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9 Attorneys for Plaintiffs
 10 FACEBOOK, INC. and INSTAGRAM, LLC

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **OAKLAND/SAN FRANCISCO DIVISION**

14 FACEBOOK, INC., a Delaware
 15 corporation and INSTAGRAM, LLC, a
 16 Delaware limited liability company,

CASE NO.: 3:20-cv-07345

**COMPLAINT; DEMAND FOR JURY
 TRIAL**

17 Plaintiffs,

18 v.

19 SEAN HEILWEIL, and JARRETT
 20 LUSSO, d/b/a “BOOSTGRAM”

21
 22 Defendants.

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1 Plaintiffs Facebook, Inc. (“Facebook”) and Instagram, LLC (“Instagram”) allege
2 the following:

3 **INTRODUCTION**

4 1. Since at least August 1, 2015, and continuing to the present, Defendants
5 Sean Heilweil and Jarret Lusso operated an unlawful business using the website
6 boostgram.com. Defendants’ business artificially inflated the “likes” and “followers”
7 of Instagram accounts (a practice known as “fake engagement”). Defendants used a
8 network of computers or “bots,” computer scripts, and their customers’ Instagram
9 accounts to deliver automated “likes” and “followers” to Instagram accounts, and
10 promoted their fake engagement service using a diluting domain name, in violation of
11 Instagram’s Terms of Use, Community Guidelines, and Platform Policy and state and
12 federal laws.

13 2. Defendants interfered with and continue to interfere with Instagram’s
14 service, created an inauthentic experience for Instagram users, and attempted to
15 fraudulently influence Instagram users for their own enrichment. Facebook and
16 Instagram bring this action to stop Defendants’ ongoing and future misuse of Plaintiffs’
17 platform and infringing activity. Facebook and Instagram also bring this action to
18 obtain compensatory and punitive damages pursuant to the California Comprehensive
19 Computer Data Access and Fraud Act, Section 502 (the “CCCDFA”); Computer
20 Fraud and Abuse Act, 18 U.S.C. § 1030 (the “CFAA”), the Lanham Act, 15 U.S.C. §
21 1125 (c) and (d), and for breach of contract. Facebook and Instagram also seek
22 disgorgement of Defendants’ illicit profits for unjust enrichment.

23 **PARTIES**

24 3. Plaintiff Facebook is a Delaware corporation with its principal place of
25 business in Menlo Park, California.

26 4. Plaintiff Instagram is a Delaware limited liability company with its
27 principal place of business in Menlo Park, California. Instagram is a subsidiary of
28 Facebook.

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1 business model depended on accessing and using Instagram in order to artificially
2 manipulate Instagram accounts in exchange for money and used a mark that dilutes
3 Instagram marks. Additionally, Defendants transacted business and engaged in
4 commerce in California by, among other things, knowingly using a server and computer
5 network located in the Northern District of California to operate their fake engagement
6 service.

7 13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b),
8 as the threatened and actual harm to Facebook and Instagram occurred in this District.

9 14. Pursuant to Civil L.R. 3-2(c), this case may be assigned to either the San
10 Francisco or Oakland division because Facebook and Instagram are located in San
11 Mateo County.

12 **FACTUAL ALLEGATIONS**

13 **A. Background on Instagram and Facebook**

14 15. Facebook is a social networking website and mobile application that
15 enables its users to create their own personal profiles and connect with each other on
16 their personal computers and mobile devices. As of August 2020, Facebook daily active
17 users averaged 1.79 billion and monthly active users averaged 2.7 billion. Facebook
18 has several products, including Instagram. Facebook owns and operates the Instagram
19 service, platform, and computers.

20 16. Instagram is a photo and video sharing service, mobile application, and
21 social network. Instagram users can post photos and videos to their profile and share
22 them with their followers or a select group of friends. Instagram users can also view,
23 comment on, and “like” posts shared by others on Instagram.

24 17. Instagram users can gain followers, views, and likes, but only from other
25 registered Instagram users. If a visitor to Instagram does not have an Instagram account
26 and tries to “like” a post, the visitor is redirected to the Instagram login page to enter
27 their Instagram credentials or to create an Instagram account.

1 18. When an Instagram user posts a photo to their account, other Instagram
 2 users can view the photo, and choose to “like” it and add a comment to the post. For
 3 private accounts, followers of the private account can see the post. For public accounts,
 4 anyone with an Instagram account can see the post. When a photo is liked or a comment
 5 about the post is added, that like and comment can be seen by anyone who can see the
 6 post. An Instagram user can also choose to “follow” another Instagram user. Instagram
 7 users can see the total number of users following an Instagram account. For marketing
 8 and other commercial purposes, certain Instagram users strive to increase the number
 9 of followers, views, comments, and likes they receive to increase their visibility and
 10 popularity on Instagram.

11 **B. Instagram’s Terms of Use, Guidelines, and Platform Policy**

12 19. Everyone who uses Instagram agrees to Instagram’s Terms of Use
 13 (“Terms”) and other rules that govern access to and use of Instagram, including
 14 Instagram’s Community Guidelines, Brand Guidelines, and Platform Policy
 15 (collectively, “Terms and Policies”).¹ Since April 2018, the Instagram Terms state that
 16 because Instagram is a Facebook product, the Instagram Terms constitute an agreement
 17 between the Instagram users and Facebook.

18 20. Since at least April 2018, Instagram’s Terms have prohibited users from
 19 (a) “do[ing] anything unlawful, misleading, or fraudulent or for an illegal or
 20 unauthorized purpose”; (b) “interfer[ing] with or impair[ing] the intended operation of
 21 [Instagram]”; (c) “attempt[ing] to buy, [or] sell . . . any aspect of [an Instagram]
 22 account”; (d) “access . . . information in unauthorized ways” including “in an automated
 23 way without our express permission”; (e) “violate (or help or encourage others to
 24 violate) [Instagram] Terms or [Instagram] policies . . . including . . . the Instagram
 25 Community Guidelines[, and] Instagram Platform Policy.”

26
 27
 28 ¹ Instagram’s Terms and Policies can be accessed at
<https://help.instagram.com/581066165581870>.

1 21. In addition, Instagram’s Terms require users to “use [Instagram’s]
2 intellectual property and trademarks or similar marks,” only “as expressly permitted by
3 [Instagram’s] Brand Guidelines² or with [] prior written permission.” The Brand
4 Guidelines prohibit using the marks in a way that “[m]akes the Instagram brand the
5 most distinctive or prominent feature,” “[i]mplies partnership, sponsorship or
6 endorsement,” or “combine[s] ‘Insta’ or ‘gram’ with [the user’s] own brand.”

7 22. Instagram’s Community Guidelines prohibit users from artificially
8 collecting likes and followers.

9 **C. Defendants Diluted Instagram’s Registered Trademarks**

10 23. Instagram owns the exclusive rights to the highly distinctive
11 INSTAGRAM word mark, having used the mark in connection with its goods and
12 services as early as 2010.

13 24. In addition to its extensive common law rights, Instagram owns numerous
14 United States registrations for the INSTAGRAM word mark, including, but not limited
15 to:

- 16 a) United States Registration Number 4,822,600;
- 17 b) United States Registration Number 4,146,057;
- 18 c) United States Registration Number 4,756,754;
- 19 d) United States Registration Number 4,863,595;
- 20 e) United States Registration Number 4,863,594;
- 21 f) United States Registration Number 5,566,030;
- 22 g) United States Registration Number 4,170,675; and
- 23 h) United States Registration Number 4,827,509.

24 25. Copies of these registration certificates are attached to this complaint as
25 Exhibit 4. Instagram’s common law and registered trademark rights are collectively
26 referred to as the “Instagram Trademarks.”

27
28 _____
² Instagram Brand Guidelines can be found at <https://en.instagram-brand.com/>.

1 26. In or around April 2017, Plaintiffs learned that on March 2, 2014,
2 Defendants registered and began using the domain name boostgram.com (“Domain
3 Name”), which dilutes the Instagram Trademarks. Exs. 2 and 5.

