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Ventures, Inc. and Steve Vachani

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 FACEBOOK, INC.,

19 Plaintiff,

20 -against-

21 POWER VENTURES, INC. d/b/a POWER.COM, a
22 California corporation; POWER VENTURES, INC.
a Cayman Island Corporation, STEVE VACHANI,
23 an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
24 DOES 2 through 25, inclusive, individuals and/or
25 business entities of unknown nature,

26 Defendants.
27
28

Case No. 5:08-cv-05780 JW

DECLARATION OF L. TIMOTHY FISHER IN SUPPORT OF DEFENDANTS' OPPOSITIONS TO FACEBOOK'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT ON COUNT 1 (CAN-SPAM ACT, 15 U.S.C § 7704) AND UNDER CALIFORNIA PENAL CODE § 502 AND THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030

Date: January 23, 2012
Time: 9:00 a.m.
Courtroom 9 – 19th Floor
Chief Judge James Ware

1 I, L. Timothy Fisher, declare as follows:

2 1. I am a partner at Bursor & Fisher, P.A., counsel of record for Defendants Power
3 Ventures, Inc. ("Power") and Steve Vachani (collectively, "Defendants"). I am an attorney at law
4 licensed to practice in the State of California, and I am a member of the bar of this Court. I make
5 this declaration in support of defendants' oppositions to Facebook's motions for partial summary
6 judgment. I have personal knowledge of the facts set forth in this declaration and, if called as a
7 witness, I could and would testify competently thereto.

8 2. Attached hereto as Exhibit A are true and correct copies of excerpts from the
9 February 17, 2011 transcript of the deposition of Facebook's in-house counsel Craig Clark.

10 3. Attached hereto as Exhibit B are true and correct copies of excerpts from the
11 September 29, 2011 transcript of the deposition of Rob Pollock.

12 4. Attached hereto as Exhibit C is a true and correct copy of Facebook, Inc.'s
13 Objections and Response to Defendants' Requests for Production Set One, dated December 15,
14 2010. In response to Defendants' document requests, Facebook has not produced any documents
15 showing that it was injured by any of the events described in its First Amended Complaint.

16 5. Attached hereto as Exhibit D is a true and correct copy of Facebook, Inc.'s
17 Objections and Responses to Defendants' Interrogatories, Set One, dated December 15, 2010.

18 6. Attached hereto as Exhibit E are true and correct copies of excerpts from the July
19 20, 2011 transcript of the deposition of Steven Vachani.

20 7. Attached hereto as Exhibit F are true and correct copies of excerpts of Defendant
21 Power Ventures, Inc.'s Supplemental Responses To Facebook, Inc.'s Interrogatories Nos. 1, 2, 3, 7,
22 13, 14, 15, 19, 20 and 21, dated November 18, 2011.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct, executed on December 2, 2011 at Walnut Creek, California.

25
26 

27
28 _____
L. Timothy Fisher

EXHIBIT A

In The Matter Of:

FACEBOOK, INC.

v.

POWER VENTURES, INC. d/b/a POWER.COM

CRAIG CLARK - Vol. 1

February 17, 2011

CONFIDENTIAL

MERRILL CORPORATION

LegalLink, Inc.

225 Varick Street
10th Floor
New York, NY 10014
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

--oOo--

FACEBOOK, INC., a Delaware)	
corporation,)	
)	
Plaintiff,)	
)	Case No.
vs.)	C-08-05780-FJ
)	
POWER VENTURES, INC. d/b/a)	
POWER.COM, a California)	
corporation; POWER VENTURES,)	
INC., a Cayman Island)	
Corporation; STEVEN VACHANI, an)	
individual; DOE 1, d/b/a)	
POWER.COM, an individual and/or)	
business entity of unknown)	
nature; DOES 2 through 25,)	
inclusive, individuals and/or)	
business entities of unknown)	
nature,)	
)	
Defendants.)	
)	

CONFIDENTIAL DEPOSITION OF
CRAIG CLARK

Thursday, February 17, 2011
Volume 1 (Pages 1 - 135)

REPORTED BY: ANA M. DUB, RMR, CRR, CSR 7445
(03-433213)

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1	testimony.	10:04:18
2	THE WITNESS: I remember --	10:04:18
3	MR. BURSOR: In terms of documents.	10:04:18
4	MR. CHATTERJEE: Okay.	10:04:19
5	THE WITNESS: I remember looking at	10:04:20
6	e-mails.	10:04:21
7	MR. BURSOR: Q. What factual information	10:04:25
8	did you garner from the e-mails you looked at?	10:04:27
9	A. Background details on the investigation of	10:04:29
10	Power.com's activities: scraping, spamming.	10:04:31
11	Q. Anything else?	10:04:46
12	A. Not that I recall.	10:04:47
13	Q. In the course of your work verifying these	10:04:51
14	interrogatory responses, did you review any	10:04:58
15	documents related to customers -- users of Facebook	10:05:05
16	complaining about Power's activities?	10:05:09
17	A. I did not.	10:05:12
18	Q. Have you ever seen a document concerning a	10:05:15
19	Facebook user complaining about something that Power	10:05:17
20	did on Facebook?	10:05:20
21	A. I don't believe so.	10:05:25
22	Q. Have you ever had a conversation with	10:05:25
23	anyone inside Facebook about a Facebook user	10:05:26
24	complaining about something that Power did on	10:05:32
25	Facebook?	10:05:35

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1	Q.	How do you know that?	10:10:38
2	A.	Because of the message itself. The	10:10:38
3		message was not -- was initiated by Power and says	10:10:41
4		that it comes from Facebook.	10:10:48
5	Q.	Can you tell me the name of anyone that	10:10:53
6		was misled by this message?	10:10:54
7	A.	I can't.	10:10:57
8	Q.	Have you ever seen a document referring to	10:10:58
9		anyone being misled by this message?	10:11:00
10	A.	Yes.	10:11:03
11	Q.	What was that document?	10:11:04
12	A.	This document.	10:11:05
13	Q.	The Amended Complaint written by	10:11:06
14		Facebook's lawyers?	10:11:08
15	A.	That's -- that's one document.	10:11:09
16	Q.	Okay. That's one. Are there any others?	10:11:11
17	A.	Yes. The e-mail message itself would be	10:11:14
18		an example of a message that is misleading.	10:11:19
19	Q.	Are you aware of any document that could	10:11:22
20		be used to provide the name of anyone who was	10:11:26
21		supposedly misled by this message?	10:11:29
22	MR. CHATTERJEE:	Vague.	10:11:33
23	THE WITNESS:	I believe that anyone who	10:11:35
24		received this message would have been misled.	10:11:37
25	MR. BURSOR:	Q. So just from the fact	10:11:39

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1 Q. Okay. Isn't it true that the one-and-only 10:20:55
2 party with any control over the content of that 10:21:01
3 header -- you refer to that as a header; right? 10:21:05

4 MR. CHATTERJEE: Vague. 10:21:09

5 MR. BURSOR: Q. When you said "header" 10:21:10
6 earlier today, this is what you were talking about; 10:21:11
7 right? 10:21:13

