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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

BY FAX

(Additional Counsel Appear on Signature Page)

Attorneys for Plaintiff and all others Similarly Situated

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

C09 03043 HRL

RootZoo, Inc., individually, and on behalf of all others similarly situated,

Plaintiff,

v.

FACEBOOK, INC., and DOES 1 through 10 inclusive,

Defendants.

CLASS ACTION COMPLAINT for:

- (1) Breach of Contract; and
- (2) Violation of Bus. & Prof. Code §17200, *et seq.* – “Unlawful,” “Unfair” and “Fraudulent” Business Practices.

JURY TRIAL DEMANDED

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1 Plaintiff, RootZoo, Inc., (“Plaintiff”), individually and on behalf of the Class
2 described below, by its attorneys, makes the following allegations based upon
3 information and belief, except as to allegations specifically pertaining to Plaintiff
4 and its counsel, which are based on personal knowledge. Plaintiff brings this
5 action for damages and injunctive relief against defendant Facebook, Inc.
6 (“Facebook” or “defendant”), demanding a trial by jury.

7 **NATURE OF THE ACTION**

8 1. Plaintiff brings this class action against Facebook to recover damages
9 and other relief available at law and in equity on behalf of itself as well as on
10 behalf of the members of the following Class:

11 *All persons or entities in the United States who paid*
12 *Facebook for PPC (pay-per-click) advertising through*
13 *Facebook’s Performance Advertising Platform.*

14 2. This action arises from the Facebook’s two distinct deceptive business
15 practices: charging Plaintiff and members of the Class for clicks that never
16 occurred; and for failing to properly guard against clicks that result from abusive
17 practices by third parties referred to as “click fraud.”

18 **THE PARTIES**

19 3. Plaintiff, RootZoo, Inc, is a corporation organized under the laws of
20 the state of Delaware with its principal place of business in Manhattan, New York.
21 RootZoo, Inc., owns and operates RootZoo.com , a social networking website
22 designed to facilitate the discussion of sports. Plaintiff contracted with Facebook
23 and paid for advertising on Facebook.com on a “pay-per-click” basis.

24

CLASS ACTION COMPLAINT

1 **FACTUAL BACKGROUND**

2 8. Facebook is a social networking website with the URL,
3 www.facebook.com . Registration is free and registered users can create profiles
4 on Facebook.com, which entitle users, among other things, to post photos, to list
5 personal interests, to exchange private or public messages, and to join networks of
6 groups of friends organized by location, workplace, school, and region. Users can
7 also freely add individuals to their network of “Facebook friends” and send them
8 messages, and “update” their personal Facebook page to notify friends about
9 themselves.

10 9. According to industry statistics, Facebook is the leading social
11 networking site in the World based on monthly unique visitors, having attracted
12 132 million unique visitors in June 2008. Facebook also claims to have more than
13 200 million active users. In the United States, there are more than 70 million
14 active users.

15 10. Facebook boasts that it is a social utility “that helps people
16 communicate more efficiently with their friends, family and coworkers. The
17 company develops technologies that facilitate the sharing of information through
18 the social graph, the digital mapping of people's real-world social connections.”
19 For most, Facebook is just that: a digital platform for socialization. For Facebook,
20 however, providing that socialization allows it to garner revenue for advertising on
21 a variety of advertising platforms.

22 11. Facebook's revenues are generated in part from its sale of advertising
23 through its “Performance Ad System” advertising platform.

1 12. Facebook permits advertisers to select demographic and other data
2 provided by the Facebook user on his/her respective Facebook page, such as city,
3 gender, age, relationship status, employer, educational level, political views,
4 interests, languages and “keywords.”

5 13. Facebook then uses this information to deliver advertisements on the
6 user’s Facebook page that match the criteria selected by advertisers to target
7 Facebook users.

8 14. Facebook’s Performance Ad System permits advertisers to contract
9 with Facebook based on either on a “Pay-per-click” (“PPC”) model or a “Pay-per-
10 impression” (“CPM”) model.

