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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 ANGEL FRALEY; PAUL WANG; SUSAN
16 MAINZER; JAMES H. DUVAL, a minor, by
and through JAMES DUVAL, as Guardian ad
17 Litem; and W.T., a minor, by and through
18 RUSSELL TAIT, as Guardian ad Litem;
19 individually and on behalf of all others similarly
situated,

20 Plaintiffs,

21 v.

22 FACEBOOK, INC., a corporation; and DOES 1-
23 100,

24 Defendants.

Case No. CV 11-01726 LHK PSG

**DECLARATION OF GARY
FRAZIER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Courtroom: 8

Judge: Hon. Lucy H. Koh

Trial Date: December 3, 2012

1 1. I, GARY FRAZIER, declare and state as follows:

2 2. I have been retained as an expert by Plaintiffs' attorneys to consult with
3 them concerning the factual issues presented in the above case.

4 3. In connection with my work in this case, I have read, reviewed, and analyzed
5 the following documents.

6 a. Plaintiff's Second Amended Complaint

7 b. Order Granting In Part And Denying In Part Defendant's Motion To
8 Dismiss

9 c. Plaintiff's Statement of Facts

10 d. Depositions of Chris Plambeck, John Hegeman and Gokul Rajaram

11 e. Deposition Exhibits 32, 48, 62, 326, 323, 355, 366, 376, 448, 451, 488,
12 524, 581, 583, 586, 588, 589, 592, 596, 612, 618, 623, 647, 648, 654,
13 682, 683, 684, 685, and 690.

14 f. Additional Bates Stamped Documents FB_FRA 1037, 1138-1140, 1879-
15 1881, 69757, 69758, 99715-99719, 99757.

16 4. These are the types of materials typically relied on by experts in my field
17 completing assignments such as mine in this case.

18 5. I am the Richard and Jarda Hurd Professor of Distribution Management in the
19 Department of Marketing within the Marshall School of Business at the University of
20 Southern California. I have been on the faculty of the Marshall School of Business at
21 USC since 1984. Before that, I was on the faculty of the College of Commerce and
22 Business Administration at the University of Illinois, Urbana-Champaign from 1979 to
23 1984. I received my doctorate in marketing from Indiana University in 1979.

24 6. I have focused my research, teaching, and consulting on marketing and
25 distribution management over the past thirty-five years. I have frequently published in
26 the top marketing journals. I am one of the top contributors in the history of the *Journal*
27 *of Marketing*, a leading academic marketing journal started in the 1930s. I am currently
28 Editor of the *Journal of Marketing*. I assumed the Editor position on July 1, 2011 with

1 a three year term. I received a Lifetime Achievement award from the AMA at its
2 annual summer meeting in Boston on August 14th of 2010.

3 7. I have frequently consulted for leading companies on marketing issues,
4 beginning with General Motors in 1977 and including such leading companies since as
5 Coca-Cola, Honeywell, IBM, Intel, and Texas Instruments.

6 8. I also have been qualified as an expert witness in the areas of marketing and
7 distribution management on a number of occasions. In my role as an expert witness, I
8 have been retained by counsel for companies of various sizes and in various industries.
9 I have testified on behalf of both plaintiffs and defendants.

10 9. Marketing as an academic discipline is concerned with how to gain and keep
11 end-customers. An understanding of consumer behavior is thus critical to anyone in the
12 marketing area. Within the marketing discipline, distribution management is concerned
13 with how firms organize and manage inter-firm relationships involving manufacturers,
14 wholesalers, retailers, and other organizations, to serve end-customers.

15 10. My complete career has centered around marketing strategy and channel
16 management, including how firms attempt to influence consumer decision making.
17 Attached hereto is a copy of my most current curriculum vitae setting forth in detail my
18 qualifications and experience.

19 11. After reviewing and analyzing the material provided to me, and relying on
20 my knowledge and past experience, I have come to the following findings and
21 conclusions:

22 a. Facebook has repeatedly referred to friend-endorsed advertisements
23 (such as Sponsored Stories ads) as “the Holy Grail” of advertising, touting their
24 higher value compared to standard display ads. According to Facebook’s
25 founder and CEO, Mark Zuckerberg:

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1 Nothing influences people more than a recommendation from a
2 trusted friend. A trusted referral influences people more than the
3 best broadcast message. A trusted referral is the Holy Grail of
advertising.

