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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

C07 03613 CRB
 Case No.:

18 INTUIT INC.,
 19 a Delaware Corporation,
 20 Plaintiff,
 21 vs.
 22 INTUIT BEAUTY, INC., a Nevada
 23 Corporation,
 24 Defendant

**COMPLAINT FOR TRADEMARK
 INFRINGEMENT, TRADEMARK
 DILUTION, FALSE DESIGNATION OF
 ORIGIN, UNFAIR COMPETITION, AND
 FALSE AND MISLEADING
 STATEMENTS**

DEMAND FOR JURY TRIAL

**CERTIFICATION OF INTERESTED
 ENTITIES OR PERSONS**

E-FILING
ADR
Filed
 JUL 12 2007
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

1 Plaintiff Intuit Inc. ("Intuit" or "Plaintiff") hereby alleges for its claims for relief against
2 Defendant Intuit Beauty, Inc. ("Intuit Beauty, Inc." or "Defendant") on personal knowledge as to
3 its own actions and on information and belief as to the actions of others, as follows:

4 **INTRODUCTION**

5 1. Intuit brings this action for trademark and trade name infringement, trademark
6 dilution, false designation of origin, unfair competition, and false and misleading statements all
7 arising in connection with Defendant's infringing use of the trade name and mark "Intuit Beauty"
8 ("INTUIT BEAUTY") in connection with products and services which facilitate and support the
9 establishment, development, management, and operation of small or home-based businesses, and
10 in connection with cosmetic products. INTUIT BEAUTY is a trade name and mark that fully
11 incorporates Intuit's name and mark and is confusingly similar to Intuit's INTUIT family of
12 trademarks. Defendant's use of the infringing name and mark INTUIT BEAUTY is likely to
13 cause consumer confusion as to source, affiliation or sponsorship; is likely to and tends to dilute
14 the distinctive nature of Intuit's famous name and trademarks; and is likely to generate the false
15 belief among consumers that Intuit has sponsored, endorsed, is affiliated with, and supports
16 Defendant; all in violation of Intuit's rights pursuant to the Lanham Act, 15 U.S.C. §§ 1051-1127,
17 California Business and Professions Code §§ 14330, 17200 and 17500 *et seq.*, and the common
18 law.

19 **THE PARTIES**

20 2. Plaintiff Intuit is a corporation organized and existing under the laws of Delaware,
21 is registered to do business in the State of California, and has its principal place of business at
22 2535 Garcia Avenue, Mountain View, California 94043.

23 3. On information and belief, Defendant Intuit Beauty, Inc. is a corporation organized
24 and existing under the laws of Nevada, is registered to do business in the State of California, and
25 has its principal place of business located at 19051 Goldenwest St. #147, Huntington Beach, CA.
26
27
28

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JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 1121 (trademarks, trade and corporate names) *et seq.* and 28 U.S.C. §§ 1331 (federal question), 1338 (trademarks and unfair competition), and 1367 (supplemental jurisdiction).

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b). Plaintiff Intuit is headquartered in this district, and a substantial part of the events and injury giving rise to the claims set forth herein occurred in this district. On information and belief, Defendant is also now selling its infringing branded products and services, and using its infringing name and marks in or into this district.

INTRADISTRICT ASSIGNMENT

6. Assignment of this action to the San Jose Division is proper under Civil Local Rules 3-2(c) and 3-2(e), in that a substantial part of the events giving rise to the claims alleged herein occurred in the County of Santa Clara.

THE INTUIT BRAND, TRADE NAME AND TRADEMARKS

7. Since 1983, Intuit has provided a growing array of personal and business productivity applications, software, and related products and services — including business management, personal finance, accounting and tax preparation computer software and services — all under and in connection with its famous INTUIT trademark, brand, and name. Intuit’s market-leading software, products, and services help individuals and small businesses with applications such as: business formation, management and operation; tax preparation and filing; financial management and accounting; online banking; merchant account, transaction and order processing; data management, storage, and hosting; payroll processing; and customer management.

8. In addition to offering business productivity applications and software, Intuit has also long-provided a wide array of services for small business development and operations. These services include, among others: business planning; small business formation; small business incorporation; small business administration; and marketing. Just by way of example, through Intuit’s Quicken® Incorporation and Intuit’s MyCorporation services, Intuit offers

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1 services for business formation and incorporation; document and certificate filing; financial
2 reporting; corporate kits and certificates; corporate charters, bylaws and resolutions; trademark
3 and copyright applications and filings; and more. Likewise, through Intuit's JumpUp website,
4 Intuit offers and provides services to help new businesses get up and running quickly and
5 successfully. Intuit provides such services to assist small businesses with start-up, development,
6 and management and to help them operate.

7 9. Intuit's successes with small business-related software and services are well
8 documented. In 2006, *Fortune Magazine* listed Intuit as America's Most Admired Computer
9 Software Company, and ranked Intuit for the 5th consecutive year among the "100 Best
10 Companies to Work For." Intuit's annual revenue for its fiscal years 2005 and 2006 exceeded \$2
11 billion. Intuit has millions of customers for its industry-leading products. Intuit's sales and
12 customer relationships span both U.S. and international markets. Intuit has over 7,000 employees
13 worldwide with over 25 U.S. locations from coast to coast, including Nevada and Southern
14 California, as well as internationally. Intuit relies on its U.S. and international offices as well as
15 various distribution partners to promote its market-leading products and services and the INTUIT
16 brand across North America and in markets worldwide.

17 10. Since its inception in 1983, Intuit has spent tens of millions of dollars to market,
18 advertise and otherwise promote the INTUIT brand and trade name and Intuit's software products
19 and services in interstate commerce. Part of Intuit's marketing and branding efforts include the
20 distribution of clothing and related items that bear the INTUIT name. The INTUIT brand is also
21 associated with Intuit's extensive charitable and philanthropic activities, both in the communities
22 where it maintains offices and nationwide.