8 A. I was talking to all the information that 10:21:13
9 is not the body of the message. 10:21:15

10 Q. All right. So let me focus in on just the 10:21:17
11 "from" line. Okay? The one-and-only party that has 10:21:19
12 any control over the content of that line is 10:21:23
13 Facebook itself; isn't that true? 10:21:26

14 MR. CHATTERJEE: Speculation. 10:21:29

15 THE WITNESS: As I said, I'm not sure. I 10:21:30
16 believe so, but I'm not sure. 10:21:33

17 MR. BURSOR: Q. If Power wanted to change 10:21:37
18 that line just to say "From: Power," they have no 10:21:38
19 ability to do that; isn't that true? 10:21:43

20 MR. CHATTERJEE: Speculation. 10:21:46

21 THE WITNESS: I don't believe they would. 10:21:48

22 MR. BURSOR: Q. There's no one at Power 10:21:50
23 that wrote "From: Facebook <eventmaster" 10:21:51
24 and the rest of that line; right? That drafting did 10:21:56
25 not come from anyone at Power? 10:21:59

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1	MR. CHATTERJEE: Speculation.	10:22:02
2	THE WITNESS: I don't believe anybody	10:22:03
3	would draft this. This would be an automated part	10:22:03
4	of the e-mail creation that would occur when	10:22:06
5	somebody initiated the transmission of a message.	10:22:09
6	Right. So, I mean, there's nobody sitting	10:22:15
7	there typing the "from" line.	10:22:17
8	MR. BURSOR: Q. Right.	10:22:21
9	A. That would be part of how e-mail works.	10:22:22
10	Q. That "from" line was automatically	10:22:32
11	generated by Facebook's computers; right?	10:22:34
12	MR. CHATTERJEE: Speculation.	10:22:38
13	THE WITNESS: That's pretty -- excuse me.	10:22:40
14	That's pretty -- I'm sorry.	10:22:47
15	Can you repeat the -- can you read back	10:22:48
16	the question?	10:22:50
17	(Record read as follows:	10:22:50
18	"QUESTION: That 'from' line was	10:22:55
19	automatically generated by Facebook's	10:22:55
20	computers; right?")	10:22:55
21	THE WITNESS: Automatically generated by	10:22:56
22	Facebook's computers or their systems, based on a	10:23:00
23	prompt from somebody outside. Right? Could be a	10:23:07
24	user. Could be whoever -- whoever's creating the	10:23:13
25	event.	10:23:15

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1 MR. BURSOR: Yeah, yeah. 10:26:27

2 THE WITNESS: Is that -- let's proceed. 10:26:27

3 MR. BURSOR: Q. All right. So you recall 10:26:28

4 saying more than ten times today that Power 10:26:29

5 initiated this message; right? 10:26:31

6 A. I don't recall how many times it was, but 10:26:33

7 yes, Power initiated this message. 10:26:35

8 Q. That's part of your story; right? 10:26:37

9 A. Does that -- 10:26:41

10 MR. CHATTERJEE: Objection; argumentative. 10:26:42

11 Do you have a question that's actually 10:26:43

12 going to factual knowledge, Scott? 10:26:44

13 MR. BURSOR: Q. You see "Subject: Nik"? 10:26:47

14 You see that? 10:26:49

15 A. I see it. 10:26:50

16 Q. And then do you see in the body of the 10:26:51

17 message it says "Nik invited you"? 10:26:52

18 A. Mm-hmm, yes. 10:26:54

19 Q. Who's Nik? 10:26:57

20 A. I don't know who Nik is. 10:27:00

21 Q. Did Nik initiate this message? 10:27:02

22 MR. CHATTERJEE: Speculation. 10:27:04

23 THE WITNESS: I don't know who Nik is, so 10:27:05

24 I don't know if Nik initiated this message. 10:27:07

25 But my understanding is this was initiated 10:27:09

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1 on behalf of a user named Nik through Power. 10:27:13

2 MR. BURSOR: Q. What's the basis for that 10:27:17

3 understanding? 10:27:18

4 A. The -- 10:27:20

5 MR. CHATTERJEE: Attorney-client 10:27:21

6 privilege. Instruction not to answer. 10:27:21

7 MR. BURSOR: Q. Did you rely on that 10:27:28

8 understanding when you signed the verification to 10:27:29

9 the interrogatory responses? 10:27:31

10 A. What understanding? 10:27:35

11 Q. The understanding you just testified to, 10:27:38

12 that Power initiated this message. 10:27:40

13 A. Yes. That, I believe, underpins 10:27:43

14 everything. Power initiated the message based on 10:27:46

15 the way it was -- contact importing and scraping -- 10:27:49

16 (Court reporter clarifies.) 10:27:59

17 THE WITNESS: Contact importing and 10:27:59

18 logging into Facebook on behalf of other people 10:27:59

19 without permission. 10:28:03

20 MR. BURSOR: Q. Without whose permission? 10:28:05

21 A. Without Facebook's permission. 10:28:08

22 Q. Did they have Nik's permission? 10:28:09

23 A. Without the user's permission. 10:28:10

24 Q. Did they have Nik's permission? 10:28:12

25 A. I don't know who Nik is. I don't believe 10:28:14

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1 were soliciting people's log-in information and, in 10:37:15
2 this instance, offering monetary compensation to 10:37:19
3 send invites to get people to sign up for Power. 10:37:23

4 Q. And where did you get that information 10:37:30
5 from? 10:37:31

6 A. My knowledge at the company working in a 10:37:33
7 legal role. 10:37:36

8 Q. So that part's not privileged? 10:37:37

9 A. I don't know what "that part" is that 10:37:42
10 you're referring to. 10:37:44

11 This message is not privileged. 10:37:49

12 Q. You see at the bottom of the page where it 10:37:59
13 says "Thanks, The Facebook Team"? 10:38:01

14 A. Mm-hmm. 10:38:04

15 Q. Yes? 10:38:04

16 A. Yes. 10:38:05

17 Q. Who wrote that? 10:38:05

18 MR. CHATTERJEE: Speculation. 10:38:07

19 THE WITNESS: I don't know. 10:38:10

20 MR. BURSOR: Q. Didn't Facebook itself 10:38:11
21 write that? 10:38:13

22 MR. CHATTERJEE: Same objections. 10:38:14

23 THE WITNESS: I don't know. 10:38:15

24 MR. BURSOR: Q. Isn't it true that 10:38:15
25 Facebook appends that very same text to every e-mail 10:38:17

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1 communication it sends after an event is created? 10:38:20

