

ORIGINAL  
FILED

08 DEC 30 PM 2:12

RICHARD W. WIERING  
CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIF.

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  
jmccullagh@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  
9 Telephone: 206.359.8000 / Facsimile: 206.359.9000

10 Attorneys for Plaintiff  
FACEBOOK, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION

14 FACEBOOK, INC., a Delaware  
15 corporation,

16 Plaintiff,

17 v.

18 POWER VENTURES, INC. d/b/a  
POWER.COM, a California  
19 corporation,

20 Defendant.

Case No.

**08 05780 WDB**

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

E-filing

ADR

FAXED

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

2 **I. INTRODUCTION**

3 1. This action arises from Defendant’s infringement of Facebook’s trademarks and  
4 copyrights, its unauthorized solicitation, storage and use of Facebook users’ login information to  
5 gain unauthorized access to Facebook’s protected computer network and the unauthorized use of  
6 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. Defendant operates a website accessible at <http://power.com> (“Power.com”),  
28 which offers to integrate multiple social networking accounts into a single experience on

1 Defendant's website. Defendant has knowingly and willfully disregarded Facebook's protocols  
2 and procedures for accessing information stored on Facebook computers and is offering a product  
3 that solicits, stores, and uses Facebook login information to access information stored on  
4 Facebook computers without authorization and to display Facebook copyrighted material without  
5 permission. Defendant is also infringing upon Facebook's trademark by displaying and using the  
6 Facebook trademark without authorization in a manner that is likely to confuse consumers into  
7 wrongly believing that Power.com's services are affiliated with, sponsored by, or endorsed by  
8 Facebook. In addition to these injurious activities, Defendant is also inducing Facebook users to  
9 provide it 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. Defendant has 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, Defendant essentially admits that its activities violate  
15 Facebook's rights, and it has informed Facebook that it made a "business decision" to continue  
16 these malicious activities.

17 7. Facebook, through this lawsuit, seeks to immediately stop Defendant from its  
18 continuing injurious actions, from which Facebook has suffered irreparable and incalculable  
19 harm, and which will continue unless Defendant is 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 doing business  
25 in the State of California at 2425B Channing Way, Ste #216, Berkeley, CA 94704.

## 26 III. JURISDICTION AND VENUE

27 10. This Court has federal question jurisdiction of this action under 28 U.S.C. § 1331  
28 because this action alleges violations of federal statutes, including the Computer Fraud and Abuse

1 Act (18 U.S.C. § 1030), the Copyright Act (17 U.S.C. 101), the Digital Millennium Copyright  
2 Act (17 U.S.C. 1201); and the Lanham Act (15 U.S.C. 1114 and 1125(a)). The Court has  
3 supplemental jurisdiction over the remaining claims under 29 U.S.C. § 1367.

4 11. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because a substantial  
5 part of the events giving rise to the claims raised in this lawsuit occurred in this District.

6 12. Jurisdiction and venue are also proper in this Court under California Penal Code  
7 § 520(j), which states: "For purposes of bringing a civil or a criminal action under this section, a  
8 person who causes, by any means, the access of a computer, computer system, or computer  
9 network in one jurisdiction from another jurisdiction is deemed to have personally accessed the  
10 computer, computer system, or computer network in each jurisdiction."

11 13. During all relevant times, Defendant has repeatedly, knowingly, and intentionally  
12 solicited Facebook usernames and passwords from Facebook users, and accessed or permitted  
13 access to Facebook servers located in this judicial district without Facebook's authorization.  
14 While accessing Facebook servers, Defendant made systematic and continuous contacts with this  
15 judicial district, and has targeted its wrongful acts at Facebook, which is headquartered in this  
16 judicial district.

#### 17 IV. INTRADISTRICT ASSIGNMENT

18 14. Assignment to the San Jose Division of this Court is appropriate under Civil L.R.  
19 3-2, in that the claims asserted herein arose in the county of Santa Clara. Facebook is  
20 headquartered in the county of Santa Clara, and it has servers located at several locations in this  
21 county.

#### 22 V. FACTS AND BACKGROUND

##### 23 A. Facebook Background

24 15. Facebook owns and operates the widely popular social networking website located  
25 at <http://www.facebook.com>. Facebook currently has more than 132 million active users.

26 16. To access its computer network and social networking website, Facebook requires  
27 each user to register with a unique username and password. Only registered users may access  
28 Facebook user profiles or use the Facebook service and/or applications.

1           17.     Registered users customize their user profile by adding content such as personal  
2 information, content related to their interests, and photographs, which can then be shared with  
3 other Facebook users with whom the user has a Facebook connection.

4           18.     Facebook user profiles are available for viewing and Facebook users may be  
5 contacted only by Facebook or other registered Facebook users.

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

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

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

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

25               a.     request, collect, solicit or otherwise obtain access to usernames, passwords  
26 or other authentication credentials from any Facebook Users, or [] proxy authentication  
27 credentials for any Facebook Users for the purposes of automating logins to the Facebook Site;  
28

1           b.       interfere or attempt to interfere in any manner with the functionality or  
2 proper working of the Facebook Site or Facebook Platform, or any portion or feature of either;  
3 and

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

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

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

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

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

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

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

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

3 d. impersonating any person or entity, or falsely stating or otherwise  
4 misrepresenting oneself;

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

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

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

13 h. using Facebook's website for commercial use without the express  
14 permission of Facebook.

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

20 **C. Facebook's Copyrights**

21 27. Facebook's website is, by design, uniquely distinctive in its creative composition  
22 and its comprehensive and user friendly interfaces. Among the significant unique elements of the  
23 Facebook website is the distinctive account registration and login page.

24 28. Facebook's website embodies its promise to provide an easy to use, highly  
25 interactive service that encourages individual expression and allows users to disseminate personal  
26 information to a controlled group of friends through varying methods including news feeds, direct  
27 messaging, status updates, wall-posts and forums. The website, including its innovative, yet  
28



1 accessible interfaces is fundamental to Facebook's reputation and garners substantial and valuable  
2 goodwill with its users.

3 29. As an online venture, the intellectual property related to the Facebook website is a  
4 vital asset to Facebook.

5 30. Facebook's website is a work of authorship protected by copyright law.

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

9 **D. Facebook's Trademarks**

10 32. Facebook also carefully protects its trademarks.