23 11. Through use and promotion of its famous INTUIT brand, Intuit's computer
24 software, services, and other products have risen to the top. Intuit's QuickBooks® small-business
25 software and TurboTax® small business and personal tax software, among other software and
26 services, each leads the industry. Intuit's Quicken® software, the company's first product, has
27 become the tool of choice for millions of people for managing their personal and home-based
28 business finances.

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FAMOUS AND FEDERALLY-REGISTERED "INTUIT" MARKS

12. INTUIT, the Intuit logo, and Intuit's other INTUIT-based marks, are all registered trademarks and/or registered service marks of Intuit Inc., or one of its subsidiaries, in the United States. Intuit owns the federal trademark registrations and/or common law rights on numerous INTUIT-based marks (collectively, the "INTUIT MARKS"). In fact, Intuit currently owns more than twenty separate U.S. trademark registrations that include the INTUIT mark.

13. Plaintiff has used its INTUIT name and brand in connection with computer software and related services since 1983. In 1993, Intuit was issued a federal registration on the mark INTUIT for computer software. Plaintiff subsequently obtained a number of federal trademark and service mark registrations for INTUIT-based marks. Plaintiff's federal trademark and service mark registrations include the following marks, among many others:

| Mark | Reg. No. | Filing Date | Description of Goods or Services |
|----------------------|-----------|------------------|--|
| Intuit | 1,821,148 | May 21, 1993 | computer software for use in the field of personal and business finance and accounting |
| Intuit | 1,944,875 | July 15, 1993 | financial information provided by electronic means |
| Intuit ProConnection | 2,957,901 | October 3, 2002 | business management consultation services for professionals in the fields of accounting, finance, financial planning, tax preparation and tax planning; providing information, advice, and analysis for professionals in the fields of business management; association membership programs for business professionals; providing referrals |
| Intuit | 2,771,349 | November 4, 2002 | providing business services, namely business incorporation services in the nature of preparation and filing of incorporation applications and articles of incorporation for others; administration of employee benefits for others; administration of business payroll and payroll preparation services for others; tax preparation services |
| Intuit | 2,729,121 | November 4, 2002 | online business directories; online ordering services; operating online marketplaces for sellers of goods and services; dissemination of advertising for others via the Internet; association and membership services; arranging and conducting business conferences and trade shows; providing business management information on a wide variety of topics via electronic means |

| | | | | |
|----|--------|-----------|------------------|--|
| 1 | Intuit | 2,729,122 | November 4, 2002 | catalogs in the field of finance and accounting, office supplies and desktop software; endorsement and ink stamps; rubber stamps; stationery paper; address and mailing labels; binders; business cards; cards bearing universal greetings |
| 2 | | | | |
| 3 | | | | |
| 4 | Intuit | 2,771,743 | October 23, 2002 | computer software and hardware for use in transaction processing, accounting, receipt printing, customer relationship management, inventory management and operations management |
| 5 | | | | |
| 6 | | | | |
| 7 | Intuit | 2,729,359 | October 24, 2002 | computer software for use in tax planning, tax preparation and filing; computer software for use in professional tax practice management |
| 8 | | | | |
| 9 | Intuit | 2,729,119 | October 29, 2002 | computer software for database and data management; computer software used for the electronic exchange of accounting, financial, customer, contact, product and business data; business management software for use in a variety of industries |
| 10 | | | | |
| 11 | | | | |
| 12 | Intuit | 2,763,973 | October 29, 2002 | printing services; offset printing services; stationery printing services; customized printing of company names and logos for promotional and advertising purposes on the goods of others |
| 13 | | | | |
| 14 | Intuit | 2,729,118 | October 29, 2002 | clothing, namely, t-shirts, jackets, dress shirts, polo shirts, hats and baseball caps |
| 15 | | | | |
| 16 | Intuit | 3,039,919 | June 5, 2003 | charitable services, namely providing volunteer services to non-profit organizations in a wide variety of fields; providing computer software, business management and financial services, tax preparation and filing services, and training and technical support to non-profit organizations, individuals and small businesses; philanthropic services concerning monetary donations |
| 17 | | | | |
| 18 | | | | |
| 19 | | | | |
| 20 | | | | |

21 These federal registrations are all valid, in force and effect, and constitute evidence of Plaintiff's
 22 exclusive right to use the aforementioned marks in connection with the goods and services set
 23 forth in the registrations. A true and correct copy of the Certificates of Registration for the
 24 registrations listed above are collectively attached hereto as Exhibit 1 and are incorporated herein
 25 by reference.

26 14. Plaintiff relies on its name "Intuit" and these INTUIT MARKS (collectively,
 27 "INTUIT NAME AND MARKS"), *inter alia*, to denote the source of its personal and small
 28 business productivity software and services; small business formation, development, and

1 operation; financial and tax preparation software and services; data management and hosting
2 services; hardware peripherals; products for office and personal use; and related offerings, goods,
3 and services for small businesses, accountants and individuals. The INTUIT NAME AND
4 MARKS have been promoted extensively and enjoy widespread recognition and fame.

5 15. As a consequence of Intuit’s extensive sales, marketing, and advertising in
6 interstate commerce, the INTUIT NAME AND MARKS have become well-known among the
7 general consuming public as identifying designations for Intuit’s products and services. Intuit
8 has, at great expense and effort, developed tremendous goodwill, recognition and fame in the
9 INTUIT NAME AND MARKS. As a result, the INTUIT NAME AND MARKS have become
10 famous and valuable assets of Plaintiff, and principal symbols of its extensive goodwill.

