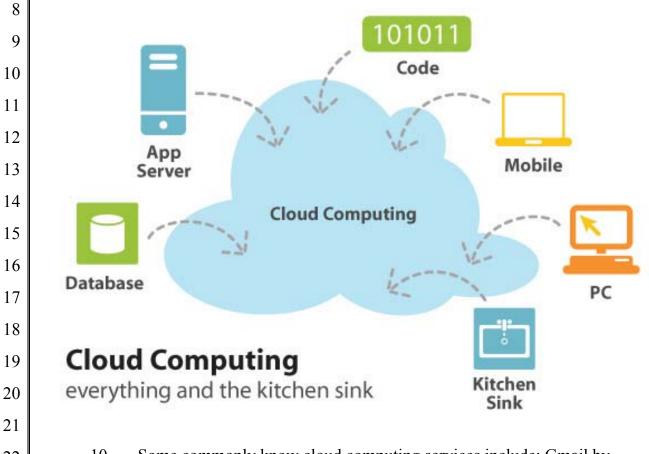
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4	Telephone: (602) 530-8000 Facsimile: (602) 530-8500 Email: rji@gknet.com		
5	Chuck.runyan@gknet.com		
6	Attorneys for Plaintiff I Cloud Communications, LLC		
7	UNITED STATES DISTRICT COURT		
8	DISTRICT OF ARIZONA		
9	I Cloud Communications, LLC, an Arizona Limited Liability Company,	No.	
10	Plaintiff,	COMPLAINT	
11	V.		
12	Apple, Inc., a California Corporation, Defendant.		
13			
14			
15	Plaintiff I Cloud Communications, LLC ("iCloud Communications"), for its		
16	complaint against Defendant Apple Inc. ("Apple") alleges as follows:		
17	NATURE OF 7	THE ACTION	
18	1. This action seeks preliminary a	nd permanent injunctive relief, monetary	
19	relief, and attorneys' fees based on Apple's i) federal unfair competition and false		
20	designation of origin in violation of § 43 of the Lanham Act, 15 U.S.C. § 1125(a); and ii)		
21	Arizona state trademark infringement, unfair competition, and injury to business		
22	reputation in violation of Arizona common law.		
23	PAR	<u>ries</u>	
24	2. Plaintiff iCloud Communications is an Arizona limited liability corporation		
25	having its principal place of business in Phoenix, Arizona.		
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1	3. Apple is a California corporation which, upon information and belief, is the
2	most highly valued technology company in the world.
3	JURISDICTION AND VENUE
4	4. These causes of action arise under the Lanham Act (15 U.S.C. §§1051-
5	1127), the laws of the State of Arizona, and the common law.
6	5. This Court has original federal question jurisdiction and supplemental
7	jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and
8	1367(a).
9	6. This Court has specific personal jurisdiction over Apple because Apple has
10	purposefully committed acts within this District from which these claims arise and/or has
11	committed tortuous acts outside of the District knowing that such acts would cause injury
12	in this District. This Court's general personal jurisdiction over Apple flows from Apple's
13	continuous, systematic and routine business contacts within Arizona and the Arizona
14	District.
15	7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a
16	substantial part of the events giving rise to the claims occurred in this District.
17	GENERAL ALLEGATIONS
18	Cloud Computing
19	8. The National Institute of Standards and Technology ("NIST") has defined
20	"cloud computing" as follows:
21	Cloud computing is a model for enabling convenient, on-
22	demand network access to a shared pool of configurable
23	computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and
24	released with minimal management effort or service provider interaction.
25	
26	NIST SP 800-145.
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9. More generally stated, "cloud computing" refers to applications and
 services offered over the Internet. The "cloud" reference is a metaphor derived from the
 cloud image used to represent the Internet in computer network diagrams and is a
 simplification of the complex series of network connections and systems involved in
 online services. Any user with an Internet connection can access the "cloud" and the
 services it provides. An example of a diagram depicting cloud computing is set forth
 below:



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

1	iCloud Communications	
2	11. iCloud Communications was formed in 2005 and is a provider of, among	
3	other "cloud computing" products and services, computer telephony (telecommunication)	
4	hardware and software for the electronic transmission of email, text, audio, video, photos,	
5	information, data, video conferencing, virtual video conferencing and other content via	
6	the internet and wireless data networks.	
7	12. iCloud Communications' software applications and customer data are	
8	hosted at and are accessed through its secure data center and telecommunications hub in	
9	Phoenix, Arizona, which was acquired and equipped by iCloud Communications at a cost	
10	of over \$550,000.	
11	13. iCloud Communications has customers located throughout North America,	
12	South America, Europe and the Middle East.	
13	iCloud Marks	
14	14. iCloud Communications spends tens of thousands of dollars annually—in	
15	excess of several hundreds of thousand of dollars since its formation in 2005—in	
16	regional, national and international, electronic, print and other advertising to promote its	
17	goods and services using the following marks and logos (the "iCloud Marks").	
18	iCloud I Cloud Communications	
19		
20		
21	iCloud Communications	
22	Communications	
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Attached as Exhibit A are various current and historic marketing brochures and materials
 describing the goods and services offered by iCloud Communications under the iCloud
 Marks.

