UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

APPLE INC. [1] **Case 32-CA-284428**

and

6,7(C) **an Individual**

ANSWER TO CORRECTED COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Apple Inc. ("Apple" or "Respondent"), through its undersigned counsel, submits the following Answer to the Corrected Complaint and Notice of Hearing ("Complaint") according to the Complaint's numbered paragraphs. To the extent the Complaint's introduction contains allegations and legal conclusions, they are denied.

1. The charge was filed by **6,7(C)** on October 12, 2021, and a copy was served on Respondent by U.S. mail on October 13, 2021.

ANSWER: On information and belief, Apple admits the allegations of Paragraph 1.

2. (a) At all times reasonably encompassed by this complaint and any answer Respondent may file, i.e., all material times, Respondent, a California corporation with a headquarters at One Apple Park Way, Cupertino, CA and retail facilities throughout the U.S., has been engaged in the development, manufacture, and retail sale of consumer electronics and software.

[1] Apple's name is "Apple Inc." There is no comma preceding the "Inc." Apple moves to correct the case caption to correctly reflect its name.

(b) Annually, in the course and conduct of its operations, Respondent derives gross revenues in excess of $500,000, and purchased and received at its California facilities products, goods and materials valued in excess of $5,000 directly from points outside the State of California.

(c) At all times reasonably encompassed by this complaint and any answer Respondent may file, i.e., all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER:

(a) Apple admits the allegations of Paragraph 2(a).

(b) Apple admits the allegations of Paragraph 2(b).

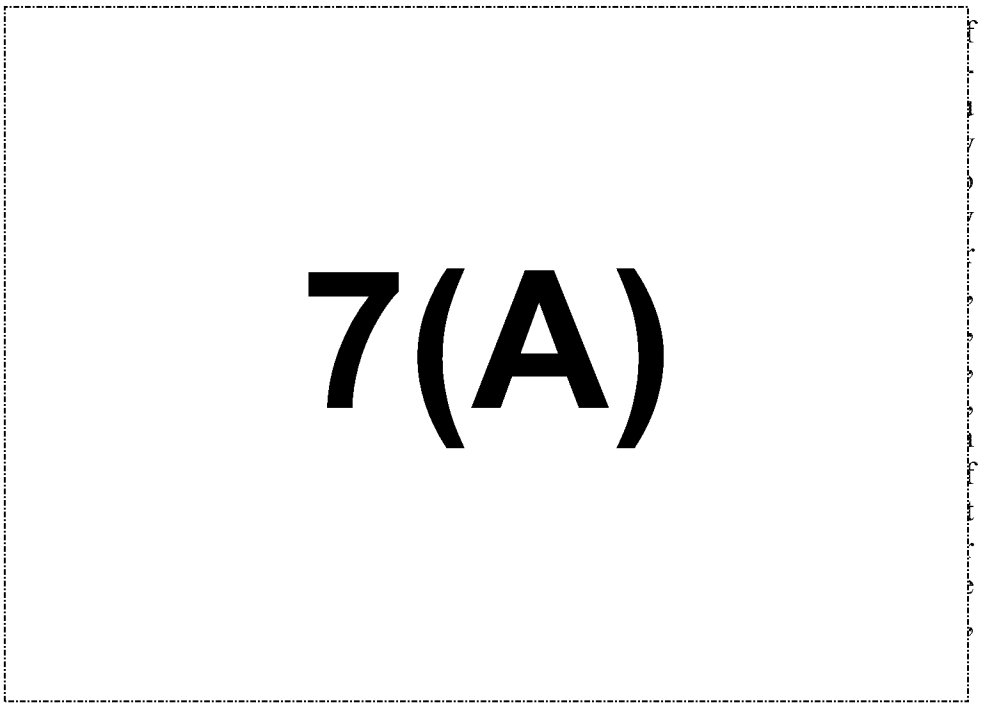
(c) Apple admits the allegations of Paragraph 2(c).

3. Since at least April 13, 2021, in a **Frequently Asked Questions** page on its intranet, a copy of which is attached to this Complaint as Attachment A and is incorporated herein in its entirety, Respondent has defined confidential information as follows:

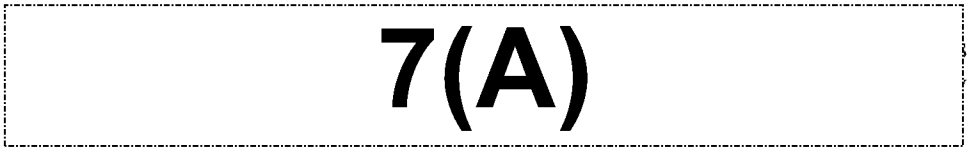
ANSWER: Apple admits the allegations of Paragraph 3.

4. Since at least April 13, 2021, Respondent has maintained a "**Confidentiality and Intellectual Property Agreement**" (IPA), a copy of which is attached to this Complaint as Attachment B and is incorporated herein in its entirety.

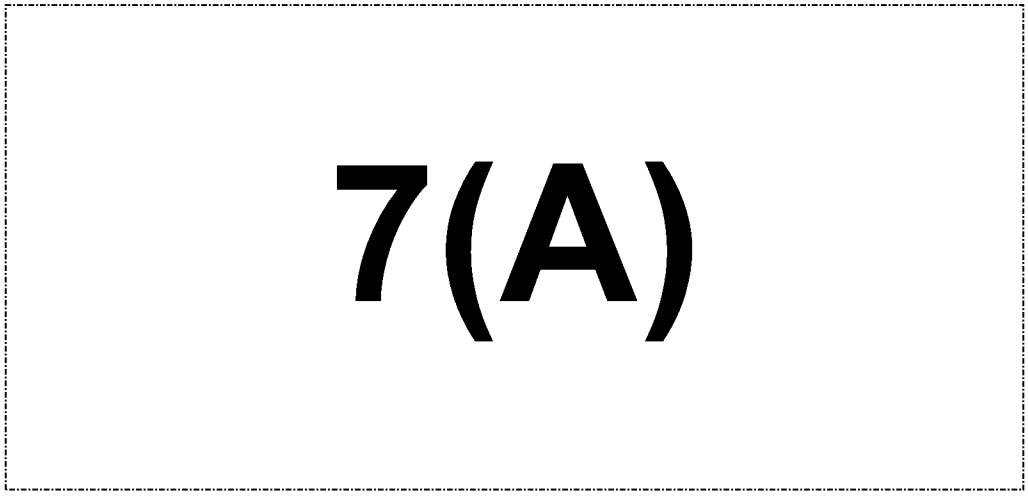
(a) Under the section heading "**I. Confidential and Proprietary Information**," the IPA states, inter alia:



(b) There is a footnote at the end of the paragraph quoted above that states:



(c) Under the section heading "I. Confidential and Proprietary Information," the IPA further states:



ANSWER: Apple admits that it has maintained an IPA since at least April 13, 2021. With regard to the specific provisions of the IPA identified above in Paragraphs 4(a) through 4(c),

Apple answers as follows, with such answers limited to the version of the IPA executed by Charging Party:

(a) Apple admits that the version of the IPA executed by Charging Party contained the language set forth in Paragraph 4(a). Apple denies all the remaining allegations of Paragraph 4(a), and each and every related legal conclusion.

(b) Apple admits that the version of the IPA executed by Charging Party contained the footnote set forth in Paragraph 4(b). Apple denies all the remaining allegations of Paragraph 4(b), and each and every related legal conclusion.

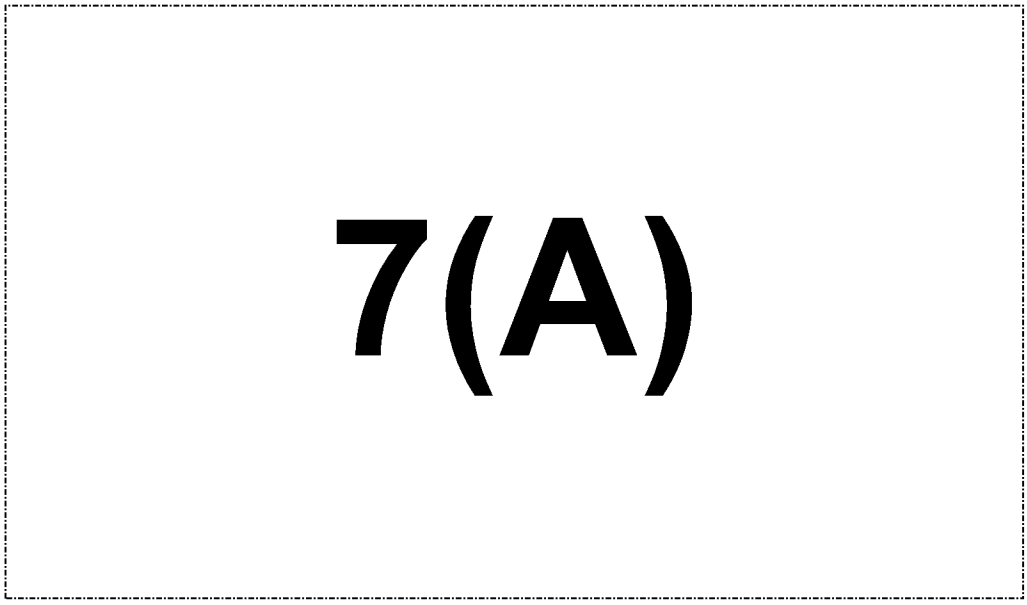
(c) Apple admits that the version of the IPA executed by Charging Party contained the language set forth in Paragraph 4(c). Apple denies all the remaining allegations of Paragraph 4(c), and each and every related legal conclusion.

Apple denies all the remaining allegations of Paragraph 4 and each of its subparagraphs, and each and every related legal conclusion.

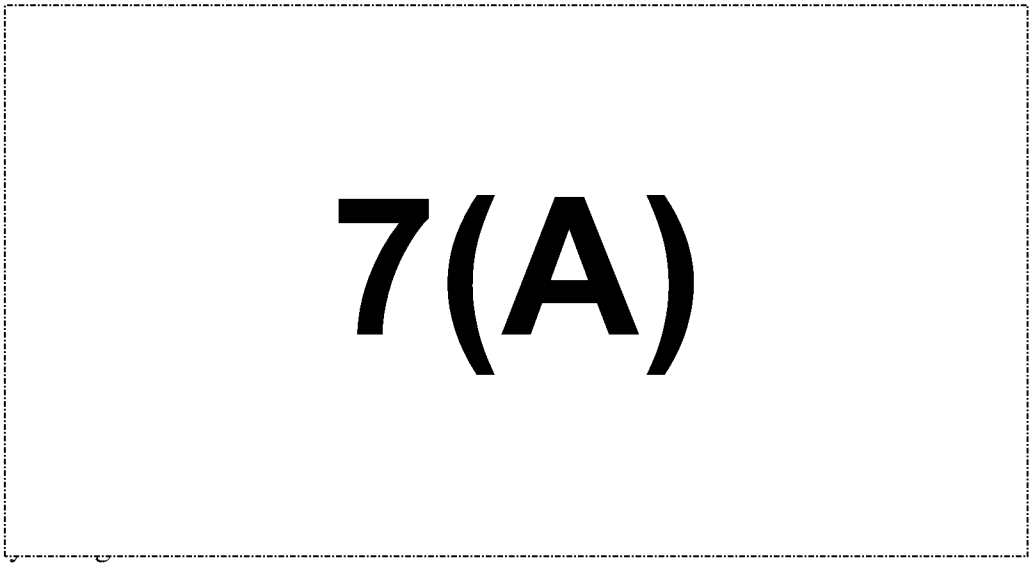
5. Since at least April 13, 2021, Respondent has maintained a **Business Conduct Policy** (BCP), and since at least April 13, 2021, Respondent has maintained as part of the BCP the rules and provisions set forth below. A copy of the 2020 version of the BCP is attached to this Complaint as Attachment C and is incorporated herein in its entirety.