4 27. Instagram’s use of the Instagram Trademarks in interstate commerce has
5 been extensive, continuous, and substantially exclusive. Instagram has made, and
6 continues to make, a substantial investment of time and effort in the promotion of
7 Instagram and the Instagram Trademarks. Through Instagram’s widespread use of the
8 Instagram Trademarks, extensive and continuous media coverage, the high degree of
9 consumer recognition of the Instagram Trademarks, Instagram’s enormous and loyal
10 user base, its multiple trademark registrations and pending applications, and other
11 factors, the Instagram Trademarks are highly distinctive and enjoy widespread
12 recognition among consumers pre-dating Defendants’ use of the dilutive
13 “Boostgram.”

14 28. As a result of Instagram’s efforts and use, the Instagram Trademarks are
15 famous within the meaning of Section 43 (a) of the Lanham Act, 15 U.S.C. § 1125(c),
16 as they are recognized within the United States and around the world as signifying high
17 quality, authentic goods and services provided by Instagram.

18 29. Since at least August 1, 2015, Defendants have diluted the Instagram
19 Trademarks by referring to their service as “BOOSTGRAM” and listing a “Boostgram”
20 copyright on their website. Exs. 1 and 3.

21 **D. Facebook and Instagram’s Enforcement Actions against Defendants**

22 30. Since 2017, to protect Instagram users and the Instagram service,
23 Facebook and Instagram have taken multiple enforcement actions against Defendants
24 for violating Instagram’s Terms and Policies, including sending multiple cease and
25 desist letters to Defendants and disabling Facebook and Instagram accounts associated
26 with Defendants and their fake engagement operation.

1 **1. May 11, 2017 Cease and Desist**

2 31. On May 11, 2017, Facebook and Instagram sent a cease and desist letter to
3 Defendants Heilweil and Lusso for marketing and providing fake engagement services
4 through the boostgram.com website. Ex. 6. At that time, Facebook and Instagram also
5 disabled Instagram and Facebook accounts associated with Defendants.

6 32. In the May 2017 cease and desist letter, Plaintiffs demanded that
7 Defendants stop violating Instagram’s Terms and Policies, including:

- 8 • Misleading Instagram users;
- 9 • Selling APIs (application programming interfaces) or tools to others;
- 10 • Automating interactions between profiles that have no prior relationship;
- 11 • Facilitating or encouraging others to violate Instagram’s [Terms].

12 33. The May 2017 cease and desist letter informed Defendants that Facebook
13 revoked their access to use and access Facebook and Instagram services. *Id.* The May
14 2017 cease and desist letter also notified Defendants that their service interfered with
15 Facebook and Instagram; and that Defendants’ actions may have violated state and
16 federal laws, including the CFAA and the CCCDAFA. *Id.*

17 34. On May 13, 2017, in response to the May 2017 cease and desist letter, an
18 attorney representing Defendants Heilweil and Lusso contacted counsel for Facebook
19 and Instagram. In the response, Defendants’ counsel acknowledged that Defendants
20 controlled boostgram.com, stating that Defendants “intended to defend the use and
21 operation” of boostgram.com, and claimed the service did not violate Instagram’s
22 Terms and Policies. Defendants’ counsel also requested the reinstatement of
23 Defendants’ accounts and access to Facebook and Instagram, which Plaintiffs declined.

24 35. After Defendants received the cease and desist letter, Defendants
25 continued to provide the same fake engagement service to artificially inflate likes and
26 followers and only removed the references to the term “automation” on their website
27 promoting the service. Exs. 3 and 7.

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1 **2. August 27, 2019 Cease and Desist**

2 36. Despite having their access revoked, between May 16, 2017 and January
3 2, 2019, Defendants created at least seven new Instagram accounts in order to access
4 and use Instagram.

5 37. On August 27, 2019, Plaintiffs sent another cease and desist letter to
6 Defendants and referenced the May 2017 cease and desist letter. Ex. 8.

7 38. In the August 2019 letter, Facebook and Instagram again demanded that
8 Defendants stop abusing Instagram and stop violating Instagram’s Terms and Policies.
9 Plaintiffs reiterated to Defendants that their conduct may have violated the CCCDAFA
10 and the CFAA. *Id.* Facebook and Instagram again notified Defendants that their access
11 to Facebook and Instagram had been revoked and disabled Defendants’ newly created
12 accounts. *Id.*

13 39. On August 29, 2019, in response to the August 2019 cease and desist letter,
14 Defendants’ attorney informed counsel for Facebook and Instagram that Defendants did
15 not intend to stop providing fake engagement services or cease the operation of the
16 website boostgram.com.

17 40. On May 26, 2020, Plaintiffs sent a final letter to Defendants’ counsel. In
18 the May 2020 letter, Plaintiffs reiterated that Defendants’ operation violated
19 Instagram’s Terms and Policies and noted that Defendants’ access to Facebook and
20 Instagram had been revoked since May 11, 2017. Defendants failed to respond to the
21 May 2020 letter.

22 41. Despite Plaintiffs’ enforcement efforts, Defendants resumed and continued
23 to access and use the Instagram service.

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1 **E. Defendants Used an Automated Process and Bots to Artificially**
2 **Increase the Likes and Followers of Instagram Users and Interfered**
3 **with Instagram’s Service and Computer Network**

4 42. Since at least August 1, 2015 and continuing to the present, Defendants
5 used the website boostgram.com to market and provide fake engagement services for
6 Instagram and conducted financial transactions with their customers. Exs. 1 and 3.

7 43. Beginning no later than July 14, 2020, Defendants used Amazon servers
8 located in San Jose, California to host and operate their fake engagement business.

9 44. Between March 2014 and August 2019, Defendants promoted the
10 boostgram.com website on YouTube, Facebook, and Instagram. For example,
11 Defendants were the only administrators of a Facebook page named “Boostgram,”
12 which Defendants used to promote boostgram.com.

13 45. On or about March 2, 2014, Defendant Lusso created and operated an
14 Instagram account with the vanity name “getboostgram.” In the bio of that Instagram
15 account, Lusso wrote, “Generate Real Followers, Likes, and Comments on your
16 Instagram!”

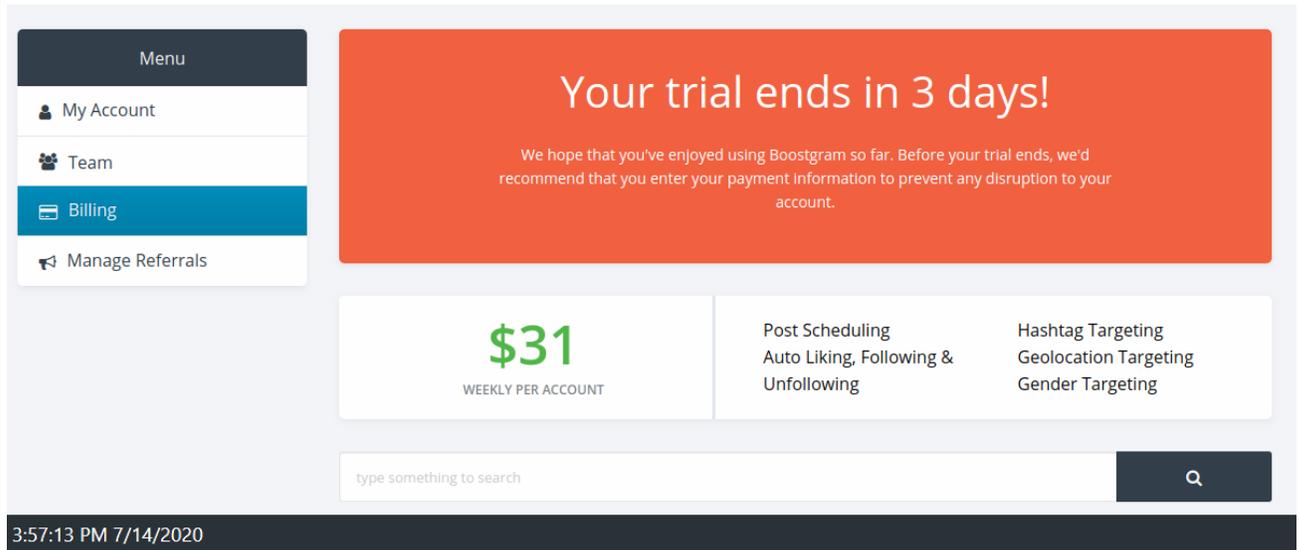
17 46. Between August 1, 2015 and May 2017, Defendants offered their
18 customers the ability to “Automate [Their] Instagram Activity” and “Get real followers,
19 likes, and comments on [their] Instagram in three clicks.” Ex. 1. Defendants stated
20 their service “automatically interacts with new fans on [their customers’] behalf.” *Id.*
21 Due to Plaintiffs’ enforcement actions, Defendants removed all references to
22 “automation” from their website but continue to offer fake engagement services. Exs.
23 3 and 7.

