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Facebook, Inc., Instagram, LLC and  
14 WhatsApp Inc.

15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF ARIZONA**

17 Facebook, Inc., a Delaware corporation;  
18 Instagram, LLC, a Delaware limited liability  
company; and WhatsApp Inc., a Delaware  
19 corporation,

20 Plaintiffs,

21 v.

22 Namecheap, Inc., a Delaware corporation, and  
Whoisguard, Inc., a Republic of Panama  
23 corporation,

24 Defendants.

Case No.

**COMPLAINT FOR  
CYBERSQUATTING; TRADEMARK  
INFRINGEMENT; FALSE  
DESIGNATION OF ORIGIN; AND  
DILUTION**

**DEMAND FOR JURY TRIAL**

TUCKER ELLIS LLP  
Chicago ♦ Cleveland ♦ Columbus ♦ Houston ♦ Los Angeles ♦ San Francisco ♦ St. Louis

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1 Plaintiffs Facebook, Inc. (“Facebook”), Instagram, LLC (“Instagram”), and  
2 WhatsApp Inc. (“WhatsApp”) (collectively “Plaintiffs”) by and through their attorneys,  
3 Tucker Ellis LLP, file their complaint against Defendants Namecheap, Inc.  
4 (“Namecheap), and Whoisguard, Inc. (“Whoisguard”) (collectively “Defendants”) for  
5 injunctive relief and damages.

## 6 I. INTRODUCTION

7 1. Cybercrime is highly dependent on Internet domain names, which are  
8 registered and used to send spear-phishing emails, operate malware, and engage in other  
9 types of online abuse. According to the Internet Corporation of Assigned Names and  
10 Numbers (“ICANN”), as of July 31, 2019, there were over 800,000 resolving domain  
11 names used for phishing, malware, spam, and botnets.

12 2. Cybercriminals often rely on proxy services to hide their ownership and  
13 control of malicious domains from the public. Proxy services conceal the domain name  
14 registrant’s identity normally listed on publicly available domain name registration  
15 records. These proxy services, like the services offered by Defendants, are increasingly  
16 used by cybercriminals and spammers as they cycle through domain names in order to  
17 conceal their identities and evade detection.

18 3. Namecheap is an ICANN-accredited domain name registrar.

19 4. Whoisguard, which is Namecheap’s alter ego, provides a proxy service to  
20 Namecheap’s customers (Whoisguard and Namecheap refer to this service as  
21 “WhoisGuard” with a capital “G”).

22 5. Whoisguard registers the domain name (as the registrant) and licenses the  
23 domain name to the individual or entity who uses the domain name (the “Licensee”).

24 6. Whoisguard is listed as the registrant for domain names which use the  
25 WhoisGuard service on publicly available domain name registration records.

26 7. Countless domain names registered by Whoisguard and licensed to  
27 Licensee(s) are used in connection with online abuse, including phishing, malware,  
28 spam and trademark infringement.

1 8. Despite notice, Namecheap has repeatedly failed to take "... steps to  
2 investigate and respond appropriately to any reports of abuse" as required by the  
3 ICANN Registrar Accreditation Agreement ("RAA").

4 9. Even when Whoisguard has received reasonable evidence of actionable  
5 harm caused by one of the domain names Whoisguard registered, Whoisguard has failed  
6 to provide the identity or contact information of its Licensee(s) to the victim of that  
7 harm.

8 10. According to the Internet anti-spam organization, Spamhaus.org,  
9 Namecheap was responsible for more fraudulent domain registrations than the next  
10 three registrars on the "Top 20" list combined. In Spamhaus' third-quarter 2019 report,  
11 it explained: "The US-based domain registrar 'Namecheap' continued to be the favorite  
12 place for malware authors to register their botnet C&C domains." In Spamhaus' 2019  
13 overall report, it stated: "Namecheap was (again) the most abused registrar: Around  
14 25% of all botnet C&C domain names were registered through this US-based registrar.  
15 It's the third consecutive year that Namecheap has held the pole position in our annual  
16 ranking of most abused domain registrars."

17 11. In 2018, Internet security expert Brian Krebs, who writes extensively on  
18 cybersecurity matters, reported on a so-called sextortion email scam that was making its  
19 way around the Internet. Krebs reviewed the domain names used in the scams and  
20 noted: "most were registered at the end of May 2018 through domain registrar  
21 Namecheap."

