

1 JEDEDIAH WAKEFIELD (CSB No. 178058)
jwakefield@fenwick.com
2 FENWICK & WEST LLP
555 California Street, 12th Floor
3 San Francisco, California 94104
Telephone: (415) 875-2300
4 Facsimile: (415) 281-1350

5 KAREN WEBB (CSB NO. 233370)
kwebb@fenwick.com
6 FENWICK & WEST LLP
801 California Street
7 Mountain View, California 94041
Telephone: (650) 988-8500
8 Facsimile: (650) 938-5200

9 Attorneys for Plaintiff
10 TWITTER, INC.

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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

EDL

15 **CV 11 4480**
16 CASE NO.

16 TWITTER, INC., a Delaware Corporation,

17 Plaintiff,

18 v.

19 TWITTAD, LLC, an Iowa limited liability
20 company,

21 Defendant.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND CANCELLATION OF
TRADEMARK FROM FEDERAL
REGISTER**

DEMAND FOR JURY TRIAL

22
23 Plaintiff Twitter, Inc. ("Twitter") alleges as follows:

24 1. This action arises from the registration of the mark "LET YOUR AD MEET
25 TWEETS" by Twittad, LLC ("Twittad" or "Defendant") in connection with online advertising
26 services for use on Twitter. Defendant's LET YOUR AD MEET TWEETS registration unfairly
27 exploits the widespread association by the consuming public of the mark TWEET with Twitter,
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1 and threatens to block Twitter from its registration and legitimate uses of its own mark. In fact, it
2 appears that Defendant has used LET YOUR AD MEET TWEETS solely as a generic phrase to
3 refer to advertising in connection with Twitter itself, and as such it is incapable of serving as a
4 mark, rendering the registration subject to cancellation on that ground. Alternatively, if
5 Defendant is able to establish use of LET YOUR AD MEET TWEETS as a mark, its registration
6 is subject to cancellation based on Twitter's preexisting rights in the TWEET mark. Accordingly,
7 Twitter seeks cancellation of Twittad's LET YOUR AD MEET TWEETS trademark registration
8 under the Lanham Act 15 U.S.C. § 1052(d), § 1064 and § 1119.

9 **JURISDICTION AND VENUE**

10 2. This Court has personal jurisdiction over Twittad because, on information and
11 belief, defendant Twittad has sufficient contacts with this judicial district, including without
12 limitation through conducting of business within and marketing to consumers within this judicial
13 district. On information and belief, said contacts include, without limitation, contacts related to
14 Defendant' doing business in this District and use of the alleged mark LET YOUR AD MEET
15 TWEETS.

16 3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and
17 28 U.S.C. §§ 1331, and 1338. Twitter's claims are based on violations of the Lanham Act, as
18 amended, 15 U.S.C. §§ 1051-1127.

19 4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c). On
20 information and belief, Twittad uses the LET YOUR AD MEET TWEETS mark in this district to
21 advertise and sell its services, and Twitter is headquartered in this District.

22 **INTRADISTRICT ASSIGNMENT**

23 5. Pursuant to Civil L.R. 3-2(c), this action is to be assigned on a district-wide basis
24 because it is an intellectual property action.

25 **THE PARTIES**

26 6. Plaintiff Twitter is a Delaware corporation having its principal place of business at
27 795 Folsom Street, Suite 600, San Francisco, California 94107. Twitter is widely recognized for
28

1 providing a popular social networking and micro-blogging platform throughout the United States
2 and worldwide.

3 7. Upon information and belief, Twittad has a principal place of business at 10605
4 Justin Drive, Urbandale, Iowa 50322. Upon information and belief, Twittad operates a website at
5 www.twittad.com and offers online advertising services exclusively in connection with Twitter's
6 services. Upon information and belief, Twittad conducts business and targets consumers
7 nationwide, including within the Northern District of California.

8 **TWITTER'S BUSINESS AND MARKS**

9 8. Twitter provides a social networking and communications platform for users to
10 post information and stay connected through the exchange of short, frequent messages. A
11 message shared via the Twitter service is referred to as a "Tweet." These Tweets are posted to a
12 user's Twitter profile or blog, sent to followers, and are searchable by Twitter's search engine.
13 Consumers access Twitter's services via Twitter's website, third-party websites, and mobile
14 applications.

15 9. Twitter's offerings are well-known around the world and throughout the United
16 States with over 100 million active users. Users of Twitter's service send over 200 million
17 Tweets per day.

18 10. Immediately after Twitter's launch, the TWEET mark became widely adopted by
19 consumers and media outlets to refer to Twitter. Prior to the public identifying TWEET with
20 Twitter, the TWEET mark was not generally known to the consuming public beyond its
21 dictionary meaning relating to birdsong, and had no association with web-based social
22 networking and communications services.

23 11. Twitter's continuing use and considerable investment in the TWEET mark has
24 created significant consumer recognition and goodwill associated with Twitter and its TWEET
25 mark. The public has come to know TWEET as an indication of services that originate from
26 Twitter.

27 12. To help protect this goodwill and investment, Twitter has filed trademark
28 applications for the TWEET mark.

1 13. Twitter also owns a family of TWEET marks which are identified by the TWEET
2 mark along with a short prefix or suffix – such as COTWEET, RETWEET and TWEETDECK.
3 Accordingly, consumers would likely be confused by Defendant’s trademark use of LET YOUR
4 AD MEET TWEETS, which shares the dominant TWEET term, and would appear to be part of
5 Twitter’s family of marks.

6 **TWITTAD’S BUSINESS AND MARKS**

7 14. On information and belief, Twittad maintains a website at www.twittad.com and
8 offers online advertising services specifically for use on Twitter and in connection with Twitter’s
9 services, including to consumers in California.