4 Mark Zuckerberg, Facebook CEO Claire
5 Hoffman, *The Battle for Facebook*, Rolling
6 Stone, Sept. 15, 2010.) Exhibit 654.

7 According to Facebook's COO, Sheryl Sandberg:

8 Marketers have always known that the best recommendation comes
9 from a friend [...]. This, in many ways, is the Holy Grail of
10 marketing.

11 Sheryl Sandberg, Facebook COO "It's All
12 About People' with Sheryl Sandberg at IAB
MIXX [HQ]." Exhibit 355.

13 I could not agree more with these statements. The value of a Sponsored Stories
14 advertisement is at least twice the value of a standard display ad, per Facebook's
15 own statements: "Ads shown with the names of people's friends are *twice as*
16 *effective as those without*. ("Guide to the New Facebook Ads Manager," Page
17 3.) Sheryl Sandberg states that such friend-endorsed advertisements are actually
18 300% more valuable than non-friend-endorsed advertisements:

19 When a customer has a good experience...on Facebook, the
20 average action is shared with the average number of friends, which
21 is 130 people. This is the illusive goal we've been searching for,
for a long time; Making your customers your marketers.

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1 On average, if you compare an ad without a friend's endorsement,
2 and you compare an ad with a friend's [Facebook] "Like", these
3 are the differences: on average, 68% more people are likely to
4 remember seeing the ad with their friend's name. A hundred
5 percent—so two times more likely to remember the ad's message;
6 and 300% more likely to purchase.

7 Sheryl Sandberg, Facebook COO, "'It's All
8 About People' with Sheryl Sandberg at IAB
9 MIXX [HQ]," Sept. 28, 2010, Exhibit 355.

10 Facebook has found the Holy Grail: exploiting the trust of friends to sell more
11 ads. A friend endorsement is the most valuable type of advertising for an
12 advertiser, regardless of the advertising medium. Marketers have been searching
13 for ways to utilize friend endorsements for decades.

14 b. Facebook's internal documents acknowledge that their friend-endorsed
15 "Sponsored Stories" ads are, as I would anticipate, successful in engaging users:

16 Interactions with Sponsored Stories are [REDACTED] higher than other
17 ads. We think this is a testament to putting people at the center of
18 marketing. Because you see the story in the context of your friend,
19 it is more likely you will see and engage with the story.

20 Internal E-mail from Brad Smallwood of
21 Facebook's marketing department. Exhibit
22 682.

23 c. Before social media advertising, friend-endorsed advertisements could
24 not occur at scale – i.e., reach sufficiently large audiences – in a cost effective
25 manner. Social media advertising, led by Facebook, has completely changed
26 this, making friend-endorsed advertisements cost effective for advertisers.

27 d. In advertising, an advertiser will pay (and will have to pay) an individual
28 who acts as a spokesperson, endorser, or model in an ad campaign. There is
value in the use of an individual's endorsement and the use of their image, even
in the case of non-celebrities. That value is included in the cost to the entity

1 producing the ad. In my experience, the amount paid to a spokesperson,
2 endorser, or model is proportional to the relevance of that person's endorsement
3 to the audience to which the ad is being shown.

4 e. Effective ads are what advertisers pay for. Advertisers are willing to pay
5 more for ads that are more effective. A friend-endorsed ad, because of the fact
6 that it gets the attention of its audience, is more effective. All other things being
7 equal, an advertiser will always pay more for a friend-endorsement than for an ad
8 without a friend endorsement. Sponsored Stories ads use friend endorsements.
9 Therefore, Facebook increases its revenue by using friend-endorsed Sponsored
10 Stories ads.

11 f. I understand that Facebook has taken the position in this matter that
12 Sponsored Stories ads are not advertisements. This is incorrect. There is no
13 better term to describe Sponsored Stories than "friend-endorsed advertisements."
14 Facebook's customers purchase these ads for the purpose of generating profits
15 from friend endorsements. Facebook, in turn, generates revenue from the sale of
16 Sponsored Stories ads as an advertiser.