11 **DEFENDANT’S INFRINGING NAME AND MARK**

12 16. Defendant offers products and services that are confusingly similar to those
13 offered and provided by Intuit – all offered and sold by Defendant under the infringing INTUIT
14 BEAUTY name and mark (“INFRINGING NAME AND MARK”).

15 17. Defendant offers cosmetic, body, and skincare products under the INFRINGING
16 NAME AND MARK, which encompasses the INTUIT NAME AND MARK in its entirety.
17 Consumers may mistake the source of Defendant’s products as being affiliated with or a business
18 sub-division of Intuit, which offers various products and goods such as clothing and accessory
19 lines.

20 18. Upon information and belief, Defendant also offers business services for
21 individuals to form, develop, manage, and operate small or home businesses. On further
22 information and belief, Defendant’s services include, among other things, provision of business
23 development kits (including a DVD), along with training and support to consumers to create and
24 operate small businesses. Defendant also advertises that its products and services will provide
25 individuals “with everything you need to start your very own business (including a business
26 starter kit and your very own customized website), we’ll also give you unsurpassed training
27 ...and help you really grow your business... and we’re here to support you every step of the
28 way.”

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1 19. Defendant’s services and products bearing or marketed under the INFRINGING
2 NAME AND MARK also travel through or are likely to travel through the same channels of
3 interstate commerce as the services, software, and products bearing and marketed under the
4 INTUIT NAME AND MARKS, including (as examples) through internet advertising and sales,
5 and small business development and franchising channels. Defendant also uses the
6 INFRINGING NAME AND MARK on websites such as www.intuitbeauty.com. On information
7 and belief, as part of the business services provided by Defendant, Defendant also establishes for
8 would-be small business owners additional websites that incorporate the INFRINGING NAME
9 AND MARK. For many years, Intuit has advertised and offered its own business-related
10 services, computer software, and products bearing the famous INTUIT NAME AND MARKS on
11 the Intuit websites, including at www.intuit.com, www.jumpup.intuit.com, www.quicken.com,
12 www.quickbooks.com, www.mycorporation.com, and predecessor URL addresses, among others.

13 20. On information and belief, Defendant also provides and promotes its products and
14 services – both domestically and internationally – in connection with charitable or philanthropic
15 organizations and causes. Intuit also provides and promotes its products and services in similar
16 channels and philanthropic sectors, and holds a federal trademark registration for the INTUIT
17 mark pertaining to such charitable services.

18 21. On information and belief, Defendant has taken these acts more than two decades
19 after Intuit’s first uses of the famous Intuit brand and the INTUIT NAME AND MARKS. The
20 INFRINGING NAME AND MARK poses a threat to Intuit’s famous brand and the INTUIT
21 NAME AND MARKS. Defendant’s use of the name and mark INTUIT BEAUTY, which fully
22 incorporates the INTUIT NAME AND MARK, is likely to cause confusion among potential
23 customers and others as to the source of Defendant’s goods and services, or as to the sponsorship,
24 affiliation, or other relationship between Defendant and Intuit. By way of example, Defendant
25 markets its business start-up, operations, order and sales tracking products, services and support
26 to the very same small businesses and home business consumers to whom Intuit markets its
27 QuickBooks®, TurboTax® or Quicken® and other software and related services, and
28 Defendant’s customers may use Intuit’s software and services in running their INTUIT BEAUTY

1 small businesses. Defendant's use of the INFRINGING NAME AND MARK lessens the
2 capacity of the famous INTUIT NAME AND MARKS to identify and distinguish Intuit's goods
3 and services, and is likely to (and does) dilute Intuit's famous marks.

4 22. Defendant has never been authorized to use the INTUIT NAME AND MARKS;
5 Defendant is not associated or affiliated with Intuit; Intuit does not sponsor Defendant; Intuit is
6 not the source of Defendant's products or services; Defendant is not authorized to use any of the
7 INTUIT MARKS as a business name, or in connection with Defendant's services; and Intuit has
8 no power over the nature or quality of the products or services offered by Defendant. As such,
9 Defendant's use of the infringing INTUIT BEAUTY trade name and mark, including the
10 aforementioned use on Defendant's website, is likely to cause consumers to falsely believe that
11 Intuit is affiliated with and supports Defendant, and that Defendant and Intuit are associated or
12 affiliated with each other.

13 23. This likely consumer confusion is likely to cause consumers to be misled and
14 deceived, and dilutes Intuit's famous marks, which Intuit has taken extensive measures to develop
15 and protect.

16 **FIRST CLAIM FOR RELIEF**
17 **(Infringement of Federally Registered Trademarks and Service Marks)**
18 **[15 U.S.C. § 1114]**

19 24. Plaintiff realleges and incorporates paragraphs 1-23 above into this Claim for
20 Relief as if set forth herein.

21 25. Plaintiff has used its federally registered INTUIT-based trade name, trademarks
22 and service marks in connection with, among other things: small business services, including
23 services for the creation, formation, management, development, and operation of small
24 businesses; small business solutions software; computer software; and related products and
25 services for small businesses, accountants and individuals. Plaintiff has used its federally
26 registered INTUIT-based trade name, trademarks and service marks for many years before
27 Defendant's first use of the INFRINGING NAME AND MARK.
28

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1 26. On information and belief, Defendant uses the INFRINGING NAME AND
2 MARK in connection with, among other things, business services to assist individuals in creating,
3 forming, managing, developing, and operating small businesses, and in connection with cosmetic
4 products. These services and products are offered, sold and marketed through the same channels
5 as are products and services bearing or sold under the INTUIT NAME AND MARKS. The
6 INFRINGING NAME AND MARK is so similar to Plaintiff's name and federally registered
7 marks – and, in fact, fully incorporates Plaintiff's name and federally registered marks – as to be
8 likely to cause confusion, mistake and deception among purchasers and users as to the source and
9 origin of the services, thereby causing loss, damage and injury to Plaintiff and to the purchasing
10 public.

