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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 I Cloud Communications, LLC, an Arizona
14 Limited Liability Company,

15 Plaintiff,

16 v.

17 Apple, Inc., a California Corporation,

18 Defendant.

No.

COMPLAINT

19 Plaintiff I Cloud Communications, LLC (“iCloud Communications”), for its
20 complaint against Defendant Apple Inc. (“Apple”) alleges as follows:

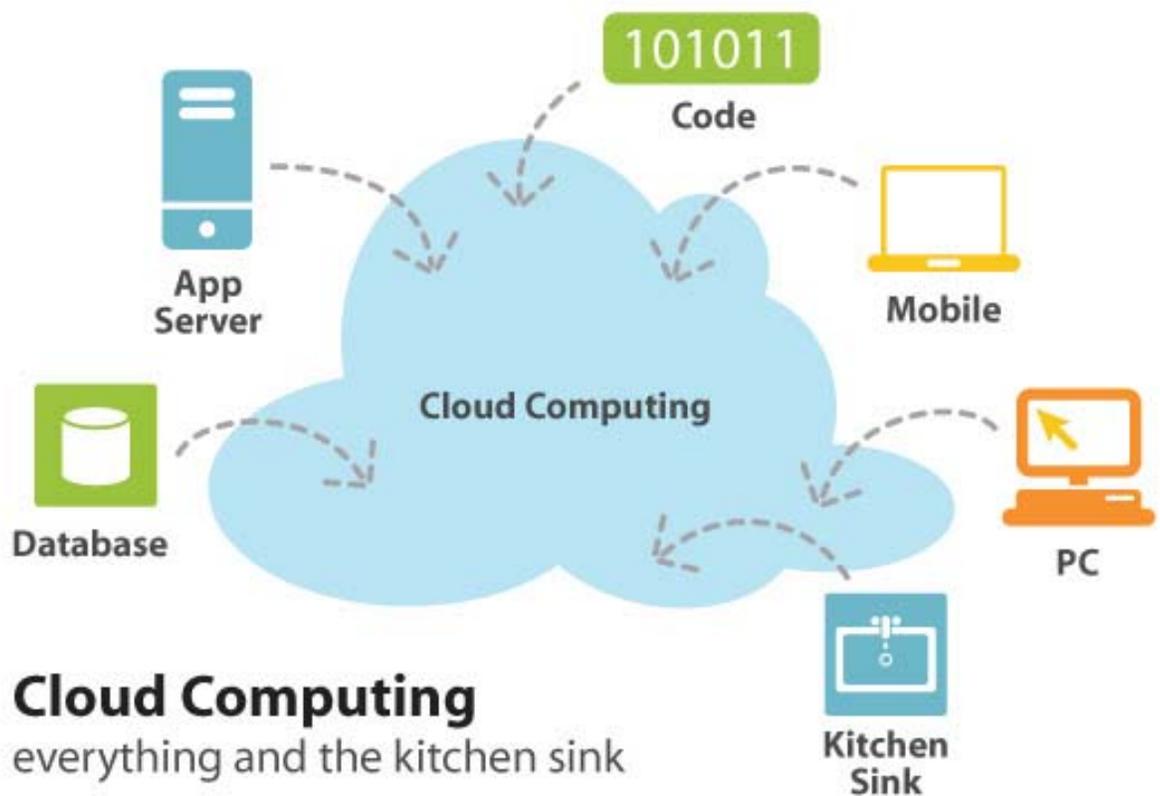
21 **NATURE OF THE ACTION**

22 1. This action seeks preliminary and permanent injunctive relief, monetary
23 relief, and attorneys’ fees based on Apple’s i) federal unfair competition and false
24 designation of origin in violation of § 43 of the Lanham Act, 15 U.S.C. § 1125(a); and ii)
25 Arizona state trademark infringement, unfair competition, and injury to business
26 reputation in violation of Arizona common law.

PARTIES

1. Plaintiff iCloud Communications is an Arizona limited liability corporation
having its principal place of business in Phoenix, Arizona.

