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 6 Ventures, Inc. and Steve Vachani

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

11 FACEBOOK, INC.,

12 Plaintiff,

13 -against-

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

19 Defendants.

Case No. 5:08-cv-05780

**DECLARATION OF STEVE
 VACHANI IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 FACEBOOK INC.'S MOTION FOR
 JUDGMENT ON THE PLEADINGS
 PURSUANT TO FED. R. CIV. P.
 12(C) OR, IN THE ALTERNATIVE,
 PARTIAL SUMMARY JUDGMENT
 OF LIABILITY UNDER
 CALIFORNIA PENAL CODE §
 502(c)**

Judge: Honorable Jeremy Fogel
 Date: February 26, 2010
 Time: 9:00 a.m.

Courtroom: 3, 5th Floor



1 I, Steve Vachani, declare:

2 1. I am CEO of Power.com. I make this declaration in support of Defendants'
3 Opposition To Facebook Inc.'s Motion for Judgment on the Pleadings Pursuant To Fed. R. Civ. P.
4 12(c) or, in the Alternative, Partial Summary Judgment of Liability Under California Penal Code §
5 502(c). I have personal knowledge of the facts stated herein and, if called as a witness, I could and
6 would competently testify to the truth thereof.

7 2. During a roughly two-month period, from December 2008 through January 2009,
8 Power offered Facebook users a different and potentially superior browser through which they
9 could access their Facebook accounts to copy, update, and/or port their own "User Content." This
10 "User Content" includes photos, profiles, messages, notes, text, information, music, video,
11 advertisements, listings, and other content that users upload, publish or display on the Facebook
12 site.

13 3. Though Facebook "does not assert any ownership" over this User Content,
14 Facebook does attempt to prevent users from copying it – to make it difficult for users to port their
15 User Content to other websites. This gives Facebook an unfair competitive advantage because
16 users will be less likely to join a new social networking website if the user is unable to port his
17 contacts and other User Content without laboriously re-typing and/or re-uploading each item.

18 4. Thus, even if Power offers new technology that is superior to Facebook, a user is
19 not likely to migrate to that new technology if doing so would require, for example, re-typing
20 hundreds of entries in an address book stored in the user's Facebook account. So, while Facebook
21 "does not assert any ownership" over the user's address book, Facebook does employ a variety of
22 measures to make it very difficult to copy it.

23 5. Power's browser provides users with utilities that allow them to copy their own
24 User Content for purposes of updating it and making it portable to other sites – without copying
25 other elements of the Facebook website. The only data accessed through Power's utilities were
26 user's own "User Content," over which Facebook has disclaimed any ownership.

27 6. Facebook does not allege that Power has copied any element of the Facebook
28 website that is subject to a copyright owned by Facebook – and in fact Power has not done so.

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1 7. Facebook does not allege that any data, any software, or any computer owned by
2 Facebook has been damaged in any way by users accessing their accounts through the Power
3 browser – and in fact no such damage has occurred.

4 8. Actions by users to access their own accounts and to copy their own User Content
5 through the Power browser are not “attacks.” These users employed a utility that is commonplace
6 in the industry and which Facebook itself makes available to its users to access accounts on other
7 websites.

8 9. The pleadings establish that Facebook “implemented technical measures to block
9 users from accessing Facebook through Power.com.” Amended Answer ¶ 63. These technical
10 measures were quite simple. Facebook blocked Power’s IP address, so that users attempting to
11 access their Facebook accounts through Power’s browser would be denied access. An IP (Internet
12 Protocol) address is a numeric label that is assigned to devices, including web servers and other
13 types of computers, participating in a computer network. For example, the IP address for the
14 Power.com web server is 70.38.96.9, and the IP address for the Facebook.com web server is
15 69.63.186.36. The blocking of an IP address is a simple feature that can be implemented with
16 push-button ease by virtually any web host. The “expenditure” of “corporate resources” to
17 accomplish this “technical measure” would involve, essentially, a few clicks of a mouse to access
18 the IP blocking feature of the web host, and ten keystrokes to enter Power.com’s IP address among
19 those to be blocked.

