

EXHIBIT H

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FACEBOOK, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

15 FACEBOOK, INC.,

16 Plaintiff,

17 v.

18 VARIOUS, INC.; GMCI INTERNET
19 OPERATIONS, INC.; TRAFFIC CAT, INC.;
20 FRIENDFINDER NETWORKS INC.; and
DOES 1-100,

21 Defendants.

Case No. 4:11-cv-01805-SBA

**PLAINTIFF FACEBOOK, INC.'S FIRST SET
OF REQUEST FOR PRODUCTION OF
DOCUMENTS FROM DEFENDANTS**

22 **PROPOUNDING PARTY: FACEBOOK, INC.**

23 **RESPONDING PARTY: VARIOUS, INC.; GMCI INTERNET OPERATIONS, INC.;**
24 **TRAFFIC CAT, INC.; AND FRIENDFINDER NETWORKS INC.**

25 **SET: ONE**

26 Pursuant to the Court's Order and Rules 26 and 34 of the Federal Rules of Civil
27 Procedure, Plaintiff Facebook, Inc. ("Facebook") hereby demands that Defendants Various, Inc.,
28

1 GMCI Internet Operations, Inc., Traffic Cat, Inc., and Friendfinder Networks, Inc. (“NAMED
2 DEFENDANTS”) answer the following document requests and produce for copying and inspection
3 responsive documents within fifteen (15) from the date this demand is served, at the offices of
4 Plaintiff Facebook’s counsel, Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304.

5 **I. DEFINITIONS.**

6 Words in CAPITALS are defined as follows:

7 **1.** YOU, YOUR or YOURS shall mean Defendants Various, Inc., GMCI Internet
8 Operations, Inc., Traffic Cat, Inc., and Friendfinder Networks, Inc., and each of them
9 individually, as well as each of their officers, directors, employees, partners, corporate parent,
10 subsidiaries, affiliates, attorneys, accountants, consultants, representatives and agents.

11 **2.** DOCUMENT is used in its broadest sense, and is defined to be synonymous in
12 meaning and equal in scope to the definition in Federal Rule of Civil Procedure 34. A draft or
13 non-identical copy is a separate DOCUMENT within the meaning of this term. Without limiting the
14 generality of the foregoing, the term “DOCUMENT” means, without limitation, the following items,
15 whether printed, or written, produced or reproduced by any other mechanical process, or written
16 or produced by hand, or in electronic format: agreements, communications, reports,
17 correspondence, telegrams, memoranda, summaries or records of telephone conversations,
18 summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks,
19 plans, drawings, sketches, maps, summaries or records of any meetings or conferences,
20 summaries or reports of investigations or negotiations, opinions or reports of consultants,
21 photographs, motion picture film, tape recordings, videotapes, computer disks, tapes or hard
22 drives, electronic mail, brochures, pamphlets, advertisements, circulars, newspaper or magazine
23 articles, newsletters, publications, press releases, surveys, judicial records, customer lists,
24 governmental certificates, applications, licenses, registrations, letters, accounts, objects, minutes
25 of meetings, interoffice communications, studies, written forecasts, projections, analyses,
26 contracts, guarantee agreements, ledgers, books of accounts, vouchers, checks, purchase orders,
27 invoices, charge slips, expense account reports, receipts, working papers, drafts, statistical
28 records, cost sheets, calendars, appointment books, time sheets or logs, job or transaction files,

1 computer printouts or papers similar to any of the foregoing, and any marginal comments
2 appearing on any DOCUMENT and other writing.

3 **3.** COMMUNICATION is used in its broadest sense, and means any transmission of
4 information from one PERSON or entity to another by any means, including without limitation
5 written communications, telephone communications, in-person communications, email and other
6 electronic communications.

7 **4.** PERSON means any natural person or any business, legal, or governmental entity or
8 association or any other cognizable entity, including, without limitation, corporations,
9 proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations,
10 governmental agencies or instrumentalities, societies and orders.

11 **5.** A request to provide DOCUMENTS that SUPPORT something means relating to,
12 referring to, describing, referencing, evidencing, concerning or constituting.