11 33. Facebook owns all common law rights in the FACEBOOK mark.

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

25 35. FACEBOOK has been used in commerce by Facebook since 2004. Facebook's  
26 use has been continuous and exclusive.

27 36. Facebook has attained strong name recognition in the FACEBOOK mark. The  
28 mark has come to be associated with Facebook and identifies Facebook as the source of



1 advertising, information, online directory information, internet based introduction, online chat  
2 rooms, bulletin boards, hosting online web facilities and social networking services offered in  
3 connection with the mark.

4 37. Facebook has also developed substantial goodwill in the FACEBOOK mark.

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

8 39. The Facebook mark is among Facebook's most important and valuable assets.

9 **E. Defendant's Unauthorized Activities**

10 40. Defendant's website, Power.com, induces visitors to surrender their Facebook  
11 usernames and passwords in order to "integrate" their Facebook account into Defendant's  
12 "Power.com" website.

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

16 42. At no time has Defendant received permission from Facebook to conduct any  
17 commercial activity on Facebook's website.

18 43. At no time has Defendant received permission from Facebook to use other users'  
19 accounts to access Facebook's computer systems.

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

22 45. In order for a visitor of Power.com to integrate a Facebook account into the  
23 Power.com website, Power.com requires that users provide it with their Facebook username and  
24 password.

25 46. Power.com stores these passwords outside of Facebook's network, and outside the  
26 control of Facebook's security staff.

27 47. Upon information and belief, on or before December 1, 2008, Power.com began to  
28 "scrape" proprietary data from Facebook users who had given their login credentials as part of its

1 integration services. This data was copied from Facebook's site and re-purposed and re-displayed  
2 on Power.com's site.

3 48. At no time has Defendant received permission from Facebook to represent that  
4 solicitation of Facebook username and passwords was authorized or endorsed by Facebook.

5 49. At no time has Defendant received permission from Facebook to use automated  
6 scripts to collect information from or otherwise interact with the Facebook's website or to access  
7 Facebook's computers for the purpose of scraping user data from Facebook and displaying it on  
8 Power.com.

9 50. Defendant's actions are knowing, intentional, willful, malicious and fraudulent.

10 51. Upon information and belief, Defendant does not disclose to its customers that its  
11 services are unlawful and violate the Facebook Terms of Use. Indeed, Defendant knowingly,  
12 willfully, intentionally, fraudulently and maliciously induces, encourages and assists Facebook  
13 users in abusing the Facebook system and violating Facebook's Terms of Use.

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

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

18 53. On December 12, 2008, Defendant, through its CEO, Steven Vachani, responded  
19 to Facebook's notice by promising to "implement Facebook connect on our main login page and  
20 work with the capabilities of Facebook connect for the login to our site." He also promised to  
21 "delete any Facebook friend information we currently have." He "estimate[d] that it [would] take  
22 2 weeks to completely finish this integration with Facebook connect and shift the user experience  
23 for our current users."

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

27  
28

1           55.     On December 17, 2008, Mr. Vachani for the first time communicated his concern  
2 that Power.com might not be able to integrate Facebook Connect fully by the December 26, 2008  
3 deadline, and asked for an extension of time to integrate Facebook Connect.

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

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

15           58.     Upon learning of Power.com's intent to continue accessing Facebook's computers  
16 without authorization, Facebook implemented technical measures to block access to the Facebook  
17 Site by Power.com.

18           59.     Upon information and belief, Defendant deliberately circumvented Facebook's  
19 technological security measures in order to continue its unlawful practice of accessing  
20 Facebook's computers systems without authorization and to thereby obtain proprietary  
21 information from Facebook.

22           **2. Defendant Is Sending Unsolicited Commercial Messages to Facebook Users**

23           60.     On or before December 26, 2008, Power.com began a "Launch Promotion" that  
24 promises Power.com users the chance to win one hundred dollars if they successfully invite and  
25 sign up the most new Power.com users.

26           61.     As part of this promotion, Power.com provides participants with a list of their  
27 Facebook friends, obtained without authorization by Power.com from Facebook, and asks the  
28

1 participant to select which of those friends should receive a Power.com invitation. Power.com  
2 then sends unsolicited commercial emails to those friends.

3 62. These unsolicited commercial emails are deceptive and misleading.

4 63. The "from" line of the emailed messages purports to come from "Facebook" and  
5 uses an "@facebookmail.com" address, not Power.com.

6 64. The message, drafted by Power.com, is signed by "The Facebook Team," which is  
7 both misleading and false.

8 65. An example of one of these unsolicited messages is included here:

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

10 **To: [Redacted]**

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

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

---

13 Nik invited you to "Bring 100 friends and win 100 bucks!" on Friday, March 20  
14 at 1:00am.

15 Nik says, "Bring 100 friends and win 100 bucks!".

16 Event: Bring 100 friends and win 100 bucks!

17 What: Reunion

18 Host: Power

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

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

21 Where: Power

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

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

24 Thanks,

25 The Facebook Team

26 —  
27 Want to control which emails you receive from Facebook? Go to:

28 <http://www.facebook.com/editaccount.php?notifications&md=ZXZlbnRfaW52aXRlO2Zyb209MTEzNTM3MDM4NztlawQ9NDc0NjIwODYxODk7dG89MTEwNzc2ODMyOA==>

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

1           67. Power.com's offer of potential monetary compensation induces Facebook users to  
2 participate in Power.com's "Launch Promotion." Power.com then sends these unsolicited  
3 messages to the user's Facebook friends.

4           68. Defendant's use of a Facebook address to send these messages and deceptive  
5 sender and signature information is likely to confuse recipients and lead to the false impression  
6 that Facebook is affiliated with, endorses, or sponsors these messages.

7           **3. Defendant Is Violating Facebook's Intellectual Property Rights**

8           69. Upon information and belief, Defendant developed computer software and other  
9 automated devices and programs to access and obtain information from the Facebook website for  
10 aggregating services.

11           70. Upon information and belief, Defendant accessed and copied the Facebook  
12 website (including but not limited to, creation of cached copies of the website) to develop, test,  
13 implement, use and provide Defendant's aggregating services.