24 47. Since June 2017 to present, Defendants have referred to their fake
25 engagement service as “audience targeting” on their website, but nonetheless provided
26 the same service to artificially inflate likes and followers. *Id.*

27
28

1 48. Defendants charged a fixed weekly price for their fake engagement
2 services. As shown below in Figure 1, after a free three-day trial, Defendants charged
3 a weekly price of \$31 per user account for their fake engagement service.

4 **Figure 1: Boostgram Pricing**

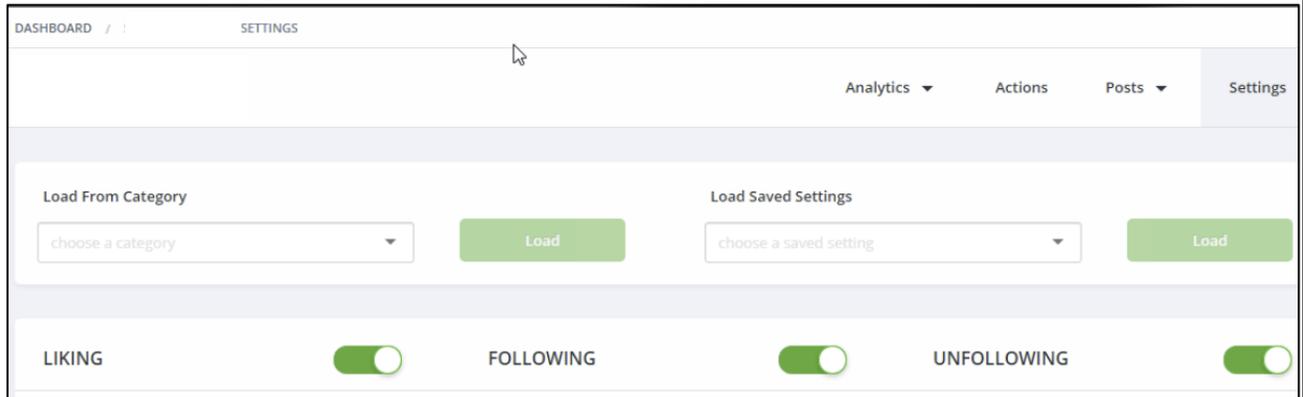


15 49. Once a customer registered their Instagram account with Boostgram,
16 Defendants used bots and computer scripts to (a) login to the customer's Instagram
17 account in an automated manner, and (b) use the Instagram account to automate the
18 delivery of thousands of artificial likes and to follow other Instagram users. This
19 conduct was not authorized by Facebook or Instagram.

20 50. As shown below in Figure 2, as of August 7, 2020, Defendants offer their
21 customers the ability to customize the fake engagement from their Instagram account.
22 And an earlier version of boostgram.com allowed customers to control the rate at which
23 the fake engagement was delivered.

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Figure 2: Boostgram Dashboard

51. For example, between July 16, 2019 and July 19, 2019, after registering an Instagram account on boostgram.com and paying Defendants \$31.00, Defendants' bots and computer scripts used the Instagram account to automate the delivery of over 5,000 likes to other Instagram accounts.

52. Similarly, between July 23, 2020 and July 30, 2020, after registering an Instagram account on boostgram.com and paying Defendants \$31.00, Defendants' automated system used the Instagram account to deliver over 6,500 likes to other Instagram accounts.

F. Defendants Unjustly Enriched Themselves and Their Unlawful Acts Have Caused Damage and a Loss to Facebook and Instagram

53. Defendants' continued breaches of Instagram's Terms and Policies have caused Facebook and Instagram substantial harm. Defendants interfered and continue to interfere with Instagram's service. Defendants created and continue to create an inauthentic experience for Instagram users who used, viewed, and relied on Defendants' fake engagement.

54. Facebook and Instagram have suffered damages attributable to the efforts and resources it has used to address this complaint, investigate, and mitigate Defendants' illegal conduct, and to identify, analyze, and stop their fraudulent and injurious activities.

1 62. Defendants' many breaches have caused Facebook and Instagram to incur
2 damages in an amount to be determined at trial, but in an amount exceeding \$75,000.

3 **SECOND CAUSE OF ACTION**

4 (California Penal Code § 502)

5 63. Facebook and Instagram incorporate all preceding paragraphs here.

6 64. Since at least May 2017, Defendants have violated California Penal Code
7 § 502 by accessing Facebook and Instagram and operating their fake engagement
8 service after Facebook and Instagram sent Defendants cease and desist letters, revoked
9 Defendants' access to Facebook and Instagram, and disabled their user accounts.

10 65. Defendants knowingly accessed and without permission used Facebook
11 and Instagram's data, computers, computer system, and computer network in order to
12 (A) devise or execute a scheme or artifice to defraud and deceive, and (B) to wrongfully
13 control or obtain money, property, or data, in violation of California Penal Code §
14 502(c)(1). Defendants' business model is based on deceiving Instagram users and
15 unjustly profiting from it.

16 66. Defendants knowingly and without permission used or caused to be used
17 Facebook and Instagram's computer services in violation of California Penal Code
18 § 502(c)(3) by accessing and using Instagram after Facebook and Instagram sent them
19 multiple cease and desist letters revoking their access to Instagram and disabled their
20 user accounts.

21 67. By artificially inflating certain Instagram users' likes and followers, and
22 impairing the intended operation of Instagram, Defendants knowingly and without
23 permission disrupted or caused the disruption of Facebook and Instagram's computer
24 services, computers, computer systems, and/or computer networks in violation of
25 California Penal Code § 502(c)(5).

26 68. Defendants knowingly and without permission accessed and caused to be
27 accessed Facebook and Instagram's computers, computer systems, and/or computer
28 networks in violation of California Penal Code § 502(c)(7). Defendants accessed

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1 Facebook and Instagram’s computer network after Facebook and Instagram disabled
2 their Instagram accounts, and sent multiple cease and desist letters to Defendants
3 revoking their access to the Instagram platform.

4 69. Because Facebook and Instagram suffered damages and a loss as a result
5 of Defendants’ actions and continue to suffer damages as result of Defendants’ actions,
6 Facebook and Instagram are entitled to compensatory damages, in an amount of at least
7 \$75,000, attorney fees, and any other amount of damages proven at trial, and injunctive
8 relief under California Penal Code § 502(e)(1) and (2).

9 70. Because Defendants willfully violated California Penal Code § 502, and
10 there is clear and convincing evidence that Defendants committed “fraud” as defined
11 by Section 3294 of the Civil Code, Facebook is entitled to punitive and exemplary
12 damages under California Penal Code § 502(e)(4).

13 **THIRD CAUSE OF ACTION**

14 (Computer Fraud and Abuse Act, 18 U.S.C. § 1030)

15 71. Facebook and Instagram incorporate all preceding paragraphs here.

16 72. Since at least May 2017, Defendants have violated 18 U.S.C. § 1030 by
17 accessing Facebook and Instagram without authorization in order to operate their fake
18 engagement service. Specifically, Defendants accessed Facebook and Instagram after
19 Plaintiffs sent Defendants multiple cease and desist letters, revoked Defendants’ access
20 to Facebook and Instagram, and disabled their accounts.

21 73. Facebook and Instagram computers and servers are protected computers as
22 defined by 18 U.S.C. § 1030(e)(2).

23 74. Defendants’ access and use of Facebook and Instagram’s computers and
24 computer systems was unauthorized since at least May 2017 because Defendants
25 accessed and used Facebook and Instagram’s computer network after Facebook and
26 Instagram disabled their Instagram accounts and sent multiple cease and desist letters
27 to Defendants revoking their access to and use of the Instagram platform.

