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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 YAHOO!, INC.,) Case No. 3:16-cv-07044
)
12 Plaintiff,) YAHOO!, INC.'S COMPLAINT FOR
) BREACH OF CONTRACT
13 vs.)
) DEMAND FOR JURY TRIAL
14 MYMAIL, LTD.,)
)
15 Defendant.)
16

17 Plaintiff Yahoo!, Inc. ("Yahoo"), for its Complaint against MyMail, Ltd. ("MyMail"), to
18 the best of its knowledge, information and belief, and through its attorneys, alleges as follows:

19 **NATURE OF ACTION**

20 1. This is an action for breach of contract.

21 **PARTIES**

22 2. Plaintiff Yahoo is a company organized and existing under the laws of the
23 Delaware with its principal place of business at 701 First Avenue, Sunnyvale, California 94089.

24 3. On information and belief, Defendant MyMail is a Texas limited partnership with
25 its principal place of business located at 5344 County Road 3901, Athens, TX 75752.

26 **JURISDICTION AND VENUE**

27 4. This Court has subject matter jurisdiction over this dispute based on diversity of
28 citizenship under 28 U.S.C. § 1332(a), as the amount in controversy exceeds \$75,000 and the

1 dispute is between a plaintiff that is incorporated in Delaware, with current headquarters in
2 California, and a defendant that on information and belief is a citizen of Texas.

3 5. This Court has personal jurisdiction over MyMail because MyMail purposefully
4 has directed its activities at California residents, including Yahoo, with the knowledge that its
5 conduct could cause harm in this State, and Yahoo's cause of action arises out of and is related to
6 these activities.

7 6. This Court also has personal jurisdiction over MyMail because, on information and
8 belief, MyMail agreed in the contracts at issue in this litigation to submit to the personal
9 jurisdiction of this court.

10 7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b). On information
11 and belief, MyMail also agreed in the contracts at issue in this litigation to setting venue in this
12 judicial district.

13 **INTRADISTRICT ASSIGNMENT**

14 8. Assignment to the San Jose Division is appropriate pursuant to Civil L.R. 3-2(c)
15 and (e) because a substantial part of the events or omissions giving rise to Yahoo's claims occurred
16 in the County of Santa Clara and because MyMail agreed in the contracts at issue in this litigation
17 to litigate related disputes in the County of Santa Clara.

18 **FACTUAL BACKGROUND**

19 9. Yahoo provides users with access to a rich collection of resources, including
20 various communications tools, forums, shopping services, search services, personalized content
21 and branded programming through its network of properties which may be accessed through,
22 among other things, personal computers and mobile devices.

23 10. One resource that Yahoo has provided users with access to is the "Yahoo Toolbar."

24 11. Before downloading or first using the Yahoo Toolbar, a user needed to agree to the
25 terms of a Toolbar Software License. A true and correct copy of the Toolbar Software License is
26 attached to this Complaint as Exhibit 1 and is incorporated by reference herein.

27 12. The Toolbar Software License provides, among other things, that a user may not
28 "decompile, reverse engineer, disassemble, modify, rent, lease, loan, distribute, or create

1 derivative works (as defined by the U.S. Copyright Act) or improvements (as defined by U.S.
2 patent law) from the Yahoo! Software or any portion thereof." Ex. 1 ¶ 1.2(i).

3 13. The Toolbar Software License also provides that a user may not "use the Yahoo!
4 Software in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with
5 TOS or this Software License." *Id.* ¶ 1.2(iii).

6 14. The Toolbar Software License also provides that a user may not "derive income
7 from the use or provision of the Yahoo! Software, whether for direct commercial or monetary gain
8 or otherwise, without Yahoo!'s prior, express, written permission." *Id.* ¶ 1.2(vi).

9 15. The Toolbar Software License also provides: "You agree not to assign, copy,
10 transfer, or transmit the Yahoo! Software, or any data obtained through the Yahoo! Software, to
11 any third party." *Id.* ¶ 2.

12 16. The Toolbar Software License also provides: "THE YAHOO! ENTITIES AND
13 YAHOO! LICENSORS WILL NOT BE LIABLE TO YOU FOR CLAIMS AND LIABILITIES
14 OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF THE
15 YAHOO! SOFTWARE BY YOURSELF OR BY THIRD PARTIES" *Id.* ¶ 6.

16 17. The Toolbar Software License also provides: "You agree to indemnify and hold the
17 Yahoo! Entities harmless from any claim or demand, including reasonable attorneys' fees, made
18 by any third party in connection with or arising out of your use of the Yahoo! Software, your
19 violation of any terms or conditions of this Software License, your violation of applicable laws, or
20 your violation of any rights of another person or entity." *Id.* ¶ 7.

21 18. The Toolbar Software License also provides: "This Software License and the
22 relationship between [MyMail] and Yahoo! is governed by the laws of the State of California
23 without regard to its conflict of law provisions." *Id.* ¶ 9.