1 9. More generally stated, “cloud computing” refers to applications and
2 services offered over the Internet. The “cloud” reference is a metaphor derived from the
3 cloud image used to represent the Internet in computer network diagrams and is a
4 simplification of the complex series of network connections and systems involved in
5 online services. Any user with an Internet connection can access the “cloud” and the
6 services it provides. An example of a diagram depicting cloud computing is set forth
7 below:



22 10. Some commonly know cloud computing services include: Gmail by
23 Google; Google Docs; Google Calendar; YouTube; LinkedIn; Amazon Web Services;
24 Amazon MP3; Rackspace; Microsoft Azure; and MobileMe by Apple.

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iCloud Communications

11. iCloud Communications was formed in 2005 and is a provider of, among other “cloud computing” products and services, computer telephony (telecommunication) hardware and software for the electronic transmission of email, text, audio, video, photos, information, data, video conferencing, virtual video conferencing and other content via the internet and wireless data networks.

12. iCloud Communications’ software applications and customer data are hosted at and are accessed through its secure data center and telecommunications hub in Phoenix, Arizona, which was acquired and equipped by iCloud Communications at a cost of over \$550,000.

13. iCloud Communications has customers located throughout North America, South America, Europe and the Middle East.

iCloud Marks

14. iCloud Communications spends tens of thousands of dollars annually—in excess of several hundreds of thousand of dollars since its formation in 2005—in regional, national and international, electronic, print and other advertising to promote its goods and services using the following marks and logos (the “iCloud Marks”).

iCloud

I Cloud Communications

iCloud Communications



1 Attached as **Exhibit A** are various current and historic marketing brochures and materials
2 describing the goods and services offered by iCloud Communications under the **iCloud**
3 **Marks**.

4 15. iCloud Communications also promotes, and since 2005 has promoted, its
5 services through its website, www.geticloud.com, where the name iCloud and other
6 **iCloud Marks** are prominently displayed. See **Exhibit B** attached hereto.

7 16. iCloud Communications also uses, and since 2005 has used, the **iCloud**
8 **Marks** at tradeshows, in brochures, and in every communication and invoice it
9 disseminates to customers and prospective customers.

10 16. By virtue of iCloud Communications' long and extensive use of the **iCloud**
11 **Marks**, its advertising and promotional campaigns and expenditure of substantial monies
12 thereon, iCloud Communications had, prior to June 6, 2011, established significant
13 goodwill and valuable rights in and ownership to the **iCloud Marks** in connection with
14 computer telephony and electronic data transmission and storage services.

15 **Apple's Infringement of the iCloud Marks**

16 17. Apple was formed on April 1, 1976, began to conduct business in Arizona
17 in 1976, and continues to conduct business in Arizona.

18 18. Recently, Apple began using marks identical or confusingly similar to the
19 **iCloud Marks** to promote its new cloud computing telecommunications and data
20 services.

21 19. On June 6, 2011, at Apple's highly anticipated Worldwide Developer
22 Conference ("WWDC"), Apple's Chief Executive Officer, Steve Jobs, publicly
23 announced the launch of its new cloud computing telecommunications and data storage
24 platform "iCloud."
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1 20. A press release issued by Apple concurrently with Steve Job’s public
2 announcement at the June 6th WWDC describes Apple’s vision for its “iCloud” platform.
3 Among other things, the press release states that Apple’s iCloud will “wirelessly store
4 your content in iCloud and automatically and wirelessly push it to all your devices.” It
5 further states that the iCloud platform will wirelessly transmit and store at its data center
6 email, text, audio, video, photos and other data. A copy of the Apple press release is
7 attached hereto as **Exhibit C**.