(a) Under the section heading "**The Way We Do Business Worldwide**," the BCP states, inter alia:

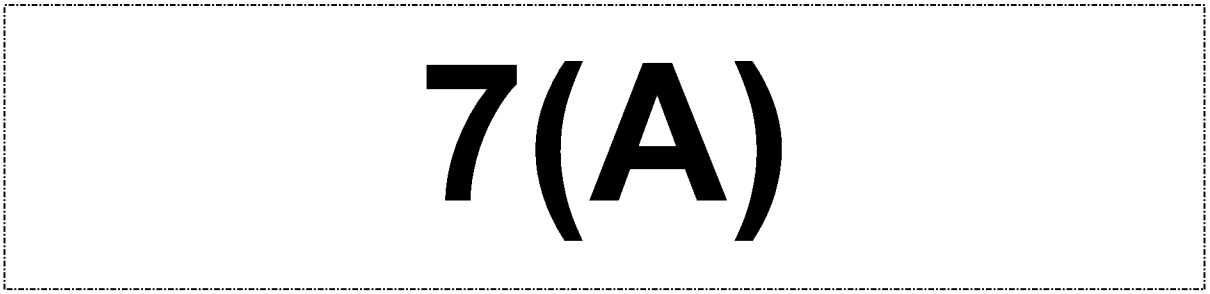
7(A)

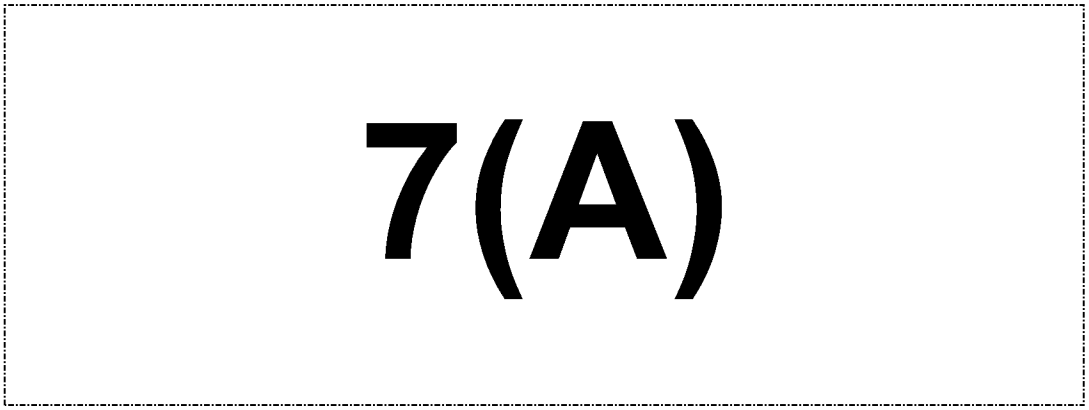


(b) Under the section heading "The Way We Do Business Worldwide," the 2020 BCP further states:

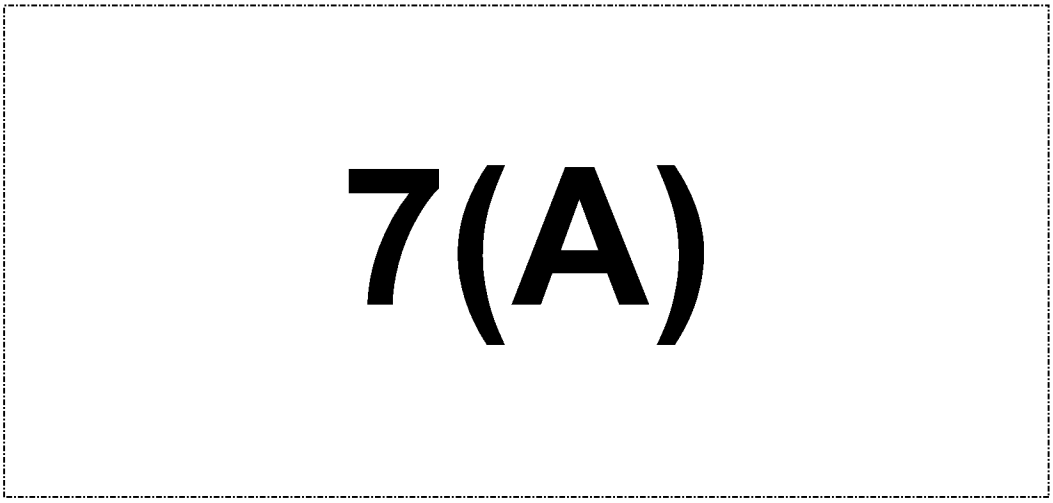


(c) Under the section heading "**Protecting Apple**," the BCP states: 7(A)