11 15. Under Facebook’s PPC model, advertisers are charged a fixed amount
12 each time a user clicks on an advertiser’s website or Facebook page which results
13 in the user being directed from Facebook to the advertiser’s independent web site.

14 16. Under Facebook’s CPM model, advertisers are charged based on how
15 many times the advertiser’s advertisement is made available for viewing by the
16 Facebook user.

17 17. As part of the advertising contractual process with Facebook,
18 Facebook requires the advertiser to provide a maximum PPC bid (how much they
19 are willing to pay per click – the minimum being \$0.01). Advertisers bid based on
20 how much an advertiser is willing to pay for each click on the advertisement.

21 18. Facebook sets the amount that it will charge per click based on a bid
22 algorithm that it does not disclose to its customers.

1 19. An advertiser is required to set a “Daily Budget” in which the
2 advertisers will not pay more than the budgeted amount for the clicks in a twenty-
3 four hour period.

4 20. Customers who wish to advertiser with Facebook are presented with a
5 “Terms and Conditions” agreement (the “Agreement”) to which they must indicate
6 their consent. The Agreement obligates the advertiser to pay Facebook for clicks
7 as determined solely by Facebook and irrespective of whether these clicks are
8 legitimate clicks or the result of a person or “bot” (a software application that
9 performs an automated task) clicking on the advertiser’s ad for other reasons.

10 **A. Facebook Charges Plaintiff and the Class for Clicks That Never**
11 **Occurred.**

12 21. There are two main technological approaches advertisers employ for
13 tracking clicks to their websites. The primary method, logfile analysis, uses
14 software, such as Goggle Analytics or Stat Counter, to read the logfiles in which
15 the web server for a website records all of its transactions. The second method,
16 page tagging, uses JavaScript on each page to notify a third-party server when a
17 page is rendered by a web browser. Both collect data that can be processed to
18 produce web traffic reports.

19 22. Facebook advertisers have repeatedly complained directly to
20 Facebook, and in group discussions on the Internet that Facebook monitors, that
21 based on the advertisers’ web site traffic tracking data, Facebook is charging
22 advertisers for clicks that never occurred.

1 23. Facebook has refused to take any action in response to these
2 complaints nor has Facebook made available any of its internal data that would
3 allow advertisers to understand the basis for the clicks on the advertisers'
4 advertisements which Facebook claims to have occurred.

5 24. Unlike other websites that sell advertising on a PPC model, such as
6 Yahoo! or Google, nowhere on Facebook's website does it provide any
7 information on the methods or practices it employs to track clicks on
8 advertisements that appear on its web site.

9 25. The below are examples of complaints from Facebook advertisers
10 found on the website, www.Wickedfire.com, regarding Facebook's charging
11 advertisers for clicks that never occurred:

12 Tracking 202 [a tracking device] is telling me 11 clicks....Facebook is telling me
13 145. That's way off the 15-20%, is there a different margin for tracking 202 than
there is prosper 202 or did I suffer from one of those click bots?

14 Sucks how high the numbers are today. Its clear the problem is getting worse
15 daily. I've moved most of my [ads] off facebook for the time being and magically
16 my [data] is all positive again. Crazy how that works. There are lots of places to
buy traffic, some that will even actually give you the traffic you are paying for.
17 Facebook is never going to admit to whats going on. I can almost guarantee you
that.

18 Facebook is still reporting 20% more clicks than I actually get. This is [bs]. If I
19 were at least getting bot traffic or something that would be one thing, but right
now Facebook is simply stealing 20% of clicks that I paid for, which adds up to
20 thousands of dollars. Someone should threaten legal action, this is straight up
fraud on Facebook's part.

21 FB click fraud update: ratio is now EXACTLY 10:1. 10 clicks reported on FB, 1
22 click on prosper. No, this wasnt on a small scale either. Were talking 1000's of
clicks. Have fun facebook. Im checking out till you can fix this [problem].

23 I'm targeting small, specific demos, Facebook reports exactly twice as many
24 clicks as hit my [destination page]. Facebook is stealing our money.....