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1 75. Defendants violated 18 U.S.C. § 1030(a)(4) because they knowingly and
2 with intent to defraud accessed Facebook and Instagram protected computers by
3 sending unauthorized commands and signals to Facebook and Instagram computers and
4 by means of such conduct furthered the intended fraud and obtained something of value.
5 Defendants sent the commands to Facebook and Instagram computers to manipulate
6 Instagram’s service by automating the delivery of likes and followers and fraudulently
7 inflating likes and followers of certain Instagram posts and accounts. Defendants did
8 these acts in exchange for profit.

9 76. Defendants violated 18 U.S.C. § 1030(b) by conspiring or attempting to
10 commit the violation alleged in the preceding paragraph.

11 77. Defendants’ conduct has caused a loss to Facebook and Instagram during
12 a one-year period in excess of \$5,000.

13 78. Defendants’ actions caused Facebook and Instagram to incur losses and
14 other economic damages, including, among other things, the expenditure of resources
15 to investigate, mitigate, and respond to Defendants’ conduct. Facebook and Instagram
16 are entitled to be compensated for losses and damages in an amount proven at trial.

17 79. Facebook and Instagram have no adequate remedy at law that would
18 prevent Defendants from continuing their fraudulent scheme. Permanent injunctive
19 relief is therefore warranted.

20 **FOURTH CAUSE OF ACTION**

21 (Cybersquatting on the Instagram Trademarks Under 15 U.S.C. § 1125(d))

22 80. Facebook and Instagram incorporate all preceding paragraphs here.

23 81. The Instagram Trademarks were highly distinctive and federally registered
24 at the United States Patent and Trademark Office at the time Defendants registered the
25 Domain Name.

26 82. The Instagram Trademarks are and were famous within the meaning of
27 15 U.S.C. § 1125(c) at the time of the registration of the Domain Name.

28 83. The Domain Name is dilutive of the Instagram Trademarks.

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1 84. Defendants registered, trafficked in, and used the Domain Name with a
2 bad-faith intent to profit from the Instagram Trademarks.

3 85. The Domain Name does not consist of the legal name of either Defendant,
4 nor does it consist of a name that is otherwise commonly used to identify either
5 Defendant.

6 86. Defendants have not made any prior use of the Domain Name in
7 connection with the *bona fide* offering of any goods or services.

8 87. Defendants have not made any *bona fide* noncommercial or fair use of the
9 Instagram Trademarks on a website accessible at the Domain Name.

10 88. Defendants registered and used the Domain Name to capitalize on the
11 Instagram Trademarks and to offer illicit services specifically aimed at Instagram.com
12 for Defendants' commercial gain. Such registration and use dilutes the distinctive
13 quality of the Instagram Trademarks by tarnishing or lessening the distinctiveness of
14 the Instagram Trademarks.

15 89. Defendants' registration, trafficking, and use of the Domain Name
16 constitutes cybersquatting in violation of 15 U.S.C. § 1125(d), entitling Facebook and
17 Instagram to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

18 90. Facebook and Instagram are entitled to recover their costs as well as
19 Defendants' profits, Plaintiffs' actual damages, or statutory damages under 15 U.S.C.
20 § 1117(d), on election by Facebook and Instagram, in an amount of \$100,000 per
21 domain name.

22 91. This is an exceptional case making Plaintiffs eligible for an award of
23 attorneys' fees under 15 U.S.C. § 1117.

24 **FIFTH CAUSE OF ACTION**

25 (Dilution of the Instagram Trademarks Under 15 U.S.C. § 1125(c))

26 92. Facebook and Instagram incorporate all preceding paragraphs here.

27 93. The Instagram Trademarks are famous, as that term is used in 15 U.S.C. §
28 1125(c), and they were famous before Defendants' use of Boostgram and variations of

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1 the Instagram Trademarks in commerce. This fame is based on, among other things,
2 the inherent distinctiveness and federal registration of each of the Instagram
3 Trademarks, as well as the extensive and exclusive worldwide use, advertising,
4 promotion, and recognition of them.

5 94. Defendants' use of Boostgram and variations thereof, in commerce is
6 likely to cause dilution by blurring, or dilution by tarnishment, of these trademarks.

7 95. Defendants' acts constitute dilution by blurring and dilution by
8 tarnishment in violation of 15 U.S.C. § 1125(c), entitling Plaintiffs to relief.

9 96. Defendants have unfairly profited from their conduct.

10 97. Defendants damaged the goodwill associated with the Instagram
11 Trademarks and will continue to cause irreparable harm.

12 98. Plaintiffs' remedy at law is not adequate to compensate them for the
13 injuries inflicted by Defendants. Accordingly, Plaintiffs are entitled to permanent
14 injunctive relief pursuant to 15 U.S.C. § 1116.

15 99. Because Defendants acted willfully, Plaintiffs are entitled to damages, and
16 those damages should be trebled pursuant to 15 U.S.C. § 1117(a).

17 100. This is an exceptional case, making Plaintiffs eligible for an award of
18 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

19 **SIXTH CAUSE OF ACTION**

20 (Unjust Enrichment)

21 101. Facebook and Instagram incorporate all preceding paragraphs here.

22 102. Defendants' acts as alleged herein constitute unjust enrichment by the
23 Defendants at Facebook and Instagram's expense.

24 103. Defendants accessed and used, without authorization or permission,
25 Facebook and Instagram's service, platform, and computer network, all of which belong
26 to Facebook and Instagram.

27 104. Defendants used Facebook and Instagram's service, platform, and
28 computer network to, among other things, defraud and deceive Instagram users,

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1 artificially inflate likes and followers for certain Instagram posts and accounts, impair
2 the intended operation of Instagram, interfere with Instagram’s service, platform, and
3 computer network, and wrongfully obtain money from the operation of their unlawful
4 business.

5 105. Defendants received a benefit by profiting off of their unauthorized use of
6 Facebook and Instagram’s service, platform, and computer network. But for
7 Defendants’ illegal use of Instagram, they would not have received the profits they
8 achieved.

9 106. Defendants’ retention of the profits derived from their unlawful and
10 unauthorized use of Facebook and Instagram’s service, platform, and computer network
11 would be unjust.

12 107. Facebook and Instagram seek an accounting and disgorgement of
13 Defendants’ ill-gotten profits in an amount to be determined at trial.

14 **REQUEST FOR RELIEF**

15 **WHEREFORE**, Facebook and Instagram are entitled to judgment against
16 Defendants on each of Plaintiffs’ causes of action awarding Facebook and Instagram:

- 17 1. Compensatory damages in an amount to be determined at trial;
- 18 2. Punitive damages in an amount to be determined at trial;
- 19 3. An accounting of each Defendants profits resulting from their fake
20 engagement service;
- 21 4. Disgorgement of Defendants’ profits resulting from their fake engagement
22 service;
- 23 5. A permanent injunction enjoining and restraining Defendants and their
24 agents, servants, employees, successors, and assigns, and all other persons acting in
25 concert or participation with any of them from:
 - 26 a. accessing or attempting to access Facebook and Instagram’s service,
27 platform, and computer systems;
- 28

10. All such other and further relief as this Court may deem just and proper.

Dated: October 20, 2020

HUNTON ANDREWS KURTH LLP

By: /s/ Ann Marie Mortimer

Ann Marie Mortimer

Jason J. Kim

Jeff R. R. Nelson

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable to a jury.

Dated: October 20, 2020

HUNTON ANDREWS KURTH LLP

By: /s/ Ann Marie Mortimer

Ann Marie Mortimer

Jason J. Kim

Jeff R. R. Nelson

Attorneys for Plaintiffs

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Los Angeles, California 90071-2627

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EXHIBIT 1

Automate Your Instagram Activity

Get real followers, likes, and comments on your instagram in three clicks.

[Start Your 3 Day Free Trial](#)

How It Works



Connect to Instagram

To get started, connect your Instagram account to Boostgram. Once you're connected, you will be allowed to access our dashboard.



Enter your Preferences

Now that you're in the Boostgram dashboard, you'll want to setup your account to target the type of audience you want to engage with.



Save & Start

Once you have perfected your settings press the Save & Start button. Now, sit back, and enjoy your new organic fans and engagement.

[Start Your 3 Day Free Trial](#)

Our Features



Automated Activity

Boostgram automatically interacts with new fans on your behalf. This leads to thousands of new people following, liking, and interacting with your profile.



