

1 David Chiappetta, State Bar No. 172099
 dchiappetta@perkinscoie.com
 2 Kaycie Wall, State Bar No. 226027
 kwall@perkinscoie.com
 3 PERKINS COIE LLP
 101 Jefferson Drive
 4 Menlo Park, California 94025
 Telephone: 650.838.4300 / Facsimile: 650.838.4350

5 James McCullagh, *pro hac vice application to follow*
 jmcullagh@perkinscoie.com
 6 Joseph Cutler, *pro hac vice application to follow*
 jcutler@perkinscoie.com
 7 PERKINS COIE LLP
 1201 Third Avenue, Suite 4800
 8 Seattle, Washington 98101
 Telephone: 206.359.8000 / Facsimile: 206.359.9000

9 Attorneys for Plaintiff
 FACEBOOK, INC.

10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

14 FACEBOOK, INC., a Delaware
 corporation,

15 Plaintiff,

16 v.

17 POWER VENTURES, INC. d/b/a
 18 POWER.COM, a California
 corporation; POWER VENTURES,
 19 INC. a Cayman Island Corporation;
 STEVEN VACHANI, an individual;
 20 DOE 1, d/b/a POWER.COM, an
 individual and/or business entity of
 21 unknown nature; DOES 2 through 25,
 inclusive, individuals and/or business
 22 entities of unknown nature,

23 Defendants.

Case No. C-08-05780-JF

FIRST AMENDED COMPLAINT FOR:

- 1) VIOLATION OF CONTROLLING THE
 ASSAULT OF NON-SOLICITED
 PORNOGRAPHY AND MARKETING ACT OF
 2003, 15 U.S.C. § 7701, *et seq.*;
- 2) VIOLATION OF THE COMPUTER FRAUD
 AND ABUSE ACT, 18 U.S.C. § 1030, *et seq.*;
- 3) VIOLATION OF THE CALIFORNIA
 COMPREHENSIVE COMPUTER DATA ACCESS
 AND FRAUD ACT, CALIFORNIA PENAL CODE
 SECTION 502;
- 4) COPYRIGHT INFRINGEMENT, 17 U.S.C. §
 101, *et seq.*;
- 5) VIOLATION OF THE DIGITAL MILLENNIUM
 COPYRIGHT ACT, 17 U.S.C. § 1201, *et seq.*;
- 6) TRADEMARK INFRINGEMENT, 15 U.S.C. §§
 1114 and 1125(a);
- 7) TRADEMARK INFRINGEMENT UNDER
 CALIFORNIA LAW;
- 8) UNLAWFUL, UNFAIR, AND FRAUDULENT
 COMPETITION UNDER CALIFORNIA
 BUSINESS & PROFESSIONS CODE § 17200
- DEMAND FOR JURY TRIAL**

1 For its complaint, Facebook, Inc. (“Facebook”) alleges as follows:

2 **I. INTRODUCTION**

3 1. This action arises from Defendants’ infringement of Facebook’s trademarks and
4 copyrights, their unauthorized solicitation, storage and use of Facebook users’ login information
5 to gain unauthorized access to Facebook’s protected computer network and the unauthorized use
6 of Facebook user accounts to send unsolicited commercial messages to other Facebook users.

7 2. Facebook developed and operates one of the most popular social networking sites
8 on the Internet that connects people with their friends, family and coworkers. Facebook allows
9 users to join networks and to “friend” other users and thereby creates online communities of users
10 with shared interests and connections. Facebook’s widespread popularity, which now includes
11 more than 132 million active users worldwide, is at least partially the result of the sophisticated
12 methods of communication available on Facebook’s website.

13 3. In addition to providing users with great flexibility in ways to communicate with
14 their friends, Facebook is dedicated to protecting the privacy and security of its users. Facebook
15 tightly controls access to its network, and implements a variety of features in order to protect the
16 privacy and security of its users’ personal information. One such security measure is the
17 prohibition of soliciting or sharing user login information (i.e. username and password).

