

1 WILLIAM W. OXLEY (State Bar No. 136793)
woxley@orrick.com
2 CHRISTOPHER S. RUHLAND (State Bar No. 175054)
cruhland@orrick.com
3 NATHAN J. NOVAK (State Bar No. 240473)
nnovak@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
777 South Figueroa Street
5 Suite 3200
Los Angeles, CA 90017
6 Telephone: 213-629-2020
Facsimile: 213-612-2499

7 Attorneys for Plaintiff
8 MySpace, Inc.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 MYSPACE, INC., a Delaware
corporation,

13 Plaintiff,

14 vs.

15 OPTINREALBIG.COM, LLC, a
16 Colorado limited liability company,
CPA EMPIRE.COM, LLC, a
17 Colorado limited liability company,
18 MEDIA BREAKAWAY, LLC, a
Nevada limited liability company,
19 and SCOTT RICHTER, MARAT
NIGMATZYANOV, and
20 YEVGENIY LESCHINSKIY, and
DOES 1-10, inclusive, individuals,

21 Defendants.
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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
CV 07 0496 GHK
(RCX)

Case No.

COMPLAINT FOR:

- (1) VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT
- (2) VIOLATIONS OF THE CAN-SPAM ACT
- (3) VIOLATIONS OF THE ELECTRONIC COMMUNICATION PRIVACY ACT
- (4) VIOLATIONS OF CALIFORNIA'S ANTI-SPAM STATUTE
- (5) BREACH OF CONTRACT
- (6) UNFAIR COMPETITION
- (7) TRESPASS TO CHATTELS
- (8) CONVERSION

DEMAND FOR JURY TRIAL

1 Plaintiff MySpace, Inc. alleges as follows against defendants
2 Optinrealbig.com LLC (“Optinrealbig.com”), CPA Empire.com LLC (“CPA
3 Empire.com”), Media Breakaway LLC (“Media Breakaway”) and Scott Richter
4 (collectively, the “Richter Defendants”), Marat Nigmatzyanov, Yevgeniy
5 Leshchinskiy, and Does 1-10, inclusive:

6 **JURISDICTION AND VENUE**

7 1. This is a civil action for violations of the Computer Fraud and Abuse
8 Act, 18 U.S.C. § 1030, the CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.*, the
9 Electronic Communication Privacy Act, 18 U.S.C. § 2701 *et seq.*, and California’s
10 Anti-Spam statute, California Business and Professions Code § 17529 *et seq.*,
11 breach of contract, unfair competition under California Business and Professions
12 Code § 17200 *et seq.* and the common law, trespass to chattels, and conversion.
13 The Court has jurisdiction over the Computer Fraud and Abuse Act, CAN-SPAM
14 Act, and Electronic Communication Privacy Act claims under 28 U.S.C. § 1331.
15 The Court has supplemental jurisdiction over the remaining claims under 28 U.S.C.
16 § 1367.

17 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

18 **PARTIES**

19 3. Plaintiff MySpace is a corporation organized under the laws of the
20 State of Delaware, with its principal place of business in Beverly Hills, California.

21 4. Defendant Scott Richter is a self-described “high volume e-mail
22 deployer” and the principal of a number of companies that specialize in spamming,
23 including Optinrealbig.com and CPA Empire.com, both Colorado limited liability
24 companies, and Media Breakaway, a Nevada limited liability company.
25 Nigmatzyanov and Leshchinskiy are individuals believed to be residents of
26 Maryland who carried out certain of the tortious acts described in this Complaint at
27 Richter’s behest. Does 1-10, inclusive, also carried out certain of the tortious acts
28 described in this Complaint at Richter’s behest. On information and belief, each

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1 Defendant is responsible for the acts alleged herein, and MySpace's injuries were
2 proximately caused by these Defendants.

3 **MYSFACE AND ITS ONLINE COMMUNITY**

4 5. MySpace operates a popular social networking website located at
5 MySpace.com. Through the website, MySpace members create personal profiles,
6 which become the members' "space" on MySpace.com. These profiles typically
7 include personal descriptions, photographs, blogs, and other information. Once a
8 member creates a profile, the member can build a personal network within
9 MySpace by inviting others to become a part of the member's personal network or
10 by accepting an invitation to become a part of another member's personal network.
11 The MySpace users within a member's personal network are known as "friends."
12 MySpace members use these personal networks to communicate with friends and to
13 find other friends. MySpace has registered over 140 million members.