14           71. Defendant without authorization has used the famous FACEBOOK mark in  
15 commerce to advertise Defendants' services on the Internet in a manner likely to confuse  
16 consumers as to its association, affiliation, endorsement or sponsorship with or by Facebook

17           72. Defendant's unauthorized use of the FACEBOOK mark includes, but is not  
18 limited to, use of the mark on its homepage to advertise its services and in unsolicited  
19 promotional emails sent to current Facebook users.

20           73. Defendant's use of the FACEBOOK mark causes confusion and mistake and is  
21 likely to deceive customers and potential customers regarding the origin, affiliation, association,  
22 connection, and/or endorsement of Defendant's services and website with or by Facebook.

23           74. At no time has Facebook authorized or consented to Defendant's use of the  
24 FACEBOOK mark or any other Facebook intellectual property.

25           75. At no time has Facebook had any association, affiliation or connection with, or  
26 endorsed Defendant's services, Defendant's website or Defendant. Specifically, Defendant's  
27 services are not authorized, approved, endorsed or sponsored by, or associated, affiliated or  
28

1 connected with Facebook, and Defendant and its website is not authorized, approved, endorsed,  
2 or sponsored by, or associated, affiliated or connected with Facebook.

3 76. In using the FACEBOOK mark, Defendant has willfully and deliberately sought to  
4 profit from Facebook's pre-established goodwill and reputation.

5 77. Facebook has suffered significant harm to its reputation and goodwill due to  
6 Defendant's actions and will continue to suffer irreparable harm to its reputation and goodwill if  
7 Defendant's conduct is not enjoined.

8 78. Facebook has suffered economic damages in excess of \$5,000, including effort and  
9 resources used to investigate and combat Defendant's unauthorized access to Facebook  
10 computers and sending of unsolicited commercial messages, to prevent further attacks and to  
11 locate and identify the Defendant.

12 79. Upon information and belief, Defendant willfully and maliciously engaged in  
13 unauthorized access to and appropriation of Facebook computers, servers, systems, networks and  
14 data, including network information, Facebook user information, and Facebook user login  
15 information.

16 80. Upon information and belief, Defendant willfully and maliciously sent deceptive  
17 and unsolicited commercial messages in order to trick Facebook users into believing that  
18 Facebook authorized Defendant's solicitation of their login credentials and to thereby profit from  
19 Defendant's unlawful spamming scheme.

20 81. Defendant benefited financially from their behavior while at the same time  
21 harming Facebook and its users.

22 **VI. CLAIMS FOR RELIEF**

23 **FIRST CLAIM FOR RELIEF**

24 **VIOLATION OF CONTROLLING THE ASSAULT OF NON-SOLICITED  
25 PORNOGRAPHY AND MARKETING ("CAN-SPAM"), 15 U.S.C. § 7701, *et seq.***

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

28 83. Facebook is a provider of Internet access service as defined in 15 U.S.C.  
§ 7702(11) because it provides a service that enables users to access content, information,

1 electronic mail, or other services offered over the Internet, and may also include access to  
2 proprietary content, information, and other services as part of a package to consumers.

3 84. Facebook's website and computers operate in interstate and foreign commerce and  
4 communication and are therefore protected computers under 15 U.S.C. § 7702(13).

5 85. Facebook's computers that operate the website are involved in interstate and  
6 foreign commerce and communication and are therefore protected computers under 15 U.S.C.  
7 § 7702(13).

8 86. The electronic messages initiated by Defendant were "commercial" electronic  
9 messages because their primary purpose was the commercial advertisement or promotion of a  
10 commercial product or service (including content on an Internet website operated for a  
11 commercial purpose) as provided in 15 U.S.C. § 7702(2)(A).

12 87. Defendant intentionally misled Facebook users by initiating the transmission of  
13 commercial electronic messages through Facebook's computers to Facebook users that contained  
14 header information that was materially false or misleading as to the true identity of the sender of  
15 the messages in violation of 15 U.S.C. § 7704(a)(3).

16 88. Defendant initiated the transmission of commercial electronic messages, in a  
17 pattern or practice, through Facebook's computers to Facebook users, that did not contain a  
18 functioning return electronic mail address or other Internet-based opt-out mechanism in violation  
19 of 15 U.S.C. § 7704(a)(3).

20 89. Defendant initiated the transmission of commercial electronic messages, in a  
21 pattern or practice, through Facebook's computers to Facebook users, that did not contain clear  
22 and conspicuous identification that the messages were advertisements or solicitations, clear and  
23 conspicuous notice of the opportunity to decline to receive further commercial emails from the  
24 sender, and a valid physical postal address of the sender in violation of 15 U.S.C. § 7704(a)(5).

25 90. Defendant initiated the transmission of commercial electronic messages, in a  
26 pattern or practice, through Facebook's computers to Facebook users, that contained "from" lines  
27 that were misleading regarding the actual sender of the message and misleading regarding  
28 Facebook's connection to the messages in violation of 15 U.S.C. § 7704(a)(2).



1           91. Facebook is informed and believes, and based thereon alleges, that Defendant  
2 initiated the transmission of the misleading commercial electronic messages with actual  
3 knowledge, or knowledge fairly implied on the basis of objective circumstances, that the  
4 messages' subject heading would be likely to mislead a recipient, acting reasonably under the  
5 circumstances.

6           92. Facebook is informed and believes, and based thereon alleges, that Defendant  
7 initiated the transmission of commercial electronic messages, in a pattern or practice, through  
8 Facebook's computers to Facebook users, that are misleading and unlawful under 15 U.S.C.  
9 § 7704(a), as alleged above, or assisted in the origination of such messages through the  
10 unauthorized relay or retransmission of the messages as defined in 15 U.S.C. § 7704(b)(3).

11           93. Defendant has caused Facebook harm by deterring users and potential users from  
12 using Facebook; by damaging Facebook's goodwill and reputation with its customers; and by  
13 causing other injuries to Facebook.

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

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

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

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

26  
27  
28

**SECOND CLAIM FOR RELIEF**

**VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030, *et seq.***

1  
2  
3 98. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth  
4 herein, the allegations in all the preceding paragraphs.

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

7 100. On information and belief, Defendant knowingly and intentionally accessed  
8 Facebook's computers without authorization or in excess of authorization as defined by  
9 Facebook's Terms of Use.