2 MR. CHATTERJEE: Same objection. 10:38:24

3 Speculation. 10:38:25

4 THE WITNESS: I don't know. 10:38:26

5 MR. BURSOR: Q. Do you think it's 10:38:26

6 misleading for Facebook to do that if Facebook is 10:38:27

7 not, in fact, the initiator of the message? 10:38:30

8 MR. CHATTERJEE: Form. 10:38:34

9 THE WITNESS: Could you break that down? 10:38:38

10 MR. BURSOR: Q. Sure. Facebook put that 10:38:39

11 text in the message? 10:38:40

12 A. I don't -- 10:38:42

13 Q. You understand that; right? 10:38:42

14 A. I don't know. 10:38:43

15 Q. Well, let me ask you to assume that that's 10:38:43

16 true. Do you think that's misleading? 10:38:46

17 MR. CHATTERJEE: Incomplete hypothetical. 10:38:48

18 THE WITNESS: Are you asking me -- 10:38:50

19 MR. BURSOR: Q. Let me ask you a more 10:38:54

20 specific question. 10:38:55

21 A. Great. 10:38:56

22 Q. You created an event on Facebook; right? 10:38:56

23 A. I have created an event on Facebook. 10:38:59

24 Q. How many events have you created? 10:39:01

25 A. I don't know. 10:39:03

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1 of this message? 10:45:57

2 A. I don't recall. 10:45:58

3 Q. You didn't even bother to look for that 10:45:59

4 before you signed the verification? 10:46:02

5 MR. CHATTERJEE: Argumentative. 10:46:02

6 THE WITNESS: That's not what I said. I 10:46:03

7 said I don't recall. 10:46:04

8 MR. BURSOR: Q. So it's possible you 10:46:06

9 looked at it? 10:46:07

10 A. I don't recall looking at it. 10:46:08

11 Q. So you don't know what's behind the 10:46:11

12 redaction there? 10:46:13

13 A. I do not recall. 10:46:15

14 Q. So do you see where it says -- so it's not 10:46:18

15 Power that redacted it; right? 10:46:20

16 A. I don't recall. But given that this is 10:46:24

17 our complaint, I assume we made the redactions. 10:46:26

18 Q. So you see where it says "Nik invited you 10:46:31

19 to the event"? See that? 10:46:33

20 A. I see where it says: 10:46:34

21 "Nik [Redacted] invited you 10:46:36

22 to the event" -- 10:46:39

23 Q. Okay. 10:46:40

24 A. -- "'Bring -- 10:46:41

25 Q. No. I'm only asking -- 10:46:42

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1 A. "100 friends" -- 10:46:43
2 Q. -- you about that part. 10:46:43
3 "Nik . . . invited you to the 10:46:44
4 event" -- 10:46:45
5 "Nik [Redacted] invited you 10:46:46
6 to the event" 10:46:48
7 Can you focus in on that? 10:46:48
8 A. I can focus in on that, yes. 10:46:50
9 Q. Who wrote that? 10:46:51
10 MR. CHATTERJEE: Speculation. 10:46:52
11 THE WITNESS: I don't recall -- or I don't 10:46:54
12 know. 10:46:55
13 MR. BURSOR: Q. Who would know the answer 10:47:08
14 to that? 10:47:11
15 A. Again, I believe the header information, 10:47:12
16 as with other elements of this message, would have 10:47:15
17 been auto-generated. So as far as "write this," I 10:47:18
18 don't know would write this. 10:47:23
19 Q. It would have been auto-generated by whom? 10:47:26
20 A. By the -- 10:47:32
21 MR. CHATTERJEE: Vague. 10:47:33
22 THE WITNESS: By the system that was 10:47:34
23 called to send out the invitation. 10:47:37
24 MR. BURSOR: Q. What system is that? 10:47:40
25 A. That would probably be Facebook's system. 10:47:41

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1 THE WITNESS: I don't believe so. 10:57:40

2 MR. BURSOR: Q. All right. So do you 10:57:44

3 want to change the answer you just gave two seconds 10:57:44

4 ago? 10:57:47

5 A. That's -- I don't see how my two answers 10:57:49

6 are connected. Your questions were different. 10:57:53

7 Q. So you have to be a Facebook user to 10:58:00

8 create an event; right? 10:58:01

9 A. As far as I know -- 10:58:04

10 MR. CHATTERJEE: Speculation, vague. 10:58:04

11 THE WITNESS: As far as I know, to create 10:58:06

12 a Facebook event, you have to be a Facebook user. 10:58:08

13 MR. BURSOR: Q. And the e-mail in 10:58:10

14 paragraph 70 was generated as the result of the 10:58:12

15 creation of a Facebook event? 10:58:14

16 A. Yes, that appears to be the case. 10:58:17

17 Q. And the user that created that event was 10:58:18

18 someone named Nik? 10:58:22

19 MR. CHATTERJEE: Speculation. 10:58:25

20 THE WITNESS: I don't know. 10:58:27

21 MR. BURSOR: Q. You don't know? 10:58:31

22 A. It would appear, based on this e-mail, 10:58:32

23 that it was created by somebody named Nik. 10:58:33

24 Q. And in order to invite people to an event, 10:58:38

25 they have to have previously friended you on 10:58:43

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1 Facebook; right? 10:58:46

2 MR. CHATTERJEE: Asked and answered. 10:58:47

3 THE WITNESS: Yeah, I'm not sure. 10:58:48

4 MR. BURSOR: Q. So, what is it that 10:58:49

5 you're not sure about? 10:58:57

6 A. Well, I'm not sure -- I'm not sure. 10:58:59

7 Q. If you're not Nik's friend, Nik can't 10:59:06

8 invite you to this event; isn't that right? 10:59:08

9 MR. CHATTERJEE: Argumentative and 10:59:11

10 speculation. 10:59:12

11 THE WITNESS: I don't know. I believe 10:59:13

12 that's true, but I don't know for sure. 10:59:13

13 MR. BURSOR: Q. And the only people who 10:59:15

14 are Nik's friends are people who have consented to 10:59:18

15 be Nik's friends; right? 10:59:21

16 MR. CHATTERJEE: Speculation. 10:59:25

17 THE WITNESS: If someone is your Facebook 10:59:29

18 friend, then either they would have to confirm you 10:59:33

19 as a friend or you would have to confirm them as a 10:59:36

20 friend. 10:59:38

21 MR. BURSOR: Q. And you're not alleging 10:59:40

22 that Power did anything to interfere with that; 10:59:42

23 right? 10:59:44

24 MR. CHATTERJEE: I'm not -- I'm not even 10:59:46

25 sure -- are you asking about his personal knowledge? 10:59:48

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1 language about compensatory damages aside, just are 11:16:28
2 you aware of any economic loss that Facebook has 11:16:31
3 suffered as a result of the actions of Power? 11:16:35

4 MR. CHATTERJEE: Same instruction. 11:16:39

5 If you have personal knowledge of it, you 11:16:41
6 can go ahead and answer; but if it's privileged 11:16:43
7 information, you shouldn't. 11:16:46

8 THE WITNESS: Yeah, I don't think I can 11:16:50
9 answer that without getting into attorney-client 11:16:51
10 privilege. 11:16:53

11 MR. BURSOR: Q. Do you have any personal 11:16:55
12 knowledge of such a loss? 11:16:56

13 A. Same answer. 11:16:59

14 Q. Can you identify anything that Power did 11:17:26
15 that caused Facebook to lose money? 11:17:27

16 A. Same answer. 11:17:33

17 Q. You can't answer? 11:17:33

18 A. I can't answer that. 11:17:34

19 MR. BURSOR: Let me ask the court reporter 11:17:56
20 to mark as Exhibit 1-4 a single-page document. It's 11:17:57
21 Defendant's First Request for Production Pursuant to 11:18:00
22 Federal Rule of Civil Procedure 34. It's dated 11:18:03
23 October 8th, 2010. 11:18:07

24 (Whereupon, Defendants' Exhibit 1-4 was 11:18:32
25 marked for identification.) 11:18:32