11 27. On information and belief, Defendant knew or by the exercise of reasonable care
12 should have known that its adoption, commencement of use in commerce, and continuing use of
13 the INFRINGING NAME AND MARK in connection with cosmetic products and small business
14 products and services to assist individuals in forming, developing and managing businesses,
15 would cause confusion, mistake, or deception among purchasers, users and the public.

16 28. On information and belief, Defendant knew or by the exercise of reasonable care
17 should have known of Plaintiff's prior use of the INTUIT NAME AND MARKS; and, by
18 adopting, commencing use, and continuing use of the INFRINGING NAME AND MARK,
19 Defendant intended to and did induce and intends to and will induce customers to purchase its
20 products and services by trading off the extensive goodwill built by Plaintiff in its federally
21 registered marks.

22 29. The foregoing actions by Defendant violates Plaintiff's rights under Section 32 of
23 the Lanham Act, 15 U.S.C. § 1114, and, on information and belief, have been knowing,
24 deliberate, willful, intended to cause confusion or mistake, or to deceive, and in disregard of
25 Plaintiff's rights.

26 30. Defendant's wrongful acts, as alleged above, have permitted or will permit them to
27 make substantial sales and profits on the strength of Plaintiff's nationwide and international
28 advertising, promotion, sales and consumer recognition.

1 31. As a direct and proximate cause of Defendant's wrongful conduct, as alleged
2 above, Plaintiff has been and will be deprived of substantial sales of its sales in an amount as yet
3 unknown but to be proved at trial, and has been and will be deprived of the value of its federally
4 registered marks as commercial assets in an amount as yet unknown but to be determined at trial.

5 32. Plaintiff has no adequate remedy at law for, and is being irreparably harmed by,
6 Defendant's continuing violation of its rights as set forth above. On information and belief, such
7 violation will continue unless Defendant is enjoined by this Court.

8 **SECOND CLAIM FOR RELIEF**
9 **(Dilution in Violation of Federal Law)**
10 [15 U.S.C. § 1125(c)]

11 33. Plaintiff realleges and incorporates paragraphs 1-23 above into this Claim for
12 Relief as if set forth herein.

13 34. The INTUIT NAME AND MARKS are famous and distinctive, both inherently
14 and through acquired distinctiveness, and are entitled to protection against dilution. The INTUIT
15 NAME AND MARKS are widely recognized by the general consuming public as a designation of
16 the source of goods and services from Intuit.

17 35. Defendant commenced use of the INFRINGING NAME AND MARK after the
18 INTUIT NAME AND MARKS had become famous and distinctive.

19 36. Defendant's use of the INFRINGING NAME AND MARK in commerce causes
20 or is likely to cause an association arising from the similarity of the INFRINGING NAME AND
21 MARK and the INTUIT NAME AND MARKS that impairs the distinctiveness of the famous
22 INTUIT NAME AND MARKS and causes a dilution of the distinctive quality of the famous
23 INTUIT NAME AND MARKS in violation of 15 U.S.C. § 1125(c).

24 37. On information and belief, the foregoing conduct by Defendant has been knowing,
25 deliberate, willful, intended to cause confusion or dilution, and in disregard of Plaintiff's rights.

26 38. As a direct and proximate cause of Defendant's wrongful conduct, as alleged
27 above, Intuit has been and will be deprived of substantial sales of its products and services in an
28 amount as yet unknown but to be proved at trial, and has been and will be deprived of the value of

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1 its federally registered name and marks as commercial assets in an amount as yet unknown but to
2 be determined at trial.

3 39. Plaintiff has no adequate remedy at law for, and is being irreparably harmed by,
4 Defendant's continuing violation of its rights as set forth above. On information and belief, such
5 harm will continue unless Defendant is enjoined by this Court.

6 **THIRD CLAIM FOR RELIEF**
7 **(False Designation of Origin)**
8 [15 U.S.C. § 1125]

9 40. Plaintiff realleges and incorporates paragraphs 1-23 above into this Claim for
10 Relief as if set forth herein.

11 41. Defendant's conduct, as averred above, is likely to cause confusion, mistake, and
12 deception among consumers and the public as to the source, origin, sponsorship, or quality of its
13 products and services, and is likely to confuse or mislead the public into believing that Defendant
14 is the source or sponsor of Plaintiff's products and services, thereby causing loss, damage and
15 injury to Plaintiff and the purchasing public. Defendant knew, or by the exercise of reasonable
16 care should have known, that its conduct was likely to so mislead the public.

17 42. On information and belief, the foregoing conduct by Defendant has been knowing,
18 deliberate, willful, intended to cause confusion or mistake, or to deceive, and in disregard of
19 Plaintiff's rights.

20 43. By its use of the INFRINGING NAME AND MARK in connection with its
21 products and services, Defendant has engaged in acts constituting false designation of origin and
22 unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23 44. Defendant's wrongful acts, as alleged above, have permitted or will permit them to
24 make substantial sales and profits on the strength of Plaintiff's nationwide and international
25 marketing, advertising, sales, and consumer recognition.

26 45. As a direct and proximate result of Defendant's wrongful conduct, as alleged
27 above, Plaintiff has been and will be deprived of substantial sales in an amount as yet unknown
28 but to be proved at trial, and has been and will be deprived of the value of its INTUIT NAME
AND MARKS as commercial assets in an amount as yet unknown but to be determined at trial.