Schedule Posts

Create a unique Instagram campaign or plan posts in advance, Boostgram lets you schedule any content to be posted now or in the future.



Full Control

We provide a full range of actions and settings to help you increase and target highly specific fans on your Instagram account.



Gender Targeting

Our customized gender targeting allows you to automatically interact with either female, male or both audiences.



Location Targeting

Targeting by location allows you to focus your efforts to specific geographic areas. This is very effective for local and regional businesses.



No Download

Our enterprise level software runs entirely on our own web servers, so there is no need to download or install any applications.



Manage Multiple Accounts

Add multiple Instagram accounts into your dashboard for easy and simple control over multiple Instagram accounts.



Mobile Ready

Our web based software is also 100% mobile friendly. Edit your settings on the go or login to check on your statistics.



24/7 Support

We're here to help! Our friendly support staff is available 24/7 to answer any questions through both chat and email.

Don't Be Basic, Be Awesome

Get real engagement on your Instagram right now!

[Start Your 3 Day Free Trial](#)

EXHIBIT 2

Q Inspect: boostgram.com

Domain Profile Screenshot History **Whois History** Hosting History SSL Profile

2015-01-07 - (6 years ago)
1 identical record

Domain	boostgram.com
Record Date	2015-01-07
Registrar	ENOM, INC.
Server	whois.enom.com
Created	2014-03-02 (6 years ago)
Updated	2014-03-02 (6 years ago)
Expires	2015-03-02 (5 years ago)
Unique Emails	<ul style="list-style-type: none"> • abuse@enom.com • sean@cacheventures.com

Domain Name: BOOSTGRAM.COM
Registry Domain ID: 1848853418_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.enom.com
Registrar URL: www.enom.com
Updated Date: 2014-03-02T14:53:19.00Z
Creation Date: 2014-03-02T22:53:00.00Z
Registrar Registration Expiration Date: 2015-03-02T22:53:00.00Z
Registrar: ENOM, INC.
Registrar IANA ID: 48
Registrar Abuse Contact Email: abuse@enom.com
Registrar Abuse Contact Phone: +1.4252982646
Reseller: NAMECHEAP.COM
Domain Status: clientTransferProhibited
Registry Registrant ID:
Registrant Name: SEAN HEILWEIL
Registrant Organization: CACHE VENTURES, LLC
Registrant Street: PO BOX
Registrant City: MONROE
Registrant State/Province: NY
Registrant Postal Code: 10949
Registrant Country: US
Registrant Phone: +1.6463960803
Registrant Phone Ext:
Registrant Fax:
Registrant Fax Ext:
Registrant Email: SEAN@CACHEVENTURES.COM
Registry Admin ID:
Admin Name: SEAN HEILWEIL
Admin Organization: CACHE VENTURES, LLC
Admin Street: PO BOX
Admin City: MONROE
Admin State/Province: NY
Admin Postal Code: 10949
Admin Country: US
Admin Phone: +1.6463960803
Admin Phone Ext:
Admin Fax:
Admin Fax Ext:
Admin Email: SEAN@CACHEVENTURES.COM
Registry Tech ID:
Tech Name: SEAN HEILWEIL
Tech Organization: CACHE VENTURES, LLC
Tech Street: PO BOX
Tech City: MONROE
Tech State/Province: NY
Tech Postal Code: 10949
Tech Country: US
Tech Phone: +1.6463960803
Tech Phone Ext:
Tech Fax:
Tech Fax Ext:
Tech Email: SEAN@CACHEVENTURES.COM
Name Server: NS-1013.AWSDNS-62.NET
Name Server: NS-1088.AWSDNS-08.ORG
Name Server: NS-1737.AWSDNS-25.CO.UK
Name Server: NS-311.AWSDNS-38.COM
DNSSEC: unSigned
URL of the ICANN WHOIS Data Problem Reporting System: <http://wdprs.internic.net/>

Historical Records

188 records found

EXHIBIT 3

Increase Your Instagram Exposure

Get real organic engagement on your Instagram account in just three clicks.

[Start Your 3 Day Free Trial](#)

How It Works



Connect to Instagram

To get started, connect your Instagram account to Boostgram. Once you're connected, you will be allowed to access our dashboard.



Enter your Preferences

Now that you're in the Boostgram dashboard, you'll want to setup your account to target the type of audience you want to engage with.



Save & Start

Once you have perfected your settings press the Save & Start button. Now, sit back, and enjoy your new organic fans and engagement.

[Start Your 3 Day Free Trial](#)

Our Features



Audience Targeting

Boostgram attracts new followers to your Instagram account. This leads to thousands of new people following, liking, and interacting with your profile.



Schedule Posts

Create a unique Instagram campaign or plan posts in advance, Boostgram lets you schedule any content to be posted now or in the future.



Full Control

We provide a full range of actions and settings to help you increase and target highly specific fans on your Instagram account.



Gender Targeting

Our customized gender targeting allows you to automatically interact with either female, male or both audiences.



Location Targeting

Targeting by location allows you to focus your efforts to specific geographic areas. This is very effective for local and regional businesses.



No Download

Our enterprise level software runs entirely on our own web servers, so there is no need to download or install any applications.



Manage Multiple Accounts

Add multiple Instagram accounts into your dashboard for easy and simple control over multiple Instagram accounts.



Mobile Ready

Our web based software is also 100% mobile friendly. Edit your settings on the go or login to check on your statistics.



24/7 Support

We're here to help! Our friendly support staff is available 24/7 to answer any questions through both chat and email.

Don't Be Basic, Be Awesome

Get real engagement on your Instagram right now!

[Start Your 3 Day Free Trial](#)

EXHIBIT 4

United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,822,600

INSTAGRAM, LLC (DELAWARE LIMITED LIABILITY COMPANY)
1601 WILLOW ROAD

Registered Sep. 29, 2015

MENLO PARK, CA 94035

Int. Cl.: 9

FOR: DOWNLOADABLE COMPUTER SOFTWARE FOR MODIFYING THE APPEARANCE AND ENABLING TRANSMISSION OF IMAGES, AUDIO-VISUAL AND VIDEO CONTENT; COMPUTER SOFTWARE FOR THE COLLECTION, EDITING, ORGANIZING, MODIFYING, TRANSMISSION, STORAGE AND SHARING OF DATA AND INFORMATION; COMPUTER SOFTWARE FOR USE AS AN APPLICATION PROGRAMMING INTERFACE (API); COMPUTER SOFTWARE IN THE NATURE OF AN APPLICATION PROGRAMMING INTERFACE (API) WHICH FACILITATES ONLINE SERVICES FOR SOCIAL NETWORKING, BUILDING SOCIAL NETWORKING APPLICATIONS AND FOR ALLOWING DATA RETRIEVAL, UPLOAD, DOWNLOAD, ACCESS AND MANAGEMENT; COMPUTER SOFTWARE TO ENABLE UPLOADING, DOWNLOADING, ACCESSING, POSTING, DISPLAYING, TAGGING, BLOGGING, STREAMING, LINKING, SHARING OR OTHERWISE PROVIDING ELECTRONIC MEDIA OR INFORMATION VIA COMPUTER AND COMMUNICATION NETWORKS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 10-6-2010; IN COMMERCE 10-6-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 4,146,057 AND 4,170,675.

SN 85-965,174, FILED 6-20-2013.

BARBARA BROWN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,146,057

Registered May 22, 2012

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

INSTAGRAM, INC. (DELAWARE CORPORATION)
181 SOUTH PARK AVENUE
SAN FRANCISCO, CA 94107

FOR: DOWNLOADABLE COMPUTER SOFTWARE FOR MODIFYING THE APPEARANCE AND ENABLING TRANSMISSION OF PHOTOGRAPHS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-6-2010; IN COMMERCE 10-6-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

THE WORDING "INSTAGRAM" HAS NO MEANING IN A FOREIGN LANGUAGE.

SER. NO. 85-426,267, FILED 9-19-2011.