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1	MR. BURSOR: Q. Mr. Clark, you have	11:18:34
2	Exhibit 1-4?	11:18:34
3	A. I do.	11:18:36
4	Q. Have you seen that before?	11:18:37
5	A. Not that I recall.	11:18:39
6	Q. You know what a document request is;	11:18:46
7	right?	11:18:47
8	A. I do.	11:18:47
9	Q. Now, I already asked you about No. 3	11:18:48
10	because earlier today I asked you if you were aware	11:18:50
11	of any documents concerning any complaints made by	11:18:52
12	Facebook users and you told me you were not.	11:18:57
13	Do you remember that?	11:18:59
14	A. I did.	11:19:00
15	Q. So I want to ask the same question about	11:19:01
16	Item 1.	11:19:03
17	A. Excuse me.	11:19:08
18	Q. Are you aware of any document concerning	11:19:08
19	any injury that Facebook suffered as a result of the	11:19:12
20	events described in the First Amended Complaint?	11:19:14
21	Just the existence of a document.	11:19:16
22	A. I don't know.	11:19:23
23	Q. As you sit here today, you couldn't	11:19:25
24	identify any document that would relate to that?	11:19:26
25	A. No, I don't believe I can.	11:19:33

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1 it was the easiest. 11:22:10

2 A. Right. 11:22:11

3 Q. All right. You testified that you weren't 11:22:11

4 aware -- 11:22:12

5 A. But -- okay. Go ahead. 11:22:13

6 Q. You see 3 asks for any complaints Facebook 11:22:14

7 users made as a result of the events described in 11:22:18

8 Facebook's First Amended Complaint? You see that? 11:22:20

9 A. I see that. 11:22:22

10 Q. But you've never seen any documents like 11:22:23

11 that; right? 11:22:25

12 MR. CHATTERJEE: Overly broad, vague. 11:22:29

13 THE WITNESS: Again, there are documents 11:22:30

14 I've seen that may be responsive to this category. 11:22:34

15 If you're asking if I've seen any specific 11:22:36

16 complaints about Power.com, I have not. 11:22:38

17 MR. BURSOR: Q. Have you seen general 11:22:42

18 complaints about Power.com? 11:22:44

19 A. No. 11:22:46

20 Q. All right. So you haven't seen any 11:22:49

21 specific complaints and you haven't seen any general 11:22:51

22 complaints. What kind of complaints have you seen? 11:22:53

23 A. I've not seen any complaints regarding 11:22:56

24 Power.com based on my preparation for this 11:23:02

25 deposition or otherwise. 11:23:07

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FACEBOOK, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	No. 5:08-cv-05780 JW
)	
POWER VENTURES, INC., a)	
Cayman Island)	
corporation; STEVE)	
VACHANI, an individual;)	
DOE 1, d/b/a POWER.COM,)	
DOES 2-25 inclusive,)	
)	
Defendants.)	
)	
)	
)	

VIDEOTAPED DEPOSITION OF
ROB POLLOCK

Held at the Law Offices of Bursor & Fisher
2121 N. California, Walnut Creek, California
Thursday, September 29, 2011, 9:58 a.m.

REPORTED BY: ELAINA BULDA-JONES, RPR, CSR #11720

1 originated them.

2 BY MS. METANAT:

3 Q. And so these -- are you aware that
4 these -- that Facebook at some point blocked Power
5 from -- or blocked the -- blocked invites --
6 Facebook invites from being sent using the term
7 "Power.com"?

8 A. I'm aware that there was a discussion over
9 the origination of the invites. But my
10 understanding was, is that the invites were
11 originated by Facebook and Facebook users.

12 Q. And where did you get this understanding
13 from?

14 A. Same place, in postdiscussions with
15 counsel, court appearances.

16 Q. Did you ever discuss this issue with Steve
17 Vachani?

18 A. Well, again, when all this happened with
19 Vachani -- well, yeah, I think -- the information I
20 got from Steve on this was that those were
21 Facebook-originated invites.

22 Q. And what did -- did -- other than that did
23 Steve say anything else about the invites?

24 A. No, I don't recall.

25 Q. Did you discuss this issue with the board?

EXHIBIT C

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
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10 Attorneys for Plaintiff
 FACEBOOK, INC.

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

15 FACEBOOK, INC.,

16 Plaintiff,

17 v.

18 POWER VENTURES, INC. a Cayman Island
 19 Corporation; STEVE VACHANI, an
 individual; DOE 1, d/b/a POWER.COM,
 20 DOES 2-25, inclusive,

21 Defendants.
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Case No. 5:08-cv-05780 JW (HRL)

**FACEBOOK, INC.'S OBJECTIONS
 AND RESPONSE TO DEFENDANTS'
 REQUESTS FOR PRODUCTION,
 SET ONE**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Facebook, Inc.
2 (“Facebook”) hereby responds to Power Ventures, Inc.’s and Steve Vachani’s (collectively,
3 “Defendants”) Request For Production, Set One as follows:

4 **GENERAL OBJECTIONS**

5 In addition to any specific objections which may be made on an individual basis below,
6 Facebook objects generally to each of the requests as follows:

7 1. Facebook objects to each Request to the extent it calls for information protected
8 from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other
9 applicable privilege, doctrine or protection. To the extent Facebook produces any information
10 subject to the attorney-client privilege, the attorney work-product doctrine, or other applicable
11 privilege, doctrine or protection, such disclosure is inadvertent and does not constitute a general
12 waiver of the privilege, doctrine or protection. Nothing contained herein is intended to be or
13 should be construed as a waiver of the attorney-client privilege, the attorney work-product
14 doctrine, or any other applicable privilege, protection or doctrine.

15 2. Facebook objects to each Request to the extent it seeks legal conclusions.
16 Production of, or failure to produce any information, is not to be construed to endorse or reject
17 any legal conclusions.

18 3. Facebook objects to each Request to the extent it is vague or ambiguous.

19 4. Facebook objects to each Request to the extent it is not sufficiently limited in time
20 and/or subject matter, and is therefore overly broad, unduly burdensome, oppressive and will
21 cause undue hardship to Facebook.

22 5. Facebook objects to all Requests as overly broad and unduly burdensome to the
23 extent they seek, individually or collectively, information that is not relevant to any claim or
24 defense of the case and that does not appear reasonably calculated to lead to the discovery of
25 admissible evidence in contravention of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

26 6. Facebook objects to all Requests insofar as they purport to call for information that
27 is outside the possession, custody or control of Facebook or to seek information on matters not
28

1 known or reasonably available to Facebook, on the grounds that such discovery requests are
2 overly broad, unduly burdensome, oppressive and will cause undue hardship to Facebook.

3 7. Facebook objects to each Request to the extent it seeks information that is a matter
4 of public record. Facebook also objects to each Request to the extent the burden or expense of
5 discovery sought outweighs its likely benefit.

6 8. Facebook objects to each Request to the extent it seeks information that may
7 encompass the proprietary information, trade secrets or other confidential commercial or business
8 information of Facebook and no protective order has been entered.