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

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

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

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Apple's Infringement of the iCloud Marks

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

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

19. On June 6, 2011, at Apple's highly anticipated Worldwide Developer
Conference ("WWDC"), Apple's Chief Executive Officer, Steve Jobs, publicly
announced the launch of its new cloud computing telecommunications and data storage
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 computers; delivery of digital music by telecommunications;
13	electronic transmission of streamed and downloadable audio
14	and video files via computer and other communications networks; delivery of messages by electronic transmission;
15	delivery of digital music by telecommunications; electronic
16	mail services; streaming of video content via a global computer network; electronic transmission of audio and video
17	files via communications networks; information, advisory and consultancy services relating to all the aforesaid.
18	A copy of the Apple's U.S. application is attached hereto as Exhibit D .
19	22. In a similar filing with the Trademarks and Designs Registration Office of
20	the European Union made on May 31, 2011, Apple indicated its intent to use the "iCloud"
21	mark in connection with, among other services:
22	Telecommunications; communication and telecommunication
23	services; telecommunication access services; communications
24	by computer; communication between computers; electronic sending of data and documentation via the Internet or other
25	databasescommunication by computer, computer
26	intercommunication; telex, telegram and telephone services; broadcasting or transmission of radio and television
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	 programs; provision of telecommunications access and links to computer databases and the Internetdelivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; provision of telecommunication networks provision of telecommunications connections to electronic multimetia content; provision of telecommunication of information (including web pages)rental and hire of communication apparatus and electronic mail-boxes; electronic news services; electronic communications consultancy; facsimile, message collection and transmission services; transmission of data and of information by electronic means, computer, cable, radio, teleprinter, teleletter, electronic mail, telecopier. A copy of the Apple's E.U. filing is attached hereto as Exhibit E 23. Apple has, since the June 6th announcement, widely promoted its proposed "iCloud" services across numerous marketing channels, including print and electronic media and on its website, www.apple.com, and through the use of the domain name island acm
	 iCloud Communications under the iCloud Marks since its formation in 2005. However, due to the worldwide media coverage given to and generated by Apple's announcement of 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. 25. Upon information and belief, at the time Apple elected to adopt "iCloud" for its cloud computing telecommunications and data services, Apple was aware of or was willfully blind to iCloud Communications' use of and rights in the iCloud Marks.
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Apple's Pattern Of Willful Trademark Infringement

2 26. Although Apple aggressively protects its trademark rights, Apple has a long
and well known history of knowingly and willfully treading on the trademark rights of
others—a history which began as early as the 1970s when Apple was first sued for
trademark infringement by the Beatles record label, Apple Corp. Although the case was
settled on the condition that Apple not enter into the music business, Apple entered into
the music business in the 1990s and was sued again.

8 27. Apple's early flagship product—the Macintosh computer—also ran afoul of 9 the trademark rights of both McIntosh Labs, a high-end stereo equipment maker, and a 10 software company named Management and Computer Services, Inc. (MACS). Apple's 11 former CEO John Sculley reported that Apple paid nearly \$2 million (nearly 3 decades 12 ago) to extricate itself from the legal mess it created by its adoption of the Macintosh 13 label.

14 28. Apple was sued another time for trademark infringement due to its adoption
15 of the name "Mighty Mouse" for computer devices despite Terrytoon's famous trademark
16 for the cartoon character of the same name.

17 29. In more recent times, Apple has been sued for its use of various marks
18 employing the "i" prefix in connection with various wireless technology goods and
19 services. For example, Apple was sued by Cisco Systems, Inc. ("Cisco") in 2007 for
20 trademark infringement arising from Apple's introduction of the iPhone. Cisco, which
21 owned the mark "iPhone," and Apple had been in licensing discussions for two years
22 prior to the launch of the iPhone. Nonetheless, Apple ignored Cisco's trademark rights
23 and announced the iPhone without first reaching any agreement with Cisco.

24 30. Upon information and belief, Apple also began using "iPad" without
25 seeking a license from Fujitsu Frontech North America, which had previously used and

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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 22

34. Apple also went through the motions of purchasing a U. S. trademark 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.

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5 36. Apple's announcement of and the launch of its advertising campaign for its 6 iCloud service have so thoroughly swamped the reputation of iCloud Communications 7 and the goodwill it had built up over the years in the iCloud Marks that is likely to 8 cause—and has actually caused—confusion among consumers of cloud computing 9 services and members of the general public as to the source of the parties' goods and 10 services. In fact, iCloud Communications has received numerous inquiries from both 11 existing and prospective customers regarding whether it is now owned or affiliated with 12 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.

18 38. The loss of and damage to the goodwill in the iCloud Marks, the damage
19 to iCloud Communication's reputation and confusion among consumers is likely to
20 continue—and, in fact, intensify—unless Apple is enjoined from its use of the mark
21 "iCloud."