10 101. On information and belief, after gaining unauthorized access to Facebook servers,  
11 Defendant obtained and used valuable information from Facebook's protected computers in  
12 transactions involving interstate or foreign communications. This information included, among  
13 other things, Facebook users' friend lists, and the means of sending messages to those friends.  
14 The use included sending unauthorized messages from Facebook user accounts without  
15 authorization and copying proprietary Facebook data and re-displaying it on Defendant's site.

16 102. Defendant knowingly, willfully, and with an intent to defraud accessed Facebook's  
17 computers without authorization or in excess of authorization and obtained valuable information  
18 from Facebook's computers that, on information and belief, Defendant used to obtain something  
19 of value.

20 103. Defendant knowingly, willfully, and with an intent to defraud trafficked in login  
21 information through which computers were accessed without authorization, affecting interstate  
22 commerce.

23 104. Defendant's conduct has caused a loss to Facebook during a one-year period in  
24 excess of \$5,000.

25 105. Facebook has been damaged by Defendant's actions, including being forced to  
26 expend resources to investigate the unauthorized access and abuse of its computer network.  
27 Facebook seeks compensatory and other equitable relief under 18 U.S.C. § 1030(g) in an amount  
28 to be proven at trial.

1 106. Facebook has suffered irreparable and incalculable harm and injuries resulting  
2 from Defendant's conduct, which harm will continue unless Defendant is enjoined from further  
3 unauthorized use of Facebook's protected computers. Facebook has no adequate remedy at law.

4 **THIRD CLAIM FOR RELIEF**  
5 **CALIFORNIA COMPREHENSIVE COMPUTER DATA ACCESS**  
6 **AND FRAUD ACT, CALIFORNIA PENAL CODE § 502**

7 107. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth  
8 herein, the allegations contained in all the preceding paragraphs.

9 108. Defendant knowingly accessed and without permission used Facebook data,  
10 computers, computer systems and/or computer network in order to devise and/or execute a  
11 scheme to defraud and deceive in violation of California Penal Code § 502(c)(1).

12 109. Defendant knowingly accessed and without permission took, copied, and/or used  
13 data from Facebook's computers, computer systems and/or computer network in violation of  
14 California Penal Code § 502(c)(2).

15 110. Defendant knowingly and without permission used or caused to be used  
16 Facebook's computer services in violation of California Penal Code § 502(c)(3).

17 111. Defendant knowingly and without permission accessed and added data to  
18 Facebook's computers, computer systems and/or computer network in violation of California  
19 Penal Code § 502(c)(4).

20 112. Defendant knowingly and without permission accessed or caused to be accessed  
21 Facebook's computers, computer systems, and/or computer network in violation of California  
22 Penal Code § 502(c)(7).

23 113. Facebook suffered and continues to suffer damage as a result of Defendant's  
24 violations of the California Penal Code § 502 identified above.

25 114. Defendant's conduct also caused irreparable and incalculable harm and injuries to  
26 Facebook (including, but not limited to, Facebook's reputation and goodwill), and, unless  
27 enjoined, will cause further irreparable and incalculable injury, for which Facebook has no  
28 adequate remedy at law.

1 115. Defendant willfully violated California Penal Code § 502 in disregard and  
2 derogation of Facebook's rights and the rights of legitimate Facebook users, and Defendant's  
3 actions as alleged above were carried out with oppression, fraud and malice.

4 116. Pursuant to California Penal Code § 502(e), Facebook is entitled to injunctive  
5 relief, compensatory damages, punitive or exemplary damages, attorneys' fees, costs and other  
6 equitable relief.

7 **FOURTH CLAIM FOR RELIEF**  
8 **COPYRIGHT INFRINGEMENT (DIRECT VICARIOUS AND CONTRIBUTORY)**  
9 **17 U.S.C. § 101, *et seq.***

10 117. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth  
11 herein, the allegations in all the preceding paragraphs.

12 118. Plaintiff Facebook owns and has registered copyrights in its website.

13 119. Defendant had and has access to Facebook's website.

14 120. Defendant has copied and/or created derivative works from Facebook's website  
15 and/or portions thereof, and continues to do so.

16 121. Defendant's copies and/or derivative works are substantially similar to Facebook's  
17 original copyright-protected website.

18 122. The copies and/or derivative works created by Defendant are unauthorized.

19 123. At all times relevant, Defendant obtained direct financial benefit from the  
20 infringement and had the right and ability to control the infringing conduct, and/or intentionally  
21 induced, encouraged, caused or materially contributed to the infringement.

22 124. The foregoing acts of Defendant constitute direct infringement, vicarious  
23 infringement, and/or contributory infringement of Facebook's exclusive rights in its copyrighted  
24 works under 17 U.S.C. § 106.

25 125. Upon information and belief, Defendant's actions were and are intentional, willful,  
26 wanton and performed in disregard of Facebook's rights.

27 126. Plaintiff Facebook has been and will continue to be damaged, and Defendant has  
28 been unjustly enriched by, Defendant's unlawful infringement.

1 127. Defendant's conduct also has caused irreparable and incalculable harm and  
2 injuries to Facebook, and, unless enjoined, will cause further irreparable and incalculable injury,  
3 for which Facebook has no adequate remedy at law.

4 128. Plaintiff Facebook is entitled to the relief provided by 17 U.S.C. §§ 502-505,  
5 including but not limited to, injunctive relief, an order for the impounding and destruction of all  
6 of Defendant's infringing copies and/or derivative works, compensatory damages (including, but  
7 not limited to actual damages and/or Defendant's profits), statutory damages, punitive damages,  
8 and Facebook's costs and attorneys' fees in amounts to be determined at trial.

9 **FIFTH CLAIM FOR RELIEF**  
10 **VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA")**  
11 **17 U.S.C. § 1201, et seq.**

12 129. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth  
13 herein, the allegations in all the preceding paragraphs.

14 130. Plaintiff Facebook has registered copyrights in its website.

15 131. Plaintiff Facebook employs numerous technological measures, including  
16 identification and blocking the IP addresses of known offenders.

17 132. Defendant has circumvented and is circumventing technological measures that  
18 effectively control access to Facebook's copyrighted website and portions thereof.

19 133. On information and belief, Defendant manufactures, imports, provides, offers to  
20 the public, or otherwise traffics in technology, products, services, devices, components, or parts  
21 thereof, that are primarily designed or produced for the purpose of circumventing technological  
22 measures and/or protection afforded by technological measures that effectively control access to  
23 Facebook's copyrighted website and/or portions thereof.