18 4. Facebook operates an “open development” platform called “Facebook Connect”
19 that permits third party software developers to create applications that run on Facebook’s website.
20 Facebook grants developers interested in integrating their applications with Facebook a limited
21 license to access Facebook’s website. This limited license is conditioned on developers’
22 compliance with specified development protocols and procedures for implementing Facebook
23 Connect and accessing information stored on Facebook computers. The development protocols
24 and procedures, including the requirement that third parties never solicit, collect, or store
25 Facebook usernames or passwords, are intended to ensure the integrity of the Facebook website
26 and interoperability of all Facebook applications.

27 5. Defendants operate a website accessible at <http://power.com>, which offers to
28 integrate multiple social networking accounts into a single experience on Defendants’ website.

1 Defendants have knowingly and willfully disregarded Facebook’s protocols and procedures for
2 accessing information stored on Facebook computers and are offering a product that solicits,
3 stores, and uses Facebook login information to access information stored on Facebook computers
4 without authorization and to display Facebook copyrighted material without permission.

5 Defendants are also infringing upon Facebook’s trademark by displaying and using the Facebook
6 trademark without authorization in a manner that is likely to confuse consumers into wrongly
7 believing that Defendants’ services are affiliated with, sponsored by, or endorsed by Facebook.

8 In addition to these injurious activities, Defendants are also inducing Facebook users to provide
9 them with email addresses of their Facebook contacts (“Friends”) for the purpose of sending
10 unsolicited commercial messages that purposefully and falsely state that they come from “The
11 Facebook Team.”

12 6. Defendants have ignored Facebook’s requests to respect its intellectual property
13 rights, to cease its unauthorized access of Facebook’s computer system and to stop interfering
14 with its relationships with its users. In fact, Defendants essentially admit that their activities
15 violate Facebook’s rights, and they have informed Facebook that they made a “business decision”
16 to continue these malicious activities.

17 7. Facebook, through this lawsuit, seeks to immediately stop Defendants from their
18 continuing injurious actions, from which Facebook has suffered irreparable and incalculable
19 harm, and which will continue unless Defendants are enjoined from further abuse of Facebook’s
20 trademarks and copyrighted material and unauthorized access to Facebook’s protected computers.

21 II. PARTIES

22 8. Plaintiff Facebook is a Delaware corporation with its principal place of business in
23 Palo Alto, California.

24 9. Defendant Power Ventures, Inc. d/b/a Power.com is a corporation incorporated in
25 California, doing business in the State of California.

26 10. Defendant Power Ventures, Inc. is a corporation incorporated in the Cayman
27 Islands, doing business in the State of California. Facebook is informed and believes, and based
28

1 thereon, alleges that Power Ventures, Inc. directed, conducted, participated in, ratified, endorsed,
2 or was otherwise involved in the acts complained of and has liability for such acts.

3 11. Defendant Steven Vachani (“Vachani”) is an individual who conducts business in
4 the State of California and, on information and belief, is domiciled in this judicial district.
5 Vachani purports to be the CEO of Power.com. Facebook is informed and believes, and based
6 thereon, alleges that Vachani directed, conducted, participated in, ratified, endorsed, or was
7 otherwise involved in the acts complained of and that he has liability for such acts.

8 12. Defendant Doe 1 d/b/a Power.com is an individual or entity that operates and/or
9 controls the website located at <http://power.com> and does business as Power.com. Doe 1 engaged
10 in and is responsible in whole or in part for the wrongdoing alleged herein. Facebook is ignorant
11 of the true name of Doe 1, which is a fictitious name. Facebook will amend this First Amended
12 Complaint if and when the identity of Doe 1 becomes known.

13 13. Does 2-25 are persons or entities responsible in whole or in part for the
14 wrongdoing alleged herein. Facebook is informed and believes, and based thereon, alleges that
15 Does 2 -5 individually directed, conducted, participated in, ratified, endorsed, or were otherwise
16 involved in the acts complained of, and that they have liability for such acts. Facebook is
17 ignorant of the true names of Does 2-25, which are fictitious names. Facebook will amend this
18 First Amended Complaint if and when the identities of such persons or entities and/or the scope
19 of their actions become known.