22 12. One such example Krebs discussed in his 2018 report involved  
23 uscourts.gov.com and numerous other domain names that were used in connection with  
24 a ransomware scam that was perpetrated by sending out spam emails. These domain  
25 names were registered through Namecheap.

26 13. Whoisguard and its alter ego, Namecheap, has and continues to register,  
27 as the registrant, domain names used for malicious activity, including phishing and  
28 online fraud. Many of these domain names infringed and continue to infringe on

1 Plaintiffs' trademarks.

2 14. Whoisguard and Namecheap, as its alter ego, with a bad faith intent to  
3 profit from Plaintiffs' trademarks, registered (as the registrant), trafficked in (as the  
4 licensor), and/or used domain names that are identical or confusingly similar to  
5 Plaintiffs' trademarks in violation of 15 U.S.C. § 1125.

6 15. Namecheap and Whoisguard agreed in the Domain Name Registration  
7 Agreement that, "if [Whoisguard] license[s] the use of the domain name registered to  
8 [Whoisguard] to a third party, [Whoisguard] nonetheless remain[s] the domain name  
9 holder of record, and remain[s] responsible for all obligations under this Agreement,  
10 including but not limited to ... ensuring non-infringement of any third party intellectual  
11 property rights or other rights."

12 16. Namecheap and Whoisguard also agreed that Whoisguard, as the  
13 Registered Name Holder, shall accept liability for harm caused by wrongful use of the  
14 Registered Name, unless it discloses the current contact information provided by the  
15 licensee and the identity of the licensee.

16 17. Plaintiffs have sent multiple notices to Whoisguard providing reasonable  
17 evidence of actionable harm and requesting that Whoisguard disclose the identity and  
18 current contact information for the relevant Whoisguard's Licensees.

19 18. Whoisguard failed to disclose the identity and current contact information  
20 for the Licensees and, therefore, Whoisguard and Namecheap, as its alter ego, have  
21 agreed to accept liability for the harm caused by the use of the domain names.

22 19. Plaintiffs seek damages and injunctive relief against Defendants to stop  
23 their ongoing unlawful and harmful conduct, pursuant to the Lanham Act and the Anti-  
24 Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125.

## 25 **II. THE PARTIES**

26 20. Plaintiff Facebook, Inc. is a Delaware corporation with its principal place  
27 of business in Menlo Park, California.

28 21. Plaintiff Instagram, LLC is a Delaware limited liability company with its

1 principal place of business in Menlo Park, California.

2 22. Plaintiff WhatsApp Inc. is a Delaware corporation with its principal place  
3 of business in Menlo Park, California.

4 23. Defendant Namecheap, Inc. is a Delaware corporation with its principal  
5 place of business in Phoenix, Arizona.

6 24. Defendant Whoisguard, Inc. is a Republic of Panama corporation with its  
7 principal place of business in Phoenix, Arizona.

8 25. At all times material to this action, Namecheap and Whoisguard have  
9 been and continue to be instrumentalities and alter egos of each other. Namecheap is  
10 also the direct participant in the actions of Whoisguard as alleged in this Complaint.

### 11 **III. JURISDICTION AND VENUE**

12 26. The Court has federal question jurisdiction over the federal causes of  
13 action alleged in this complaint pursuant to 28 U.S.C. § 1331.

14 27. The Court has general jurisdiction over Namecheap because its principal  
15 place of business is in Phoenix, Arizona. Namecheap further operates its datacenters in  
16 Arizona, both its headquarters and employees are in Arizona, and Namecheap specifies  
17 Arizona in the forum selection clauses in its contracts.

18 28. The Court has personal jurisdiction over Whoisguard because the business  
19 of Whoisguard is to provide services to Namecheap in Arizona. Further, Whoisguard's  
20 principal place of business is in Phoenix, Arizona. Whoisguard further operates its  
21 datacenters in Arizona, both its headquarters and employees are in Arizona, and  
22 Whoisguard specifies Arizona in the forum selection clauses in its contracts.

23 29. Namecheap and Whoisguard have entered into one or more contracts for  
24 domain name registration services and proxy services used in connection with  
25 Defendants' unlawful scheme; a material term of these contracts was Defendants'  
26 agreement to submit to the Court's jurisdiction. A copy of Namecheap's Domain Name  
27 Registration Agreement (including the referenced agreements which form part of the  
28 agreement) is attached to this Complaint as Exhibit 1. A copy of Whoisguard's proxy

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