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April 7, 2011

VIA EMAIL

Adam J. Kessel
Fish & Richardson P.C.
One Marina Park Drive
Boston, MA 02210

kessel@fr.com

Re: Face-to-Facebook

Mr. Kessel:

After having almost a month to respond to Facebook's cease and desist letter, your clients' response did not address any of the significant issues Facebook raised. Facebook clearly stated its position in its initial letter, and no further explanation should be necessary for you to respond.

Your letter conspicuously omits any reference to behavior that your clients have already admitted: designing and using a harvesting bot to access, steal, and repurpose Facebook's and its users' data for their own benefit. You have not yet meaningfully addressed these admissions.

Instead, you claimed to not understand Facebook's position because Facebook did not identify how your clients evaded its technical and security measures. As your clients undoubtedly know, they designed their bot to (1) operate at a speed that evaded Facebook's captcha-based protections and (2) pretend to be a different browser (cycling through approximately ten different browsers) each time it issued a scraping request to Facebook. The only purpose for your clients to have designed a bot with these capabilities is to evade Facebook's technical and security measures. Finally, your clients were aware of and blatantly ignored Facebook's robots.txt file, www.facebook.com/robots.txt.

Although its claims were set out in its initial letter, Facebook will again set them out here.

LEGAL [REDACTED]

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- The Computer Fraud and Abuse Act, 18 U.S.C. § 1030, prohibits the conduct your clients have admitted. *See* 18 U.S.C. § 1030(a). Regarding Facebook's right to seek redress under this statute, 18 U.S.C. § 1030(g) specifically authorizes any person who suffers damages or loss by reason of a violation of the section to maintain a civil action against the violators.
- The California Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502, prohibits conduct your clients have admitted. *See* Cal. Penal Code § 502(c). Section 502(e)(1) authorizes the owner or lessee of a computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation to bring a civil action against the violator.
- The EU Data Protection Directive sets minimum standards for EU Member State laws regarding notification of data processing, legitimate purposes of data collection and processing, and conditions under which personal data can be processed in the EU. Member States, including Italy, can and have set more restrictive requirements.
- As Facebook users, your clients agreed to and are bound by Facebook's Statement of Rights and Responsibilities and other applicable terms, which prohibit collecting Facebook users' content on information, or otherwise accessing Facebook, using automated means (such as harvesting bots) without Facebook's permission. This term was in place at all times relevant to this matter, and applies to all Facebook data and user content, including data that may be publicly available.
- The federal Lanham Act, 15 U.S.C. §§ 1501, *et seq.*, including the Anticybersquatting Consumer Protection Act, prohibits infringing or diluting another's trademark or using, selling, or offering for sale a domain name that infringes another's trademark.
- California Business and Professions Code §§ 17200, *et seq.*, prohibits unlawful, unfair, or fraudulent business acts or practices.

This list is not exhaustive and Facebook continues to evaluate its options and will take necessary measures to enforce its rights, and protect its users, site, services, network, and Platform.

Facebook's demands, which your clients have not yet addressed, remain unchanged and now also specifically incorporate an additional demand. Please confirm to me in writing that your clients:

- Have stopped and will not again scrape, copy, collect, or obtain any Facebook or user data through automated or other means, from Facebook, its users, or its services;

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- Have stopped and will not again use the Facebook site, services, network, or Platform to do anything unlawful, misleading, or malicious;
- Have delivered to Facebook and thereafter deleted and destroyed all data they scraped, copied, collected or otherwise obtained, through automated or other means, from Facebook, its users, or any of Facebook's services;
- Have taken down and destroyed any and all automated harvesting bots or code they used to scrape, copy, collect, or otherwise obtain Facebook's or its users' data;
- Have stopped and will not again facilitate or encourage violations of the Statement of Rights and Responsibilities;
- Have stopped and will not again access Facebook's site, services, network, or Platform for any reason whatsoever; and
- Have stopped and will not again use the face-to-facebook.net domain name and have disabled and will not reactivate any site available at that address or sell, offer to sell, or transfer it to a third party. Your clients should let the domain registration expire.

Please also provide the following information:

- A complete accounting of all Facebook user IDs or email addresses for Facebook profiles from which your clients scraped, copied, collected, or obtained any data.

This remains a serious matter to Facebook and its users. We look forward to a substantive and meaningful response from you without any further delay.

This letter does not relinquish or waive of any of Facebook's rights. Facebook specifically reserves all rights and remedies at law or equity, under applicable domestic and foreign laws.

Sincerely,

[Redacted signature block with blue ink scribbles]

LEGAL [Redacted]