13 **6.** COMPLAINT refers to the complaint filed by Facebook in *Facebook, Inc. v.*
14 *Various, Inc., et al.*, Civil Action No. 11-cv-01805-SBA in the United States District Court for
15 the Northern District of California, San Francisco Division on or about April 13, 2011.

16 **7.** DEFENDANTS' MARK refers to the name FACE BOOK OF SEX, which YOU use
17 and/or have used in connection with YOUR website, accessible at www.facebookofsex.com, and
18 includes any other colorable imitation of that name.

19 **8.** The FACEBOOK Marks refers collectively to all of Facebook's marks that consist
20 of or incorporate the term FACEBOOK, including the FACEBOOK marks in U.S. Reg. Nos.
21 3,734,637, 3,041,791, 3,122,052, 3,881,770, 3,659,516, 3,826,546, 3,801,147, 3,716,926,
22 3,935,447, 3,917,332, 3,814,888, 3,793,608 and the FACEBOOK marks and variants thereof in
23 Application Serial Nos. 77/589,935, 77/321,801, 77/321,779, 77/896,315, 77/896,317,
24 77/896,318, 77/896,322, 77/896,323, 77/896,325, 77/967,917, 77/967,921, 77/967,932,
25 85/121,339, 85/121,349, 85/147,879, 85/147,898, 85/147,910, 85/147,930, 85/147,937,
26 85/147,950, and 85/147,955.

27 **9.** The term AFFILIATE NETWORK refers to YOUR network or "program" of affiliates,
28 partners, website operators, joint venturers, third parties and/or other Persons who have at any

1 time (1) displayed advertising for any website owned or operated by NAMED DEFENDANTS; (2)
2 directed traffic (including without limitation by automatic redirect, or displaying click-through
3 advertisements) to any website owned or operated by NAMED DEFENDANTS; and/or (3) hosted
4 advertising for NAMED DEFENDANTS' www.facebookofsex.com website.

5 **10.** The use of the singular form of any word includes the plural, and the use of the
6 plural form includes the singular form.

7 **II. INSTRUCTIONS.**

8 **1.** The original and each non-identical copy of each DOCUMENT or other tangible
9 thing requested herein which is in YOUR possession, custody or control is to be produced. If the
10 original or original carbon copy is not in YOUR possession, custody, or control, a full, clear,
11 legible copy is to be produced.

12 **2.** Each Request shall be answered fully unless it is in good faith objected to, in
13 which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to
14 only a portion of a Request, or a word, phrase, or clause contained within it, YOU are required to
15 state YOUR objection to that portion only and to respond to the remainder of the Request, using
16 YOUR best efforts to do so.

17 **3.** Pursuant to Federal Rule of Civil Procedure 34(b), each DOCUMENT and/or thing
18 produced in response is to be produced as it is kept in the usual course of business, including all
19 file folders, binders, notebooks and other devices by which such papers, data, information or
20 things may be organized, separated or stored.

21 **4.** Electronic records and computerized information must be produced in native
22 format. If Facebook so requests, YOU shall provide a description of the system from which the
23 records or information were derived sufficient to permit rendering the records and information
24 intelligible. This description shall include, but not be limited to, the manufacturer's name and
25 model number for electronic hardware used to create the electronic records, as well as the
26 manufacturer's name, version number, any special parameters, and written documentation and
27 instructions for any software used to create the electronic records and sufficient to permit those
28 records to be read from the media produced. YOU shall provide all decryption or access

1 passwords necessary to unlock any computerized information produced, including without
2 limitation electronic mail passwords and file decryption passwords.

3 **5.** If a record, DOCUMENT or data item was created on a computer or computer
4 system, including but not limited to electronic mail, data files, databases, electronic documents,
5 spreadsheets, source code, object code, machine code, or other programming code, it must be
6 produced in an unaltered state and in its native format. For all such media produced, external
7 labels on the media shall identify the computer(s) from which the copies of computer files were
8 made and the full names of the individuals who used the computer so identified. If any such
9 media has been altered from its original state, you must clearly identify it in your production by
10 placing a label on it, titled “ALTERED FROM ORIGINAL STATE,” and in a separate
11 DOCUMENT describe the manner in which the record, DOCUMENT or data item has been altered.