9 **SPECIFIC OBJECTIONS**

10 **REQUEST FOR PRODUCTION NO. 1:**

11 Please produce all documents, all electronically stored information, and all tangible things
12 concerning any injury that Facebook suffered as a result of the events described in Facebook's
13 First Amended Complaint.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

15 Facebook incorporates by reference its General Objections as if fully set forth herein.
16 Facebook further objects to the use of the terms "injury," "suffered," and "events" as vague,
17 overly broad and unduly burdensome. Facebook also objects to the Request to the extent it seeks
18 information protected from discovery by the attorney-client privilege, the attorney work-product
19 doctrine, or any other applicable privilege, protection or doctrine. Facebook objects to the
20 Request to the extent it seeks Facebook's proprietary information, trade secrets or other
21 confidential commercial or business information and no protective order has been entered.
22 Facebook objects to the Request to the extent it calls for a legal conclusion or expert testimony to
23 determine the meaning of "injury." Facebook also objects to this Request on the basis that it is
24 premature and that discovery is ongoing. Facebook reserves its right to supplement its Response
25 to this Request and to produce documents as they are discovered. Subject to, and without
26 waiving the foregoing objections, Facebook responds that it will produce any non-privileged and
27 responsive documents, if any, upon the entry of an appropriate protective order.
28

1 **REQUEST FOR PRODUCTION NO. 2:**

2 Please produce all documents, all electronically stored information, and all tangible things
3 concerning any expenditure that Facebook made as a result of the events described in Facebook's
4 First Amended Complaint.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

6 Facebook incorporates by reference its General Objections as if fully set forth herein.
7 Facebook objects to the use of the term "events" and the phrase "as a result of" as vague, overly
8 broad and unduly burdensome. Facebook objects to the Request to the extent it seeks information
9 protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or
10 any other applicable privilege, protection or doctrine. Facebook objects to the Request to the
11 extent it seeks Facebook's proprietary information, trade secrets or other confidential commercial
12 or business information and no protective order has been entered. Facebook also objects to this
13 Request on the basis that it is premature and that discovery remains ongoing. Facebook expressly
14 reserves its right to supplement this response and to produce documents as they are discovered.
15 Subject to, and without waiving the foregoing objections, Facebook responds that it will produce
16 any non-privileged and responsive documents, if any, upon the entry of an appropriate protective
17 order.

18 **REQUEST FOR PRODUCTION NO. 3:**

19 Please produce all documents, all electronically stored information, and all tangible things
20 concerning any complaints Facebook users made as a result of the events described in Facebook's
21 First Amended Complaint.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

23 Facebook incorporates by reference its General Objections as if fully set forth herein.
24 Facebook objects to the use of the term "events" and the phrase "as a result of" as vague, overly
25 broad and unduly burdensome. Facebook objects to the term "complaints" as vague and
26 ambiguous. Facebook further objects to this Request on the basis that it seeks discovery that is
27 neither relevant to a claim or defense of a party nor reasonably calculated to lead to discovery of
28 admissible evidence. Facebook also objects to the Request to the extent it seeks information

1 protected from discovery by the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et.*
 2 *seq.* ("ECPA"), or any other applicable privilege, protection or doctrine. Facebook further objects
 3 to the Request to the extent it seeks documents outside Facebook's possession, custody or control.
 4 Facebook objects to the Request to the extent it seeks Facebook's proprietary information, trade
 5 secrets or other confidential commercial or business information and no protective order has been
 6 entered. Facebook also objects to this Request on the basis that it is premature and that discovery
 7 remains ongoing. Facebook expressly reserves its right to supplement its response to this
 8 Request and to produce documents as they are discovered. Subject to, and without waiving the
 9 foregoing objections, Facebook responds that it will produce any non-privileged and responsive
 10 documents, if any, upon the entry of an appropriate protective order.

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Dated: December 15, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP



I. NEEL CHATTERJEE
 Attorneys for Plaintiff
 FACEBOOK, INC.

EXHIBIT D

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10 Attorneys for Plaintiff
FACEBOOK, INC.

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

15 FACEBOOK, INC.,

16 Plaintiff,

17 v.

18 POWER VENTURES, INC. a Cayman Island
19 Corporation; STEVE VACHANI, an
20 individual; DOE 1, d/b/a POWER.COM,
DOES 2-25, inclusive,

21 Defendants.
22

Case No. 5:08-cv-05780 JW (HRL)

**FACEBOOK, INC.'S OBJECTIONS
AND RESPONSES TO
DEFENDANTS'
INTERROGATORIES, SET ONE**

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1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Facebook, Inc.
2 (“Facebook”) hereby responds to Power Ventures, Inc.’s and Steve Vachani’s (collectively,
3 “Defendants”) Interrogatories, Set One as follows:

4 **GENERAL OBJECTIONS**

5 In addition to any specific objections which may be made on an individual basis below,
6 Facebook objects generally to each of the interrogatories as follows:

7 1. Facebook objects to each Interrogatory to the extent it calls for information
8 protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, the
9 consulting expert exemption from discovery or any other applicable privilege, doctrine or
10 protection. To the extent Facebook provides any information subject to the attorney-client
11 privilege, the attorney work-product doctrine, or other applicable privilege, doctrine or protection,
12 such disclosure is inadvertent and does not constitute a general waiver of the privilege, doctrine
13 or protection. Nothing contained herein is intended to be or should be construed as a waiver of
14 the attorney-client privilege, the attorney work-product doctrine, or any other applicable
15 privilege, protection or doctrine.

16 2. Facebook objects to each Interrogatory to the extent it seeks legal conclusions.

17 3. Facebook objects to each Interrogatory to the extent it is vague or ambiguous.

18 4. Facebook objects to each Interrogatory to the extent it is not sufficiently limited in
19 time and/or subject matter, and is therefore overly broad, unduly burdensome, oppressive and will
20 cause undue hardship to Facebook.

21 5. Facebook objects to all Interrogatories as overly broad and unduly burdensome to
22 the extent they seek, individually or collectively, information that is not relevant to any claim or
23 defense of the case and that does not appear reasonably calculated to lead to the discovery of
24 admissible evidence in contravention of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

25 6. Facebook objects to all Interrogatories insofar as they purport to call for
26 information that is outside the possession, custody or control of Facebook or to seek information
27 on matters not known or reasonably available to Facebook, on the grounds that such discovery
28 requests are overly broad, unduly burdensome, oppressive and will cause undue hardship to

1 Facebook. Facebook also objects to all of Defendants' Interrogatories to the extent that they seek
2 information in the possession of Defendants and/or a third party.

3 7. Facebook objects to each Interrogatory to the extent it seeks information that is a
4 matter of public record. Facebook also objects to each Interrogatory to the extent the burden or
5 expense of discovery sought outweighs its likely benefit.

6 8. Facebook objects to each Interrogatory to the extent it seeks information that may
7 encompass the proprietary information, trade secrets or other confidential commercial or business
8 information of Facebook and no protective order has been entered in this action.

9 9. By responding to any of Defendants' Interrogatories or providing any information
10 herewith, Facebook does not waive and expressly preserves the objections set forth herein and
11 does not concede the relevancy or admissibility of the response.

12 10. Facebook objects to any and all of Defendants' Interrogatories to the extent they
13 seek information that may be derived or ascertained from the documents produced by Facebook
14 and the burden of deriving or ascertaining the answer is substantially the same for Defendants.
15 *See generally* Fed. R. Civ. P. 33(d).