8 21. Moreover, in one of its recent trademark filings with the United States
9 Patent and Trademark Office made on June 1, 2011, Apple stated its intent to use the
10 “iCloud” mark in connection with, among other services:

11 Telecommunications; telecommunication access services;
12 communications by computer; communication between
13 computers; delivery of digital music by telecommunications;
14 electronic transmission of streamed and downloadable audio
15 and video files via computer and other communications
16 networks; delivery of messages by electronic transmission;
17 delivery of digital music by telecommunications; electronic
18 mail services; streaming of video content via a global
19 computer network; electronic transmission of audio and video
20 files via communications networks; information, advisory and
21 consultancy services relating to all the aforesaid.

22 A copy of the Apple’s U.S. application is attached hereto as **Exhibit D**.

23 22. In a similar filing with the Trademarks and Designs Registration Office of
24 the European Union made on May 31, 2011, Apple indicated its intent to use the “iCloud”
25 mark in connection with, among other services:

26 Telecommunications; communication and telecommunication
services; telecommunication access services; communications
by computer; communication between computers; electronic
sending of data and documentation via the Internet or other
databases...communication by computer, computer
intercommunication; telex, telegram and telephone services;
broadcasting or transmission of radio and television

1 programs; . . . provision of telecommunications access and
2 links to computer databases and the Internet...delivery of
3 messages by electronic transmission; provision of
4 connectivity services and access to electronic
5 communications networks, for transmission or reception of
6 audio, video or multimedia content; provision of
7 telecommunications connections to electronic communication
8 networks... provision of telecommunications connections to
9 the Internet or computer databases; electronic mail services;
10 telecommunication of information (including web
11 pages)...rental and hire of communication apparatus and
12 electronic mail-boxes; electronic news services; electronic
13 communications consultancy; facsimile, message collection
14 and transmission services; transmission of data and of
15 information by electronic means, computer, cable, radio,
16 teleprinter, teletype, electronic mail, telecopier.

17 A copy of the Apple's E.U. filing is attached hereto as **Exhibit E**

18 23. Apple has, since the June 6th announcement, widely promoted its proposed
19 "iCloud" services across numerous marketing channels, including print and electronic
20 media and on its website, www.apple.com, and through the use of the domain name
21 icloud.com.

22 24. The goods and services with which Apple intends to use the "iCloud" mark
23 are identical to or closely related to the goods and services that have been offered by
24 iCloud Communications under the **iCloud Marks** since its formation in 2005. However,
25 due to the worldwide media coverage given to and generated by Apple's announcement of
26 its "iCloud" services and the ensuing saturation advertising campaign pursued by Apple,
the media and the general public have quickly come to associate the mark "iCloud" with
Apple, rather than iCloud Communications.

27 25. Upon information and belief, at the time Apple elected to adopt "iCloud"
28 for its cloud computing telecommunications and data services, Apple was aware of or
29 was willfully blind to iCloud Communications' use of and rights in the **iCloud Marks**.

1 had pending before the United States Patent and Trademark Office an application for the
2 iPad mark.

3 31. Most recently, in May 2010, Apple was sued by Innovative Media Group,
4 LLC (“IMG”) for infringement of IMG’s federally registered “iAds” trademark after
5 Apple launched its “iAd” mobile advertising program.

6 32. Apple’s announcement and launch of its “iCloud” cloud computing service
7 appears to be just one more example of Apple’s “act first and worry about the
8 consequences later” approach to trademark use as even the most cursory Internet
9 search—which could have easily been conducted by any of the legion of Apple’s in-
10 house marketing or legal staff—would have revealed the prior, long term usage of the
11 **iCloud Marks** by iCloud Communications.

12 33. Moreover, as was the case of the “iPhone” and “iAd” marks, Apple
13 discreetly applied for a foreign trademark registration for ICLOUD months prior to the
14 launch announcement on June 6, 2011 (Apple applied initially in Australia for iPhone,
15 Canada for iAd and Jamaica for iCloud). That foreign ICLOUD application appears to
16 now form the basis for the various iCloud applications for which Apple filed in the
17 United States on June 1, 2011. Apparently, Apple is attempting to use a foreign
18 jurisdiction’s laws to gain priority for its U.S. registrations while circumventing the
19 notice and publication requirements for trademark applications filed here in the United
20 States with respect to “intent-to-use” applications.