20 14. Defendants Power Ventures, Inc. d/b/a Power.com, Power Ventures, Inc., Vachani
21 and the Doe Defendants are referred to collectively in this First Amended Complaint as
22 “Defendants.”

23 III. JURISDICTION AND VENUE

24 15. This Court has federal question jurisdiction of this action under 28 U.S.C. § 1331
25 because this action alleges violations of federal statutes, including the Computer Fraud and Abuse
26 Act (18 U.S.C. § 1030), the Copyright Act (17 U.S.C. 101), the Digital Millennium Copyright
27 Act (17 U.S.C. 1201); and the Lanham Act (15 U.S.C. 1114 and 1125(a)). The Court has
28 supplemental jurisdiction over the remaining claims under 29 U.S.C. § 1367.

1 23. Facebook user profiles are available for viewing and Facebook users may be
2 contacted only by Facebook or other registered Facebook users.

3 24. Users increase the number of Facebook connections by joining networks of users
4 with shared interests, by inviting other Facebook users to be their “friends” or by accepting
5 “friend” invitations from other users. A Facebook user cannot add a “friend” to his or her profile
6 until the friend consents to being added to the user’s friend list. In this manner, Facebook’s
7 website creates a virtual social network of interconnected profiles.

8 25. Facebook permits users to control access to different portions of their profile to the
9 user’s friends, friends of friends, the user’s networks, or a subset of these groups. The ability to
10 control access to certain parts of a user’s profile, including messaging options, minimizes
11 unwanted communications and increases the security of Facebook communications.

12 26. Secure communication between Facebook users is vital to the integrity of
13 Facebook’s proprietary computer network as well as to the level of confidence that users have in
14 using Facebook. Facebook does not tolerate or permit the use of its service or site for sending
15 unsolicited commercial messages (“spam”).

16 27. Facebook grants third parties a limited license to create applications that interact
17 with Facebook’s proprietary network, provided that these applications adhere to a standardized
18 set of protocols and procedures and that the third party developers agree to Facebook’s Developer
19 Terms of Service, Facebook Terms of Use, and all other applicable Facebook Terms and Policies.
20 Among the reasonable limitations that Facebook places on developers is the prohibition of
21 applications that:

22 a. request, collect, solicit or otherwise obtain access to usernames, passwords
23 or other authentication credentials from any Facebook Users, or [] proxy authentication
24 credentials for any Facebook Users for the purposes of automating logins to the Facebook Site;

25 b. interfere or attempt to interfere in any manner with the functionality or
26 proper working of the Facebook Site or Facebook Platform, or any portion or feature of either;
27 and
28

1 c. engage in spamming or other advertising or marketing activities that
2 violate any applicable laws, regulations or generally-accepted advertising industry guidelines.

3 28. Facebook permits integration with third party websites, and even permits exchange
4 of proprietary data with third party websites, provided that the third party website uses
5 Facebook's "Connect" service, which allows users to "connect" their Facebook identity, friends
6 and privacy to any site using a trusted authentication interface. This interface ensures that
7 Facebook users only provide their login information to Facebook, and that this sensitive
8 information is stored only on Facebook's secure servers – not the servers of the third party
9 websites. By offering Facebook Connect, Facebook enables users to integrate with other sites
10 without compromising Facebook's commitment to safeguard its users' privacy and security.
11 Facebook does not permit third party access to Facebook user profile data unless such third
12 parties use Facebook Connect.

13 **B. Facebook's Terms of Use**

14 29. Before Facebook activates a username and permits a user access to certain features
15 of the Facebook website, the user must agree to Facebook's Terms of Use, which set forth the
16 acceptable terms of use of its computer network and prohibit users from conducting certain
17 activities. These Terms of Use are attached as Exhibit A and can also be found at:
18 <http://www.facebook.com/terms.php?ref=pf>.