16 11. Facebook reserves the right to supplement or amend these objections and
17 responses upon, among other things: further investigation; discovery of additional facts;
18 discovery of persons with knowledge or relevant information; or developments in this action or
19 any other proceeding.

20 **SPECIFIC OBJECTIONS**

21 **INTERROGATORY NO. 1:**

22 Please identify anyone that was misled by the messages referenced in ¶92 of your First
23 Amended Complaint.

24 **RESPONSE TO INTERROGATORY NO. 1:**

25 Facebook incorporates by reference its General Objections as if fully set forth herein.
26 Facebook objects to the use of the terms "anyone" and "misled" as vague, overly broad and
27 unduly burdensome. Facebook also objects to this Interrogatory to the extent it seeks information
28 protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or

1 any other applicable privilege, protection or doctrine. Facebook objects to this Interrogatory to
2 the extent it seeks information protected from disclosure by the Electronic Communications
3 Privacy Act, 18 U.S.C. § 2510 *et. seq.* ("ECPA"). Facebook also objects to this Interrogatory on
4 the basis that it is premature and that discovery is ongoing. Facebook expressly reserves its right
5 to supplement its response as information is discovered. Facebook notes that information
6 responsive to this Interrogatory, to the extent such information exists, would likely be confidential
7 and could not be produced prior to the entry of an appropriate protective order in this action.
8 Subject to and without waiving its objections, Facebook responds as follows: Facebook users who
9 either opened or read the misleading message sent by Defendants and/or Facebook users who
10 used Defendants' unauthorized systems to access Facebook.

11
12 **INTERROGATORY NO. 2:**

13 Where has the copyrighted work that you claim has been infringed appeared on the
14 Facebook website? Please provide the URL and the specific material on the page that you claim
15 has been infringed.

16 **RESPONSE TO INTERROGATORY NO. 2:**

17 Facebook incorporates by reference its General Objections as if fully set forth herein.
18 Facebook objects to the use of the terms "copyrighted work" and "appeared" as vague, overly
19 broad and unduly burdensome. Facebook also objects to the Interrogatory to the extent it seeks
20 information protected from discovery by the attorney-client privilege, the attorney work-product
21 doctrine, or any other applicable privilege, protection or doctrine. Facebook objects to this
22 Interrogatory to the extent it seeks Facebook's proprietary information, trade secrets or other
23 confidential commercial or business information and no protective order has been entered in this
24 action. Facebook objects to this Interrogatory to the extent it calls for a legal conclusion or expert
25 testimony to determine what has been "infringed." Facebook also objects to this Interrogatory on
26 the basis that it is premature and that discovery is ongoing. Facebook expressly reserves its right
27 to supplement its response as information is discovered.

1 **INTERROGATORY NO. 3:**

2 Where has the infringing content appeared on our site? Please provide the URL and the
3 specific material on the page that you are referring to.

4 **RESPONSE TO INTERROGATORY NO. 3:**

5 Facebook incorporates by reference its General Objections as if fully set forth herein.
6 Facebook objects to the use of the terms “infringing content,” “appeared,” “our” and “site” as
7 vague, overly broad and unduly burdensome. Facebook also objects to this Interrogatory to the
8 extent it seeks information protected from discovery by the attorney-client privilege, the attorney
9 work-product doctrine, or any other applicable privilege, protection or doctrine. Facebook
10 objects to this Interrogatory to the extent it calls for a legal conclusion or expert testimony to
11 determine the meaning of “infringing content” and “appeared.” Facebook objects and notes that
12 discovery in this matter is still ongoing and that this request is objectionable as premature.
13 Indeed, no discovery has yet been received from Defendants. Accordingly, Facebook is not yet in
14 possession of all evidence responsive to this Interrogatory. Facebook expressly reserves its right
15 to supplement its response to this Interrogatory once all such discovery is received from
16 Defendants.

17
18 **INTERROGATORY NO. 4:**

19 Where has the Facebook trademark appeared on our site? Please provide the URL and the
20 specific material on the page that you are referring to.

21 **RESPONSE TO INTERROGATORY NO. 4:**

22 Facebook incorporates by reference its General Objections as if fully set forth herein.
23 Facebook objects to the use of the terms “Facebook trademark,” “appeared,” “our” and “site” as
24 vague, overly broad and unduly burdensome. Facebook also objects to this Interrogatory to the
25 extent it seeks information protected from discovery by the attorney-client privilege, the attorney
26 work-product doctrine, or any other applicable privilege, protection or doctrine. Facebook also
27 objects to this Interrogatory on the basis that it is premature and that information requested is in
28 Defendants' possession. Relatedly, Facebook objects and notes that discovery in this matter is

1 still ongoing. Indeed, no discovery has yet been received from Defendants. Accordingly,
2 Facebook is not yet in possession of all evidence and/or information responsive to this
3 Interrogatory. Facebook expressly reserves its right to supplement its response to this
4 Interrogatory.

5 Subject to and without waiving the foregoing objections, Facebook responds that one of
6 its trademarks appeared on at least the following URLs:

7 <http://www.power.com/Pub/Login.aspx?ReturnUrl=%2fpriv%2fpower%2fhome.aspx>

8 <http://www.power.com/priv/power/home.aspx>

9 <http://power.com/pub/login.aspx>

10 http://static.power.com/images/PressKit/Login_EN.jpg?v=327

11 http://static.power.com/images/PressKit/Mensagem_EN.jpg?v=327

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13 **INTERROGATORY NO. 5:**

14 Please identify anyone that has experienced any form of “customer confusion,” “mistake,”
15 or “deception” caused by a Facebook trademark that appeared on our site.

16 **RESPONSE TO INTERROGATORY NO. 5:**

17 Facebook incorporates by reference its General Objections as if fully set forth herein.
18 Facebook objects to the use of the terms “anyone,” “experienced,” “any form,” “caused,”
19 “appeared,” “our” and “site” as vague, overly broad and unduly burdensome. Facebook also
20 objects to this Interrogatory to the extent it seeks information protected from discovery by the
21 attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege,
22 protection or doctrine. Facebook objects to this Interrogatory to the extent it seeks information
23 protected from disclosure by the ECPA. Facebook also objects to this Interrogatory on the basis
24 that it is premature and that discovery is ongoing. Facebook reserves its right to supplement its
25 response as information is discovered. Facebook notes that information responsive to this
26 Interrogatory, to the extent such information exists, would likely be confidential and could not be
27 produced prior to the entry of an appropriate protective order in this action. Subject to and
28 without waiving its objections, Facebook responds as follows: Facebook users who used

1 Defendants' unauthorized systems to access Facebook and/or who viewed Facebook's name, logo
2 or other trademarks on any Power website, e-mail or other Power document or communication.

3
4
5 Dated: December 15, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP

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7 

8 I. NEEL CHATTERJEE
9 Attorneys for Plaintiff
10 FACEBOOK, INC.

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VERIFICATION

1
2 I, Craig Clark, certify and declare that I have read the foregoing Interrogatory Responses
3 (“Responses”) know their contents. I am an agent of Facebook, Inc. (“Facebook”) a party to this
4 action. I am authorized to make this verification for Facebook and, on its behalf, I make this
5 verification. I am informed and believe and on that ground allege that the matters stated in the
6 Responses are true.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct to the best of my knowledge.

