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22 Attorneys for Plaintiff,  
 23 DANIEL M. MILLER

24 **UNITED STATES DISTRICT COURT**  
 25 **NORTHERN DISTRICT OF CALIFORNIA**  
 26 **SAN FRANCISCO DIVISION**

27		)	
28	DANIEL M. MILLER,	)	<b>CASE NO.: CV-10-264 (WHA)</b>
	Plaintiff,	)	<b>SECOND AMENDED COMPLAINT</b>
	vs.	)	
	FACEBOOK, INC. and YAO WEI	)	
	YEO,	)	
	Defendants.	)	

**SECOND AMENDED COMPLAINT**

1  
2 Plaintiff Daniel M. Miller (“Plaintiff”), for its complaint against Defendants  
3 Facebook, Inc. (“Facebook”) and Yao Wei Yeo (“Yeo”, collectively with Facebook as  
4 “Defendants”), hereby demands a jury trial and alleges as follows:  
5

6 **THE PARTIES**

7 1. Plaintiff, Daniel M. Miller, is an individual residing at 2079 Kinsmon Drive,  
8 Marietta, Georgia 30062.  
9

10 2. On information and belief, Defendant Facebook, Inc. is a corporation  
11 organized and existing under the laws of Delaware with its principal place of business at  
12 1601 S. California Avenue, Palo Alto, California 94304.  
13

14 3. Upon information and belief, Defendant Yeo is an individual with unknown  
15 address that was not ascertainable after reasonable diligence.  
16

17 **JURISDICTION AND VENUE**

18 4. This action arises under the Laws of the United States, 17 U.S.C. § 1 et seq.,  
19 including 17 U.S. § 501.

20 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,  
21 1332(a)(1), 1367 and 1338(a).  
22

23 6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) and  
24 28 U.S.C. § 1391(b) and (c).  
25

26 7. On information and belief, Defendant Facebook is subject to personal  
27 jurisdiction in this district by virtue of, among other things, doing business and committing  
28 acts of infringement in this State, including in this judicial district, through agents and

1 representatives and/or otherwise having substantial contacts with this State and this  
2 judicial district.

3 8. On information and belief Defendant Yeo is subject to personal jurisdiction  
4 in this district by virtue of, among other things, committing acts of infringement in this  
5 State, including in this judicial district, as well as trying to specifically hide evidence of his  
6 infringement from specific residents of Georgia.  
7

8 **FACTUAL BACKGROUND**  
9

10 9. In early 2007, Plaintiff authored the video game *Boomshine*.

11 10. *Boomshine* is a game played on the Internet using Adobe Flash™  
12 technology where players click on a floating circle that causes the clicked circle to expand  
13 and causes other contacted floating circles to likewise expand in a chain reaction.  
14

15 11. *Boomshine* was published by Plaintiff on the Internet on the website  
16 K2xl.com starting on March 9, 2007.  
17

18 12. Plaintiff was duly and lawfully granted a copyright registration on  
19 *Boomshine* by the United States Copyright Office with registration number  
20 TX0007089855.  
21

22 13. Defendant Yeo does business as Zwigglers Apps on the websites  
23 www.facebook.com/zwigglers and www.zwigglers.com.  
24

25 14. At least as early as April, 2009, Defendant Yeo published the game  
26 *ChainRxn* on a website hosted by Defendant Facebook.  
27  
28

1           15.    *ChainRxn* is a game played on the Internet using Adobe Flash™ technology  
2 where players click on a floating circle that causes the clicked circle to expand and causes  
3 other contacted floating circles to likewise expand in a chain reaction.

4           16.    The *ChainRxn* game was created and published utilizing the Facebook  
5 Developer Platform.  
6

7           17.    When the *ChainRxn* game was initially published on Facebook until  
8 sometime after the initial filing of this action on October 9, 2009, users would access the  
9 game by navigating from a link at [www.facebook.com/zwigglers](http://www.facebook.com/zwigglers). This link would take  
10 the user to a Facebook webpage called the *ChainRxn* canvas page.  
11

12           18.    The *ChainRxn* canvas page was a webpage sent from Facebook that provided  
13 information related to *ChainRxn*, advertisements from Facebook, and an embedded iFrame  
14 in the users' browser. The Facebook canvas iFrame caused the users' browser to retrieve  
15 information from a website designated by Defendant Yeo while making it appear to the  
16 user that the user was receiving information hosted on, or provided by, the Facebook  
17 website.  
18  
19

20           19.    Defendant Yeo designed the *ChainRxn* application to interface with the  
21 Facebook social network. When a user would access the *ChainRxn* canvas page, the  
22 *ChainRxn* application along with the information contained on the *ChainRxn* canvas page,  
23 such as the embedded Facebook iFrame, advertisements from Facebook, and information  
24 related to *ChainRxn*, would be downloaded to the users' computer's cache. In this manner,  
25 the *ChainRxn* application, while not "hosted" on Facebook's servers, routinely drew  
26 information from Facebook's servers and was distributed to each user who accessed the  
27  
28