24 134. On information and belief, Defendant's technology products, services, devices,  
25 components or parts thereof, are primarily designed or produced for the purpose of circumventing  
26 technological measures and/or protection afforded by technological measures that effectively  
27 control access to Facebook's copyrighted website and/or portions thereof.

28 135. On information and belief, Defendant's technology, products, services, devices,  
components, or parts thereof have no or limited commercially significant purpose or use other

1 than to circumvent technological measures that effectively control access to the Facebook website  
2 and/or portions thereof.

3 136. On information and belief, Defendant and/or others acting in concert with  
4 Defendant markets such technology, products, services, devices, components, or parts thereof  
5 with Defendant's knowledge for use in circumventing technological measures that effectively  
6 control access to Facebook's website and/or portions thereof.

7 137. Facebook has been and will continue to be damaged in an amount not presently  
8 known with certainty, but which will be proven at trial.

9 138. Defendant's conduct also has caused irreparable and incalculable harm and  
10 injuries to Facebook, and, unless enjoined, will cause further irreparable and incalculable injury,  
11 for which Facebook has no adequate remedy at law.

12 139. Facebook is entitled to the range of relief provided by 17 U.S.C. §§ 1201-1203,  
13 including, but not limited to, injunctive relief, compensatory damages or statutory damages,  
14 punitive damages, and Facebook's costs and attorneys' fees in amounts to be proven at trial.

15 **SIXTH CLAIM FOR RELIEF**

16 **TRADEMARK INFRINGEMENT, 15 U.S.C. §§ 1114 and 1125(a)**

17 140. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth  
18 herein, the allegations in all the preceding paragraphs.

19 141. Plaintiff Facebook owns U.S. federal registrations 3041791, 3122052 for the  
20 FACEBOOK mark. These registrations are in full force and effect and are enforceable.

21 142. At all times relevant, Defendant exercised ownership or control over online  
22 advertising for its products, services and websites, and knowingly cooperated in and/or induced  
23 encouraged, enabled or aided the infringement of Facebook's trademark rights in online  
24 advertising for its products, services and website.

25 143. Defendant's use of the FACEBOOK mark in interstate commerce is likely to cause  
26 customer confusion or to cause mistake or to deceive as to the origin of the products and services  
27 offered and sold by Defendant and as to their affiliation, connection, or association with and/or  
28 endorsement or approval by Facebook.

1 144. The foregoing acts of Defendant constitute false designation of association,  
2 affiliation, connection, endorsement and/or approval under 15 U.S.C. § 1125(a), and/or vicarious  
3 or contributory infringement of Facebook's rights under 15 U.S.C. § 1125(a).

4 145. Defendant's actions also constitute the use in interstate commerce of a  
5 reproduction, counterfeit, copy, or colorable imitation of a registered trademark of Facebook in  
6 connection with the sale, offering for sale, distribution, or advertising of goods or services on or  
7 in connection with which such use is likely to cause confusion or mistake, or to deceive, in  
8 violation of 15 U.S.C. § 1114.

9 146. Upon information and belief, Defendant has engaged in such false designation of  
10 origin, association, affiliation, connection, endorsement and/or approval knowingly, willfully,  
11 deliberately, and in conscious disregard of Facebook's rights, making this an exceptional case  
12 within the meaning of 15 U.S.C. § 1117.

13 147. Facebook has been damaged and will continue to be damaged, and Defendant has  
14 been unjustly enriched, by such unlawful conduct in an amount to be proven at trial.

15 148. In addition, Defendant's conduct described herein has caused and, if not enjoined,  
16 will continue to cause irreparable damage to Facebook's rights in its marks, and to the business,  
17 positive reputation and goodwill of Facebook, which cannot be adequately compensated solely by  
18 monetary damages. Facebook therefore has no adequate remedy at law and seeks permanent  
19 injunctive relief pursuant to 15 U.S.C. § 1116.

20 **SEVENTH CLAIM FOR RELIEF**

21 **TRADEMARK INFRINGEMENT UNDER CALIFORNIA LAW**

22 149. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth  
23 herein, the allegations in all the preceding paragraphs.

24 150. Plaintiff Facebook owns common law rights in the FACEBOOK mark that date  
25 back to 2004.

26 151. The acts and conduct of Defendant as alleged in COUNT VI immediately above  
27 constitute trademark infringement under the common law of California  
28



**EIGHTH CLAIM FOR RELIEF**  
**UNLAWFUL, UNFAIR, AND FRAUDULENT COMPETITION UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, et seq.**

152. Plaintiff Facebook realleges and incorporates by reference, as is fully set forth herein, the allegations in all the preceding paragraphs.

153. The acts and conduct of Defendant as alleged above in this Complaint constitute unlawful, unfair, and/or fraudulent business acts or practices as defined by Cal. Bus. & Prof. Code § 17200 et seq.

154. Defendant's acts of unlawful, unfair, and fraudulent competition have caused harm to competition, to consumers, and to its competitors. Defendant's acts of unlawful, unfair, and fraudulent competition have proximately caused Facebook to suffer injury in fact and loss of money and/or property (including as a result of expenses that Facebook has incurred, and continues to incur, in its efforts to prevent and deter Defendant from engaging in unlawful conduct) in an amount to be proven at trial. Defendant's acts of unlawful, unfair, and fraudulent competition also have caused irreparable and incalculable injury to Facebook, to the FACEBOOK mark and trade name and to the business and goodwill represented thereby, and, unless enjoined, could cause further irreparable and incalculable injury, whereby Facebook has no adequate remedy at law.

**VII. PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff Facebook prays for the following relief:

A. For injunctive relief, as follows: A permanent injunction enjoining and restraining Defendant, and all persons or entities acting in concert with it during the pendency of this action and thereafter perpetually from:

1. soliciting and/or storing Facebook login information;
2. accessing or attempting to access Facebook's website and computer systems;
3. initiating unsolicited commercial electronic mail messages to Facebook users;

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 Defendant's site;
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: December 30, 2008

**PERKINS COIE LLP**

By: 

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: December 30, 2008

**PERKINS COIE LLP**

By:  \_\_\_\_\_

Attorneys for Plaintiff  
FACEBOOK, INC.