14 6. MySpace employs internal email systems, including bulletin systems,
15 that MySpace owns, operates, and administers. MySpace members use these
16 systems to communicate with other members. MySpace also employs a system that
17 MySpace owns, operates, and administers that allows MySpace members to invite
18 other members to become friends and to accept or reject invitations to become
19 friends. When a MySpace member posts a bulletin, an electronic message is
20 transmitted to each of that member's friends.

21 7. An important aspect of the MySpace experience is that members
22 generally receive communications only from a limited number of people. MySpace
23 members do not expect to receive – and should not receive – unsolicited mass
24 communications, such as spam. MySpace employs various security measures to
25 prohibit the unauthorized use of its website and its computers.

26 8. In addition to these security measures, MySpace's terms of use
27 prohibit any form of unsolicited mass communication. Each user on MySpace.com
28 agrees to be bound by the Terms of Use Agreement (the "Agreement"), which

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1 prohibits, among other things, spamming, sending any unsolicited mass mailing or
2 instant messaging, using MySpace for commercial services, and making any
3 automated use of the system, such as using scripts to send bulletins or other
4 communications. The Agreement also provides that “if you breach this Agreement
5 and send unsolicited email, instant messages or other unsolicited communications
6 of any kind through the Services, you acknowledge that you will have caused
7 substantial harm to MySpace.com, but that the amount of such harm would be
8 extremely difficult to ascertain. As a reasonable estimation of such harm, you agree
9 to pay MySpace.com \$50 for each such unsolicited email or other unsolicited
10 communication you send through the Services.”

11 9. In addition, the Agreement prohibits users from submitting any
12 content on MySpace.com that, without limitation, (a) promotes information that is
13 known to be false or misleading or (b) solicits passwords or personal identifying
14 information for commercial or unlawful purposes. The Agreement also prohibits,
15 among other things: (a) any criminal or tortious activity; (b) attempting to
16 impersonate another member or person; (c) using an account, username, or
17 password of another member; and (d) using MySpace in a manner inconsistent with
18 any and all applicable laws and regulations.

19 10. All MySpace members, including the Defendants, are parties to the
20 Agreement or are bound to the terms of the Agreement through the actions of
21 parties thereto.

22 **DEFENDANTS’ UNLAWFUL CONDUCT**

23 11. The Richter Defendants specialize in the delivery of commercial e-
24 mails – known as “spam” – in very high volumes. Beginning in July of 2006 and
25 continuing into December of 2006, the Richter Defendants arranged for millions of
26 spam “bulletins” to be sent through MySpace’s network.

27 12. Defendants sent these spam bulletins through the accounts of existing
28 MySpace users without those users’ knowledge. On information and belief,

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1 Defendants accomplished this by either misappropriating the login names and
2 passwords of existing MySpace users through phishing or by acquiring a list of
3 phished names and passwords from one or more third parties.

4 13. Defendants used computer programs called “scripts” to login into
5 compromised MySpace users’ accounts and send the spam bulletins. The scripts –
6 computer programs that execute a predetermined set of commands repeatedly –
7 allowed for the spam bulletins to be mass-distributed quickly. The bulletins
8 promoted websites that offered recipients, for instance, free “ringtones” for cellular
9 phones, free Lacoste polo shirts, or a free “Sidekick 3.”

10 14. While most spam is easily identified as spam and often ignored by
11 recipients, the Defendants’ spam attack was more successful because the
12 Defendants used stolen account information to make it appear that bulletin
13 recipients were receiving the bulletins from their friends. Additionally, the
14 bulletins included statements that appeared to be made by legitimate MySpace users
15 and that professed the legitimacy of the promotions.

16 15. The sending of a bulletin results in an electronic message being sent
17 to each friend in a MySpace user’s network. Thus, the Defendants caused millions
18 of spam bulletin messages to be sent to MySpace users.

19 16. The Richter Defendants had knowledge of the other Defendants’
20 unlawful actions and authorized and/or directed them to take the actions described
21 in this Complaint on the Richter Defendants’ behalf.