21 34. Apple also went through the motions of purchasing a U. S. trademark
22 registration for “iCloud,” Reg. No. 3,744,821, from a Swedish consulting company
23 whose use of the mark post-dates that of iCloud Communications by two years.
24 Moreover, upon information and belief, the Swedish company has continued offering the
25 same services to the same customers under a similar mark. Thus, Apple’s acquisition of
26 the mark iCloud appears to have been “in gross” and is, therefore, invalid.

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Irreparable Harm Suffered by iCloud Communications

35. Apple has used, and continues to use, “iCloud” in connection with its efforts to advertise, market, and promote its cloud computing services throughout the world using many of the same marketing channels used by iCloud Communications.

36. Apple’s announcement of and the launch of its advertising campaign for its iCloud service have so thoroughly swamped the reputation of iCloud Communications and the goodwill it had built up over the years in the **iCloud Marks** that is likely to cause—and has actually caused—confusion among consumers of cloud computing services and members of the general public as to the source of the parties’ goods and services. In fact, iCloud Communications has received numerous inquiries from both existing and prospective customers regarding whether it is now owned or affiliated with Apple.

37. Additionally, it is likely that consumers will be given the misimpression that Apple, not iCloud Communications, is the source of the services offered under the **iCloud Marks** and/or that iCloud Communications is an unauthorized user of and is infringing upon Apple’s trademark rights. Such misimpressions will damage iCloud Communications’ reputation.

38. The loss of and damage to the goodwill in the **iCloud Marks**, the damage to iCloud Communication’s reputation and confusion among consumers is likely to continue—and, in fact, intensify—unless Apple is enjoined from its use of the mark “iCloud.”

FIRST CAUSE OF ACTION

False Designation of Origin and Unfair Competition

Violating 35 U.S.C. §1125(a)

39. iCloud Communications repeats and realleges all allegations contained in paragraphs 1 to 38 and by this reference incorporates them here.

1 Communications and cause iCloud Communications tremendous damage to their
2 goodwill, business reputation, and trademark services.

3 **THIRD CAUSE OF ACTION**

4 **Trademark Infringement Under Arizona Common Law**

5 48. iCloud Communications repeats and realleges all allegations contained in
6 paragraphs 1 to 47 and by this reference incorporates them here.

7 49. iCloud Communications has developed substantial common law trademark
8 rights in the **iCloud Marks** under Arizona law and in all jurisdictions where iCloud
9 Communications has used those marks.

10 50. Apple has infringed the **iCloud Marks** by using confusingly similar marks
11 in commerce in Arizona in a way that has caused and likely will continue to cause
12 consumer confusion as to iCloud Communications' association with, affiliation with, or
13 sponsorship of Apple and their products, goods and services.

14 51. Apple's acts have been willful and in conscious disregard of the trademark
15 rights of iCloud Communications.

16 52. iCloud Communications has been damaged by, and Apple has profited
17 from, Apple's wrongful conduct in an amount to be proven at trial.

18 53. iCloud Communications is entitled to damages and enhanced damages in
19 amounts to be proven at trial.

20 54. Monetary relief alone is inadequate to fully address the irreparable injury
21 that Apple's illegal actions have caused and will continue to cause to iCloud
22 Communications if this Court does not enjoin Apple. iCloud Communications is
23 therefore entitled to preliminary and permanent injunctive relief to stop Apple's unfair
24 competition.

1 **FOURTH CAUSE OF ACTION**

2 **Injury to Business Reputation Under Arizona Common Law**

3 55. iCloud Communications repeats and realleges all allegations contained in
4 paragraphs 1 to 54 and by this reference incorporates them here.