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1 46. Plaintiff has no adequate remedy at law for, and is being irreparably harmed by,
2 Defendant's continuing violation of its rights as set forth above. On information and belief, such
3 violation will continue unless Defendant is enjoined by this Court.

4 **FOURTH CLAIM FOR RELIEF**

5 **(Unfair Competition)**

6 [Cal. Bus. and Prof. Code §§ 17200 *et seq.*]

7 47. Plaintiff realleges and incorporates paragraphs 1-23 alleged above into this Claim
8 for Relief as if set forth herein.

9 48. By advertising and using the INFRINGING NAME AND MARK, Defendant has
10 engaged in unfair competition, including unlawful, unfair and fraudulent business practices and
11 unfair, deceptive, untrue and misleading advertising in violation of Intuit's rights and in violation
12 of California Business and Professions Code sections 17200, *et seq.*

13 49. Defendant's use of the INFRINGING NAME AND MARK is in violation and
14 derogation of Intuit's rights and is likely to cause confusion, mistake, and deception among
15 consumers and the public as to the source, origin, sponsorship, or quality of Defendant's goods
16 and services, thereby causing loss, damage and injury to Intuit and to the purchasing public. On
17 information and belief, Defendant knew or should have known that its conduct was likely to
18 mislead the public.

19 50. The foregoing actions of Defendant violate Intuit's rights under California
20 Business & Professions Code sections 17200 *et seq.* and, on information and belief, have been
21 knowing, deliberate, willful, intended to cause mistake and to deceive, and in disregard of
22 Plaintiff's rights.

23 51. Defendant's wrongful acts, as alleged above, have permitted or will permit them to
24 make substantial sales and profits on the strength of Plaintiff's nationwide and international
25 marketing, advertising, sales, and consumer recognition. As a direct and proximate result of
26 Defendant's unfair competition in violation of California Business and Professions Code sections
27 17200 *et seq.*, Defendant has been unjustly enriched in an amount not yet ascertained.
28 Accordingly, Intuit is entitled to recover restitution for Defendant's unjust enrichment in an
amount to be determined at trial.

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1 52. As a direct and proximate result of Defendant's unfair competition in violation of
2 California Business and Professions Code sections 17200 *et seq*, Plaintiff has suffered and will
3 continue to suffer great and irreparable harm.

4 53. Plaintiff has no adequate remedy at law for Defendant's continuing violations of
5 its rights as set forth above. On information and belief, such violations will continue unless
6 Defendant is enjoined by this Court.

7 **FIFTH CLAIM FOR RELIEF**
8 **(False & Misleading Statements)**
9 [Cal. Bus. and Prof. Code § 17500 *et seq.*]

10 54. Plaintiff realleges and incorporates paragraphs 1-23 alleged above into this Claim
11 for Relief as if set forth herein.

12 55. By advertising and using the INFRINGING NAME AND MARK in connection
13 with Defendant's products and services as set forth above, Defendant has made false and
14 misleading statements which were and are known or which, by the exercise of reasonable care,
15 should have been known to Defendant to be false and misleading in violation of California
16 Business and Professions Code sections 17500 *et seq*.

17 56. Defendant's use of the INFRINGING NAME AND MARK is in violation and
18 derogation of Intuit's rights and is likely to cause confusion, mistake, and deception among
19 consumers and the public as to the source, origin, sponsorship, or quality of Defendant's goods
20 and services, thereby causing loss, damage and injury to Intuit and to the purchasing public. On
21 information and belief, Defendant knew or should have known that its conduct was likely to
22 mislead the public.

23 57. The foregoing actions of Defendant violate Intuit's rights under California
24 Business & Professions Code sections 17500 *et seq*. and, on information and belief, have been
25 knowing, deliberate, willful, intended to cause mistake and to deceive, and in disregard of
26 Plaintiff's rights.

27 58. Defendant's wrongful acts, as alleged above, have permitted or will permit them to
28 make substantial sales and profits on the strength of Plaintiff's nationwide and international
marketing, advertising, sales, and consumer recognition. As a direct and proximate result of

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1 Defendant's false and misleading statements in violation of California Business and Professions
2 Code sections 17500 *et seq.*, Defendant has been unjustly enriched in an amount not yet
3 ascertained. Accordingly, Intuit is entitled to recover restitution for Defendant's unjust
4 enrichment in an amount to be determined at trial.

5 59. As a direct and proximate result of Defendant's false and misleading statements in
6 violation of California Business and Professions Code sections 17500 *et seq.*, Plaintiff has
7 suffered and will continue to suffer great and irreparable harm.

8 60. Plaintiff has no adequate remedy at law for Defendant's continuing violations of
9 its rights as set forth above. On information and belief, such violations will continue unless
10 Defendant is enjoined by this Court.

11 **SIXTH CLAIM FOR RELIEF**
12 **(Dilution in Violation of California Law)**
13 **[Cal. Bus. and Prof. Code § 14330]**

14 61. Plaintiff realleges and incorporates paragraphs 1-23 alleged above into this Claim
15 for Relief as if set forth herein.

16 62. Defendant, by use of the INFRINGING NAME AND MARK, has injured and will
17 continue to injure Intuit's business reputation, and has diluted and will continue to dilute the
18 distinctive quality of the INTUIT NAME AND MARKS in violation of California Business and
19 Professions Code section 14330.

20 63. As a direct and proximate result of Defendant's dilution in violation of California
21 Business and Professions Code sections 14330, Plaintiff has suffered and will continue to suffer
22 great and irreparable harm.

23 64. Plaintiff has no adequate remedy at law for Defendant's continuing violations of
24 its rights as set forth above. On information and belief, such violations will continue unless
25 Defendant is enjoined by this Court.