19 30. Facebook's Terms of Use require Facebook users to abide by certain rules of user
20 conduct, in which among other things, users agree that in their use of Facebook's Service or Site,
21 they will refrain from:

22 a. soliciting personal information from anyone under 18 or soliciting
23 passwords or personally identifying information for commercial or unlawful purposes;

24 b. using or attempting to use another's account, service or system without
25 authorization from Facebook, or creating a false identity on Facebook;

26 c. using automated scripts to collect information from or otherwise interact
27 with the Facebook website;

28

1 d. impersonating any person or entity, or falsely stating or otherwise
2 misrepresenting oneself;

3 e. uploading, posting, transmitting, sharing or otherwise making available any
4 unsolicited or unauthorized advertising, solicitations, promotional materials, junk mail, spam,
5 chain letters, pyramid schemes or any other form of solicitation;

6 f. harvesting or collecting email addresses or other contact information of
7 other users from Facebook by electronic or other means for purposes of sending unsolicited
8 emails or other unsolicited communications;

9 g. registering for more than one User account or falsely stating or otherwise
10 misrepresenting oneself; and

11 h. using Facebook’s website for commercial use without the express
12 permission of Facebook.

13 31. Facebook users who agree to Facebook’s Terms of Use enjoy a limited license to
14 access and use Facebook’s website and services. However, “[a]ny use of the Site or the Site
15 Content other than as specifically authorized herein, without the prior written permission of
16 Company, is strictly prohibited and will terminate the license granted herein.” Thus,
17 unauthorized use of Facebook’s website terminates a user’s license to access the site.

18 **C. Facebook’s Copyrights**

19 32. Facebook’s website is, by design, uniquely distinctive in its creative composition
20 and its comprehensive and user friendly interfaces. Among the significant unique elements of the
21 Facebook website is the distinctive account registration and login page.

22 33. Facebook’s website embodies its promise to provide an easy to use, highly
23 interactive service that encourages individual expression and allows users to disseminate personal
24 information to a controlled group of friends through varying methods including news feeds, direct
25 messaging, status updates, wall-posts and forums. The website, including its innovative, yet
26 accessible interfaces is fundamental to Facebook’s reputation and garners substantial and valuable
27 goodwill with its users.
28

1 34. As an online venture, the intellectual property related to the Facebook website is a
2 vital asset to Facebook.

3 35. Facebook's website is a work of authorship protected by copyright law.

4 36. Facebook owns all right, title and interest, including copyrights, in and to its
5 website. The Facebook website is copyright protected under Registration No. VA-0001409016,
6 dated November 7, 2006, and entitled "Facebook homepage."

7 **D. Facebook's Trademarks**

8 37. Facebook also carefully protects its trademarks.

9 38. Facebook owns all common law rights in the FACEBOOK mark.

10 39. Facebook is also the owner of U.S. federal registrations: 3041791, 3122052 for the
11 FACEBOOK mark, covering, *inter alia*, "providing an online directory information service
12 featuring information regarding, and in the nature of, collegiate life, general interest, classifieds,
13 virtual community, social networking, photo sharing, and transmission of photographic images,
14 advertising and information distribution services...; providing on-line computer databases and
15 on-line searchable databases in the field of collegiate life, general interest, classifieds, virtual
16 community, social networking, photosharing, videosharing and transmission of photographic
17 images;" "providing online chat rooms and electronic bulletin boards for registered users for
18 transmission of messages concerning collegiate life, general interest, classifieds, virtual
19 community, social networking, photo sharing, and transmission of photographic images;"
20 "computer services, namely, hosting online web facilities for others for organizing and
21 conducting online meetings, gatherings, and interactive discussions;" and "internet based
22 introduction and social networking services."

23 40. FACEBOOK has been used in commerce by Facebook since 2004. Facebook's
24 use has been continuous and exclusive.

25 41. Facebook has attained strong name recognition in the FACEBOOK mark. The
26 mark has come to be associated with Facebook and identifies Facebook as the source of
27 advertising, information, online directory information, internet based introduction, online chat
28

1 rooms, bulletin boards, hosting online web facilities and social networking services offered in
2 connection with the mark.