CLASS ACTION COMPLAINT

1 This is experienced by not just those that use 202. When in doubt, look at your
2 raw apache logs - which I did. The result: 15% - 20% clicks never make it to my
3 [Destination Page]. Clearly a case of click-fraud going on. Tested on 3 different
4 servers at 3 different DCs (not a network issue).

5 **B. Facebook Does Not Adequately Guard Against Click Fraud Despite**
6 **Knowledge of its Existence.**

7 26. "Click fraud" is a term in the Internet advertising industry used to
8 describe clicks on an advertisement with no intention of doing business with the
9 advertiser and for some purpose other than that contemplated by the advertisement.
10 The use of the word "fraud" can be a bit misleading, since the word is not used as
11 is understood at common law. Instead the industry uses the term "click fraud"
12 colloquially to simply describe purposeful clicks on advertisements by persons or
13 software other than a potential customer.

14 27. The perpetrators of fraudulent (or invalid) clicks in connection with
15 Facebook's Performance Advertising Platform often consist of actual competitors
16 of the advertiser who simply wish to exploit the defects in Facebook's PPC
17 advertising model in order to increase the fees that their competitor is paying for
18 advertising and/or to boost the effectiveness of their own ads (given that Facebook
19 employs a daily budgeting system, "using-up" a competitor's budget in the
20 beginning of a twenty-four hour period means that the competitor's ads will not be
21 competing with other competitors).

22 28. Facebook garners revenue from click fraud since it charges advertisers
23 for each click without employing any means to determine whether any click is the
24 result of a valid or improper purpose.

1 29. Click fraud can be prevented and/or greatly minimized by tracking the
2 use of a pay-per-click advertisement, including the identity and/or source of those
3 clicking on the advertisement/link and the frequency of such activity. Such
4 tracking can be accomplished by, among other things, computer programs that
5 count the number and timing of clicks originating from a single source.

6 30. Many of the websites that compete with Facebook for the sale of PPC
7 advertising, such as Yahoo! and Google, provide extensive information on their
8 websites regarding their efforts to detect and minimize click fraud. In contrast,
9 nowhere on Facebook's website is there any information on its efforts to detect and
10 minimize click fraud. Nor does Facebook warn its existing and potential
11 customers about the existence, and prevalence, of click fraud on its website despite
12 its keen awareness of the issue.

13 31. Furthermore, when its advertising customers suspect that they have
14 become the victims of click fraud, Facebook fails to (a) advise them that they have
15 been victimized, and (b) to refund them the excess charges that they have incurred
16 as a result of the improper click activity. Facebook derives the same amount of
17 income from an improper click as it does from a legitimate click.

18 32. While Facebook does provide advertisers with statistics regarding the
19 numbers of users who allegedly clicked on an advertisement, it will not disclose
20 information to advertisers that would allow advertisers to ascertain whether the
21 clicks were legitimate. Advertisers are forced to accept Facebook's representation
22 without any ability to verify the information that Facebook provides.

1 33. Facebook's unwillingness to police and to prevent click fraud is
2 especially egregious given that it is uniquely in a position to exercise that function.
3 More egregious still, is the fact that Facebook's complicity in click fraud is not
4 limited to inaction. Facebook has actually created an environment that fosters
5 click fraud as it makes access to its community, and therefore the ability to commit
6 click fraud on its web site, extraordinarily easy such that fraudsters are able to
7 create thousands of fake profiles in order to gain access to Facebook
8 advertisements.

9
10 **C. Plaintiff, Just Like Thousands of Others, Has Been Charged Both for**
11 **Non-Existent Clicks and for Clicks Resulting from Facebook's Failure**
12 **To Police Click Fraud**

13
14 34. RootZoo.com, is a social networking website for sports fans. In
15 approximately November 2007, Plaintiff, as the owner and operator of
16 RootZoo.com, entered into a contract with Facebook for the placement of PPC
17 advertisements on Facebook.com.

18 35. During the period November 2007 to early June 2008, Plaintiff
19 contracted with Facebook for PPC advertisements. During that period, Plaintiff
20 accepted Facebook's accounting for clicks from Facebook.com to RootZoo.com
21 without cross-checking against RootZoo.com's click-tracking software.