**EXHIBIT A**

# Terms of Use

Date of Last Revision: September 23, 2008

Welcome to Facebook, a social utility that connects you with the people around you. The Facebook service and network (collectively, "Facebook" or "the Service") are operated by Facebook, Inc. and its corporate affiliates (collectively, "us", "we" or "the Company"). By accessing or using our web site at [www.facebook.com](http://www.facebook.com) or the mobile version thereof (together the "Site") or by posting a Share Button on your site, you (the "User") signify that you have read, understand and agree to be bound by these Terms of Use ("Terms of Use" or "Agreement"), whether or not you are a registered member of Facebook. We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Service or the Site after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Service or the Site. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Use and to review such changes.

**PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED.**

## Eligibility

Membership in the Service is void where prohibited. This Site is intended solely for users who are thirteen (13) years of age or older, and users of the Site under 18 who are currently in high school or college. Any registration by, use of or access to the Site by anyone under 13, or by anyone who is under 18 and not in high school or college, is unauthorized, unlicensed and in violation of these Terms of Use. By using the Service or the Site, you represent and warrant that you are 13 or older and in high school or college, or else that you are 18 or older, and that you agree to and to abide by all of the terms and conditions of this Agreement.

## Registration Data; Account Security

In consideration of your use of the Site, you agree to (a) provide accurate, current and complete information about you as may be prompted by any registration forms on the Site ("Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration Data, and any other information you provide to Company, to keep it accurate, current and complete; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

## **Proprietary Rights in Site Content; Limited License**

All content on the Site and available through the Service, including designs, text, graphics, pictures, video, information, applications, software, music, sound and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of the Company, its users or its licensors with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission, except that the foregoing does not apply to your own User Content (as defined below) that you legally post on the Site. Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and the Site Content and to download or print a copy of any portion of the Site Content to which you have properly gained access solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. Except for your own User Content, you may not upload or republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation, and any other use of the Site Content is strictly prohibited. Such license is subject to these Terms of Use and does not permit use of any data mining, robots, scraping or similar data gathering or extraction methods. Any use of the Site or the Site Content other than as specifically authorized herein, without the prior written permission of Company, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time without notice and with or without cause.

## **Trademarks**

32665, FACEBOOK, THE FACEBOOK, FACEBOOKHIGH, FBOOK, POKE, THE WALL and other Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress of Company in the U.S. and/or other countries. Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

## **User Conduct**

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

In addition, you agree not to use the Service or the Site to:

- harvest or collect email addresses or other contact information of other users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site;
- use automated scripts to collect information from or otherwise interact with the Service or the Site;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share, store or otherwise make available any videos other than those of a personal nature that: (i) are of you or your friends, (ii) are taken by you or your friends, or (iii) are original art or animation created by you or your friends;
- register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;
- impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- intimidate or harass another;
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site.
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.



Without limiting any of the foregoing, you also agree to abide by our Facebook Code of Conduct that provides further information regarding the authorized conduct of users on Facebook.

## **User Content Posted on the Site**

You are solely responsible for the photos, profiles (including your name, image, and likeness), messages, notes, text, information, music, video, advertisements, listings, and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other users (collectively the "User Content"). You may not post, transmit, or share User Content on the Site or Service that you did not create or that you do not have permission to post. You understand and agree that the Company may, but is not obligated to, review the Site and may delete or remove (without notice) any Site Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of the Company violates this Agreement or the Facebook Code of Conduct, or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others. You are solely responsible at your sole cost and expense for creating backup copies and replacing any User Content you post or store on the Site or provide to the Company.

When you post User Content to the Site, you authorize and direct us to make such copies thereof as we deem necessary in order to facilitate the posting and storage of the User Content on the Site. By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing. You may remove your User Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content. Facebook does not assert any ownership over your User Content; rather, as between us and you, subject to the rights granted to us in these Terms, you retain full ownership of all of your User Content and any intellectual property rights or other proprietary rights associated with your User Content.

## **Facebook Mobile Services**

The Service includes certain services that are available via your mobile phone, including (i) the ability to upload content to Facebook via your mobile phone (Mobile Uploads), (ii) the ability to receive and reply to Facebook messages, to poke and receive pokes and to write wall posts using text messaging (Mobile Texts), (iii) the ability to browse Facebook from your mobile phone (Mobile Web), and (iv) the ability to access certain Facebook features through a mobile application you have downloaded and installed on your mobile phone (Mobile Client) (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. In addition,

downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. Therefore, you should check with your carrier to find out if the Mobile Services are available for your mobile devices, and what restrictions, if any, may be applicable to your use of such Mobile Services. By using the Mobile Services, you agree that we may communicate with you regarding Facebook and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Facebook account information to ensure that your messages are not sent to the person that acquires your old number.

## **Copyright Complaints**

We respect the intellectual property rights of others and we prohibit users from uploading, posting or otherwise transmitting on the Facebook website or service any materials that violate another party's intellectual property rights. When we receive proper Notification of Alleged Copyright Infringement as described in our [Facebook Copyright Policy](#), we promptly remove or disable access to the allegedly infringing material and terminate the accounts of repeat infringers as described herein in accordance with the Digital Millennium Copyright Act. If you believe that any material on the Site infringes upon any copyright which you own or control, you may send a written notification of such infringement to our Designated Agent. Please see our [Facebook Copyright Policy](#) for more information on how to report infringement of your copyright.

## **Repeat Infringer Policy**

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances and at Company's sole discretion, members who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Site and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

## **Third Party Websites and Content**

The Site contains (or you may be sent through the Site or the Service) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Applications, Software or Content"). Such Third Party Sites and Third Party Applications, Software or Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Applications, Software or Content posted on, available through or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Sites or the Third Party Applications, Software or Content. Inclusion of, linking to or permitting the use or installation of any Third Party Site or any Third Party Applications,

Software or Content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third Party Sites or to use or install any Third Party Applications, Software or Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the Site or relating to any applications you use or install from the site.

## **Share Service**

Company offers a feature whereby users of the Site can share with others or post to their own member profile, videos, articles and other Third Party Applications, Software or Content from, and/or links to, Third Party Sites through the Service (the "Share Service"). You acknowledge and agree that your use of the Share Services and all links, User Content or Third Party Applications, Software or Content shared through the Share Service is subject to, and will fully comply with the user conduct rules set forth above and the other terms and conditions set forth in these Terms of Use.