3 42. Facebook has also developed substantial goodwill in the FACEBOOK mark.

4 43. Facebook's website is currently the leading social networking site based on the
5 number of unique visitors that visit its site each month. In fact, it is one of the most visited
6 websites in the world, attracting over 132 million unique visitors in a month.

7 44. The Facebook mark is among Facebook's most important and valuable assets.

8 **E. Defendants' Unauthorized Activities**

9 45. Power.com's website, located at <http://power.com>, induces visitors to surrender
10 their Facebook usernames and passwords in order to "integrate" their Facebook account into
11 Power.com's website.

12 46. On information and belief, Defendants or individuals acting in concert with
13 Defendants, in developing and testing Power.com's website, registered for at least one Facebook
14 account and during all relevant times agreed to abide by Facebook's Terms of Use.

15 47. At no time have Defendants received permission from Facebook to conduct any
16 commercial activity on Facebook's website.

17 48. At no time have Defendants received permission from Facebook to use other
18 users' accounts to access Facebook's computer systems.

19 49. On or before December 1, 2008, Power.com began advertising and offering
20 integration with Facebook's site.

21 50. In order for a visitor to integrate a Facebook account into Power.com's website,
22 Power.com requires that users provide it with their Facebook username and password.

23 51. Power.com stores these passwords outside of Facebook's network, and outside the
24 control of Facebook's security staff.

25 52. Upon information and belief, on or before December 1, 2008, Power.com began to
26 "scrape" proprietary data from Facebook users who had given their login credentials as part of its
27 integration services. This data was copied from Facebook's site and re-purposed and re-displayed
28 on Power.com's website.

1 53. At no time have Defendants received permission from Facebook to represent that
2 solicitation of Facebook username and passwords was authorized or endorsed by Facebook.

3 54. At no time have Defendants received permission from Facebook to use automated
4 scripts to collect information from or otherwise interact with the Facebook's website or to access
5 Facebook's computers for the purpose of scraping user data from Facebook and displaying it on
6 Power.com's website.

7 55. Defendants' actions are knowing, intentional, willful, malicious and fraudulent.

8 56. Upon information and belief, Defendants do not disclose to their customers that
9 their services are unlawful and violate the Facebook Terms of Use. Indeed, Defendants
10 knowingly, willfully, intentionally, fraudulently and maliciously induce, encourage and assist
11 Facebook users in abusing the Facebook system and violating Facebook's Terms of Use.

12 **1. Facebook Notified Power.com of Its Unauthorized and Unlawful Activity**

13 57. Facebook notified Defendant Vachani on December 1, 2008, that Power.com's
14 access of Facebook's website and servers was unauthorized and violated Facebook's rights,
15 including Facebook's trademark, copyrights, and business expectations with its users.

16 58. On December 12, 2008, Defendant Vachani responded to Facebook's notice by
17 promising that Power.com would "implement Facebook connect on our main login page and
18 work with the capabilities of Facebook connect for the login to our site." He also promised that
19 Power.com would "delete any Facebook friend information we currently have." He "estimate[d]
20 that it [would] take 2 weeks to completely finish this integration with Facebook connect and shift
21 the user experience for our current users."

22 59. On December 15, 2008, Facebook communicated its acknowledgement of
23 Defendant Vachani's promise to have Facebook Connect integrated into Power.com's website
24 within two weeks (by December 26), and to purge and delete any Facebook information that
25 Power.com already had.

26 60. On December 17, 2008, Defendant Vachani for the first time communicated his
27 concern that Power.com might not be able to integrate Facebook Connect fully by the December
28 26, 2008 deadline, and asked for an extension of time to integrate Facebook Connect.

1 61. On December 22, 2008, Defendant Vachani further responded to Facebook that
2 Power.com intended to comply with the December 26, 2008 deadline to take down all integration
3 services with Facebook.com, remove all Facebook trademarks from Power.com’s website, and
4 purge and destroy any ill-gotten data, including user login information, even if it had not fully
5 integrated Facebook Connect as a replacement solution.