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SEVENTH CLAIM FOR RELIEF
(Common Law Unfair Competition)

65. Plaintiff realleges and incorporates paragraphs 1-23 above into this Claim for Relief as if set forth herein.

66. In addition to its rights under the Lanham Act as set forth above, Plaintiff has, with respect to its products and services, valid common law rights in the INTUIT NAME AND MARKS.

67. Defendant's use of the INFRINGING NAME AND MARK is in violation and derogation of Plaintiff's common law rights and is likely to cause confusion, mistake and deception among consumers and the public as to the source, origin, sponsorship, or quality of Defendant's goods and services, thereby causing loss, damages and injury to Plaintiff and to the purchasing public. Defendant knew, or in the exercise of reasonable care should have known, that its conduct was likely to mislead the public.

68. The foregoing actions of Defendant violate Intuit's rights under the common law and, on information and belief, have been knowing, deliberate, willful, intended to cause mistake and to deceive, and in disregard of Plaintiff's rights under the common law.

69. Defendant's wrongful acts, as alleged above, have permitted or will permit them to make substantial sales and profits on the strength of Plaintiff's nationwide and international marketing, advertising, sales, and consumer recognition. As a direct and proximate result of Defendant's unfair competition in violation of the common law, Defendant has been unjustly enriched in an amount not yet ascertained. Accordingly, Intuit is entitled to recover restitution for Defendant's unjust enrichment in an amount to be determined at trial.

70. By engaging in such actions, Defendant has been guilty of fraud, oppression, malice, and other despicable conduct, thereby entitling Plaintiff to an award of exemplary and punitive damages.

71. As a direct and proximate result of Defendant's unfair competition in violation of the common law, Plaintiff has suffered and will continue to suffer great and irreparable harm.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

1 72. Plaintiff has no adequate remedy at law for Defendant's continuing violation of its
2 rights as set forth above. On information and belief, such violation will continue unless
3 Defendant is enjoined by this Court.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Intuit prays for judgment against Defendant as follows:

6 1. Defendant and Defendant's officers, agents, servant, employees, attorneys, and all
7 others in active concert or in participation with Defendant, or who receive actual notice of the
8 injunction, to be permanently enjoined from using INTUIT BEAUTY, or any colorable imitation
9 thereof, or any of the INTUIT NAME AND MARKS, as a service mark, trademark or trade
10 name, or as a portion of a service mark, trademark or trade name;

11 2. Intuit be awarded up to three times its damages caused by Defendant's unlawful
12 conduct as proven at trial;

13 3. Intuit be awarded up to three times the amount of profit unjustly received by
14 Defendant as a result of its unlawful conduct as proven at trial, and that Defendant be otherwise
15 ordered to disgorge its profits unjustly received as a result of its unlawful conduct;

16 5. Intuit be awarded exemplary and punitive damages;

17 6. Intuit be awarded its reasonably attorneys' fees and costs; and

18 7. Intuit be awarded such other relief as the Court deems just and proper.

19 Dated: July 11, 2007

FENWICK & WEST LLP

21 By:



22 _____
Rodger R. Cole

23 Attorneys for Plaintiff INTUIT INC.
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FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

Dated: July 11, 2007

FENWICK & WEST LLP

By: 
Rodger R. Cole

Attorneys for Plaintiff INTUIT INC.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

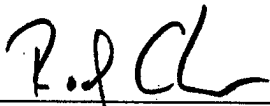
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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: July 11, 2007

FENWICK & WEST LLP

By: 
Rodger R. Cole
Attorneys for Plaintiff INTUIT INC.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

16319/00072/SF/5204826.8

EXHIBIT 1

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office **Reg. No. 1,821,148**
Registered Feb. 15, 1994

**TRADEMARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
155 LINFIELD AVENUE
MENLO PARK, CA 94025**

**FIRST USE 1-27-1984; IN COMMERCE
2-17-1984.**

**FOR: COMPUTER SOFTWARE FOR USE IN
THE FIELD OF PERSONAL AND BUSINESS
FINANCE AND ACCOUNTING AND USER
MANUALS FOR USE THEREWITH ALL SOLD
AS A UNIT, IN CLASS 9 (U.S. CL. 38).**

SER. NO. 74-394,100; FILED 5-21-1993.

**GERALD C. SEEGARS, EXAMINING ATTOR-
NEY**

Int. Cl.: 36

Prior U.S. Cl.: 102

United States Patent and Trademark Office

Reg. No. 1,944,875

Registered Jan. 2, 1996

**SERVICE MARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
155 LINFIELD AVENUE
MENLO PARK, CA 94025**

**FIRST USE 11-4-1992; IN COMMERCE
11-4-1992.**

SER. NO. 74-412,843, FILED 7-15-1993.

**FOR: FINANCIAL INFORMATION PROVID-
ED BY ELECTRONIC MEANS, IN CLASS 36
(U.S. CL. 102).**

**GERALD C. SEEGARS, EXAMINING ATTOR-
NEY**

Int. Cls.: 35 and 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,957,901

Registered May 31, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

INTUIT PROCONNECTION

**INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043**

**AND TAX PROFESSIONAL REFERRALS, IN CLASS
35 (U.S. CLS. 100, 101 AND 102).**

FIRST USE 10-28-2002; IN COMMERCE 10-28-2002.