24 19. The Toolbar Software License also provides: "You and Yahoo! agree to submit to
25 the personal and exclusive jurisdiction of the courts located within the county of Santa Clara." *Id.*

26 20. Yahoo also provides users with access to email services.
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1 21. Before first using Yahoo's email services, a user must agree to Yahoo's Terms of
2 Service ("TOS"). A true and correct copy of the TOS is attached to this Complaint as Exhibit 2
3 and is incorporated by reference herein.

4 22. The TOS provides, among other things, as follows: "You agree to indemnify and
5 hold Yahoo and its subsidiaries, affiliates, officers, agents, employees, partners and licensors
6 harmless from any claim or demand, including reasonable attorneys' fees, made by any third party
7 due to or arising out of . . . your use of the Yahoo Services, your connection to the Yahoo
8 Services, your violation of the TOS, or your violation of any rights of another." *Id.* ¶ 11.

9 23. The TOS also provides: "YOU EXPRESSLY UNDERSTAND AND AGREE
10 THAT YAHOO AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES,
11 AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY
12 PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY
13 DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS,
14 GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF YAHOO HAS
15 BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a)
16 THE USE OR THE INABILITY TO USE THE YAHOO SERVICE; (b) THE COST OF
17 PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (c) UNAUTHORIZED
18 ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS
19 OR CONDUCT OF ANY THIRD PARTY ON THE YAHOO SERVICE; OR (e) ANY OTHER
20 MATTER RELATING TO THE YAHOO SERVICE." *Id.* ¶ 20.

21 24. The TOS also provides: "You and Yahoo each agree that the TOS and the
22 relationship between the parties shall be governed by the laws of the State of California without
23 regard to its conflict of law provisions and that any and all claims, causes of action or disputes
24 (regardless of theory) arising out of or relating to the TOS, or the relationship between you and
25 Yahoo, shall be brought exclusively in the courts located in the county of Santa Clara, California
26 or the U.S. District Court for the Northern District of California. You and Yahoo agree to submit
27 to the personal jurisdiction of the courts located within the county of Santa Clara, California or the
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1 Northern District of California, and agree to waive any and all objections to the exercise of
2 jurisdiction over the parties by such courts and to venue in such courts." *Id.* ¶ 28.

3 25. On information and belief, MyMail or an individual under MyMail's direction or
4 control has used Yahoo's email services, and has downloaded, installed, and used at least one
5 version of the Yahoo Toolbar in connection with Yahoo's email services. *See generally* Exs. 3, 4.

6 26. On information and belief, MyMail agreed to and is bound by the TOS and the
7 Toolbar Software License.

8 27. On September 7, 2016, MyMail filed a Complaint against Yahoo in the United
9 States District Court for the Eastern District of Texas. Ex. 3 (MyMail Complaint). This action
10 (the "Texas Action") was designated Civil Action No. 2:16-cv-01000-JRG-RSP. *See id.*

11 28. On November 18, 2016, MyMail filed a First Amended Complaint (the "FAC") in
12 the Texas Action. *See* Ex. 4 (FAC).

13 29. Multiple paragraphs of the MyMail Complaint and FAC purport to describe aspects
14 of the use and operation of the Yahoo Toolbar. *See, e.g., id.* ¶¶ 10-37.

15 30. Multiple figures in the MyMail Complaint and FAC appear to have been produced
16 by a computer running at least one version of the Yahoo Toolbar. *See, e.g., id.* ¶ 10 (Figure 1), ¶
17 17 (Figure 9), ¶ 22 (Figure 27), ¶ 25 (Figure 31), ¶ 27 (Figure 33), ¶ 28 (Figure 34). The text in
18 the MyMail Complaint and FAC that accompanies these figures correspondingly and explicitly
19 alleges that these figures depict the operation of at least one version of the Yahoo Toolbar. *See,*
20 *e.g., id.* ¶ 27 ("***As shown below . . . the Yahoo Toolbar displays the toolbar*** as defined by the
21 updated toolbar data, such as the latest unread mail count, while one or more first webpages of, for
22 example, the Google website are being displayed on the user internet device.") (emphasis added).

23 31. Multiple figures in the MyMail Complaint and FAC appear to depict the use of at
24 least one version of the Yahoo Toolbar in conjunction with the use of Yahoo's e-mail services.
25 *See, e.g., id.* ¶ 17 at Figure 9 (purporting to depict the use of the Yahoo Toolbar with the Yahoo
26 email account "bjctest02").

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1 32. Both the MyMail Complaint and FAC contain figures depicting data allegedly
2 stored by at least one version of the Yahoo Toolbar in the "Windows System Registry." *See, e.g.,*
3 *id.* ¶ 13 (Figures 4, 5, 6).

4 33. Both the MyMail Complaint and FAC also contain figures depicting the contents of
5 a file allegedly used by at least one version of the Yahoo Toolbar. *See, e.g., id.* ¶¶ 15-16 (Figures
6 7 and 8). One portion of this file is alleged by MyMail to identify "a function to be performed by
7 a specific toolbar button upon actuation of the toolbar button," and to include a "function to be
8 performed when the "Mail" button is actuated" during the use of the Yahoo Toolbar. *Id.* ¶ 16.