6 62. However, despite his earlier promises, after close of business on Friday December
7 26, 2008, Defendant Vachani sent an email to Facebook’s counsel expressing for the first time
8 Power.com’s “business decision” to continue its website’s unauthorized use of Facebook user
9 login credentials and unauthorized access to Facebook’s computers until it was able to fully
10 implement Facebook’s Connect service. Defendant Vachani estimated that this would take more
11 than five additional weeks to complete.

12 63. Upon learning of Power.com’s intent to continue accessing Facebook’s computers
13 without authorization, Facebook implemented technical measures to block access to the Facebook
14 Site by Power.com.

15 64. Upon information and belief, Defendants deliberately circumvented Facebook’s
16 technological security measures in order to continue Power.com’s unlawful practice of accessing
17 Facebook’s computers systems without authorization and to thereby obtain proprietary
18 information from Facebook.

19 **2. Defendants Are Sending Unsolicited Commercial Messages to Facebook Users**

20 65. On or before December 26, 2008, Power.com began a “Launch Promotion” that
21 promises Power.com’s website’s users the chance to win one hundred dollars if they successfully
22 invite and sign up the most new Power.com users.

23 66. As part of this promotion, Power.com provides participants with a list of their
24 Facebook friends, obtained without authorization by Power.com from Facebook, and asks the
25 participant to select which of those friends should receive a Power.com invitation. Power.com
26 then sends unsolicited commercial emails to those friends.

27 67. These unsolicited commercial emails are deceptive and misleading.
28

1 68. The “from” line of the emailed messages purports to come from “Facebook” and
2 uses an “@facebookmail.com” address, not Power.com.

3 69. The message, drafted by Power.com, is signed by “The Facebook Team,” which is
4 both misleading and false.

5 70. An example of one of these unsolicited messages is included here:

6 **From: Facebook <eventmaster+z0s9a6jc@facebookmail.com>**

7 **To: [Redacted]**

8 **Subject: Nik [Redacted] invited you to the event “Bring 100 friends and win 100 bucks!”...**

9 **Date: Tue, Dec 30, 2008 at 11:44 AM**

10 Nik invited you to “Bring 100 friends and win 100 bucks!” on Friday, March 20
11 at 1:00am.

12 Nik says, “Bring 100 friends and win 100 bucks!”.

13 Event: Bring 100 friends and win 100 bucks!

14 What: Reunion

15 Host: Power

16 Start Time: Friday, March 20 at 1:00am

17 End Time: Friday, March 20 at 11:55pm

18 Where: Power

19 To see more details and RSVP, follow the link below:

20 [http://www.facebook.com/n/?event.php&eid=\[redacted\]](http://www.facebook.com/n/?event.php&eid=[redacted])

21 Thanks,

22 The Facebook Team

23 —

24 Want to control which emails you receive from Facebook? Go to:

25 <http://www.facebook.com/editaccount.php?notifications&md=ZXZlbnRfaW52aXRlO2Zyb209MTEzNTM3M4NztlWQ9NDc0NjIwODYxODk7dG89MTEwNzc2ODMyOA==>

26 71. The unsolicited commercial messages do not properly identify the initiators of the
27 messages, nor do they provide clear or conspicuous notice that the messages are advertisements
28 for Power.com, information on how recipients can opt-out of future messages, or a valid address
that recipients can use to contact the Defendants.

 72. Power.com’s offer of potential monetary compensation induces Facebook users to
participate in Power.com’s “Launch Promotion.” Power.com then sends these unsolicited
messages to the user’s Facebook friends.

1 73. Defendants' use of a Facebook address to send these messages and deceptive
2 sender and signature information is likely to confuse recipients and lead to the false impression
3 that Facebook is affiliated with, endorses, or sponsors these messages.

4 **3. Defendants Are Violating Facebook's Intellectual Property Rights**

5 74. Upon information and belief, Defendants developed computer software and other
6 automated devices and programs to access and obtain information from the Facebook website for
7 aggregating services.

