

1 WILLIAM W. OXLEY (State Bar No. 136793)  
woxley@orrick.com  
2 CHRISTOPHER S. RUIHLAND (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,  
MEDIA BREAKAWAY, LLC, a  
18 Nevada limited liability company,  
and SCOTT RICHTER, MARAT  
19 NIGMATZYANOV, and  
YEVGENIY LESCHINSKIY, and  
20 DOES 1-10, inclusive, individuals,

21 Defendants.

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.





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conduct;

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

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.

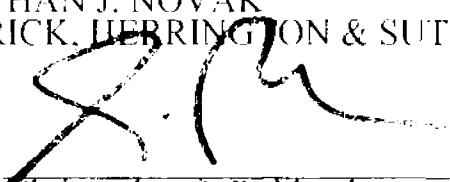
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**DEMAND FOR JURY TRIAL**

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.