BILL DAWE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,756,754

INSTAGRAM, LLC (DELAWARE LIMITED LIABILITY COMPANY)
1601 WILLOW ROAD
MENLO PARK, CA 94025

Registered June 16, 2015

Int. Cls.: 35 and 38

FOR: MARKETING, ADVERTISING AND PROMOTION SERVICES; DISSEMINATION OF ADVERTISING FOR OTHERS VIA COMPUTER AND COMMUNICATION NETWORKS; MARKETING AND ADVERTISING CONSULTATION SERVICES; PROMOTING THE GOODS AND SERVICES OF OTHERS VIA COMPUTER AND COMMUNICATION NETWORKS; MARKET RESEARCH SERVICES; PROVISION OF MARKET RESEARCH INFORMATION, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SERVICE MARK

PRINCIPAL REGISTER

FIRST USE 8-0-2013; IN COMMERCE 11-1-2013.

FOR: TELECOMMUNICATION SERVICES, NAMELY, TRANSMISSION OF ADVERTISEMENTS AND MEDIA ADVERTISING COMMUNICATIONS VIA COMPUTER AND COMMUNICATION NETWORKS, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 8-0-2013; IN COMMERCE 11-1-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 4,146,057 AND 4,170,675.

SN 86-100,072, FILED 10-24-2013.

SANJEEV VOHRA, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

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United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,863,595

INSTAGRAM, LLC (DELAWARE LIMITED LIABILITY COMPANY)
1601 WILLOW ROAD
MENLO PARK, CA 94025

Registered Dec. 1, 2015

Int. Cl.: 38

SERVICE MARK

PRINCIPAL REGISTER

FOR: TELECOMMUNICATIONS SERVICES, NAMELY, ELECTRONIC TRANSMISSION OF DATA, MESSAGES, GRAPHICS, IMAGES, VIDEOS AND INFORMATION; PEER-TO-PEER PHOTO AND VIDEO SHARING SERVICES, NAMELY, ELECTRONIC TRANSMISSION OF DIGITAL PHOTOS, VIDEO AND AUDIO-VISUAL FILES AMONG INTERNET USERS; PROVIDING ACCESS TO COMPUTER, ELECTRONIC AND ONLINE DATABASES; PROVIDING ONLINE FORUMS FOR COMMUNICATION, NAMELY, TRANSMISSION ON TOPICS OF GENERAL INTEREST; PROVIDING ONLINE CHAT ROOMS AND ELECTRONIC BULLETIN BOARDS FOR TRANSMISSION OF MESSAGES AMONG USERS IN THE FIELD OF GENERAL INTEREST; BROADCASTING SERVICES OVER COMPUTER OR OTHER COMMUNICATION NETWORKS, NAMELY, UPLOADING, POSTING, DISPLAYING, TAGGING, AND ELECTRONICALLY TRANSMITTING DATA, INFORMATION, MESSAGES, GRAPHICS, VIDEOS, AND IMAGES, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 10-6-2010; IN COMMERCE 10-6-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 4,146,057 AND 4,170,675.

SN 85-965,177, FILED 6-20-2013.

BARBARA BROWN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

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Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

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United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,863,594

INSTAGRAM, LLC (DELAWARE LIMITED LIABILITY COMPANY)
1601 WILLOW ROAD
MENLO PARK, CA 94025

Registered Dec. 1, 2015

Int. Cl.: 41

FOR: PROVIDING COMPUTER, ELECTRONIC AND ONLINE DATABASES IN THE FIELD OF ENTERTAINMENT; PUBLICATION OF ELECTRONIC JOURNALS AND WEB LOGS FEATURING USER GENERATED OR SPECIFIED CONTENT; PUBLISHING OF ELECTRONIC PUBLICATIONS FOR OTHERS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

SERVICE MARK

PRINCIPAL REGISTER

FIRST USE 10-6-2010; IN COMMERCE 10-6-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 4,146,057 AND 4,170,675.

SN 85-965,169, FILED 6-20-2013.

BARBARA BROWN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

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Requirements in the First Ten Years*

What and When to File:

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Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

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United States of America

United States Patent and Trademark Office

INSTAGRAM

Reg. No. 5,566,030

Registered Sep. 18, 2018

Int. Cl.: 42

Service Mark

Principal Register

Instagram, LLC (DELAWARE LIMITED LIABILITY COMPANY)
1601 Willow Road
Menlo Park, CALIFORNIA 94025

CLASS 42: Providing a web site that gives users the ability to upload images; file sharing services, namely, providing a website featuring technology enabling users to upload electronic files; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information

FIRST USE 11-5-2012; IN COMMERCE 11-5-2012

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

OWNER OF U.S. REG. NO. 4170675, 4146057

SER. NO. 85-965,167, FILED 06-20-2013



Andrei Iancu

Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,170,675

Registered July 10, 2012

Int. Cl.: 42

SERVICE MARK

PRINCIPAL REGISTER

INSTAGRAM, INC. (DELAWARE CORPORATION)
181 SOUTH PARK AVENUE
SAN FRANCISCO, CA 94107

FOR: PROVIDING A WEB SITE THAT GIVES USERS THE ABILITY TO UPLOAD PHOTOGRAPHS; TECHNICAL SUPPORT SERVICES, NAMELY, PROVIDING HELP DESK SERVICES IN THE FIELD OF COMPUTER SOFTWARE, NAMELY, PROVIDING USERS WITH INSTRUCTIONS AND ADVICE ON THE USE OF DOWNLOADABLE COMPUTER SOFTWARE, PROVIDED ONLINE AND VIA E-MAIL; COMPUTER SERVICES, NAMELY, PROVIDING AN INTERACTIVE WEBSITE FEATURING TECHNOLOGY THAT ALLOWS USERS TO MANAGE THEIR ONLINE PHOTOGRAPH AND SOCIAL NETWORKING ACCOUNTS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-6-2010; IN COMMERCE 10-6-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

THE WORD "INSTAGRAM" HAS NO MEANING IN A FOREIGN LANGUAGE.

SER. NO. 85-426,271, FILED 9-19-2011.

BILL DAWE, EXAMINING ATTORNEY



David S. Kappas

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

INSTAGRAM

Reg. No. 4,827,509

INSTAGRAM LLC (DELAWARE LIMITED LIABILITY COMPANY)
1601 WILLOW ROAD
MENLO PARK, CA 94025

Registered Oct. 6, 2015

Int. Cl.: 45

FOR: INTERNET BASED SOCIAL INTRODUCTION, NETWORKING AND DATING SERVICES; PROVIDING INFORMATION IN THE FORM OF DATABASES FEATURING INFORMATION IN THE FIELDS OF SOCIAL NETWORKING, SOCIAL INTRODUCTION AND DATING, IN CLASS 45 (U.S. CLS. 100 AND 101).

SERVICE MARK

PRINCIPAL REGISTER

FIRST USE 10-6-2010; IN COMMERCE 10-6-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-965,171, FILED 6-20-2013.

EUGENIA MARTIN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT 5

Q Inspect: boostgram.com

- Domain Profile
- Screenshot History
- Whois History**
- Hosting History
- SSL Profile

2016-01-29 - (5 years ago)
2 identical records

Domain	boostgram.com
Record Date	2016-01-29
Registrar	ENOM, INC.
Server	whois.enom.com
Created	2014-03-02 (6 years ago)
Updated	2015-03-11 (5 years ago)
Expires	2016-03-02 (4 years ago)
Unique Emails	<ul style="list-style-type: none"> • abuse@enom.com • 649cb8282f554b188484ec10106420eb.protect@whoisguard.com