8 75. Upon information and belief, Defendants accessed and copied the Facebook
9 website (including but not limited to, creation of cached copies of the website) to develop, test,
10 implement, use and provide Defendants' aggregating services.

11 76. Defendants without authorization have used the famous FACEBOOK mark in
12 commerce to advertise Defendants' services on the Internet in a manner likely to confuse
13 consumers as to its association, affiliation, endorsement or sponsorship with or by Facebook

14 77. Defendants' unauthorized use of the FACEBOOK mark includes, but is not
15 limited to, use of the mark on Power.com's website to advertise its services and in unsolicited
16 promotional emails sent to current Facebook users.

17 78. Defendants' use of the FACEBOOK mark causes confusion and mistake and is
18 likely to deceive customers and potential customers regarding the origin, affiliation, association,
19 connection, and/or endorsement of Defendants' services and website with or by Facebook.

20 79. At no time has Facebook authorized or consented to Defendants' use of the
21 FACEBOOK mark or any other Facebook intellectual property.

22 80. At no time has Facebook had any association, affiliation or connection with, or
23 endorsed Defendants' services, Power.com's website or Defendants. Specifically, Defendants'
24 services are not authorized, approved, endorsed or sponsored by, or associated, affiliated or
25 connected with Facebook, and Defendants and Power.com's website is not authorized, approved,
26 endorsed, or sponsored by, or associated, affiliated or connected with Facebook.

27 81. In using the FACEBOOK mark, Defendants have willfully and deliberately sought
28 to profit from Facebook's pre-established goodwill and reputation.

1 90. Facebook’s computers that operate the website are involved in interstate and
2 foreign commerce and communication and are therefore protected computers under 15 U.S.C.
3 § 7702(13).

4 91. The electronic messages initiated by Defendants were “commercial” electronic
5 messages because their primary purpose was the commercial advertisement or promotion of a
6 commercial product or service (including content on an Internet website operated for a
7 commercial purpose) as provided in 15 U.S.C. § 7702(2)(A).

8 92. Defendants intentionally misled Facebook users by initiating the transmission of
9 commercial electronic messages through Facebook’s computers to Facebook users that contained
10 header information that was materially false or misleading as to the true identity of the sender of
11 the messages in violation of 15 U.S.C. § 7704(a)(3).

12 93. Defendants initiated the transmission of commercial electronic messages, in a
13 pattern or practice, through Facebook’s computers to Facebook users, that did not contain a
14 functioning return electronic mail address or other Internet-based opt-out mechanism in violation
15 of 15 U.S.C. § 7704(a)(3).

16 94. Defendants initiated the transmission of commercial electronic messages, in a
17 pattern or practice, through Facebook’s computers to Facebook users, that did not contain clear
18 and conspicuous identification that the messages were advertisements or solicitations, clear and
19 conspicuous notice of the opportunity to decline to receive further commercial emails from the
20 sender, and a valid physical postal address of the sender in violation of 15 U.S.C. § 7704(a)(5).

21 95. Defendants initiated the transmission of commercial electronic messages, in a
22 pattern or practice, through Facebook’s computers to Facebook users, that contained “from” lines
23 that were misleading regarding the actual sender of the message and misleading regarding
24 Facebook’s connection to the messages in violation of 15 U.S.C. § 7704(a)(2).

25 96. Facebook is informed and believes, and based thereon alleges, that Defendants
26 initiated the transmission of the misleading commercial electronic messages with actual
27 knowledge, or knowledge fairly implied on the basis of objective circumstances, that the
28

1 messages' subject heading would be likely to mislead a recipient, acting reasonably under the
2 circumstances.

3 97. Facebook is informed and believes, and based thereon alleges, that Defendants
4 initiated the transmission of commercial electronic messages, in a pattern or practice, through
5 Facebook's computers to Facebook users, that are misleading and unlawful under 15 U.S.C.
6 § 7704(a), as alleged above, or assisted in the origination of such messages through the
7 unauthorized relay or retransmission of the messages as defined in 15 U.S.C. § 7704(b)(3).