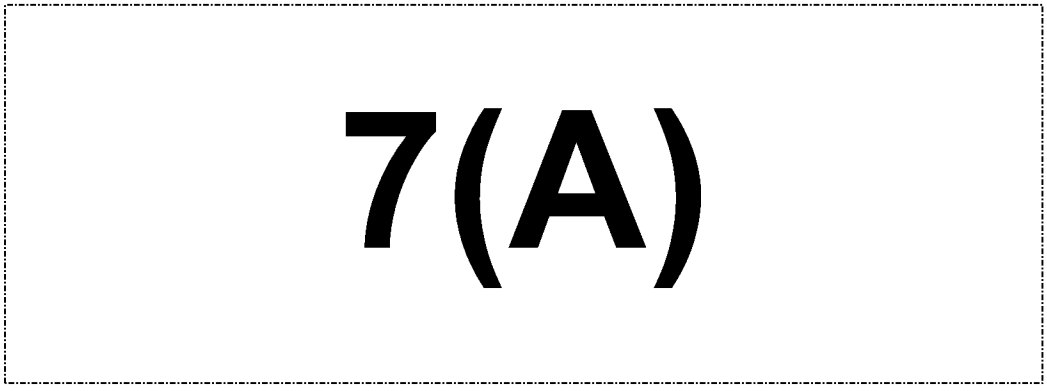




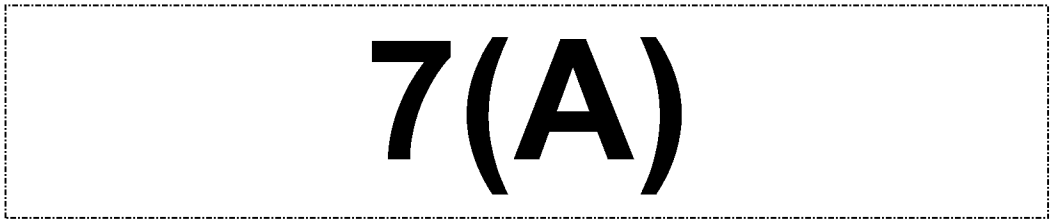
(d) Under the section heading "**Protecting Apple**," the BCP further states:

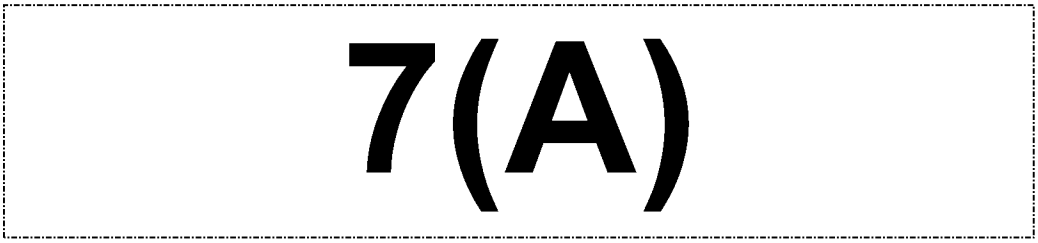


(e) Under the section heading "**Protecting Apple**," the BCP further states:

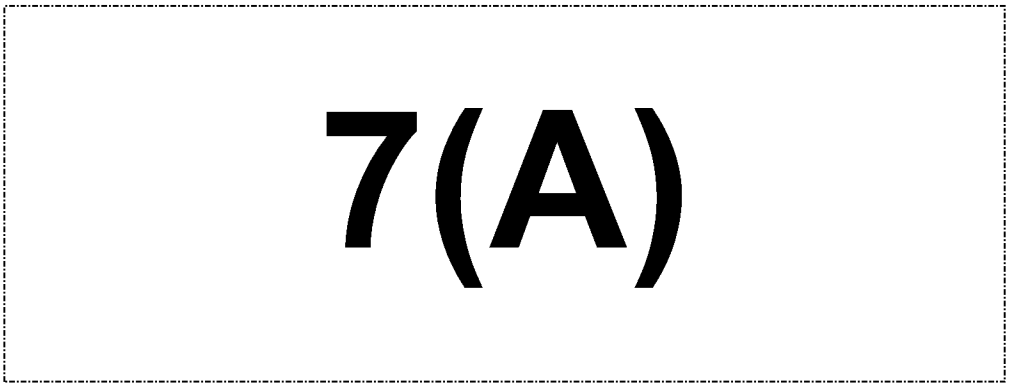


(f) Under the section heading "**Protecting Apple**," the BCP further states:

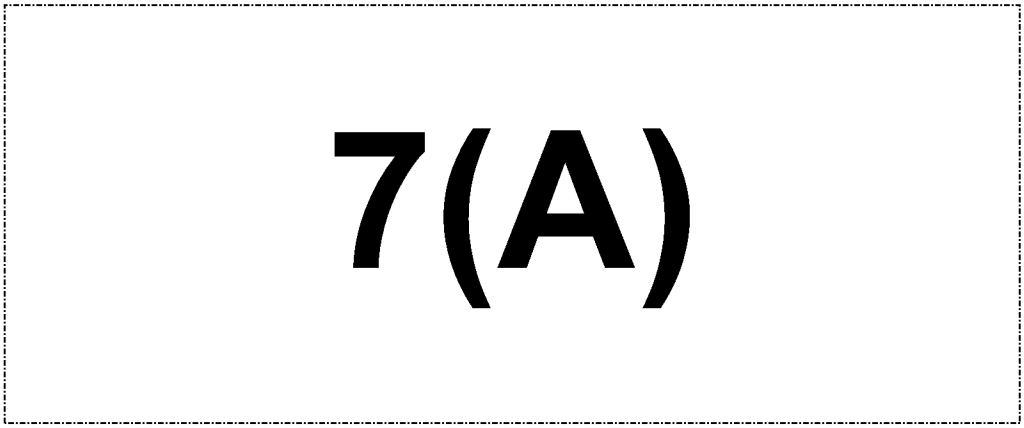




(g) Under the section heading "**Protecting Apple**," the BCP further states:

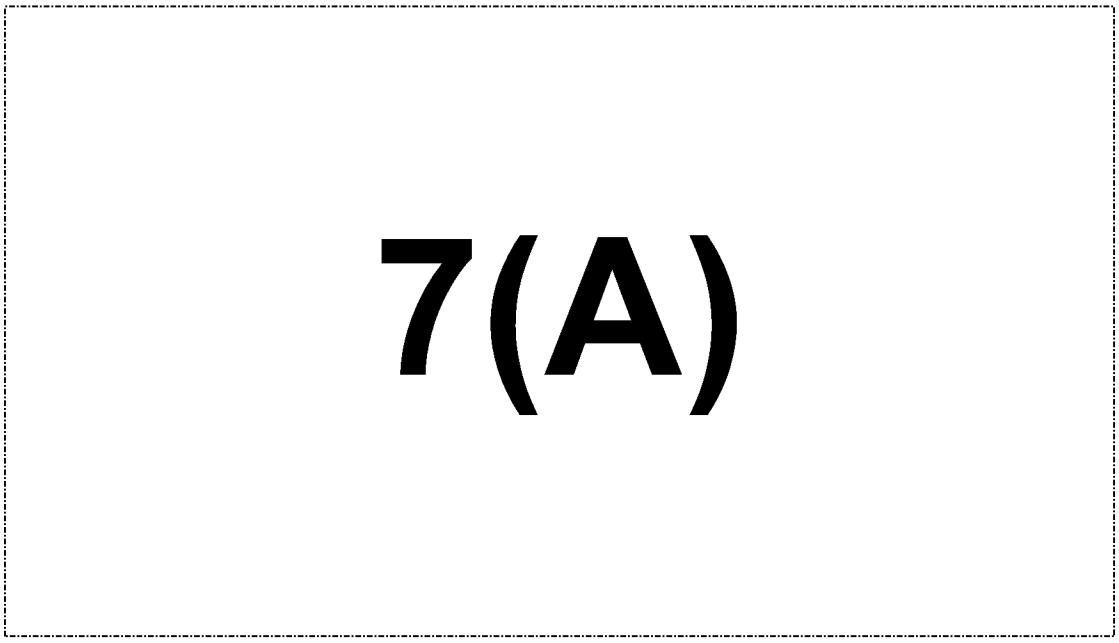


(h) Under the section heading "**Protecting Apple**," the BCP further states:



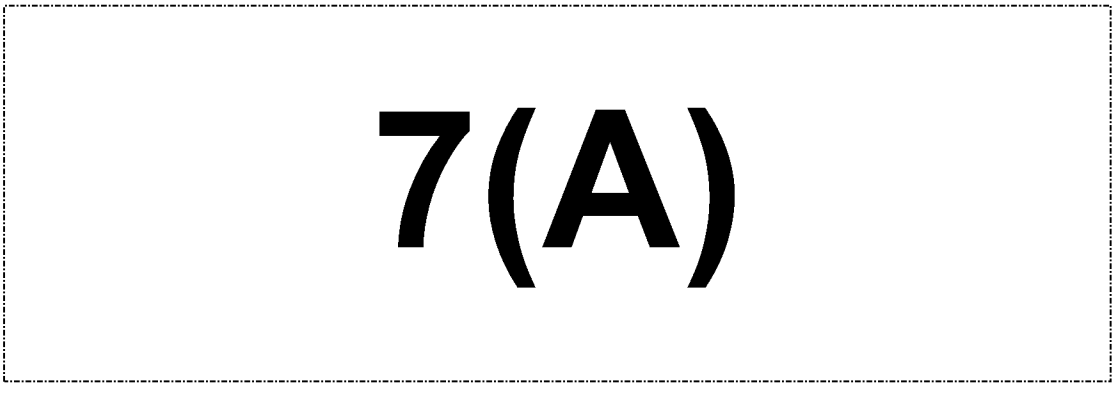
(i) Under the section heading "**Individual Accountability**," the BCP states:

(j) Under the section heading "**Individual Accountability**," the BCP further states:

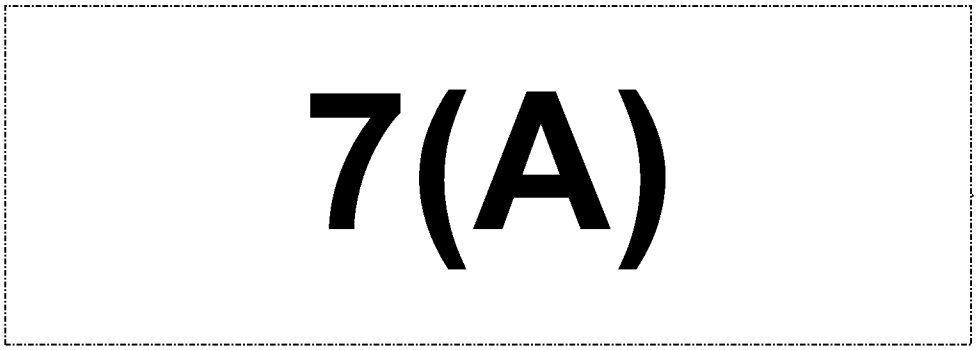


(k) Under the sub-heading "**Conflicts of Interest and Outside Activities**," the BCP further states:

(l) Under the sub-heading "**Conflicts of Interest and Outside Activities**," the BCP further states:

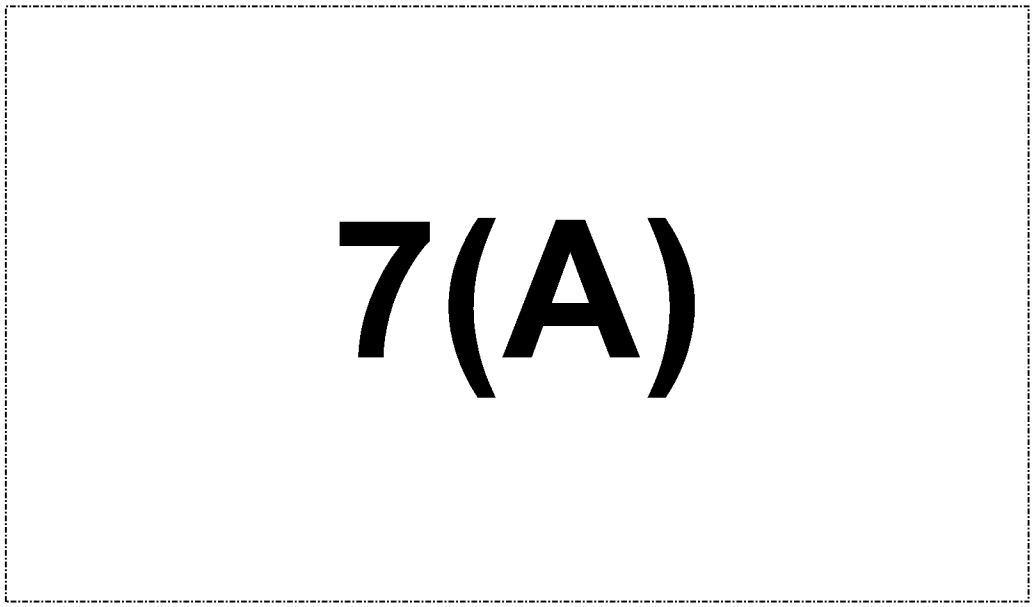


(m) Under the section heading "**Individual Accountability**," the BCP further states:

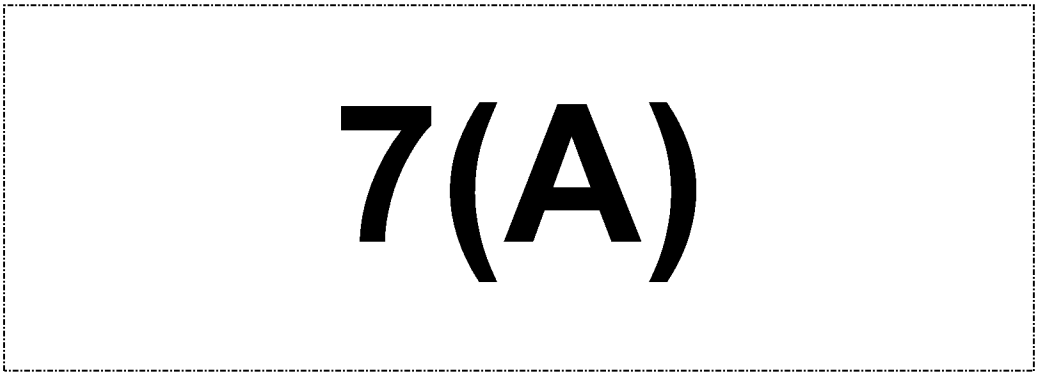


(n) Under the section heading "**Business Integrity**," the BCP states:

(o) Under the section heading "**Business Integrity**," the BCP further states:



(p) Under the section heading "**Business Integrity**," the BCP further states:



7(A)

ANSWER: Apple admits that it has maintained a Business Conduct Policy since at least April 13, 2021. With regard to the specific provisions of the Business Conduct Policy identified above in Paragraphs 5(a) through 5(p), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

(a) Apple admits the allegations of Paragraph 5(a).

(b) Apple admits the allegations of Paragraph 5(b).

(c) Apple admits the allegations of Paragraph 5(c).

(d) Apple admits the allegations of Paragraph 5(d), with the bracketed correction to a typographical error made above in the allegation.

(e) Apple admits that the heading and first three sentences of the provision of the BCP set forth in Paragraph 5(e) have appeared in the Business Conduct Policy since at least April 13, 2021. Apple admits that the last two sentences of the provision set forth in Paragraph 5(e) appeared in the Business Conduct Policy until about February 2024. Apple denies all the remaining allegations of Paragraph 5(e), and each and every related legal conclusion.

(f) Apple admits the allegations of Paragraph 5(f). Answering further, Apple states that "expense reports" was added immediately before "timecards" in or about August 2022.

(g) Apple admits the allegations of Paragraph 5(g). Answering further, Apple states that "business or products" was revised to "business, products, or services" in or about February 2024.

(h) Apple admits the allegations of Paragraph 5(h), with the bracketed correction to a typographical error made above in the allegation (i.e., removal of boldface type).

(i) Apple admits the allegations of Paragraph 5(i).

(j) Apple admits the allegations of Paragraph 5(j).

(k) Apple admits the allegations of Paragraph 5(k).

(l) Apple admits the allegations of Paragraph 5(l), with the bracketed correction to a typographical error made above in the allegation.

(m) Apple admits that the heading and first two sentences of the provision set forth in Paragraph 5(m) have appeared in the Business Conduct Policy since at least April 13, 2021. Apple denies that the third sentence of the provision set forth in Paragraph 5(m) has appeared in the identified provision of the Business Conduct Policy at any time since April 13, 2021 and all of the remaining allegations of Paragraph 5(m), and each and every related legal conclusion.

(n) Apple admits the allegations of Paragraph 5(n).

(o) Apple admits the allegations of Paragraph 5(o).

(p) Apple admits the allegations of Paragraph 5(p).

Apple denies all the remaining allegations of Paragraph 5 and each of its subparagraphs, and each and every related legal conclusion.

6. Since at least April 13, 2021, Respondent has maintained an "**About Workplace Policies**" (AWP) page on its intranet, a copy of which is attached to this Complaint as Attachment D and is incorporated herein in its entirety.

(a) Under the section heading "**Important points to know**," the AWP states, inter alia:

7(A)

ANSWER: Apple admits the allegations of Paragraphs 6 and 6(a).

7. Since at least April 13, 2021, Respondent has maintained a **Workplace Searches and Privacy Policy** (WSPP), a copy of which is attached to this Complaint as Attachment E and is incorporated herein in its entirety.

(a) The first paragraph of the WSPP states:

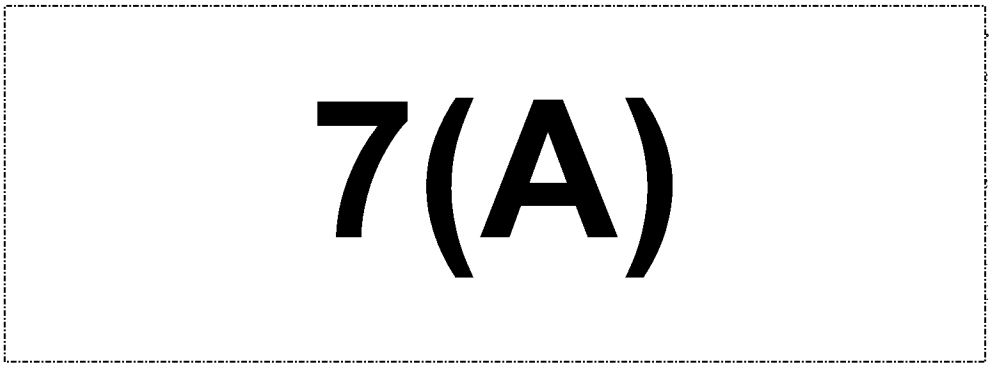
7(A)

(b) Under the section heading "**Use of Apple systems and data**," the WSPP states:

7(A)

(c) Under the section heading "**Workplace searches**," the WSPP states:

7(A)



ANSWER: Apple admits that it has maintained a WSPP since at least April 13, 2021. With regard to the specific provisions of the WSPP identified above in Paragraphs 7(a) through 7(c), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

(a) Apple admits that the language set forth above in Paragraph 7(a) appeared in the WSPP until approximately February 28, 2022. Apple denies all the remaining allegations of Paragraphs 7 and 7(a), and each and every related legal conclusion.