## **Use of Share Links by Online Content Providers**

Subject to the terms and conditions of these Terms of Use, Third Party Sites that meet the requirements set forth below may place a Share Link (as described below), in the form approved by Company, on pages of their web sites to facilitate use of the Share Service. A Third Party Site that posts a Share Link on its web site is referred to herein as an "Online Content Provider" and shall abide and be subject to the applicable sections of these Terms of Use. A "Share Link" is a button and/or a text link appearing on an Online Content Provider's web page that, upon being clicked by a user, enables us to launch a sharing mechanism through which users can share with others or post to their own member profile, links and content from that page.

In the event that the Share Link is a button that contains any icons or other graphic images, trademarks or other proprietary materials of the Company, Online Content Provider is granted permission to use such images, trademarks or other materials solely for the purpose of placing the Share Link on Online Content Provider's site and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agrees to immediately remove all Share Links from its site.

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain any web content that if shared or posted by a user would be a violation of the user conduct rules set forth above. Without limiting the foregoing, Online Content Provider agrees not to post a Share Link on any web site that contains, and represents and warrants that such web site does not and will not contain, any content that is infringing, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, lewd, fraudulent, or invasive of privacy or publicity rights or that may expose Company or its users to any harm or liability of any type. Upon including of a Share Link, Online Content Provider agrees to defend, indemnify

and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with such Share Link, any links, content or other items or materials which may be shared or posted through such Share Link, or any breach or alleged breach of the foregoing representations and warranties.

By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

## **Facebook Marketplace**

All listings posted on or through the Facebook Marketplace service and all transactions conducted in connection therewith are subject to and governed by the Facebook Marketplace Guidelines (the "Guidelines") as well as these Terms of Use. When you use Facebook Marketplace in any manner you are agreeing to abide by and be subject to the Guidelines and the other applicable rules set forth in these Terms of Use. The Guidelines are subject to change without prior notice at any time, in the Company's sole discretion, so you should review the Guidelines each time you use Facebook Marketplace. Parties to a transaction are solely responsible for all interactions with each other, for arranging for payment and the exchange of the goods or services purchased if applicable, and for the results and performance of any transaction or relationship entered into through Facebook Marketplace. You acknowledge that Facebook is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, to pay any amounts due, or to deliver any merchandise or services as promised, or for any other aspect of the transaction. Any fees or payments collected by Facebook applicable to Facebook Marketplace are set forth on the Site, and all terms and conditions applicable to such fees are set forth in the Facebook Terms of Sale. However, please note that the Terms of Sale do not apply to your purchases of products or services from third parties through Facebook Marketplace, as those transactions are strictly between you and the other party to the transaction. ALL USE OF FACEBOOK MARKETPLACE IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

## **Facebook Platform Applications**

The Facebook Platform is a set of APIs and services provided by Facebook that enable third-party developers ("Platform Developers") to create websites and applications that retrieve data made available by Facebook and its users and/or that retrieve authorized data from third-party sites for use on the Facebook Site ("Platform Applications")

Platform Developers may use the Facebook Platform and create Platform Applications only in

accordance with the terms and conditions set forth in an agreement entered into between Facebook and the Platform Developer ("Developer Terms"). Our standard Developer Terms consist of the Facebook Developer Terms of Service and the related Facebook Platform Application Guidelines. We may from time to time enter into separate agreements with certain third party Platform Developers that contain different or additional terms, provided however, that each such separate agreement will require the third party Platform Developer to only display your information in accordance with your Facebook privacy settings. The standard Developer Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these documents from time to time. ALL USE OF THE FACEBOOK PLATFORM IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Users who install Platform Applications must agree to the terms and conditions set forth in the Platform Application Terms of Use ("Application User Terms") and in these Terms of Use. The Application User Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these terms each time you install an application and from time to time. Platform Developers may require you to agree to their own terms of service, privacy policies and/or other policies as a condition of using Platform Applications. Platform Applications have not been approved, endorsed, or reviewed in any manner by Facebook, and we are not responsible for your use of or inability to use any Platform Applications, including the content, accuracy, or reliability of such Application and the privacy practices or other policies of Developers. YOU USE SUCH PLATFORM APPLICATIONS AT YOUR OWN RISK.

If you, your friends or members of your network use any Platform Applications, such Platform Applications may access and share certain information about you with others in accordance with your privacy settings as further described in our Privacy Policy. Platform Developers are required to agree to restrictions on access, storage and use of such information. However, while we have undertaken contractual and technical steps to restrict possible misuse of such information by such Platform Developers, we do not screen or approve Developers, and we cannot and do not guarantee that all Platform Developers will abide by such restrictions and agreements. Certain actions you take through the Platform Applications may be displayed to your friends in your profile, mini-feed and news feed, and you may opt-out of displaying your Platform Application actions on the Privacy Settings page. Please report any suspected misuse of information through the Facebook Platform as described in our Privacy Policy.

You may set your preferences for your news feed and mini-feed here.

## **Facebook Connect**

Facebook Connect ("Connect") enables participating third party websites to work just like Facebook Platform applications. Once you allow a third party website to connect with Facebook, you will be able to use your Facebook login information to log into that website. The third party website will be able to: generate and publish news feed and other stories about actions you take on their website; access Facebook information related to you (including your profile information, friends, and privacy settings) so you can use your Facebook information on the third party site; and allow you to interact with your friends on the website. In order to make Connect possible, you agree to allow Facebook to check your Facebook cookies when you are visiting participating



third party websites, and allow Facebook to receive information concerning the actions you take on those third party websites. In addition, once you allow a participating third party website to connect with Facebook, you agree to allow Facebook and such third party website to generate and publish news feed and other stories about actions you take on the website without any additional permission. In the event you no longer want the third party website to publish stories about you, you can always disable this feature by changing your application settings.

When your friends connect their Facebook account with a participating third party website, Facebook Connect will enable them to find Facebook friends that may also be users of that third party website, and invite them to use Connect as well. If you do not want your friends to be able to invite you, you may change your privacy settings to disable this feature.

Connect also gives you the ability to permit Facebook and participating third party websites to generate and publish news feed and other stories about actions you have taken on such websites, even if you have not gone through the Connect process. In such cases, you will be asked whether you want to publish the story on Facebook, and will be given the opportunity to save your answer for future stories. In the event you want to change your settings for that website, visit your application settings.

