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September 21, 2006

VIA FEDEX

Tim Shen, Esq.
Tim Shen Law Office
14125 Memorial Drive, Suite 106
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Re: **MYPODDER and PODCAST READY** Trademark Applications, Trademarks,
Trade Names, and Domain Names

Dear Mr. Shen:

We represent Apple Computer, Inc. in intellectual property matters.

Apple recently learned of the applications you filed on behalf of Infostructure Solutions LLC and Podcast Ready, Inc. to register **PODCAST READY** (Serial Nos. 78/813,826, 78/813,822, and 78/761,085) and **MYPODDER** (Serial No. 78/764,792) for goods and services pertaining to, *inter alia*, digital media players, software for use with these players, and the distribution of digital content to such players. Apple is also aware that your clients offer – through www.podcastready.com, www.mypodder.net, and www.mypodder.org – **MYPODDER** software, which permits users to organize, manipulate and download digital content onto a media player such as Apple’s **IPOD** device. Further, we understand that through a recent change in corporate structure, Infostructure Solutions may now be known as myPodder, Inc. For the reasons set forth below, Apple is concerned that certain uses of **PODCAST READY** and **MYPODDER** by your clients is likely to confuse consumers into mistakenly believing Apple is associated with your clients’ products and services.

As you may be aware, Apple has used its **IPOD** mark since at least as early as October 2001. Since that time, the **IPOD** trademark has rapidly become famous. Moreover, the term **POD** has also been adopted and used extensively in the marketplace by consumers as an abbreviation to refer to Apple’s **IPOD** player. The **IPOD** and **POD** marks indicate to consumers that portable electronic devices and related goods and services bearing those marks and marks similar thereto originate from or are sponsored or endorsed by Apple.

Apple owns U.S. Trademark Registration Nos. 2,835,698 and 3,089,360 for its **IPOD** mark, as well as pending U.S. applications for both **IPOD** and **POD**. In addition, Apple has filed trademark applications for **IPOD** worldwide, with registrations covering more than fifty international jurisdictions. Apple also owns international registrations and applications for **POD**. In sum, Apple has expended a great deal of time and money to build up considerable worldwide recognition and goodwill in its **IPOD** and **POD** marks.

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We note that your clients' **PODCAST READY** and **MYPODDER** marks consist in substantial part of Apple's **IPOD** mark, and contain Apple's **POD** mark in its entirety. The **MYPODDER** mark also is very similar phonetically to Apple's **IPOD** mark and appears to have been chosen intentionally to capitalize on the fame and goodwill of Apple's marks. Moreover, Infostructure Solutions' Int. Cl. 9 **PODCAST READY** application (Serial No. 78/761,085) covers "Portable listening devices," identical to the goods offered by Apple under the **IPOD** mark and covered by Apple's **IPOD** registrations. Similarly, Podcast Ready, Inc.'s Int. Cl. 9 **PODCAST READY** application (Serial No. 78/813,826) and the **MYPODDER** application cover software to manage digital content for portable media players, goods unquestionably related to media players such as Apple's **IPOD** device. We also have discovered that your clients are, or intend to, offer the **MYPODDER** software preloaded on **IPOD** devices, clearly highlighting the overlap in our clients' goods and services. Consumers, therefore, are likely to be confused and mistakenly believe your clients' products and services are associated with Apple, infringing Apple's trademark rights. Your clients' use of **PODCAST READY** and **MYPODDER** also would dilute the distinctive quality of Apple's **IPOD** mark, in contravention of Apple's rights under the Federal Trademark Dilution Act.

We imagine that it is not your clients' intent to create consumer confusion or otherwise affect Apple's trademark rights. However, as we are sure you can appreciate, Apple, as a trademark owner, has a duty to protect its valuable intellectual property. While Apple, of course, has no general objection to proper use of the descriptive term "podcast" as part of a trademark for goods and services offered in the podcasting field, it cannot allow marks that go beyond this legitimate use and infringe on Apple's rights in **POD** and **IPOD**. Based on the likelihood of confusion and dilution, therefore, we must insist that your clients withdraw both Int. Cl. 9 applications for **PODCAST READY** and limit all future use of the mark to goods and services relating to podcasting. Further, we ask that Infostructure Solutions abandon its application for **MYPODDER**, and that both companies abandon all use, and plans to use, the **MYPODDER** mark, including any use of the mypodder domains and myPodder, Inc. trade name. Please note that we have not requested abandonment of Podcast Ready, Inc.'s Int. Cl. 38 application for **PODCAST READY** because the services description indicates the mark will be used for podcasting-related services; if that assumption is incorrect, please let us know.

Apple hopes that this matter can be resolved amicably and expeditiously. We ask that you contact us by **October 5, 2006** to let us know whether your clients will comply with Apple's requests. Of course, nothing in this letter should be construed as limiting Apple's rights or remedies.

Very truly yours,

TOWNSEND AND TOWNSEND AND CREW LLP



Marie C. Seibel