5 56. Apple's use of the iCloud mark is confusingly similar to and constitutes
6 infringement of iCloud Communications' Marks. Apple's use injures iCloud
7 Communications' business reputation because consumers will believe that iCloud
8 Communications is affiliated with or related to or has the approval of Apple, and any
9 adverse reaction by the public to Apple and the quality of its products and the nature of
10 its business will injure the business reputation of iCloud Communications.

11 57. Apple's use of the iCloud Mark is likely to cause, and has caused,
12 consumers to believe that Apple, not iCloud Communications, is the true source of the
13 goods and services offered under the **iCloud Marks** and that iCloud Communications is
14 infringing upon the trademark rights of Apple in using the **iCloud Marks**.

15 58. Apple has engaged in conduct in bad faith that constitutes unfair, unlawful
16 and fraudulent business practices under the common law of the State of Arizona, causing
17 harm and irreparable injury to iCloud Communications.

18 59. iCloud Communications has no adequate remedy at law to address fully
19 this irreparable injury that Apple's illegal actions have caused and will continue to cause
20 iCloud Communications if not enjoined. iCloud Communications is therefore entitled to
21 preliminary and permanent injunctive relief to stop Apple's use of the iCloud mark.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, iCloud Communications prays for judgment in its favor and against
24 Apple as follows:

- 25 A. preliminarily and permanently enjoining Apple, its servants, agents and
26 employees and all other persons in active concert or participation with

1 Apple and their respective successors and assigns, from directly or
2 indirectly:

- 3 1) using the iCloud name or marks similar to iCloud, or any Internet
4 domain name or any other name or mark confusingly similar to the
5 **iCloud Marks**, in any manner or form, or any other reproduction,
6 counterfeit, copy or colorable imitation of such marks either alone or
7 in combination with any other designation, or in connection with any
8 advertising, marketing, promotion, offer for sale, or sale of Apple's
9 telecommunications services throughout the United States and the
10 world;
- 11 2) expressly or impliedly representing itself to customers, potential
12 customers, suppliers, potential suppliers, or the general public to be
13 affiliated with iCloud in any way;
- 14 3) representing by words or conduct that any product or services
15 provided, offered for sale, sold, advertised, or rented by Apple and
16 supplied, authorized, sponsored or endorsed by or otherwise
17 connected with iCloud Communications; and
- 18 4) competing unfairly with iCloud Communications in any manner;

19 B. ordering Apple to deliver for destruction all labels, signs, prints, insignia,
20 letterhead, brochures, business cards, invoices and any other written or
21 recorded material or advertisements in its possession or control containing
22 the iCloud name or any other colorable imitation of any one of the marks in
23 the **iCloud Marks** or confusingly similar variation of the iCloud family of
24 marks;

25 C. ordering Apple to file with this Court and to serve on iCloud
26 Communications within thirty (30) days from the date of entry of any

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restraining order or injunction, a report in writing, under oath, setting forth in detail the manner and form in which Apple has complied with the terms of the injunction;

- D. order Apple to pay iCloud Communications:
 - 1) all profits, gains and advantages obtained from Apple’s unlawful conduct, in an amount to be determined at trial;
 - 2) all monetary damages sustained, and to be sustained, by iCloud Communications as a consequence of Apple’s unlawful conduct, including lost profits and reasonable royalties, in an amount to be determined at trial; and
 - 3) iCloud Communications’ costs and disbursements of this action, including reasonable attorneys’ fees and otherwise;
- E. finding Apple’s acts have been willful and, therefore, order that Apple’s profits or Plaintiff’s damages, whichever is greater, be trebled;
- F. awarding interest on the above damage awards;
- G. invalidating U.S. Trademark Reg. No. 3,744,821 as having been abandoned due to its “in gross” transfer to Apple;
- H. ordering Apple to transfer to iCloud Communications the iCloud.com domain name; and
- I. awarding such other relief as the Court may deem just and proper.

JURY DEMAND

iCloud Communications demand a trial by jury on all issues so triable.

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RESPECTFULLY SUBMITTED this 9th day of June, 2011.

GALLAGHER & KENNEDY, P.A.

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