12 **6.** For any electronic records, DOCUMENTS or data items produced in native format,
13 YOU shall verify that YOU have modified YOUR Document retention policies in a manner that will
14 insure retention of the original records, DOCUMENTS and data items. These DOCUMENT retention
15 policies shall include, without limitation, policies that automatically delete electronic mail,
16 policies that permit overwriting of computer media for system backup functions, and similar
17 policies.

18 **7.** If YOU assert that any DOCUMENT and/or thing required to be produced is
19 privileged or otherwise protected from discovery, please set forth in YOUR written response
20 hereto regarding each DOCUMENT or thing for which a claim of privilege is made:

21 **(a)** The approximate date, and manner of recording, creating or otherwise
22 preparing the DOCUMENT or thing;

23 **(b)** The name and organizational position, if any, of each sender of the
24 DOCUMENT or thing

25 **(c)** The name and organizational position, if any, of each recipient and/or
26 custodian of the DOCUMENT or thing;

27 **(d)** The name and organizational position, if any, of each PERSON (other than
28 stenographic or clerical assistants) participating in the preparation or creation of the DOCUMENT;

1 (e) The name and organizational position, if any, of each PERSON to whom the
2 contents of the DOCUMENT or any portion thereof have heretofore been communicated by copy,
3 exhibition, reading or summarization; and

4 (f) A statement of the basis on which privilege is claimed with respect to each
5 DOCUMENT or thing and whether or not its contents are limited solely to legal advice or
6 information provided for the purpose of securing legal advice.

7 8. If any responsive DOCUMENT is no longer in existence, cannot be located or is not
8 in YOUR possession, custody or control, identify it, describe its subject matter and describe its
9 disposition, including, without limitation, identifying the PERSON having knowledge of the
10 disposition.

11 9. These Requests shall be deemed to seek the productions of Documents as of the
12 date of the required response, but shall be deemed to be continuing so that any additional
13 information relating in any way to these Requests, which Defendant acquires or which become
14 known to Defendant, shall be furnished to Facebook immediately after such information or
15 Documents are acquired or become known, to the full extent provided for by Federal Rule of
16 Civil Procedure 26(e).

17 **III. DOCUMENTS AND THINGS TO BE PRODUCED.**

18 **REQUEST FOR PRODUCTION NO. 1:**

19 All DOCUMENTS used, identified, relied upon or referred to by YOU when answering
20 Facebook's First Set of Interrogatories or any other Interrogatories propounded by Facebook.

21 **REQUEST FOR PRODUCTION NO. 2:**

22 DOCUMENTS sufficient to identify each member of YOUR AFFILIATE NETWORK, including
23 the name(s), all known current or prior mailing addresses, physical offices or other locations,
24 telephone numbers, and email addresses of each such member.

25 **REQUEST FOR PRODUCTION NO. 3:**

26 DOCUMENTS sufficient to identify every domain name operated by each member of YOUR
27 AFFILIATE NETWORK identified in YOUR response to Request for Production No. 2.

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1 **REQUEST FOR PRODUCTION NO. 4:**

2 All DOCUMENTS referring to or constituting COMMUNICATIONS between YOU and any
3 member of YOUR AFFILIATE NETWORK.

4 **REQUEST FOR PRODUCTION NO. 5:**

5 All DOCUMENTS referring to the creation, origination and development of YOUR
6 AFFILIATE NETWORK.

7 **REQUEST FOR PRODUCTION NO. 6:**

8 DOCUMENTS sufficient to identify each PERSON or entity with knowledge of the creation,
9 origination and development of YOUR AFFILIATE NETWORK.

10 **REQUEST FOR PRODUCTION NO. 7:**

11 All DOCUMENTS referring to or constituting COMMUNICATIONS between YOU and any
12 PERSON regarding the creation, origination and development of YOUR AFFILIATE NETWORK.

13 **REQUEST FOR PRODUCTION NO. 8:**

14 All DOCUMENTS referring or relating to any consideration, financial or otherwise,
15 provided to any member of YOUR AFFILIATE NETWORK.