Like Platform Applications, third party websites that participate in Connect are required, among other things, to protect your privacy consistent with your Facebook privacy settings and Facebook's privacy policy.

## **Facebook Pages**

Facebook Pages are special profiles used solely for commercial, political, or charitable purposes. You may not set up a Facebook Page on behalf of another individual or entity unless you are authorized to do so. This includes fan Facebook Pages, as well as Facebook Pages to support or criticize another individual or entity.

**FACEBOOK DOES NOT PRE-SCREEN OR APPROVE FACEBOOK PAGES, AND CANNOT GUARANTEE THAT A FACEBOOK PAGE WAS ACTUALLY CREATED AND IS BEING OPERATED BY THE INDIVIDUAL OR ENTITY THAT IS THE SUBJECT OF A FACEBOOK PAGE. NOR IS FACEBOOK RESPONSIBLE FOR THE CONTENT OF ANY FACEBOOK PAGE, OR ANY TRANSACTIONS ENTERED INTO OR OTHER ACTIONS TAKEN ON OR IN CONNECTION WITH ANY FACEBOOK PAGE, INCLUDING HOW THE OWNER OF THE FACEBOOK PAGE COLLECTS, HANDLES, USES AND / OR SHARES ANY PERSONAL INFORMATION IT MAY COLLECT FROM USERS (PLEASE REVIEW THE FACEBOOK PRIVACY POLICY IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING THE USE OR SHARING OF YOUR PERSONAL INFORMATION). YOU SHOULD BE CAREFUL BEFORE PROVIDING ANY PERSONAL INFORMATION TO OR ENTERING INTO ANY TRANSACTION IN CONNECTION WITH A FACEBOOK PAGE.**

In addition to these Terms of Use, Facebook Pages are subject to and governed by certain

Additional Terms Applicable to Facebook Pages. The Additional Terms Applicable to Facebook Pages control in the event of any conflict between them and the Terms of Use.

## **Terms of Sale**

Please refer to our Terms of Sale for the terms, conditions and policies applicable to your purchase of products or services from Company. By ordering products or services from Company through the Site, you agree to be bound by and accept the Terms of Sale. The Terms of Sale are subject to change without prior notice at any time, in Company's sole discretion so you should review the Terms of Sale each time you make a purchase.

## **User Disputes**

You are solely responsible for your interactions with other Facebook users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

## **Privacy**

We care about the privacy of our users. Click [here](#) to view the Facebook's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

## **Disclaimers**

The Company is not responsible or liable in any manner for any User Content or Third Party Applications, Software or Content posted on the Site or in connection with the Service, whether posted or caused by users of the Site, by Facebook, by third parties or by any of the equipment or programming associated with or utilized in the Site or the Service. Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content you may encounter on the Site or in connection with any User Content or Third Party Applications, Software or Content. The Company is not responsible for the conduct, whether online or offline, of any user of the Site or Service.

The Site and the Service may be temporarily unavailable from time to time for maintenance or other reasons. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Site or combination thereof, including injury or damage to User's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using or downloading materials in connection with the Web and/or in connection with the Service, including any



Mobile Client software. Under no circumstances will the Company be responsible for any loss or damage, including any loss or damage to any User Content or personal injury or death, resulting from anyone's use of the Site or the Service, any User Content or Third Party Applications, Software or Content posted on or through the Site or the Service or transmitted to Users, or any interactions between users of the Site, whether online or offline.

THE SITE, THE SERVICE (INCLUDING THE MOBILE SERVICES, THE SHARE SERVICE AND THE MARKETPLACE SERVICE), ANY PLATFORM APPLICATIONS AND THE SITE CONTENT ARE PROVIDED "AS-IS" AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE COMPANY CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SITE AND/OR THE SERVICE AND/OR ANY PLATFORM APPLICATIONS. COMPANY DOES NOT REPRESENT OR WARRANT THAT SOFTWARE, CONTENT OR MATERIALS ON THE SITE, THE SERVICE OR ANY PLATFORM APPLICATIONS ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE OR THAT THE SITE OR SERVICE ITS SERVERS, OR ANY PLATFORM APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, YOU SHOULD EXERCISE CAUTION IN THE USE AND DOWNLOADING OF ANY SUCH SOFTWARE, CONTENT OR MATERIALS AND USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN CONTENT, MATERIAL, DATA OR SOFTWARE (INCLUDING ANY MOBILE CLIENT) FROM OR THROUGH THE SERVICE AND ANY PLATFORM APPLICATIONS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR YOUR USE THEREOF AND ANY DAMAGES TO YOUR MOBILE DEVICE OR COMPUTER SYSTEM, LOSS OF DATA OR OTHER HARM OF ANY KIND THAT MAY RESULT.

The Company reserves the right to change any and all content, software and other items used or contained in the Site and any Services and Platform Applications offered through the Site at any time without notice. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by Company.

## **Limitation on Liability**

IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY

CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

## **Termination**

The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site or through any Platform Application and/or prohibit you from using or accessing the Service or the Site or any Platform Application (or any portion, aspect or feature of the Service or the Site or any Platform Application) for any reason, or no reason, at any time in its sole discretion, with or without notice, including if it believes that you are under 13, or under 18 and not in high school or college. When we are notified that a user has died, we will generally, but are not obligated to, keep the user's account active under a special memorialized status for a period of time determined by us to allow other users to post and view comments.

## **Governing Law; Venue and Jurisdiction**

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.

## **Arbitration**

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO

OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes ( the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) years after the cause of action arose.

## **Indemnity**

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Applications, Software or Content you post or share on or through the Site (including through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

## **Submissions**

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive

rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## **Definitions and Constructions**

Unless otherwise specified, the terms "includes", "including", "e.g.", "for example", and other similar terms are deemed to include the term "without limitation" immediately thereafter. Terms used in these Terms with the initial letter(s) capitalized will have the meaning attributed to them in these Terms.

## **Other**

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

## **Questions**

Please visit our [Help](#) page or these links for more information.

- [Facebook Copyright Policy](#)
- [Facebook Terms of Sale](#)
- [Facebook Marketplace Guidelines](#)
- [Facebook Platform Application Guidelines](#)
- [Platform Application Terms of Use](#)
- [Facebook Developer Terms of Service](#)