9 Executed this 15th day of December, 2010 at Palo Alto, California.

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CRAIG CLARK

DECLARATION OF SERVICE

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025. On December 15, 2010, I served the following document(s):

FACEBOOK, INC.'S OBJECTIONS AND RESPONSE TO DEFENDANTS' INTERROGATORIES, SET ONE

on the interested parties in this action by placing true and correct copies thereof in sealed envelopes addressed as follows:

Scott A. Bursor (*admitted pro hac vice*)
LAW OFFICES OF SCOTT A. BURSOR
369 Lexington Avenue
10th Floor
New York, NY 10017-6531
Tel: 212-989-9113
Fax: 212-989-9163
scott@bursor.com

**COUNSEL FOR DEFENDANTS
POWER VENTURES, INC.
A CAYMAN ISLAND CORPORATION
AND
STEVEN VACHANI**

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**BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER LLP**
2125 Oak Grove Road
Suite 120
Walnut Creek, CA 94598
Tel: (925) 945-0200
Fax: 925-945-8792

I deposited such envelopes with postage thereon fully prepaid in the United States mail at a facility regularly maintained by the United States Postal Service at Menlo Park, California on the date indicated above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2010, at Menlo Park, California.

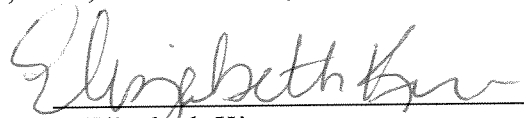

Elizabeth Kim

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FACEBOOK, INC. :
Plaintiff, :
:
v. :

POWER VENTURES, INC. d/b/a :
POWER.COM, a California :
corporation; POWER : Case No.
VENTURES, INC. a Cayman : 5:08-CV-05780
Island Corporation, STEVE : JW (HRL)
VACHANI, an individual; :
DOE 1, d/b/a POWER.COM, an :
individual and/or business :
entity of unknown nature; :
DOES 2 through 25, :
inclusive, individuals :
and/or business entities :
of unknown nature, :
Defendants. :

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

1 Videotaped Deposition of STEVEN VACHANI
2 taken on behalf of the Plaintiff at the offices of
3 BURSOR & FISHER, P.A., 369 Lexington Avenue, New
4 York, New York, on Wednesday, July 20, 2011,
5 commencing at 9:47 in the forenoon before PATRICIA
6 MULLIGAN CARRUTHERS, a Certified Court Reporter and
7 Notary Public of the State of New Jersey and Notary
8 Public of the State of New York.

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1 you would be invited to ask your friends to join 02:37
2 power.com? 02:37

3 A. No. You would have the option to 02:37
4 invite your friends to join just like you have the 02:37
5 option on Facebook to invite your friends to join 02:37
6 Facebook and every other site on the Internet, and 02:37
7 if they did, if they reach a hundred friends that 02:37
8 joined, they would earn \$100. 02:37

9 Q. And if you accepted the feature 02:37
10 that came up saying would you -- it said something 02:37
11 like, "Would you like to invite your friends to 02:37
12 Power"? 02:37

13 A. Yes. 02:37

14 Q. If you hit "yes" or "I agree" -- 02:37

15 A. Yes. 02:37

16 Q. -- how -- what -- what 02:37
17 automation would occur at that point? 02:37

18 A. So first of all, you have to 02:37
19 remember that 99 percent of our users were not -- 02:38
20 were not using -- were not using Facebook. They 02:38
21 were users on other sites, so we actually -- I 02:38
22 guess you could say we were actually a big source 02:38
23 of providing users to Facebook in Brazil. In fact, 02:38
24 as -- I guess you could say it was a gift, but we 02:38
25 -- we brought a large amount of Orkut users to 02:38

1 Facebook, so that's where a lot of our promotions
2 were -- Because our users already, as you know,
3 have -- Prior to having Facebook, we had millions
4 of users who have hundreds of friends already in
5 the system, and that represented 99 percent of our
6 contacts in our system. Facebook was a very small
7 part of this world. At that time, obviously it's a
8 much larger site today but in our world, in our
9 growth it was -- it was introduced later. So we
10 were encouraging our friends -- our users to go and
11 register at Facebook and become Facebook users.
12 Because in our -- in our view, the more social
13 networks that users were using, the more value it
14 would be to, you know, to aggregate different
15 sites. So we encouraged users to sign up for
16 Facebook. In fact, we're giving free marketing to
17 Facebook. So to answer your question, a lot of
18 these users -- You could see all your friends from
19 all your sites and say, "Hey. Join Facebook when
20 you're at Facebook." That was a big part of our
21 promotions. That was the largest part of our
22 promotions. And then, of course, if they have
23 friends that are already using Facebook -- Facebook
24 and they wanted to invite their friends to come use
25 Power, that's the smaller part. But the biggest

02:38

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1 Conditions previously. 04:44

2 Q. As of December 1st, 2008, had you 04:44
3 read the Terms and Conditions that were available 04:44
4 on the Facebook Web site? 04:44

5 A. I didn't read it all a hundred 04:44
6 percent, but we had read -- people in our company 04:44
7 had read it. 04:44

8 Q. So who in your company had read it 04:44
9 -- if anybody? 04:44

10 A. It would have been myself -- I 04:44
11 believe -- I do remember reading it. Filipe would 04:44
12 have also read it. 04:44

13 Q. Mr. Herrera? 04:44

14 A. Yes. I would have asked was there 04:44
15 anything relevant in the terms. He would have been 04:44
16 the person I talked to. 04:44

17 Q. Could you turn to Page 4? 04:44

18 A. Sure. 04:44

19 MR. BURSOR: Are you using the 04:44
20 page numbers at the top? 04:44

21 MR. COOPER: Yes. I'm sorry if 04:44
22 that wasn't clear. 04:44

23 Q. Mr. Vachani, your counsel made a 04:44
24 good point. I'm referring to the page numbers in 04:45
25 the upper right-hand corner. You see the one that 04:45

1	says Page 415?	04:45
2	A. Yes.	04:45
3	Q. Can you read the first bullet	04:45
4	point to yourself and tell me when you've finished?	04:45
5	A. The first bullet point? Yes.	04:45
6	Okay.	04:45
7	Q. As of December 1st, 2008, do you	04:45
8	know one way or another whether anybody at Power	04:45
9	had read that particular provision in the Facebook	04:45
10	Terms of Service?	04:45
11	A. Yes.	04:45
12	Q. Had you read it?	04:45
13	A. Yes.	04:45
14	Q. All right. Did you have an	04:45
15	understanding whether power.com enabled users to	04:46
16	registered users to violate the Terms of Service?	04:46
17	A. I don't understand how a message	04:46
18	that a user wants to send to another friend --	04:46
19	First of all, it's an unsolicited message; and	04:46
20	second, I don't understand what this Terms and	04:46
21	Conditions has anything to do with -- with -- I	04:46
22	don't understand how the relevance to the	04:46
23	questions.	04:46
24	Q. Did you have an understanding	04:46
25	whether or not power.com to enabled its registered	04:46