(b) Apple admits that the language set forth above in Paragraph 7(b) appeared in the WSPP until approximately February 28, 2022. Apple denies all the remaining allegations of Paragraphs 7 and 7(b), and each and every related legal conclusion.

(c) Apple admits that the language set forth above in Paragraph 7(c) appeared in the WSPP until approximately February 28, 2022. Apple denies all the remaining allegations of Paragraphs 7 and 7(c), and each and every related legal conclusion.

Apple denies all the remaining allegations of Paragraph 7 and each of its subparagraphs, and each and every related legal conclusion.

8. Since at least April 13, 2021, Respondent has maintained a "**Misconduct and Discipline Policy**" (MDP), a copy of which is attached to this Complaint as Attachment F and is incorporated herein in its entirety.

(a) Under the section heading "**Conduct warranting immediate termination**," the MDP states, inter alia:

7(A)

(b) Under the section heading "**Conduct warranting immediate termination**," the MDP further states:

7(A)

ANSWER:

(a) Apple admits the allegations of Paragraph 8 and 8(a).

(b) Apple admits the allegations of Paragraph 8 and 8(b).

9. Since at least April 13, 2021, Respondent has maintained a "**Social Media and Online Communications Policy**" (SMOCP), a copy of which is attached to this Complaint as Attachment G and is incorporated herein in its entirety.

(a) The SMOCP states, inter alia:

7(A)

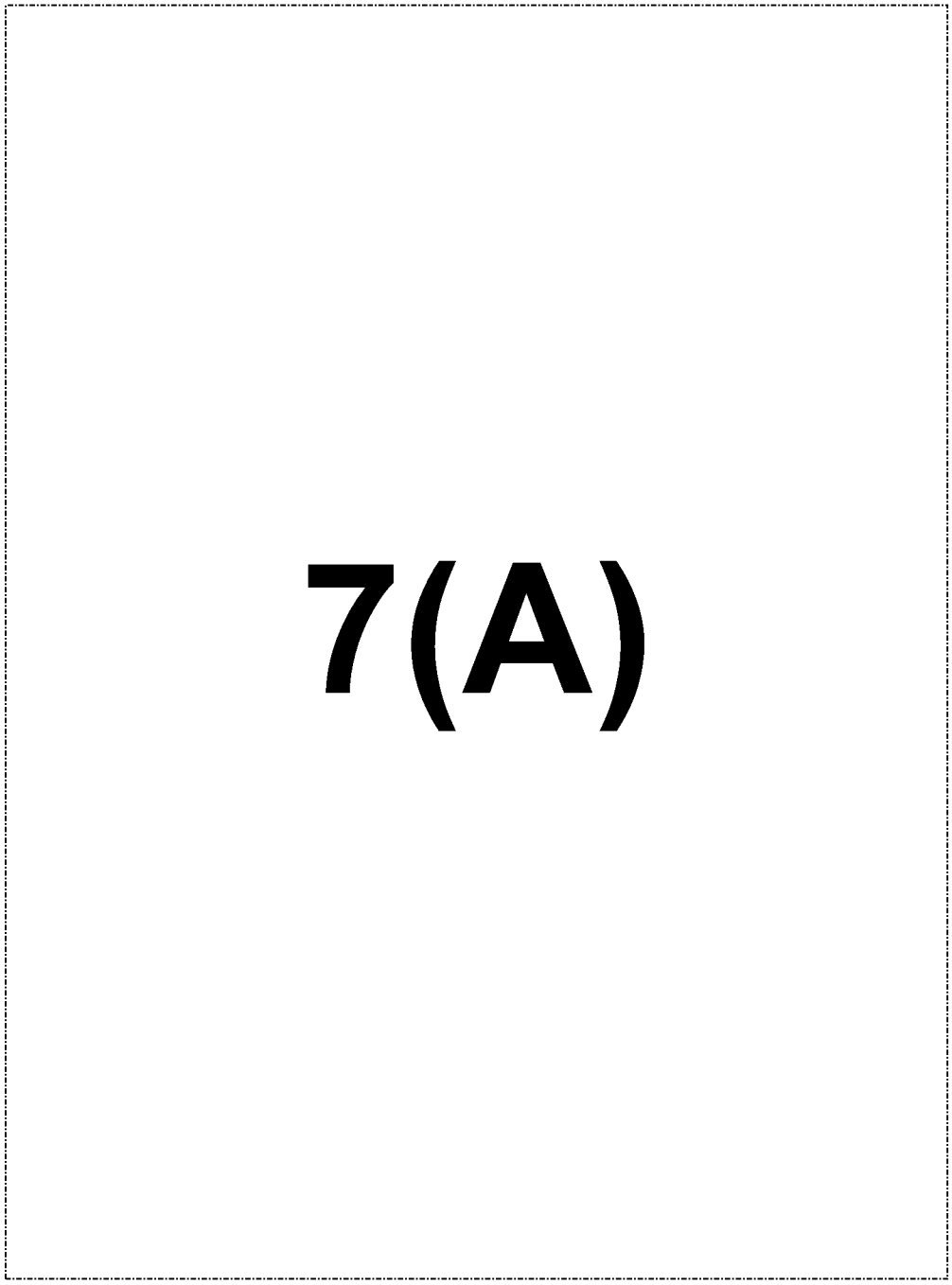
7(A)

ANSWER: Apple admits the allegations of Paragraphs 9 and 9(a).