22 36. On or about June 3, 2008, Plaintiff received a statement from
23 Facebook that showed that Facebook had charged Plaintiff for 804 clicks on June

1 2, 2008. Plaintiff utilizes two industry leading software programs that track the
2 number of clicks to its website and, just as importantly, from where the clicks to
3 RootZoo.com originated. Plaintiff's tracking software programs showed that
4 approximately 300 clicks were generated from its advertisement on Facebook.com
5 to RootZoo.com.

6 37. On June 3, 2008, Plaintiff contacted Facebook to report this material
7 discrepancy and to request a refund for clicks that never occurred. On June 6,
8 2008, pursuant to Facebook's request, Plaintiff provided Facebook with data from
9 its two software programs that showed the discrepancy between what were the
10 actual number of clicks and the number of clicks for which Facebook was
11 charging.

12 38. On June 9, 2008, Facebook emailed Plaintiff and reported,
13 "[a]ccording to our engineers, the clicks being reported within your Facebook
14 account are accurate."

15 39. Plaintiff requested that Facebook provide it with a copy of the logs
16 demonstrating that clicks for which Plaintiff was being charged were indeed actual
17 clicks. On June 10, 2008, Facebook refused to provide any back up supporting
18 documentation that would substantiate its position.

19 40. Plaintiff also requested that Facebook refund back charges for clicks
20 that never occurred. Facebook refused to refund any charges or provide any
21 credits.

22 41. In the course of investigating the situation involving charges for
23 nonexistent clicks, Plaintiff also discovered that it was receiving hundreds of clicks

1 from small towns on a daily basis during period April-May 2008 that that would
2 almost be statistically impossible given the distribution of the American population
3 and Plaintiff's prior history with Facebook advertisements.

4 42. Again, Plaintiff reported the discrepancy to Facebook and provided
5 tracking data to support its claim that it was being charged for fraudulent or
6 improper clicks.

7 43. On June 18, 2009, Facebook wrote to Plaintiff, "[w]e've been
8 continuing to look into this on our side, and so far have found that you've only
9 been billed for valid clicks on your ads, which match the stats reported to you in
10 your ads account. We're currently not able to offer you a refund for any of these
11 charges."

12 44. Facebook has never refunded any monies to Plaintiff.
13

14 **CLASS ACTION ALLEGATIONS**

15 45. Plaintiff bring this nationwide class action on behalf of itself and a
16 Class defined as follows:

17 *All persons or entities in the United States who paid*
18 *Facebook for PPC (pay-per-click) advertising through*
19 *Facebook's Performance Advertising Platform.*

20 46. Excluded from the Class are governmental entities, Defendants, any
21 entity in which Defendants have a controlling interest, and Defendants' officers,
22 directors, legal representatives, successors, subsidiaries, and assigns. Also
23

1 excluded from the Class is any judge, justice, or judicial officer presiding over this
2 matter and the members of their immediate families and judicial staff.

3 47. Plaintiff reserves the right to modify the Class description and the
4 Class period based on the results of discovery.

5 48. Plaintiff and the Class bring this action for equitable, injunctive and
6 declaratory relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of Rule 23 of
7 the Federal Rules of Civil Procedure.

8 49. Numerosity: The proposed Class is so numerous that individual
9 joinder of all its members is impracticable. Plaintiff does not presently know the
10 exact number of class members. Due to the nature of the trade and commerce
11 involved, however, Plaintiff believes that the total number of Class members is at
12 least in the thousands.

13 50. Common Questions of Law and Fact Predominate: Facebook has
14 acted, with respect to the Class, in a manner generally applicable to each Class
15 member. There is a well-defined community of interest in the questions of law and
16 fact involved in the action, which affect all Class members. There are many
17 questions of law and fact common to the Representative Plaintiff and the Class,
18 and those questions substantially predominate over any questions that may affect
19 individual Class members. The questions of law and fact common to the Class and
20 which predominate over any questions affecting only individual members include,
21 but are not limited to, the following:

- 22 a. the construction of the form Agreement between
23 Facebook and the Class;

1 52. Adequacy of Representation: Plaintiff will fairly and adequately
2 represent and protect the interests of the Class. Plaintiff is committed to
3 prosecuting this action and has retained competent counsel with substantial
4 experience in prosecuting complex and class action litigation. Plaintiff and its
5 counsel are committed to vigorously prosecuting this action on behalf of the Class,
6 and have the financial resources to do so. Neither Plaintiff nor its counsel has any
7 interests adverse to those of the Class.