10 15. On July 2, 2008, Filmfitti, LLC (“Filmfitti”) filed an intent-to-use federal
11 trademark application to register LET YOUR AD MEET TWEETS for “Dissemination of
12 advertising for others via the internet; online advertising services for others, namely, providing
13 advertising space on internet websites; compilation of advertisements on webpages; providing
14 advertising space on the internet” in class 35, under Serial No. 77513740.

15 16. On information and belief, Filmfitti applied to register a TWEET-based mark
16 solely as a reference to Twitter and to exploit the popularity and fame of Twitter’s TWEET brand.
17 However, Filmfitti’s application failed to disclose to the U.S. Patent and Trademark Office
18 (“PTO”) that the services were intended solely for use in connection with Twitter’s services.

19 17. After receiving a Notice of Allowance from the PTO, Filmfitti, LLC filed a
20 Statement of Use on August 17, 2009, alleging use since September 1, 2008. The PTO granted
21 registration on October 20, 2009, and issued a Certificate of Registration, registration number
22 3,699,994 (the “’994 Registration”).

23 18. Upon information and belief, neither Filmfitti nor Twittad have used LET YOUR
24 AD MEET TWEETS as a trademark or service mark in commerce in the United States, in
25 connection with the services identified in the ‘994 Registration or otherwise.

26 19. On March 24, 2011, Filmfitti recorded an assignment, purportedly assigning its
27 entire interest in the LET YOUR AD MEET TWEETS registration to Twittad.
28

1 20. The only distinctive portion of the LET YOUR AD MEET TWEETS mark is
2 "TWEETS," virtually identical in sight, sound and meaning to the world famous TWEET mark,
3 and the most prominent element of Twitter's family of TWEET marks. In addition, Twittad
4 offers and markets its services through Twitter's service, such that Twittad uses identical
5 channels of trade and to identical consumers as Twitter. On information and belief, Twittad uses
6 TWEETS in this context solely as a reference to Twitter's services.

7 21. On December 22, 2010, the PTO issued an office action declining to permit
8 Twitter to register its famous TWEET mark, citing a conflict with Defendant's '994 Registration,
9 and finding that consumers would be likely to believe that LET YOUR AD MEET TWEETS and
10 TWEET are confusingly similar.

11 22. Despite Twitter's numerous attempts to resolve the dispute amicably, Twittad has
12 persisted in claiming exclusive trademark rights in LET YOUR AD MEET TWEETS, leaving
13 Twitter no choice but to file this Complaint.

14 **FIRST CAUSE OF ACTION**
15 **(DECLARATION OF CANCELLATION)**

16 23. Twitter hereby incorporates each averment in paragraphs 1-22 as if fully set forth
17 herein.

18 24. A case or controversy has arisen between Twitter and Twittad under 28 U.S.C. §
19 2201 because there is a dispute as to the validity and registerability of the '994 Registration for
20 LET YOUR AD MEET TWEETS.

21 25. 15 U.S.C. § 1119 provides district courts with the authority determine rights to
22 registration of United States trademarks and to cancel registrations where appropriate.

23 26. The '994 Registration was issued on October 20, 2009, and is therefore less than
24 five years old and not entitled to any claim of incontestability.

25 27. Pursuant to 15 U.S.C. § 1051, a mark does not qualify for registration on the
26 Principal Register of the USPTO until the applicant has made use of the mark in commerce in the
27 United States for each of the goods and services identified in a trademark application.
28

1 28. Upon information and belief, Twittad and its predecessor in interest never used the
2 LET YOUR AD MEET TWEETS mark in commerce in the United States for any of the services
3 identified in the respective trademark registration.

4 29. As detailed above, LET YOUR AD MEET TWEETS does not serve to identify
5 Twittad as the source of goods or services under the mark. Rather, LET YOUR AD MEET
6 TWEETS is a generic reference to a service that allows advertising on Twitter, or at most a
7 descriptive statement lacking in secondary meaning.

8 30. Alternatively, to the extent that Twittad can show use of LET YOUR AD MEET
9 TWEETS as a trademark for any of the identified services at any time, such use constitutes
10 trademark infringement within the meaning of 15 U.S.C. § 1052(d), given Twitter's prior use and
11 widespread consumer recognition of the TWEET mark. Use of LET YOUR AD MEET
12 TWEETS as a mark to identify Twittad as the source of any of the services identified in the
13 registration would be likely to cause consumer confusion as to the source of the parties' offerings.

14 31. Accordingly, the registration for the LET YOUR AD MEET TWEETS mark,
15 Registration No. 3,699,994, is subject to cancellation pursuant to 15 U.S.C. § 1052(d), § 1064 and
16 § 1119.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Twitter prays for judgment against Twittad as follows:

- 19 A. For a declaration and order cancelling Twittad's registration for the LET YOUR AD
20 MEET TWEETS mark, Registration No. 3,699,994, pursuant to 15 U.S.C. § 1052(d), §
21 1064 and § 1119, and that such order be certified to the Director of the United States Patent
22 and Trademark Office for appropriate entry upon its records;
- 23 B. For costs of suit, including reasonable attorneys' fees; and

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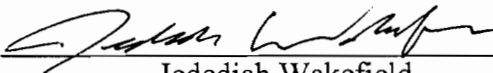
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C. For such other different and further relief as the Court deems just and proper.

Dated: September 8, 2011

FENWICK & WEST LLP

By: 
Jedediah Wakefield

Attorneys for Plaintiff
TWITTER, INC.


FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

DEMAND FOR JURY TRIAL

Plaintiff Twitter, Inc. hereby demands a jury trial on all issues so triable.

Dated: September 8, 2011

FENWICK & WEST LLP

By: 
Jedediah Wakefield

Attorneys for Plaintiff
TWITTER, INC.

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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