22 <u>FIRST CAUSE OF ACTION</u> 23 <u>False Designation of Origin and Unfair Competition</u> 24 <u>Violating 35 U.S.C. §1125(a)</u> 25 39. iCloud Communications repeats and realleges all allegations contained in 26 paragraphs 1 to 38 and by this reference incorporates them here. 2775819

1	40. Apple has knowingly and intentionally misrepresented and falsely
2	designated to the public the source and origin of their products, goods and services.
3	Apple's unauthorized use of the mark iCloud is likely to cause confusion, or to cause
4	mistake, or to deceive consumers as to Apple's affiliation, connection or association with
5	iCloud Communications and as to the true origin, sponsorship and approval of iCloud
6	Communication's services and rights in and authorization to use the iCloud Marks.
7	41. Apple's acts constitute unfair competition and false designation of origin
8	violating § 43 of the Lanham Act, 15 U.S.C. § 1125.
9	42. Apple's acts have been willful.
10	43. iCloud Communications has been damaged by, and Apple has profited
11	from, Apple's wrongful conduct in an amount to be proven at trial.
12	44. Monetary relief alone is inadequate to fully address the irreparable injury
13	that Apple's illegal actions have caused and will continue to cause to iCloud
14	Communications if this court does not enjoin Apple. iCloud Communications is,
15	therefore, entitled to preliminary and permanent injunctive relief to stop Apple's unfair
16	competition.
17	SECOND CAUSE OF ACTION
18	Unfair Competition Violating Arizona Common Law
19	45. iCloud Communications repeats and realleges all allegations contained in
20	paragraphs 1 to 44 and by this reference incorporates them here.
21	46. Apple's acts in using the mark iCloud has deceived, misled and confused
22	the public generally, and specifically iCloud Communications' customers and potential
23	clients, and will continue to do so if such use continues.
24	47. Unless enjoined, Apple will continue to willfully infringe and violate
25	iCloud Communications' rights in the iCloud Marks, which will irreparably harm iCloud
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1	Communica	tions and cause iCloud Communications tremendous damage to their
2	goodwill, bu	siness reputation, and trademark services.
3		THIRD CAUSE OF ACTION
4		<u> Trademark Infringement Under Arizona Common Law</u>
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	Communica	tions has used those marks.
10	50.	Apple has infringed the iCloud Marks by using confusingly similar marks
11	in commerce	e in Arizona in a way that has caused and likely will continue to cause
12	consumer co	onfusion 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 iCl	oud 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 b	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	Communica	tions if this Court does not enjoin Apple. iCloud Communications is
23	therefore en	titled to preliminary and permanent injunctive relief to stop Apple's unfair
24	competition	
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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 2775819 13

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

 using the iCloud name or marks similar to iCloud, or any Internet domain name or any other name or mark confusingly similar to the iCloud Marks, in any manner or form, or any other reproduction, counterfeit, copy or colorable imitation of such marks either alone or in combination with any other designation, or in connection with any advertising, marketing, promotion, offer for sale, or sale of Apple's telecommunications services throughout the United States and the world;

 expressly or impliedly representing itself to customers, potential customers, suppliers, potential suppliers, or the general public to be affiliated with iCloud in any way;

 representing by words or conduct that any product or services provided, offered for sale, sold, advertised, or rented by Apple and supplied, authorized, sponsored or endorsed by or otherwise connected with iCloud Communications; and

competing unfairly with iCloud Communications in any manner;

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

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

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1	restraining order or injunction, a report in writing, under oath, setting forth
2	in detail the manner and form in which Apple has complied with the terms
3	of the injunction;
4	D. order Apple to pay iCloud Communications:
5	1) all profits, gains and advantages obtained from Apple's unlawful
6	conduct, in an amount to be determined at trial;
7	2) all monetary damages sustained, and to be sustained, by iCloud
8	Communications as a consequence of Apple's unlawful conduct,
9	including lost profits and reasonable royalties, in an amount to be
10	determined at trial; and
11	3) iCloud Communications' costs and disbursements of this action,
12	including reasonable attorneys' fees and otherwise;
13	E. finding Apple's acts have been willful and, therefore, order that Apple's
14	profits or Plaintiff's damages, whichever is greater, be trebled;
15	F. awarding interest on the above damage awards;
16	G. invalidating U.S. Trademark Reg. No. 3,744,821 as having been abandoned
17	due to its "in gross" transfer to Apple;
18	H. ordering Apple to transfer to iCloud Communications the iCloud.com
19	domain name; and
20	I. awarding such other relief as the Court may deem just and proper.
21	JURY DEMAND
22	iCloud Communications demand a trial by jury on all issues so triable.
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1	RESPECTFULLY SUBMITTED this 9th day of June, 2011.
2	GALLAGHER & KENNEDY, P.A.
3	
4	By <u>/s/ Robert J. Itri</u> Robert J. Itri
5	2575 East Camelback Road
6	Charles E. Runyan 2575 East Camelback Road Phoenix, Arizona 85016-9225 Attorneys for Plaintiff I Cloud Communications, LLC
7	Communications, LLC
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