10. Since at least April 13, 2021, Respondent has maintained a "**Confidentiality Obligations Upon Termination of Employment Policy**" (COTEP), a copy of which is attached to this Complaint as Attachment H and is incorporated herein in its entirety.

(a) The COTEP states, inter alia:

7(A)



ANSWER: Apple admits that it has maintained a COTEP since at least April 13, 2021. With regard to the specific provisions of the COTEP identified above in Paragraph 10(a), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

Apple admits the allegations of Paragraphs 10 and 10(a) relating to the second and third paragraphs of the COTEP set forth in Paragraph 10(a).

Apple admits that the first paragraph set forth in Paragraph 10(a) appeared in the COTEP until a date uncertain. Apple denies that the first paragraph of the COTEP as reproduced above in Paragraph 10(a) remains in the COTEP as set forth above.

Apple denies all the remaining allegations of Paragraphs 10 and 10(a), and each and every related legal conclusion.

11. Since at least April 13, 2021, Respondent has maintained a "Checklist for Employees Leaving Apple" (Checklist), a copy of which is attached to this Complaint as Attachment I and is incorporated herein in its entirety.

(a) The Checklist states, inter alia:

7(A)

ANSWER: Apple admits that it has maintained the Checklist since at least April 13, 2021. With regard to the specific provision of the Checklist identified above in Paragraph 11(a), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

Apple admits that the language set forth in Paragraph 11(a) has appeared in the Checklist since at least April 13, 2021 in mostly the same form as set forth above, with certain contractions added and punctuation changes made at some point after April 13, 2021.

Apple denies all the remaining allegations of Paragraphs 11 and 11(a), and each and every related legal conclusion.

12. By the conduct described above in paragraphs 3, 4(a), 4(c), 5(a), 5(c) – 5(p), and 6–11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

ANSWER: Paragraph 12 states a legal conclusion to which no answer is required. To the extent a response is required, Apple denies each and every allegation of Paragraph 12.

13. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER: Paragraph 13 states a legal conclusion to which no answer is required. To the extent a response is required, Apple denies each and every allegation of Paragraph 13.

Any and all remaining allegations contained in the Complaint are denied, along with each and every related legal conclusion.

AFFIRMATIVE AND OTHER DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Under a *de novo* interpretation of the Act, required by *Loper Bright v. Raimondo* 603 U.S. ___, 144 S. Ct. 2244 (2024), the policy provisions identified in the Complaint are lawful.

3. Under a *de novo* interpretation of the Act, required by *Loper Bright v. Raimondo* 603 U.S. ___, 144 S. Ct. 2244 (2024), the policy disclaimers identified in the Complaint, and other similar disclaimers to employees, render the policies identified in the Complaint lawful.

4. The Complaint allegations fail to identify any policy provisions that are unlawful under *Stericycle, Inc.*, 372 NLRB No. 113 (2023), which among other things requires "a particularized analysis of specific rules [and] their language."

5. The NLRB incorrectly decided *Stericycle, Inc.*, 372 N.L.R.B. No. 113 (Aug. 2, 2023). The standard adopted by the Board in *Stericycle* is overbroad and *ultra vires* because it functions as a presumption that policies that do not expressly address Section 7 rights

automatically violate the NLRA based on speculative future interference, absent sufficient justification and/or tailoring.

6. The policy provisions at issue in the Complaint are based on legitimate justifications and are properly worded under *Stericycle, Inc.*, 372 NLRB No. 113 (2023), even if that case is valid.

7. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Apple or managers, supervisors, agents and other persons acting on behalf of Apple (collectively hereinafter referred to as "Apple's agents" or "its agents") in any policies, rules, other publications, meetings, one-on-one discussions, or written or other communications, whether in written, electronic, printed, graphic, or visual form which "contains no threat of reprisal or force or promise of benefit" is prohibited by NLRA Section 8(c).

8. Any finding of an unfair labor practice based in whole or in part on publications disseminated by Apple or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit" constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble. Under the U.S. Supreme Court's decision in *Counterman v. Colorado*, 600 U.S. 66 (2023), the First Amendment requires that, for regulation of an alleged threat to be constitutionally permitted, it must be a "true threat" and the Government must demonstrate from the context of the statement that the author of the threat acted at least in reckless disregard of whether the subject might actually find it threatening. In this case, the NLRB has failed to plead any of the required elements required under *Counterman*,

and even if it had, it could not prove them. The Board's attempts to regulate Apple's speech therefore exceeds the constitutional limits identified by the Supreme Court in *Counterman*.

9. No remedy is appropriate as Apple has not engaged in any unfair labor practice. Further, the remedies requested in the Complaint are punitive, inappropriate, non-remedial, violate Apple's freedom of speech rights under the First Amendment, violate the takings clause of the Fifth Amendment, and are beyond the authority of the Board to order.

10. The remedies sought are further punitive, inappropriate, and non-remedial to the extent that they seek the posting and/or circulation of notices to employees outside of the facility where the charge originated.

11. Apple further reserves the right to amend and/or supplement its answers and affirmative defenses.

WHEREFORE, Apple respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

Dated: Chicago, Illinois
October 17, 2024

Respectfully submitted,

/s/ Mark L. Stolzenburg

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Attorneys for Apple Inc.

CERTIFICATE OF SERVICE

I certify that on October 17, 2024, a copy of Apple Inc.'s Answer to Corrected Complaint in NLRB Case No. 32-CA-284428 was filed electronically using the NLRB's e-filing system and served by email on the following:

William Cowen
Regional Director

Nathan Seidman
Assistant to the Regional Director

Lisa McNeill
Supervisory Attorney

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William.Cowen@nlrb.gov
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6,7(C)

/s/ Mark L. Stolzenburg
Mark L. Stolzenburg