Domain Name: BOOSTGRAM.COM
Registry Domain ID: 1848853418_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.enom.com
Registrar URL: www.enom.com
Updated Date: 2015-02-16T08:21:24.00Z
Creation Date: 2014-03-02T22:53:00.00Z
Registrar Registration Expiration Date: 2016-03-02T22:53:16.00Z
Registrar: ENOM, INC.
Registrar IANA ID: 48
Reseller: NAMECHEAP.COM
Domain Status: clientTransferProhibited <https://www.icann.org/epp#clientTransferProhibited>
Registry Registrant ID:
Registrant Name: WHOISGUARD PROTECTED
Registrant Organization: WHOISGUARD, INC.
Registrant Street: P.O. BOX 0823-03411
Registrant City: PANAMA
Registrant State/Province: PANAMA
Registrant Postal Code: 00000
Registrant Country: PA
Registrant Phone: +507.8365503
Registrant Phone Ext:
Registrant Fax: +51.17057182
Registrant Fax Ext:
Registrant Email: 649CB8282F554B188484EC10106420EB.PROTECT@WHOISGUARD.COM
Registry Admin ID:
Admin Name: WHOISGUARD PROTECTED
Admin Organization: WHOISGUARD, INC.
Admin Street: P.O. BOX 0823-03411
Admin City: PANAMA
Admin State/Province: PANAMA
Admin Postal Code: 00000
Admin Country: PA
Admin Phone: +507.8365503
Admin Phone Ext:
Admin Fax: +51.17057182
Admin Fax Ext:
Admin Email: 649CB8282F554B188484EC10106420EB.PROTECT@WHOISGUARD.COM
Registry Tech ID:
Tech Name: WHOISGUARD PROTECTED
Tech Organization: WHOISGUARD, INC.
Tech Street: P.O. BOX 0823-03411
Tech City: PANAMA
Tech State/Province: PANAMA
Tech Postal Code: 00000
Tech Country: PA
Tech Phone: +507.8365503
Tech Phone Ext:
Tech Fax: +51.17057182
Tech Fax Ext:
Tech Email: 649CB8282F554B188484EC10106420EB.PROTECT@WHOISGUARD.COM
Name Server: NS-1013.AWSDNS-62.NET
Name Server: NS-1259.AWSDNS-29.ORG
Name Server: NS-1865.AWSDNS-41.CO.UK
Name Server: NS-438.AWSDNS-54.COM
Name Server: NS-626.AWSDNS-14.NET
DNSSEC: unSigned
Registrar Abuse Contact Email: abuse@enom.com
Registrar Abuse Contact Phone: +1.4252982646
URL of the ICANN WHOIS Data Problem Reporting System: <http://wdprs.internic.net/>

Historical Records

194 records found

EXHIBIT 6



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F +1.602.648.7000
PerkinsCoie.com

May 11, 2017

Kendra L. Haar
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VIA EMAIL

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sean@chcklst.com

Jarrett C. Lusso
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Bethpage, NY 11714-3101
jclusso@gmail.com

Darrell A. Prins
1450 W. Lambert Rd. #36
La Habra, CA 90631-6583
darrellthedesigner@gmail.com

Re: Cease and Desist Abuse of Instagram

Dear Mr. Heilweil, Mr. Lusso, and Mr. Prins:

We represent Facebook, Inc., based in Menlo Park, California, and Instagram, Inc. It has come to our attention that, through your websites including but not limited to, <https://boostgram.com/>, <https://try.boostgram.com/boosta>, and https://app.boostgram.com/signup?invite_code=boosta, you are selling access to software, or a bot, that automates actions on Instagram including likes, follows, comments, and messages to other Instagram users. This violates Instagram's terms of service.

Instagram demands that you stop this activity immediately.

Instagram takes the protection of the user experience very seriously, and it is committed to keeping its site safe for users to interact and share information. Instagram has developed its terms of service to protect the user experience and to facilitate these goals.

Instagram's terms of service prohibit, among other things:

- Misleading Instagram users. Your services automate various user activities, creating the false impression that accounts created or the actions taken from those accounts belong to

Sean Heilweil
Jarret Lusso
Darrell Prins
May 11, 2017
Page 2

real persons. Similarly, the fake “likes,” and related actions your software provides to photos and posts attempt to give the false impression of genuine interest in content.

- Automating user actions. Your service automates the processes of finding, following, and commenting on user content, taking multiple actions at once and without express user consent. Moreover, Instagram’s terms permit applications to post to Instagram only to manage business communications with people who have expressed interest in them, and not for other purposes.
- Selling APIs or tools to others. From your website, it appears that your software is designed specifically as a tool to increase the amount of Instagram likes and followers that visit your users’ accounts. This directly violates Facebook’s and Instagram’s terms.
- Accessing Instagram through automated means. Your service automates a variety of actions on Instagram. You may not access Facebook or Instagram through automated means without Facebook and Instagram’s prior permission.
- Facilitating or encouraging others to violate Instagram’s terms. Your software cannot be used on Instagram without violating their terms. By selling or licensing the software to others, you are facilitating the violations of Instagram’s terms as described above.

See Instagram Terms of Use, <http://instagram.com/about/legal/terms/>; and Instagram API Terms of Use, <http://instagram.com/about/legal/terms/api/>.

In addition to breaching the terms of service, and interfering with Facebook and Instagram’s business expectations and interests, your activities may violate federal and state laws. *See* Computer Fraud and Abuse Act, 18 U.S.C. § 1030; California Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502(c).

Facebook and Instagram have taken technical steps to deactivate your Facebook and Instagram accounts, and your limited license to access or use the Facebook and Instagram websites and/or services has been revoked. **This means that you, your agents, your employees, anyone acting on your behalf, and/or on behalf of your website (collectively “You” or “Your”) may not access the Facebook or Instagram websites, use the Facebook or Instagram APIs, or use any of the services offered by Facebook or Instagram for any reason whatsoever.** Facebook and Instagram will treat further activity by You on their websites or services as unauthorized access to its protected computer networks.

Sean Heilweil
Jarret Lusso
Darrell Prins
May 11, 2017
Page 3

Please respond to me in writing WITHIN 48 HOURS confirming that You:

- Have stopped and will not in the future access the Facebook and Instagram websites and/or use Facebook and Instagram's services for any reason whatsoever;
- Have preserved and will continue to preserve in the future all information related to Your offering and/or sale of Facebook and Instagram services;
- Have stopped and will not in the future offer, transfer, market, sell or offer to sell any services related to Facebook and Instagram;
- Have shut down all websites You operate that are used to sell Facebook or Instagram services, and have removed all advertisements or postings on external websites advertising or describing Your Facebook or Instagram services;
- Have removed all references to Facebook and Instagram from any and all websites that You own or have the ability to control; and
- Will account for and disgorge any and all revenue earned from Your unauthorized activities related to Facebook and Instagram.

Along with Your responses, You must provide the following information:

- A complete list of any and all Facebook and Instagram accounts You have created, developed, maintained, or controlled;
- A complete list of domain names that You own, maintain, or control presently, along with all domain names that you have previously used to offer Facebook or Instagram services;
- A detailed description of the methods used to automate Instagram functionality and provide Instagram-related services;
- A complete accounting of each and every customer who purchased your Facebook or Instagram services, including an accounting of all compensation or revenue received by You, and the URLs for each profile and/or Page for which You rendered those services; and
- A copy of each and every version of any software code You have developed or used to interact with the Facebook and Instagram websites and/or services.

Sean Heilweil
Jarret Lusso
Darrell Prins
May 11, 2017
Page 4

If you ignore this letter and continue your improper conduct, Facebook and Instagram will take necessary measures to enforce its rights, maintain the quality of its website, and protect their users.

This letter is not intended by us, and should not be construed by you, as a waiver or relinquishment of any of Facebook's or Instagram's rights or remedies. Facebook and Instagram specifically reserve all such rights and remedies whether at law or in equity.

Sincerely,


Kendra L. Haar

KLH

EXHIBIT 7



Increase Your Instagram Exposure

Get real organic engagement on your Instagram account in just three clicks.

[Start Your 3 Day Free Trial](#)

How It Works



Connect to Instagram

To get started, connect your Instagram account to Boostgram. Once you're connected, you will be allowed to access our dashboard.