**FOR: PROVIDING BUSINESS MANAGEMENT
CONSULTATION SERVICES FOR PROFESSIONALS
IN THE FIELDS OF ACCOUNTING, FINANCE,
FINANCIAL PLANNING, TAX PREPARATION
AND TAX PLANNING VIA COMPUTER AND COM-
MUNICATIONS NETWORKS; PROVIDING INFOR-
MATION, ADVICE, AND ANALYSIS FOR
PROFESSIONALS IN THE FIELDS OF BUSINESS
MANAGEMENT VIA COMPUTER AND COMMU-
NICATIONS NETWORKS; ASSOCIATION MEM-
BERSHIP PROGRAMS FOR BUSINESS
PROFESSIONALS, NAMELY, PROMOTING THE
INTERESTS OF BUSINESS CONSULTANTS, AC-
COUNTING PROFESSIONALS, TAX PROFESSION-
ALS, AND FINANCIAL PROFESSIONALS;
PROVIDING REFERRALS, NAMELY, BUSINESS
CONSULTANT, ACCOUNTING PROFESSIONAL,**

**FOR: FINANCIAL ANALYSIS AND CONSULTA-
TION, NAMELY, PROVIDING INFORMATION, AD-
VICE, AND ANALYSIS, FOR PROFESSIONALS IN
THE FIELDS OF ACCOUNTING, FINANCE, FINAN-
CIAL PLANNING, TAX PREPARATION AND TAX
PLANNING INFORMATION VIA COMPUTER AND
COMMUNICATIONS NETWORKS, IN CLASS 36
(U.S. CLS. 100, 101 AND 102).**

FIRST USE 10-28-2002; IN COMMERCE 10-28-2002.

SN 78-170,865, FILED 10-3-2002.

ROBIN CHOSID, EXAMINING ATTORNEY

Int. Cls.: 35 and 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,771,349

Registered Oct. 7, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

INTUIT

INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043

FOR: ADMINISTRATION OF BUSINESS PAY-ROLL AND PAYROLL PREPARATION SERVICES FOR OTHERS; TAX PREPARATION SERVICES; FILING OF TAX ASSESSMENTS; PROMOTING PUBLIC AWARENESS OF TAX PREPARATION AND FILING SERVICES FOR OTHERS; BUSINESS INVOICING SERVICES; PROVIDING BUSINESS SERVICES, NAMELY BUSINESS INCORPORATION SERVICES IN THE NATURE OF PREPARATION AND FILING OF INCORPORATION APPLICATIONS AND ARTICLES OF INCORPORATION FOR OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 0-0-1994; IN COMMERCE 0-0-1994.

FOR: ADMINISTRATION OF EMPLOYEE BENEFITS FOR OTHERS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-30-2001; IN COMMERCE 3-30-2001.

OWNER OF U.S. REG. NOS. 1,840,504, 1,944,875, AND 1,944,876.

SER. NO. 76-464,191, FILED 11-4-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,729,121

United States Patent and Trademark Office

Registered June 24, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

INTUIT

INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043

FOR: ONLINE BUSINESS DIRECTORIES FEATURING FINANCIAL ADVISORS, ACCOUNTANTS, BOOKKEEPERS AND THIRD-PARTY VENDORS; ONLINE ORDERING SERVICES IN THE FIELD OF FINANCIAL AND ACCOUNTING PRODUCTS AND SERVICES; OPERATING ONLINE MARKETPLACES FOR SELLERS OF GOODS AND SERVICES; DISSEMINATION OF ADVERTISING FOR OTHERS VIA THE INTERNET; ASSOCIATION AND MEMBERSHIP SERVICES, NAMELY PROMOTING THE INTERESTS OF, AND PROVIDING BUSINESS REFERRAL, MARKETING AND BUSINESS MANAGEMENT SERVICES TO MEMBER ACCOUNTING AND BUSINESS MANAGEMENT PROFESSIONALS; ARRANGING AND CONDUCTING BUSINESS CONFERENCES AND TRADE SHOWS IN THE FIELDS OF FINANCE, PAYROLL AND TAX PREPARATION AND PROCESSING, ACCOUNTING AND BUSINESS MANAGEMENT; PROVIDING

BUSINESS MANAGEMENT INFORMATION ON A WIDE VARIETY OF TOPICS VIA ELECTRONIC MEANS; ASSOCIATION AND MEMBERSHIP SERVICES, NAMELY PROMOTING THE INTERESTS OF, AND PROVIDING BUSINESS REFERRAL, MARKETING AND TECHNICAL ASSISTANCE TO MEMBER SOFTWARE DEVELOPERS; ONLINE DIRECTORIES FEATURING SOFTWARE DEVELOPERS; ARRANGING AND CONDUCTING BUSINESS CONFERENCES AND TRADE SHOWS IN THE FIELD OF SOFTWARE DEVELOPMENT; DATABASE MANAGEMENT SERVICES BY ELECTRONIC MEANS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 0-0-1996; IN COMMERCE 0-0-1996.

OWNER OF U.S. REG. NOS. 1,840,504, 1,944,876 AND OTHERS.

SER. NO. 76-464,189, FILED 11-4-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

United States Patent and Trademark Office

Reg. No. 2,729,122

Registered June 24, 2003

**TRADEMARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043**

**FOR: CATALOGS IN THE FIELD OF FINANCE
AND ACCOUNTING, OFFICE SUPPLIES AND
DESKTOP SOFTWARE; ENDORSEMENT AND
INK STAMPS; RUBBER STAMPS; STATIONERY
PAPER; ADDRESS AND MAILING LABELS; BIN-
DERS; PLASTIC BAGS FOR MAKING BANK DE-
POSITS; BUSINESS CARDS; CARDS BEARING
UNIVERSAL GREETINGS; CHECK HOLDERS; FILE**

**BOXES FOR STORAGE OF BUSINESS AND PERSO-
NAL CHECKS AND RECORDS; TAX FORMS, IN
CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).**

FIRST USE 0-0-1989; IN COMMERCE 0-0-1989.

