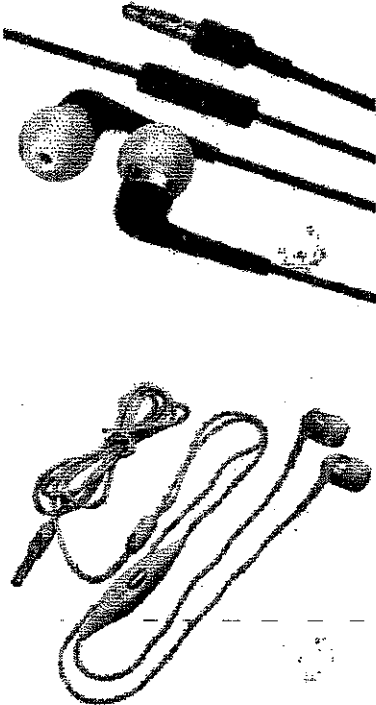
- earphones that are substantially similar in appearance to the design claimed in U.S. Patent No. D469,753 including, but not limited to, the Univesral 3.5MM Stereo Headset, White.

U.S. Patent No. D469,753	Eforcity Headphones
	

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Mr. ***ADDRESSEE NAME***
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- earphones that are substantially similar in appearance to the design claimed in U.S. Patent No. D596,616 including, but not limited to, the Universal 3.5MM In-Ear Stereo Headset w/ On-off, Fishhook Shape, Black/White, and the Hands-Free Stereo Headset w/ Switch for Apple iPad/iPhone 4/iPhone 3G/3GS, White.

U.S. Patent No. D596,616	Eforcity Headphones
 <p>FIG. 4</p>	

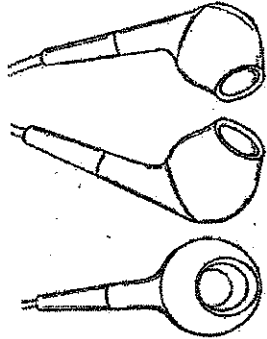
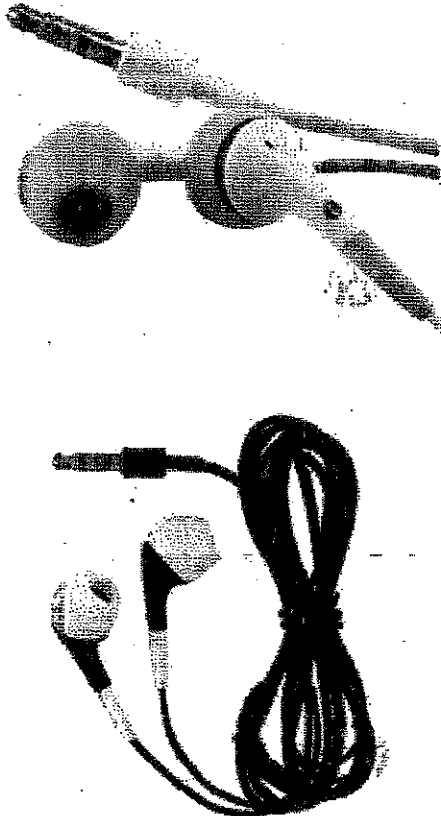
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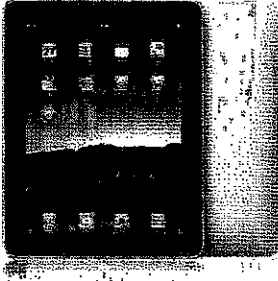
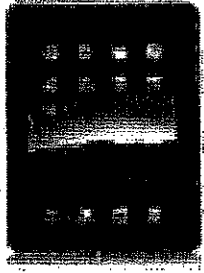
- earphones that are substantially similar in appearance to the design claimed in U.S. Patent No. D515,070 including, but not limited to, the Universal 3.5MM In-Ear Stereo Headset w/ On-off, Fishhook Shape, Black and Hands-Free Stereo Headset w/ Switch for Apple iPad/iPhone 4/iPhone 3G/3GS, White, Black, White/Black, Pink.

U.S. Patent No. D515,070	Eforcity Headphones
	

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Mr. ***ADDRESSEE NAME***
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Separately, it has come to our attention that Eforcity is using Apple's copyrighted images on its website. For example, the iPad™ image on Eforcity's websites is a copy of the image used on Apple's website and includes the iPad™ showing a screen with an identical lake and hills background as well as identical icons. Eforcity must immediately cease and desist its use of Apple's copyrighted images.

Apple Copyrighted Image	Eforcity iPad™ Image
	

Additionally, in several instances Eforcity's use of the Apple's trademarks violates Apple's trademark guidelines, which can be found at <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html>. While not an exhaustive list of violations, each of Eforcity's websites use the trademarks Apple, iPad, iPhone, iPod, and Mac in product descriptions without the ® or ™ symbols and without attribution to Apple.

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Mr. ***ADDRESSEE NAME***
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Sincerely,

s/ Robert D. Tadlock

Robert D. Tadlock
Associate

RDT

Enclosures (4)

U.S. Patent No. D589,491

U.S. Patent No. D469,753

U.S. Patent No. D596,616

U.S. Patent No. D515,070

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