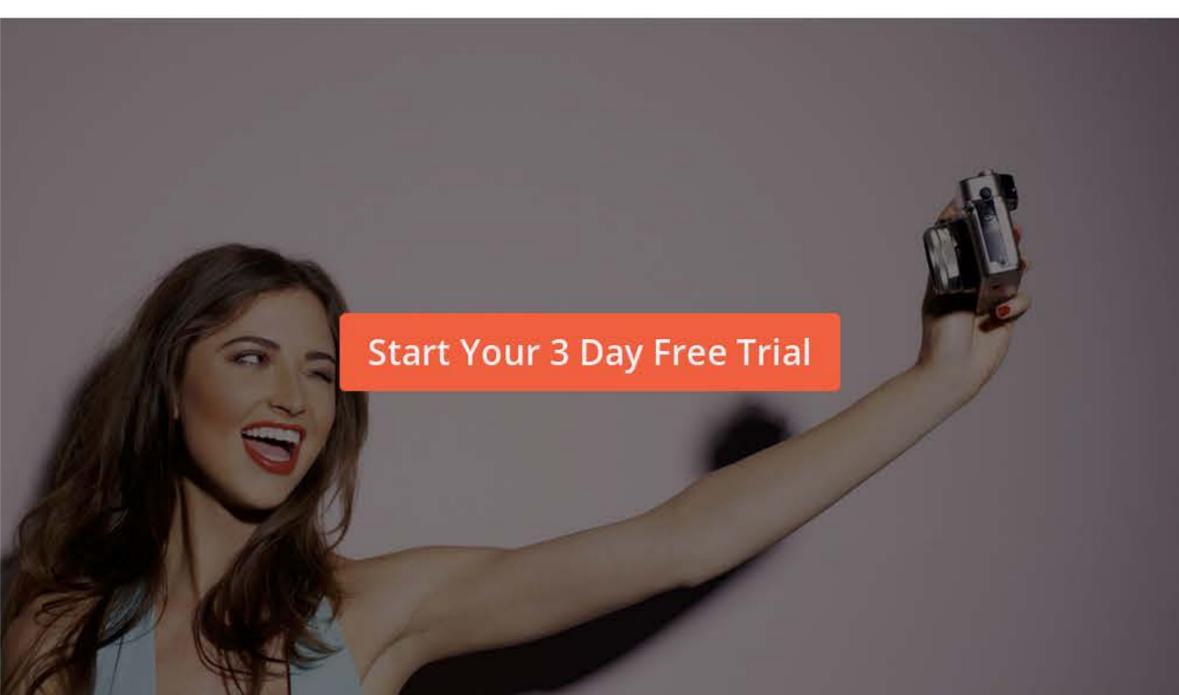
Enter your Preferences

Now that you're in the Boostgram dashboard, you'll want to setup your account to target the type of audience you want to engage with.



Save & Start

Once you have perfected your settings press the Save & Start button. Now, sit back, and enjoy your new organic fans and engagement.



[Start Your 3 Day Free Trial](#)

Our Features



Audience Targeting

Boostgram attracts new followers to your Instagram account. This leads to thousands of new people following, liking, and interacting with your profile.



Schedule Posts

Create a unique Instagram campaign or plan posts in advance, Boostgram lets you schedule any content to be posted now or in the future.



Full Control

We provide a full range of actions and settings to help you increase and target highly specific fans on your Instagram account.



Gender Targeting

Our customized gender targeting allows you to automatically interact with either female, male or both audiences.



Location Targeting

Targeting by location allows you to focus your efforts to specific geographic areas. This is very effective for local and regional businesses.



No Download

Our enterprise level software runs entirely on our own web servers, so there is no need to download or install any applications.



Manage Multiple Accounts

Add multiple Instagram accounts into your dashboard for easy and simple control over multiple Instagram accounts.



Mobile Ready

Our web based software is also 100% mobile friendly. Edit your settings on the go or login to check on your statistics.



24/7 Support

We're here to help! Our friendly support staff is available 24/7 to answer any questions through both chat and email.

Don't Be Basic, Be Awesome

Get real engagement on your Instagram right now!

[Start Your 3 Day Free Trial](#)

EXHIBIT 8



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August 27, 2019

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VIA EMAIL

Boostgram
c/o Raymond Lang, esq.
Attorney at Law
Raymond Lang & Associates P.C.
532 Broadhollow Road, Suite 114
Melville, NY 11747
rlang@asyourlawyer.com

**Re: CEASE AND DESIST ABUSE OF FACEBOOK AND INSTAGRAM -
BOOSTGRAM**

Dear Mr. Lang:

As you know, we represent Facebook, Inc., based in Menlo Park, California. We have previously interacted regarding your clients Jared Lusso, Sean Heilweil, and their website Boostgram.

We originally wrote to your clients on May 11, 2017, asking them to stop providing services that automate likes and other engagement on Instagram, a Facebook product. Although you provided a response to our letter, the matter has never been resolved. Although you claimed at the time that Boostgram did not access Instagram through automated means, your clients' website at boostgram.com, as well as evidence gathered by Facebook, confirm that your clients continue to offer services that automate multiple actions on Instagram, including fake and automated engagement services. These activities violate Instagram's terms of service. This conduct is unacceptable.

Facebook demands that your clients stop this activity *immediately*.

Facebook takes the protection of the user experience very seriously, and it is committed to keeping its websites safe for users to interact and share information. Instagram has developed its terms of service to protect the user experience and to facilitate these goals.

Instagram's terms of service prohibit, among other things:

- ***Misleading Instagram Users.*** Your clients' service automates various Instagram activities, creating the false impression that actions taken from those accounts, and the accounts themselves, are associated with real persons. Similarly, the fake "likes," "followers," and related actions give the false impression of genuine interest in the content.

Raymond Lang
August 27, 2019
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- ***Automating user actions.*** Your clients' service automates several processes on Instagram, including delivering a "like." It also allows an account to take multiple actions at once. Instagram's terms prohibit companies from offering services to users that allow the user to take more than one action on Instagram at a time.
- ***Accessing Instagram through automated means.*** Your clients advertise "automatically interact[ing]" with targeted accounts, as well as the ability to schedule Instagram posts. Accessing Instagram through automated means for these purposes is not permitted.
- ***Facilitating or encouraging others to violate Instagram's terms.*** Your clients' software cannot be used on Instagram without violating their terms. By selling or licensing the software to others, you are facilitating the violations of Instagram's terms as described above.

See Instagram Terms of Service, <http://instagram.com/about/legal/terms/>; and Instagram Platform Policy, <http://instagram.com/about/legal/terms/api/>.

In addition to breaching the terms of service and interfering with Facebook's business expectations and interests, your activities may violate other federal and state laws. See Computer Fraud and Abuse Act, 18 U.S.C. § 1030 and the California Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502(c).

Facebook has taken technical steps to deactivate your clients' Facebook and Instagram accounts, and hereby revokes your clients' limited licenses to access Facebook and Instagram. This means that your clients, their agents, employees, affiliates, or anyone acting on their behalf may not access the Facebook or Instagram websites, Platforms, or networks for any reason whatsoever. Facebook will treat any further activity by your clients on its websites, Platforms, services or networks as intentional and unauthorized access to its protected computer networks.

Please respond to me **WITHIN 48 hours** confirming that Boostgram, and your clients individually:

- Have stopped and will not in the future access the Facebook and Instagram websites and/or use Facebook's and Instagram's services for any reason whatsoever;
- Have preserved and will continue to preserve in the future all information related to their offering and/or sale of Instagram services;
- Have stopped and will not in the future offer, transfer, market, sell or offer to sell any services related to Facebook and Instagram;

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- Will transfer all domains that include the terms “Insta,” “Gram,” or similar domains related to Facebook or Instagram to Facebook;
- Have shut down all websites they operate that are used to sell Facebook or Instagram services, and have removed all advertisements or postings on external websites advertising or describing their Facebook or Instagram services;
- Have removed all references to Facebook and Instagram from any and all websites that they own or have the ability to control; *and*
- Will account for and disgorge any and all revenue earned from their unauthorized activities related to Facebook and Instagram.

Along with your responses, Facebook requires the following information:

- A complete list of any and all Facebook and Instagram accounts your clients have created, developed, maintained, or controlled;
- A complete list of domain names that they own, maintain, or control presently, along with all domain names that they have previously used to offer Facebook or Instagram services;
- A detailed description of the methods they have used to automate Facebook and Instagram functionality and provide Facebook and Instagram related services;
- A complete accounting of each and every customer who purchased their Facebook or Instagram services, including an accounting of all compensation or revenue received by them, and the URLs for each profile and/or Page for which they rendered those services; *and*
- A copy of each and every version of any software code they have developed or used to interact with the Facebook and Instagram websites and/or services.

If your clients ignore this letter and continue their current improper conduct, Facebook will take whatever measures it believes are necessary to enforce its rights, maintain the quality of its websites, and protect users’ information and privacy.

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August 27, 2019
Page 4

This letter is not intended by us, and should not be construed by you or your clients, as a waiver or relinquishment of any of Facebook's rights or remedies in this matter. Facebook specifically reserves all such rights and remedies whether at law or in equity, under applicable domestic and foreign laws.

Sincerely,


Kendra L. Haar