**OWNER OF U.S. REG. NOS. 1,840,504, 1,944,876
AND OTHERS.**

SER. NO. 76-464,192, FILED 11-4-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,771,743

Registered Oct. 7, 2003

**TRADEMARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043**

FOR: COMPUTER SOFTWARE AND HARDWARE FOR USE IN TRANSACTION PROCESSING, ACCOUNTING, RECEIPT PRINTING, CUSTOMER RELATIONSHIP MANAGEMENT, INVENTORY MANAGEMENT AND OPERATIONS MANAGEMENT, ALL IN THE FIELD OF POINT OF SALE TRANSACTIONS AND RETAIL MANAGEMENT, AND USER MANUALS SOLD AS A UNIT THEREWITH; CASH DRAWERS; COMPUTER PRINTERS; POINT OF SALE PRINTERS AND TERMINALS; CREDIT CARD AND DEBIT CARD READERS

AND SCANNERS; BAR CODE READERS AND SCANNERS; CREDIT CARD AND TRANSACTION PROCESSING TERMINALS AND COMPUTER HARDWARE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-0-2002; IN COMMERCE 5-0-2002.

OWNER OF U.S. REG. NOS. 1,840,504, 1,944,876 AND OTHERS.

SER. NO. 78-177,491, FILED 10-23-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,729,359

Registered June 24, 2003

**TRADEMARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043**

FIRST USE 0-0-1994; IN COMMERCE 0-0-1994.

**OWNER OF U.S. REG. NOS. 1,840,504, 1,944,876
AND OTHERS.**

**FOR: COMPUTER SOFTWARE FOR USE IN TAX
PLANNING, TAX PREPARATION AND FILING;
COMPUTER SOFTWARE FOR USE IN PROFES-
SIONAL TAX PRACTICE MANAGEMENT, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

SER. NO. 78-178,237, FILED 10-24-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,729,119

Registered June 24, 2003

**TRADEMARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
2535 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043**

FOR: COMPUTER SOFTWARE FOR DATABASE AND DATA MANAGEMENT, NAMELY, COMPUTER SOFTWARE FOR INVENTORY MANAGEMENT, ESTIMATING, JOB COSTING, EMPLOYEE TIME TRACKING, CUSTOMER RELATIONSHIP MANAGEMENT, BUSINESS OPERATIONS MANAGEMENT AND PROJECT MANAGEMENT AND INSTRUCTIONAL MANUALS SOLD AS A UNIT; COMPUTER SOFTWARE USED FOR THE ELECTRONIC EXCHANGE OF ACCOUNTING, FINANCIAL, CUSTOMER, CONTACT, PRODUCT AND BUSINESS DATA; BUSINESS MANAGEMENT SOFTWARE FOR USE IN A VARIETY OF INDUSTRIES, NAMELY REAL ESTATE AND PROPERTY MANAGEMENT, AUTOMOTIVE SERVICE AND REPAIR MANAGEMENT, CONSTRUCTION MAN-

AGEMENT, HEALTH CARE PRACTICE MANAGEMENT, LAW FIRM MANAGEMENT, NON-PROFIT AND PUBLIC SECTOR ORGANIZATION MANAGEMENT, RETAIL AND RESTAURANT MANAGEMENT, AND TRAVEL SERVICES MANAGEMENT AND INSTRUCTIONAL MANUALS SOLD AS A UNIT; COMPUTER SOFTWARE FOR USE IN DISTRIBUTING, INSTALLING AND UPDATING OTHER APPLICATIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 2-0-1992; IN COMMERCE 2-0-1992.

OWNER OF U.S. REG. NOS. 1,840,504, 1,944,876 AND OTHERS.

SER. NO. 76-462,271, FILED 10-29-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 40

Prior U.S. Cls.: 100, 103 and 106

United States Patent and Trademark Office

Reg. No. 2,763,973

Registered Sep. 16, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

INTUIT

**INTUIT INC. (DELAWARE CORPORATION)
2335 GARCIA AVENUE
MOUNTAIN VIEW, CA 94043**

FIRST USE 2-0-1984; IN COMMERCE 2-0-1984.

**FOR: PRINTING SERVICES; OFFSET PRINTING
SERVICES; STATIONERY PRINTING SERVICES;
CUSTOMIZED PRINTING OF COMPANY NAMES
AND LOGOS FOR PROMOTIONAL AND ADVER-
TISING PURPOSES ON THE GOODS OF OTHERS,
IN CLASS 40 (U.S. CLS. 100, 103 AND 106).**

**OWNER OF U.S. REG. NOS. 1,840,504, 1,944,876
AND OTHERS.**

SER. NO. 76-462,269, FILED 10-29-2002.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cls.: 35 and 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,039,919

Registered Jan. 10, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

INTUIT

INTUIT INC. (DELAWARE CORPORATION)

MS 2700

2535 GARCIA AVENUE

MOUNTAIN VIEW, CA 94043

FOR: CHARITABLE SERVICES, NAMELY PROVIDING VOLUNTEER SERVICES TO NON-PROFIT ORGANIZATIONS IN A WIDE VARIETY OF FIELDS; PROVIDING COMPUTER SOFTWARE, BUSINESS MANAGEMENT AND FINANCIAL SERVICES, TAX PREPARATION AND FILING SERVICES, AND TRAINING AND TECHNICAL SUPPORT TO NON-PROFIT ORGANIZATIONS, INDIVIDUALS AND SMALL BUSINESSES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-0-1995; IN COMMERCE 10-0-1995.

FOR: PHILANTHROPIC SERVICES CONCERNING MONETARY DONATIONS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-0-1995; IN COMMERCE 10-0-1995.

OWNER OF U.S. REG. NOS. 1,821,148, 1,840,504, AND 1,944,875.

SER. NO. 78-259,007, FILED 6-5-2003.

CAROLYN GRAY, EXAMINING ATTORNEY