9 34. Both the MyMail Complaint and FAC also contain figures and text describing
10 records of communications allegedly made between at least one version of the Yahoo Toolbar and
11 a server on the Internet. *See, e.g., id.* ¶¶ 18, 19, 23, 26, 32, 33, 34. Other figures and text describe
12 aspects of the alleged content and purpose of such communications. *See, e.g., id.* ¶¶ 19, 20, 21,
13 22, 23, 24, 33.

14 35. Both the MyMail Complaint and FAC contain images allegedly depicting aspects
15 of the functionality of the Yahoo Toolbar that, on information and belief, were not produced by
16 the Yahoo Toolbar, or any other software provided by Yahoo, and do not convey information that
17 would ordinarily be made visible or apparent to users of the Yahoo Toolbar. *See, e.g., id.* Figures
18 7, 8, 10, 11, 12, 14, 15, 23, 25, 26, 37.

19 36. The Texas Action relates to the TOS and the Toolbar Software License, and to the
20 relationship between MyMail and Yahoo (as described, for example, in the TOS and Toolbar
21 Software License). For example, the allegations of the MyMail Complaint and FAC appear to be
22 based upon the use of one or more versions of the Yahoo Toolbar in connection with Yahoo's e-
23 mail services—activity governed by both the TOS and the Toolbar Software License.

24 37. On information and belief, MyMail has materially breached the Toolbar Software
25 License by, for example, reverse engineering one or more versions of the Yahoo Toolbar, and by
26 using the Yahoo Toolbar in a manner inconsistent with the TOS and the Toolbar Software
27 License.

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1 38. On information and belief, MyMail has materially breached both the Toolbar
2 Software License and the TOS by, as another example, filing the Texas Action outside of courts
3 located in the county of Santa Clara, California or the U.S. District Court for the Northern District
4 of California.

5 39. On information and belief, MyMail has materially breached the Toolbar Software
6 License by, as still another example, seeking to derive income from its use of Yahoo! Software.

7 40. On information and belief, MyMail has materially breached the TOS by, as a
8 further example, copying Yahoo! Software and data obtained through Yahoo! Software and by
9 transferring or transmitting data obtained through Yahoo! Software in the MyMail Complaint and
10 FAC.

11 41. On information and belief, MyMail has breached its duty of good faith and fair
12 dealing by, for example, obtaining and using one or more versions of the Yahoo Toolbar in the
13 manner described above for the purpose of filing the Texas Action, and by filing the Texas Action.

14 42. As a result of MyMail's actions, Yahoo has spent over \$75,000 responding to the
15 Texas Action.

16 **COUNT I**

17 **(Breach of the Toolbar Software License and the TOS)**

18 43. Paragraphs 1 to 42 are incorporated herein as set forth above.

19 44. The Toolbar Software License and the TOS are valid and binding contracts.

20 45. Yahoo has performed all conditions, covenants, and promises to be performed by it
21 under the Toolbar Software License and the TOS, except for those excused or otherwise
22 discharged by reason of MyMail's conduct.

23 46. MyMail materially breached the Toolbar Software License and the TOS. Non-
24 limiting examples of such breaches are provided above, including MyMail's bringing a cause of
25 action arising out of or relating to the TOS and the Toolbar Software License in a court other than
26 the courts located in the county of Santa Clara, California or the U.S. District Court for the
27 Northern District of California, and reverse engineering aspects of one or more versions of the
28 Yahoo Toolbar.

1 47. As a direct and proximate result of MyMail's actions, Yahoo has suffered damage
2 in an amount to be proven at trial.

3 **COUNT II**

4 **(Breach of the Duty of Good Faith and Fair Dealing)**

5 48. Paragraphs 1 to 47 are incorporated herein as set forth above.

6 49. The Toolbar Software License and the TOS are valid and binding contracts.

7 50. Yahoo has performed all conditions, covenants, and promises to be performed by it
8 under the Toolbar Software License and the TOS, except for those excused or otherwise
9 discharged by reason of MyMail's conduct.

10 51. MyMail unfairly prevented Yahoo from receiving the benefits it was entitled to
11 receive under the Toolbar Software License and the TOS. Non-limiting examples of this are
12 provided above, including MyMail's obtaining and using one or more versions of the Yahoo
13 Toolbar in the manner described above for the purpose of filing the Texas Action, and also by
14 filing the Texas Action.

15 52. As a direct and proximate result of MyMail's actions, Yahoo has suffered damage
16 in an amount to be proven at trial.

17 **RELIEF SOUGHT**

18 WHEREFORE, Plaintiff Yahoo respectfully requests that a judgment be entered against
19 Defendant MyMail as follows:

- 20 a. For monetary relief, including damages sustained by Yahoo, in an amount to be
21 determined at trial;
- 22 b. For Yahoo's attorney fees and costs in this action;
- 23 c. For prejudgment interest according to law; and
- 24 d. For such other and further relief as this Court may deem just and appropriate.
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