17 g. Users whose images or likenesses are used in Sponsored Stories ads are
18 misrepresented in these ads. The way that Facebook collects the information in
19 Sponsored Stories ads is inaccurate. Facebook does not collect or attempt to
20 collect data on what its users actually like or endorse. It is troubling to me that a
21 Facebook user can take any of the following social actions that will result in
22 Facebook creating a Sponsored Stories ad when the Facebook user may not, in
23 fact, like or endorse the product:

- 24 • Page like – Facebook user clicking the "Like" button of a Facebook page
25 or web site of an advertiser;
- 26 • Page post like – Facebook user clicking a page post in the last seven
27 days;

- 1 • App used – if Facebook user used an app of an advertiser twice or at
- 2 least 10 minutes in the last month;
- 3 • Game played – if a Facebook user played a game of an advertiser twice
- 4 or at least 10 minutes in the last month;
- 5 • App shared – Facebook user shared a story from advertiser’s App in the
- 6 last seven days;
- 7 • Check-in – Facebook user checked in at one of Advertiser’s “claimed
- 8 places” in the last seven days;
- 9 • Check-in – Facebook user claimed a deal at one of Advertiser’s “claimed
- 10 places” in the last seven days;
- 11 • Domain – Facebook user, from Advertiser’s website in the last seven
- 12 days, either liked a piece of content using the like button, shared a
- 13 piece of content using the Share button, or pasted a link in status
- 14 update

15 Exhibit 62 Facebook “Quick Reference

16 Sponsored Stories”

17 The following is an example of the enticement (left column: “‘Like’ us to receive

18 a special offer code...”), and the result (right column: the resulting Sponsored

19 Stories ad).

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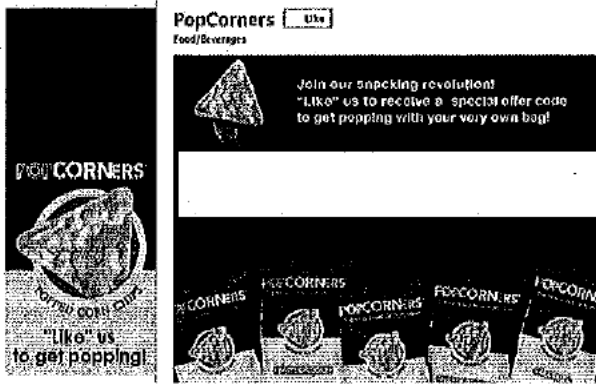
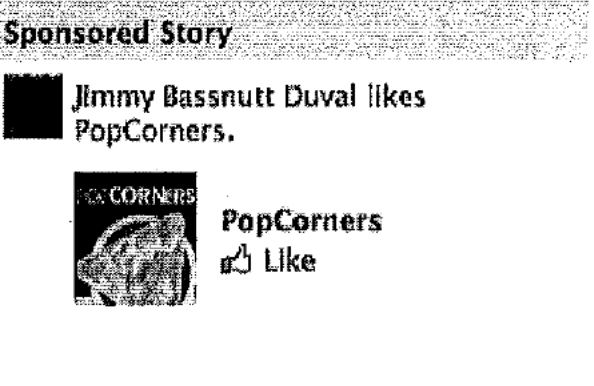
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1	ENTICEMENT	RESULT
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9 10 11	<p>Excerpt of Facebook page for PopCorners (Exhibit 647) showing the enticement to commit a social action, i.e., click “Like.”</p>	<p>Exhibit 648. Jimmy Duval committed the social action—took the enticement—and the Sponsored Stories ad was created (and he was never told it would happen, or that it did happen).</p>

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h. Thus, Facebook is not only improperly using users’ names and photograph or likenesses in Sponsored Stories ads when they click on the “Like” button for a product, but Facebook is creating Facebook ads when Facebook members simply take a simple action that might not have anything to do with the Facebook member liking or endorsing the product. Nonetheless, the Sponsored Stories ad will say that “[the User] Likes [the product],” along with the user’s photograph or likeness of the Facebook user.

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i. Users who appear in Sponsored Stories ads should be paid for the use of their name and photograph or likeness. They have a vested interest in this case in the form of unpaid compensation, which arises out of the members’ use in Sponsored Stories ads where users are unknowingly providing friend endorsements so Facebook can sell ads. Here, Facebook users have suffered a loss of money in the form of unpaid compensation for the use of their names, photographs, and likenesses.

1 j. Even if a Facebook user does, in fact, like a product and clicks the
2 "Like" button, if Facebook creates a Sponsored Stories ad based on this action,
3 the user should still be compensated.

4 12. I declare under the penalty of perjury and under the laws of the United States
5 of America that the forgoing is true and correct and based upon my personal knowledge
6 and/or professional opinions, and that if called upon to testify, I could verify the
7 accuracy of the same. This document was executed in the city of Rolling Hills, CA
8 on March 27, 2012.

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11 By: 

12 Gary Frazier
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