20 10. The utilities made available to users through the Power browser were merely
21 capable of accessing the user’s own account, displaying the Facebook website, copying the user’s
22 own “User Content,” and updating the user’s own “User Content” if directed to do so by the user.
23 The Power browser does not provide any capability to cause the alteration, deletion, damage, or
24 destruction of a computer system, computer network, computer program, or data. Nor does the
25 Power browser provide any capability to cause a denial of access to Facebook by a legitimate user.

26 11. I am not aware of any instance in which use of the Power browser caused any
27 alteration, damage, deletion or destruction to any of Facebook’s data or computers. That did not
28 happen and could not have happened.



1 12. Upon learning that users were accessing their accounts through the Power browser,
2 Facebook would have no reason to believe that its computer system, computer network, computer
3 program, or data had been altered, deleted, damaged, or destroyed by such access. Facebook is
4 familiar with the utilities used by the Power browser because Facebook itself has used similar
5 utilities for years. Thus Facebook should have been aware, and so far as I could tell was aware,
6 that it had no cause for such concern. In its communications to me, Facebook never suggested any
7 concern that its computers or data had been altered, deleted, damaged, or destroyed. Since there
8 was no cause for concern, Facebook did not, to my knowledge, make any expenditure to verify that
9 its computers or data had not been altered, deleted, damaged, or destroyed.

10 13. Facebook's only response was to block access through Power's IP address.
11 Facebook's decision to block Power's IP address was a pure business decision with only one
12 realistic purpose: to thwart a potential competitor from implementing new technology that may
13 prove superior to Facebook's technology. Facebook's decision to block Power's IP address was in
14 no sense a "reasonable" or "necessary" measure to verify that the Facebook computers or data had
15 not been altered, deleted, damaged or destroyed. Facebook had no need for such verification, and
16 IP blocking has nothing to do with such verification.

17 14. The only intended use and the only actual use of the Power browser was to display
18 the user's own Facebook account and to enable the user to copy and/or update the user's own
19 "User Content." We had no scheme to defraud, deceive or extort anyone. Nor could the Power
20 browser be used for such a scheme. Nor, to my knowledge, was the Power browser used for such a
21 scheme.

22 15. The Power browser was not intended to and is not capable of wrongfully controlling
23 or obtaining money, property or data. We did not intend it for such use. Nor, to my knowledge,
24 was the Power browser ever used for such purposes.

25 16. Power has never obtained any usernames or passwords from Facebook's computers.
26 Every username and password obtained by Power was manually entered through the Power.com
27 website by a user who wished to access his or her own account through the Power browser. No
28 data owned by Facebook has ever been altered or destroyed from such access. And the only data



1 that was "copied" or "used" in any substantial way was the user's own User Content, and only for
2 such purposes as were specifically directed by the user.

3 17. Power acted with a good faith belief that (i) access to users' Facebook accounts
4 through the Power browser was done in every instance with the permission of the user, that in
5 every instance those users had ownership of all "User Content" that was accessed and/or copied
6 through the Power browser and that no other permission was legally required for users to access
7 their own accounts and User Content through the Power browser.

8 18. To the extent that Facebook's Terms of Use purport to restrict users from accessing
9 their own User Content in this manner, Power had, and continues to have, a good faith belief that
10 Facebook's Terms of Use were legally unenforceable or otherwise violative of the copyright and
11 unfair competition laws.

12 19. In December 2008, after receiving notice that Facebook objected to users' access
13 through the Power browser, Power immediately began working with Facebook to implement a
14 different type of connection through "Facebook Connect." Power maintained its belief that it had
15 done nothing wrong, and that it had every legal right to allow users access to their own Facebook
16 accounts through the Power browser. Nevertheless, in an effort to reach an amicable resolution,
17 Power agreed to try to work through "Facebook Connect" instead. By January 2009, Power had
18 taken down its existing Facebook integration through the Power browser, and had focused its
19 efforts exclusively on implementing "Facebook Connect." Power has not made any connection to
20 Facebook since January 2009, and has no current plan to re-start its Facebook integration.
21 Nevertheless, at all times through January 2009, and continuing through to today, Power believed
22 and continues to believe, in good faith, that it had all permissions legally required to permit users to
23 access their own Facebook accounts and to copy their own User Content through the Power
24 browser. Power never "knowingly" acted "without permission," as those terms are used in §
25 502(c).

26 I declare under the penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct, and that this Declaration was executed at Salvador, Brazil this
28 15th day of January, 2010.





Steve Vachani

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