8 98. Defendants have caused Facebook harm by deterring users and potential users
9 from using Facebook; by damaging Facebook's goodwill and reputation with its customers; and
10 by causing other injuries to Facebook.

11 99. Facebook is entitled to an injunction prohibiting further violations of CAN-SPAM
12 by Defendant as provided by 15 U.S.C. § 7706(g)(1)(A), since it will continue to suffer
13 immediate and irreparable harm if Defendants' conduct is not enjoined. Facebook has no
14 adequate remedy at law.

15 100. Facebook is entitled to the greater of its actual monetary loss or statutory damages
16 as provided by 15 U.S.C. § 7706(g)(1)(B), in an amount to be proven at trial.

17 101. Facebook is entitled to an award of aggravated damages in an amount equal to
18 three times the amount otherwise available pursuant to 15 U.S.C. § 7706(g)(3)(C) because
19 Defendants violated CAN-SPAM willfully and knowingly and because Defendants' unlawful
20 activity included one or more of the aggravated violations set forth in 15 U.S.C. § 7704(b).

21 102. Facebook is entitled to reasonable costs, including reasonable attorneys' fees as
22 provided by 15 U.S.C. § 7706(g)(4).

23 **SECOND CLAIM FOR RELIEF**
24 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030, *et seq.***

25 103. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth
26 herein, the allegations in all the preceding paragraphs.

27 104. Facebook's computers are involved in interstate and foreign commerce and
28 communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

1 105. On information and belief, Defendants knowingly and intentionally accessed
2 Facebook's computers without authorization or in excess of authorization as defined by
3 Facebook's Terms of Use.

4 106. On information and belief, after gaining unauthorized access to Facebook servers,
5 Defendants obtained and used valuable information from Facebook's protected computers in
6 transactions involving interstate or foreign communications. This information included, among
7 other things, Facebook users' friend lists, and the means of sending messages to those friends.
8 The use included sending unauthorized messages from Facebook user accounts without
9 authorization and copying proprietary Facebook data and re-displaying it on Power.com's
10 website.

11 107. Defendants knowingly, willfully, and with an intent to defraud accessed
12 Facebook's computers without authorization or in excess of authorization and obtained valuable
13 information from Facebook's computers that, on information and belief, Defendants used to
14 obtain something of value.

15 108. Defendants knowingly, willfully, and with an intent to defraud trafficked in login
16 information through which computers were accessed without authorization, affecting interstate
17 commerce.

18 109. Defendants' conduct has caused a loss to Facebook during a one-year period in
19 excess of \$5,000.

20 110. Facebook has been damaged by Defendants' actions, including being forced to
21 expend resources to investigate the unauthorized access and abuse of its computer network.
22 Facebook seeks compensatory and other equitable relief under 18 U.S.C. § 1030(g) in an amount
23 to be proven at trial.

24 111. Facebook has suffered irreparable and incalculable harm and injuries resulting
25 from Defendants' conduct, which harm will continue unless Defendants are enjoined from further
26 unauthorized use of Facebook's protected computers. Facebook has no adequate remedy at law.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4. procuring unsolicited commercial electronic mail messages to Facebook users;
- 5. displaying Facebook’s trademark anywhere on their websites;
- 6. engaging in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of Facebook’s website; and
- 7. engaging in any activity that violates Facebook’s Terms of Use.

- B. An award to Facebook of damages, including but not limited to, compensatory, statutory, and punitive damages, as permitted by law and in such amounts to be proven at trial.
- C. An award to Facebook of reasonable costs, including reasonable attorneys’ fees.
- D. For pre and post-judgment interest as allowed by law.
- E. For such other relief as the Court may deem just and proper.

DATED: January 13, 2009

PERKINS COIE LLP

By: /s/ _____
David P. Chiappetta

Attorneys for Plaintiff
FACEBOOK, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable in this action.

DATED: January 13, 2009

PERKINS COIE LLP

By: /s/ _____
David P. Chiappetta

Attorneys for Plaintiff
FACEBOOK, INC.