22 **FIRST CLAIM FOR RELIEF**

23 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

24 (18 U.S.C. § 1030)

25 17. MySpace realleges and incorporates herein by reference the
26 allegations in paragraphs 1-16.

27 18. Defendants knowingly and intentionally: (a) accessed MySpace’s
28 computers without authorization or in excess of any authorization and thereby

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1 obtained information from MySpace's protected computers in a transaction
2 involving an interstate or foreign communication; (b) knowingly and with an intent
3 to defraud accessed MySpace's computers without authorization or in excess of any
4 authorization and obtained information from MySpace's computers, which, on
5 information and belief, Defendants used to obtain something of value; and (c)
6 knowingly and with an intent to defraud trafficked in passwords through which
7 computers were accessed without authorization and affected interstate commerce.

8 19. Defendants' conduct has caused a loss to MySpace during a one-year
9 period aggregating at least \$5,000.

10 20. MySpace has suffered damages resulting from Defendants' infringing
11 conduct.

12 21. By reason of Defendants' conduct, MySpace has suffered, is
13 suffering, and will continue to suffer irreparable harm and, unless Defendants are
14 enjoined, the irreparable harm to MySpace will continue. MySpace has no
15 adequate remedy at law.

16 **SECOND CLAIM FOR RELIEF**
17 **VIOLATIONS OF THE CAN-SPAM ACT**

18 (15 U.S.C. § 7701 *et seq.*)

19 22. MySpace realleges and incorporates herein by reference the
20 allegations in paragraphs 1-16 and 18-21.

21 23. MySpace is a provider of internet access service. MySpace enables
22 users to access content, including proprietary and exclusive content, electronic mail,
23 and other internet services through its website.

24 24. Defendants initiated the transmission of spam bulletins through
25 MySpace's computers, which are used in interstate and foreign commerce and
26 communication, to thousands or millions of MySpace users' computers, which are
27 also used in interstate and foreign commerce and communication.

1 enjoined, the irreparable harm to MySpace will continue. MySpace has no
2 adequate remedy at law.

3 **FIFTH CLAIM FOR RELIEF**

4 **BREACH OF CONTRACT**

5 41. MySpace realleges and incorporates herein by reference the
6 allegations in paragraphs 1-16, 18-21, 23-30, 32-35, and 37-40.

7 42. All MySpace members, including the Defendants, are parties to the
8 Agreement or are bound to the terms of the Agreement through the actions of
9 parties thereto.

10 43. MySpace has performed all of its obligations under the terms and
11 conditions of the Agreement, except those for which performance has been
12 excused.

13 44. Defendants have breached the Agreement by, among other things,
14 sending unsolicited communications through the MySpace system, submitting
15 content through MySpace that promotes information that is known to be false or
16 misleading for commercial or unlawful purposes, engaging in criminal or tortious
17 activity, attempting to impersonate another member or person, using an account,
18 username, or password of another member, utilizing "script" or "bot" programs,
19 and using MySpace in a manner inconsistent with applicable laws and regulations.

20 45. As a direct and proximate cause of Defendants' breach of contract,
21 MySpace has sustained damages.

22 **SIXTH CLAIM FOR RELIEF**

23 **UNFAIR COMPETITION**

24 (California Business & Professions Code §§ 17200 *et seq.* and Common Law)

25 46. MySpace realleges and incorporates herein by reference the
26 allegations in paragraphs 1-16, 18-21, 23-30, 32-35, 37-40, and 42-45.

1 conduct;

- 2 5. For punitive damages;
- 3 6. For interest as allowed by law;
- 4 7. For costs of suit, including attorneys' fees; and
- 5 8. For such other relief as the Court deems just and proper.

6 Dated: January 19, 2007

7 WILLIAM W. OXLEY
8 CHRISTOPHER S. RUHLAND
9 NATHAN J. NOVAK
10 ORRICK, HERRINGTON & SUTCLIFFE LLP

11 By: 
12 Christopher S. Ruhland
13 Attorneys for Plaintiff MySpace, Inc.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, MySpace hereby demands a trial by jury.

Dated: January 19, 2007

WILLIAM W. OXLEY
CHRISTOPHER S. RUHLAND
NATHAN J. NOVAK
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 

Christopher S. Ruhland
Attorneys for Plaintiff MySpace, Inc.