16 **REQUEST FOR PRODUCTION NO. 9:**

17 All DOCUMENTS referring to how YOU generate revenue through YOUR use of
18 DEFENDANTS' MARK and/or through the www.facebookofsex website, including without
19 limitation, by means of YOUR AFFILIATE NETWORK.

20 **REQUEST FOR PRODUCTION NO. 10:**

21 All DOCUMENTS referring to the adoption of DEFENDANTS' MARK by YOU or other
22 authorized users, including without limitation, all DOCUMENTS and things referring to or
23 evidencing the origination, selection, and development of DEFENDANTS' MARK.

24 **REQUEST FOR PRODUCTION NO. 11:**

25 DOCUMENTS sufficient to identify each PERSON or entity with knowledge of the creation,
26 design, development, selection, and adoption of the DEFENDANTS' MARK.

27 **REQUEST FOR PRODUCTION NO. 12:**

28 All DOCUMENTS referring to or constituting COMMUNICATIONS between YOU and any

1 PERSON regarding the creation, design, development, selection, and adoption of the DEFENDANTS'
2 MARK.

3 **REQUEST FOR PRODUCTION NO. 13:**

4 All DOCUMENTS that refer to, reflect, mention, or otherwise indicate YOUR first use of
5 DEFENDANTS' MARK.

6 **REQUEST FOR PRODUCTION NO. 14:**

7 All DOCUMENTS that refer to, reflect, mention, or otherwise indicate the timing and
8 circumstances of YOUR first learning about the FACEBOOK MARKS.

9 **REQUEST FOR PRODUCTION NO. 15:**

10 All DOCUMENTS that refer to, reflect, mention, or otherwise indicate the timing and
11 circumstances of YOUR first learning about Plaintiff Facebook.

12 **REQUEST FOR PRODUCTION NO. 16:**

13 Exemplars of each type of advertising and promotional DOCUMENT referring to, reflecting
14 and/or relating to the products and/or services offered by YOU in connection with DEFENDANTS'
15 MARK.

16 **REQUEST FOR PRODUCTION NO. 17:**

17 All DOCUMENTS that refer to or reflect any instances of actual confusion, mistake, or
18 association between DEFENDANTS' MARK and any of the FACEBOOK MARKS.

19 **REQUEST FOR PRODUCTION NO. 18:**

20 DOCUMENTS sufficient to identify all PERSONS with knowledge of any instances of actual
21 confusion, mistake, or association between DEFENDANTS' MARK and the FACEBOOK MARKS.

22 **REQUEST FOR PRODUCTION NO. 19:**

23 All DOCUMENTS that refer to or reflect any efforts made by YOU or on YOUR behalf, at any
24 time, to ascertain whether DEFENDANTS' MARK would conflict with the rights of others, including
25 without limitation, any searches, studies, investigations or analyses.

26 **REQUEST FOR PRODUCTION NO. 20:**

27 All DOCUMENTS referring to, reflecting or constituting any agreement, contract, license or
28 permission YOU have entered with any PERSON relating to the use of DEFENDANTS' MARK.

1 **REQUEST FOR PRODUCTION NO. 21:**

2 All DOCUMENTS that refer to or reflect YOUR past, current, or planned future use of the
3 DEFENDANTS' MARK.

4 **REQUEST FOR PRODUCTION NO. 22:**

5 All DOCUMENTS referring to or constituting COMMUNICATIONS with any PERSON
6 concerning Facebook.

7 **REQUEST FOR PRODUCTION NO. 23:**

8 DOCUMENTS sufficient to identify all historical versions of the website that YOU have
9 published at the domain name www.facebookofsex.com.

10 **REQUEST FOR PRODUCTION NO. 24:**

11 All DOCUMENTS upon which YOU intend to rely in support of any claim that Plaintiff is
12 not entitled to a preliminary injunction.

13 **REQUEST FOR PRODUCTION NO. 25:**

14 DOCUMENTS sufficient to show the number of visitors to the website
15 www.facebookofsex.com, by month, from its launch to the present.

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17 Dated: May __, 2011

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