1 the question read back and then just answer the 04:50
2 question. 04:50

3 A. So what's the question? 04:50
4 (Whereupon, the last question is 04:50
5 read back by the reporter.) 04:50

6 MR. BURSOR: Is the question: 04:50
7 Does he see that in the agreement? 04:50

8 MR. COOPER: Yeah, that's all I
9 asked.

10 MR. BURSOR: Yeah, so do you see
11 that -- do you see that -- 04:50

12 A. I see that in the agreement. 04:50

13 MR. BURSOR: Yeah, so then you've 04:50
14 answered the question. 04:50

15 A. Okay. Yeah, I see that in your
16 agreement. 04:50

17 Q. Have you read that language as of 04:50
18 December 1st, 2008? 04:50

19 A. Yes. I had read it many times. 04:50

20 Q. Had anybody else at power.com read 04:50
21 that language as of December 1st, 2008? 04:50

22 A. I don't know if they read it. It 04:50
23 was my job to read it and I think Filipe probably 04:51
24 read it. Those are the two people that I know. 04:51

25 Q. As of December 1st, 2008, had you 04:51

1 remember any substantial conversation. 05:38

2 Q. All right. Do you know -- The 05:38
3 second sentence of Exhibit 109 says, "Eric we need 05:38
4 to be prepare for Facebook to try and to block us 05:38
5 and the turn this into a national battle that gets 05:38
6 us huge attention"? 05:39

7 A. Yes. 05:39

8 Q. Why did you think Facebook was 05:39
9 going to block you? 05:39

10 A. Obviously, they sent this letter 05:39
11 to us saying very clearly it was -- I thought it 05:39
12 was absurd, but that -- nonetheless that they were 05:39
13 trying to do this, but it was clear that that's 05:39
14 what they would do. 05:39

15 Q. By what the way, do you remember 05:39
16 the name of the Facebook individual that Nevo 05:39
17 suggested you talk to? 05:39

18 A. I do not recall it right now. 05:39

19 Q. Do you know if it was the same Sam 05:39
20 O'Rourke? 05:39

21 A. That name sounds familiar, but I 05:39
22 don't -- I know I've heard that name. 05:39

23 Q. Why did you -- The third sentence 05:39
24 says, "We need to address the scraping argument and 05:39
25 the soliciting log in credentials"? 05:39

EXHIBIT F

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15 Attorneys for Defendants Power
16 Ventures, Inc. and Steve Vachani

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 FACEBOOK, INC.,
20
21 Plaintiff,
22 -against-
23 POWER VENTURES, INC. d/b/a POWER.COM, a
24 California corporation; POWER VENTURES, INC.
25 a Cayman Island Corporation, STEVE VACHANI,
26 an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or
business entities of unknown nature,
27 Defendants.
28

Case No. 5:08-CV-05780 JW

**DEFENDANT POWER VENTURES,
INC.'S SUPPLEMENTAL
RESPONSES TO FACEBOOK,
INC.'S INTERROGATORIES NOS.
1, 2, 3, 7, 13, 14, 15, 19, 20 AND 21**

1 ANY AND ALL of the other IP addresses used by POWER “in the normal course of business”
2 referenced in Paragraph 11 of the Declaration of Steve Vachani in Support of Defendants’ Motion
3 for Summary Judgment (Dkt. No. 98-2) filed May 9, 2011.

4 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 20:**

5 Power hereby incorporates the General Objections above as if fully stated herein. Power
6 objects that this interrogatory is vague and ambiguous, overly broad, unduly burdensome, and
7 seeks information that is irrelevant and not reasonably calculated to lead to the discovery of
8 admissible evidence.

9 Subject to and without waiving these objections, pursuant to Fed. R. Civ. P. 33(d), Power
10 refers to the SVN, produced on 10/24/11. Particularly, Power refers to the documents located at
11 “docs / Tecnologia / Hardware / Servidores.” These documents identify the servers Power used in
12 its operations, including information on each server’s hardware, which components of Power’s
13 software each server ran, the private intranet IP address of each server, the public Internet IP
14 address of each server, the subdomain of each server, and several diagrams detailing how the
15 servers were connected to the Internet as a whole.

16 **INTERROGATORY NO. 21:**

17 Describe in detail YOUR efforts from December 1, 2008 through the date of YOUR
18 response to preserve ANY AND ALL documents, computer code, correspondence, emails or
19 content from electronic or digital media (including ANY AND ALL corrupted or deleted content)
20 concerning FACEBOOK, the subject matter of FACEBOOK’s Cease and Desist Letter dated
21 December 1, 2008 (Power 2011.02.03.00001-3), and/or this litigation, including, but not limited to,
22 IDENTIFYING ANY AND ALL instructions by date that YOU made to POWER employees and
23 agents to preserve such documents, computer code, correspondence, emails, or content from
24 electronic or digital media.

25 **SUPPLEMENTAL RESPONSE TO INTERROGATORY 21:**

26 Power hereby incorporates the General Objections above as if fully stated herein. Power
27 objects that this interrogatory is vague and ambiguous, overly broad, unduly burdensome, and
28

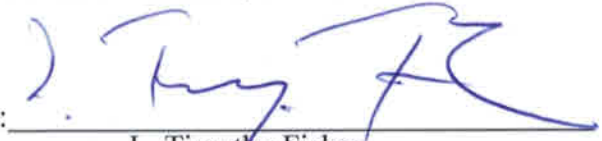
1 seeks information that is irrelevant and not reasonably calculated to lead to the discovery of
2 admissible evidence.

3 As a matter of business practice, Power does not delete or destroy any documents related to
4 any aspect of its business. See Vachani Dep. at 271:9-272:5, 296:9-298:16. Power ceased its daily
5 operations on April 2011. Nonetheless, Power preserved its files by transferring them to an online
6 backup. This online backup contains Power's databases and subversion repository, which includes
7 a large organizational chart of Power's divisions and employees, presentations given at board
8 meetings, several dozen PowerPoint presentations for investment funds and advertisers, banner ads
9 and commercials, information on Power's business model, a PowerPoint presentation for each
10 major component of Power's software (PowerFriends, PowerMessenger, Orkut connectivity,
11 MySpace connectivity), internal documentation for each component of Power's software,
12 information on stock option programs, brainstorming for new software development, plans for
13 growth and expansion, "break even" revenue requirements, marketing materials, hardware and
14 software specifications for Power's servers, network diagrams, and segments of source code.

15 Nearly every file was transferred to the online backup. However, one database file,
16 Power_Logger, was too large to feasibly be transferred. This file was over 100 GB, and it did not
17 contain critical user data, such as profiles, personal information settings, or passwords. Instead, it
18 logged the activities of Power's servers. For this reason, Power necessarily omitted Power_Logger
19 from the backup.

20 Dated: November 18, 2011

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22 By: 
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Attorneys for Defendants Power
Ventures, Inc. and Steve Vachani


VERIFICATION

I, Steve Vachani, declare that:

I am a defendant in the above-captioned action. I have read DEFENDANT POWER VENTURES, INC.'S SUPPLEMENTAL RESPONSES TO FACEBOOK, INC.'S INTERROGATORIES NOS. 1, 2, 3, 7, 13, 14, 15, 19, 20 AND 21, and know the contents thereof. The responses are true of my own knowledge except as to the matters therein stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed in San Francisco, CA on November 18th, 2011.



Steve Vachani

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