1 *ChainRxn* canvas page by way of the Facebook network. When a user played *ChainRxn*,  
2 this fact, along with information such as high scores and invitations to play *ChainRxn*,  
3 would be disseminated to the user's "Friend" network by way of Facebook's servers. This  
4 interfacing between the *ChainRxn* application and Facebook's servers was essential in  
5 generating interest in *ChainRxn* and distributing *ChainRxn* to Facebook's large user base.  
6 Facebook thereby facilitated access to the *ChainRxn* application significantly magnifying  
7 the effects of Defendant Yeo's direct infringement of the Plaintiff's copyright in  
8 *Boomshine*.  
9  
10

11 20. Defendant Yeo unlawfully copied *Boomshine* by (1) improperly accessing  
12 and decompiling the *Boomshine* source code with a decompiling program, or by viewing  
13 the *Boomshine* application via the K2xl.com web site, and (2) then reproducing the  
14 *Boomshine* source code from the original decompiled source code, or by authoring, from  
15 the "look and feel" of the *Boomshine* application available on the K2xl.com web site, a  
16 source code designed and intended to result in the *ChainRxn* application that is  
17 substantially similar to *Boomshine* in its structure, sequence, organization, and/or user  
18 interface.  
19  
20

21 21. Upon information and belief, Defendant Yeo agreed to the Facebook  
22 Statement of Rights and Responsibilities that provides Facebook the right to remove access  
23 to content through Facebook if that content infringes other people's intellectual property  
24 rights.  
25  
26

27 22. Upon information and belief, Defendant Yeo agreed to the Facebook  
28 Statement of Rights and Responsibilities that provides Facebook the right to disable

1 Defendant Yeo's account for continued infringement of third-party intellectual property  
2 rights.

3 23. Defendant Facebook published *ChainRxn* in their Application Directory  
4 which allows every Facebook user to search and view the application from within the  
5 directory.  
6

7 24. Defendant Facebook took the affirmative step to approve *ChainRxn* for  
8 publication on its Application Directory.  
9

10 25. *ChainRxn* copies the look and feel of *Boomshine* by incorporating almost  
11 every visual element of the game.

12 26. After Defendant Yeo published *ChainRxn* on Defendant Facebook's website,  
13 members of the public were deceived regarding the origin of *ChainRxn*.  
14

15 27. Because of the ability to access *ChainRxn* through Facebook and the  
16 inclusion of *ChainRxn* on the Facebook application directory, Defendant Yeo was assisted  
17 in his ability to distribute infringing copies of the *ChainRxn* game to Facebook users across  
18 the United States and the world.  
19

20 28. Defendant Facebook provides advertisements on the webpage that hosts the  
21 *ChainRxn* game.  
22

23 29. On May 7, 2009, Plaintiff sent a letter to Defendant Facebook (attached  
24 hereto as Exhibit A) demanding that Facebook remove *ChainRxn* from its website because  
25 it violates Plaintiff's copyrighted *Boomshine*.  
26

27 30. The letter to Defendant Facebook provided Facebook specific knowledge  
28 about the infringement of Plaintiff's copyright by the *ChainRxn* game.

1 31. On May 7, 2009, Plaintiff sent a letter to Defendant Yeo (attached hereto as  
2 Exhibit B) demanding that Defendant Yeo remove *ChainRxn* from the Facebook website  
3 because *ChainRxn* violates Plaintiff’s copyrighted *Boomshine*.

4  
5 32. Upon information and belief, after Defendant Yeo received the letter from  
6 Plaintiff demanding that he remove *ChainRxn* from the Facebook website, Defendant Yeo  
7 modified *ChainRxn* to prevent Plaintiff or anyone listing Plaintiff as his “friend” on the  
8 Facebook website from accessing or viewing *ChainRxn*.

9  
10 33. Despite the demands by Plaintiff that Defendants remove *ChainRxn* from the  
11 Facebook website, they have refused to do so.

12 34. Facebook could have simply prevented further infringement of Plaintiff’s  
13 copyrights by removing end users’ access to *ChainRxn* by disabling the Facebook account  
14 of Yeo and removing *ChainRxn* from the Facebook application directory.  
15

16  
17 **COUNT ONE**  
**Copyright Infringement by Defendant Yeo**

18 35. Plaintiff repeats and incorporates herein the entirety of the allegations  
19 contained in Paragraphs 1 through 32 above.  
20

21 36. Without authorization, Defendant Yeo reproduced and distributed the  
22 program *ChainRxn*, which infringes the copyright of the following Plaintiff-owned and  
23 copyrighted work by copying its look and feel: *Boomshine*, U.S. Copyright Registration  
24 TX0007089855.  
25

26 37. Plaintiff did not authorize Defendant Yeo’s copying, display or distribution  
27 of infringing copies of his work.  
28

1 38. Defendant Yeo knew that *ChainRxn* infringed Plaintiff's *Boomshine*  
2 copyright and that he did not have permission to exploit Plaintiff's work.