8 53. Superiority of a Class Action: Plaintiff and the members of the Class
9 suffered, and will continue to suffer, harm as a result of Facebook's unlawful and
10 wrongful conduct. A class action is superior to other available methods for the fair
11 and efficient adjudication of the present controversy. Individual joinder of all
12 members of the class is impractical. Even if individual class members had the
13 resources to pursue individual litigation, it would be unduly burdensome to the
14 courts in which the individual litigation would proceed. Individual litigation
15 magnifies the delay and expense to all parties in the court system of resolving the
16 controversies engendered by Defendant's common course of conduct. The class
17 action device allows a single court to provide the benefits of unitary adjudication,
18 judicial economy, and the fair and equitable handling of all Class members' claims
19 in a single forum. The conduct of this action as a class action conserves the
20 resources of the parties and of the judicial system, and protects the rights of the
21 Class members. Furthermore, for many, if not most, Class members, a class action
22 is the only feasible mechanism that allows them an opportunity for legal redress
23 and justice.

1 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS**

4 **CODE §§17200 et seq.**

5
6 60. Plaintiff realleges the preceding paragraphs as if fully set forth herein,
7 and, to the extent necessary, pleads this cause of action in the alternative.

8 61. Plaintiff has standing to pursue this claim as Plaintiff has suffered
9 injury in fact and has lost money or property as a result of Facebook's actions as
10 delineated herein.

11 62. Facebook's actions, as alleged in this Complaint, constitute an unfair
12 or deceptive practice within the meaning of California Business and Professions
13 Code section 17200 in that Facebook's actions are unfair, unlawful and/or
14 fraudulent.

15 63. Facebook's business practices, as alleged herein, are unfair because
16 they offend established public policy and/or are immoral, unethical, oppressive,
17 unscrupulous and/or substantially injurious to its customers in that Facebook: (a)
18 fails to employ any reasonable method to track fraudulent clicks; (b) fails to inform
19 its customers that it does not employ any reasonable method to track fraudulent
20 clicks; (c) charges customers for non-existent clicks; and (d) charges customers for
21 invalid clicks.

22 64. Facebook's business practices, as alleged herein, are unlawful because
23 the conduct constitutes a breach of the Agreement.

24

CLASS ACTION COMPLAINT

1 1. Certifying the proposed Class and ordering notice thereto to be paid
2 by Defendants;

3 2. Adjudging and decreeing that Defendants have engaged in the
4 conduct alleged herein;

5 3. Ordering restitution and disgorgement on certain causes of action;

6 4. Issuing an injunction ordering Defendants to cease and desist from
7 engaging in the unfair, unlawful, and/or fraudulent practices alleged in this
8 Complaint;

9 5. Awarding compensatory and general damages according to proof on
10 certain causes of action;

11 6. Awarding special damages according to proof on certain causes of
12 action;

13 7. Awarding both pre and post-judgment interest at the maximum
14 allowable rate on any amounts awarded;

15 8. Awarding costs of the proceedings herein;

16 9. Awarding reasonable attorneys fees as allowed by statute; and

17 10. Any and all such other and further relief that this Court may deem just
18 and proper.

19
20 DATED: July 7, 2009

21 SEEGER WEISS LLP

22 BY: 

23 Jonathan Shub

24 CLASS ACTION COMPLAINT

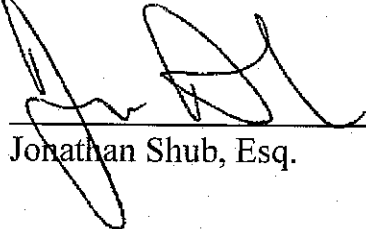
JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

DATED: July 7, 2009

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CLASS ACTION COMPLAINT