3 39. Defendant Yeo knew his acts constituted copyright infringement.

4 40. Defendant Yeo's conduct was willful within the meaning of the Copyright  
5 Act.  
6

7 41. As a result of his wrongful conduct, Defendant Yeo is liable to Plaintiff for  
8 copyright infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered, and will  
9 continue to suffer, substantial losses, including, but not limited to, damage to his business  
10 reputation and goodwill.  
11

12 42. Plaintiff is entitled to recover damages, which include his losses and any and  
13 all profits Defendant Yeo has made as a result of his wrongful conduct.  
14

15 **COUNT TWO**

16 **(Contributory Copyright Infringement as to Defendant FaceBook, Inc.)**

17 43. Plaintiff repeats and incorporates by this reference each and every allegation  
18 set forth in paragraphs 1 through 40, inclusive.  
19

20 44. Without authorization, Yao Wei Yeo reproduced, distributed and publicly  
21 displayed Plaintiff's work by and through the Facebook.com, directly infringing Plaintiff's  
22 copyrighted work.  
23

24 45. Defendant Facebook, Inc. contributed to Yeo's infringing acts. Without  
25 authorization, Defendant Facebook induced and encouraged the infringement of the  
26 *Boomshine* work by refusing to remove access to *ChainRxn* from Facebook after receiving  
27 specific notice of its infringement of the copyright in *Boomshine* and by providing a  
28



1 national and worldwide distribution channel of the *ChainRxn* game despite simple  
2 measures that could be taken to prevent the distribution of *ChainRxn* through Facebook.

3 46. Defendant Facebook, Inc. was aware of the infringing activity or was  
4 willfully blind to the infringing activity.  
5

6 47. Defendant Facebook, Inc. allowed and encouraged Yeo to reproduce,  
7 distribute and publicly display Plaintiff's work by and through the Facebook.com.  
8

9 48. Defendant Facebook, Inc. materially contributed to the infringement by  
10 providing the location and tools used for the infringing activity as described herein.

11 49. The acts and conduct of Facebook, Inc., as alleged above in this Second  
12 Amended Complaint constitute contributory copyright infringement.  
13

14 50. As a result of its wrongful conduct, Defendant Facebook, Inc. is  
15 contributorily liable to Plaintiff for copyright infringement pursuant to 17 U.S.C. § 501 and  
16 interpreting case law. Plaintiff has suffered, and will continue to suffer, substantial losses,  
17 including, but not limited to, damage to his business reputation and goodwill.  
18

19 51. Plaintiff is entitled to recover damages, which include his losses and any and  
20 all profits Defendant Facebook, Inc. has made as a result of its wrongful conduct.  
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**PRAYER**

1  
2       **WHEREFORE**, Plaintiff prays for a judgment against Defendants on all counts as  
3 follows:

4           A.       That this Court enter permanent injunctive relief enjoining and  
5 restraining Defendant Facebook, Inc. its officers, directors, employees, agents, licensees,  
6 servants, successors, and assigns, and any and all persons in active concert or  
7 participation with any of them, from the manufacture, publication, display, distribution,  
8 advertising of, sale, or offer for sale of *ChainRxn* and any other work which infringes  
9 Plaintiff’s copyrights in *Boomshine*;

10           B.       That this Court enter permanent injunctive relief enjoining and  
11 restraining Defendant Yeo, his agents, licensees, servants, successors, and assigns, and  
12 any and all persons in active concert or participation with any of them, from the  
13 manufacture, publication, display, distribution, advertising of, sale, or offer for sale of  
14 *ChainRxn* and any other work which infringes Plaintiff’s copyrights in *Boomshine*;

15           C.       That this Court enter an order adjudging that Defendants have  
16 willfully infringed upon Plaintiff’s copyrights in and to *Boomshine*;

17           D.       That this Court require Defendants to disgorge and to account to  
18 Plaintiff for any and all profits derived by Defendants from the manufacture, production,  
19 publication, distribution, advertisement, sale, transfer or other exploitation of the game  
20 *ChainRxn* and any other work which infringes Plaintiff’s copyrights in *Boomshine*;

21           E.       That this Court award Plaintiff damages against Defendants in an  
22 amount to be determined at Trial;

1 F. That this Court grants such other and further relief as it shall deem  
2 just and proper, including interest and the costs and disbursements of this action.

3 PLAINTIFF DEMANDS A TRIAL BY JURY.  
4

5  
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