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7   **IN THE UNITED STATES DISTRICT COURT**

8   **FOR THE DISTRICT OF ARIZONA**

9

10 Proofpoint, Inc., a Delaware corporation,   Civil No. _____
    and Wombat Security Technologies, Inc., a
11 Delaware corporation,

12   **COMPLAINT FOR DECLARATORY**
                                                    RELIEF UNDER THE LANHAM ACT
13   Plaintiffs,
    vs.
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15 Facebook, Inc., a Delaware corporation,
    and Instagram, LLC, a Delaware limited
16 liability company,

17   Defendants.

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19   This is a suit by Proofpoint, Inc., and Wombat Security Technologies, Inc.

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    ("Plaintiffs"), against Defendants, Facebook, Inc., and Instagram, LLC ("Defendants"), for
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22 declaratory relief under the Lanham Act pursuant to 28 U.S.C. § 2201.

23   **INTRODUCTION**

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          1.   This is an action for declaratory relief pursuant to 28 U.S.C. § 2201 to establish
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    that Plaintiffs' registration and use of the internet domain names <facbook-login.com>,
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    <facbook-login.net>, <instagrarn.ai>, <instagrarn.net>, and <instagrarn.org> (the "Domain
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1   Names") is not unlawful under the Anticybersquatting Consumer Protection Act, 15 U.S.C.

2   § 1125(d) (the "ACPA"), or otherwise under the Lanham Act, 15 U.S.C. § 1051 *et. seq.*

3   2.   This action is also filed to prevent the transfer of the Domain Names to

4   Defendants, which was ordered in an administrative decision on January 25, 2021, under the

5   Uniform Domain Name Dispute Resolution Policy (the "UDRP") in a non-binding

6   proceeding captioned *Facebook, Inc. and Instagram, LLC v. WhoisGuard Protected,*

7   *WhoisGuard, Inc. / Phishing Operations, Wombat Security Technologies*, World Intellectual

8   Property Organization Arbitration and Mediation Center, Case No. D2020-3218.

9   **PARTIES**

10   3.   Plaintiff, Wombat Security Technologies, Inc., is a Delaware corporation.

11 Wombat Security Technologies, Inc., is owned and operated by Proofpoint, Inc., a Delaware

12 Corporation. Wombat Security Technologies, Inc., and Proofpoint, Inc., are collectively

13 referred to as "Proofpoint." Proofpoint has offices at 925 West Maude Avenue, Sunnyvale,

14 CA 94085.

15   4.   On information and belief, Defendant, Facebook, Inc., is a Delaware

16 corporation with a principal place of business at 1 Hacker Way, Menlo Park, California

17 94025.

18   5.   On information and belief, Defendant, Instagram, LLC, is a Delaware limited

19 liability company with a principal place of business at 1601 Willow Road, Menlo Park,

20 California 94025.

21   **JURISDICTION AND VENUE**

22   6.   This Court has subject matter jurisdiction over this action pursuant to Section

23 39 of the Trademark Act of 1946 (the "Lanham Act"), 15 U.S.C. § 1121, and under 28

24 U.S.C. §§ 1331 and 1338(a). More specifically, this Court has jurisdiction pursuant to 28

25 U.S.C. § 1331 because this cause arises under 15 U.S.C. § 1114 in that Plaintiffs are the

26 registrant of Domain Names that are subject to transfer under a policy provided by the

27 registrar thereof relating to alleged conflict with a trade or service mark claimed by

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1   Defendants, and under 28 U.S.C. § 2201(a) "In a case of actual controversy within its

2   jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading,

3   may declare the rights and other legal relations of any interested party seeking such

4   declaration, whether or not further relief is or could be sought."

5   7.   This Court has personal jurisdiction over Defendants because Defendants

6   agreed to submit to the jurisdiction of this Court when they initiated an administrative

7   proceeding pursuant to the UDRP concerning the Domain Names. Specifically, Defendants

8   agreed in their UDRP complaint to "submit, with respect to any challenge that may be made

9   by the Respondent to a decision by the Administrative Panel to transfer or cancel the Domain

10   Names that are the subject of this Complaint, to the jurisdiction of the principal office of the

11   concerned Registrar."

12   8.   The registrar for the Domain Names is NameCheap, Inc., a Delaware

13   corporation with principal offices at 4600 East Washington Street, Suite 305, Phoenix,

14   Arizona 85034.

15   9.   Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as a substantial

16   part of the events giving rise to the claims occurred in this district. Furthermore, the registrar

17   of the Domain Names is located in this district.

18   **FACTS**

19   10.   Proofpoint is a leading, publicly traded enterprise security company with a

20   market capitalization of approximately $7 billion. Proofpoint provides software as a service

21   and other products for inbound email security, outbound data loss prevention, social media,

22   mobile devices, digital risk, email encryption, electronic discovery ("eDiscovery"), and

23   email archiving.

24   11.   Proofpoint's solutions protect organizations' greatest assets and biggest risks:

25   their people. Its cybersecurity solutions include the following:

26   a)   preventing email and cloud-based threats, including malware, credential
                        phishing and email fraud;
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b)   reducing successful phishing attacks and malware by helping people spot and report unsafe email and by safeguarding their personal digital activity;

c)   securing digital channels and blocking impostor attacks and malicious content that use trusted and lookalike email and web domains, social media, the dark web, and more;

d)   protecting sensitive data and assisting with compliance with ever-evolving regulations;

e)   collecting, archiving, supervising and monitoring sensitive data in a compliant and legally defensible manner; and

f)   providing security awareness training, including phishing simulation training campaigns, to customers to help train them on how to spot and properly respond to phishing attacks.

12.   Proofpoint has been widely recognized by third parties for its effective cybersecurity solutions that have protected many companies from online deception. For example, Forbes recently published an article based on an interview with Proofpoint's CFO, Paul Auvil. *See* Exhibit A, https://www.forbes.com/sites/jeffthomson/2020/12/04/cybersecurity-in-an-age-of-financial-threats-a-qa-with-proofpoints-cfo/?sh=76dc8d5b19ed. The online magazine Information Age also recently published an article around Proofpoint's Senior Sales Director Rob Bolton discussing cybersecurity threats in the work-from home-reality. *See* Exhibit B, https://www.information-age.com/proofpoint-gm-discusses-insider-threats-work-from-anywhere-reality-123492767/. A sampling of Proofpoint's many awards and recognitions – which are too numerous to detail here – may be found in Exhibit C, https://www.proofpoint.com/us/news?type=All#in-the-news.

13.   One of the ways Proofpoint provides its cybersecurity solution services is by conducting training to help its clients' workforce recognize cybersecurity threats, including phishing attacks.

14.   To make the training exercise more realistic, Proofpoint uses intentionally domain names that look like typo-squatted versions of recognizable domain names, such as

1 <facbook-login.com>, <instagarn.org> and the other Domain Names at issue in these

2 proceedings.

3   15.   By using domain names similar to those of well-known companies, Proofpoint

4 is able to execute a more effective training program because the workforce is more likely to

5 learn to distinguish typo-squatted domains, which are commonly abused by bad actors to

6 trick workers, from legitimate domain names. This protects both the employer that provides

7 this training to its workforce as well as the owners of legitimate domain names, including

8 social-media companies like Defendants.

9   16.   As part of its cybersecurity solution services, Proofpoint sends an imitation

10 phishing e-mail containing the Domain Names to people undergoing training. The

11 individuals undergoing training either (a) ignore the fake phishing email; (b) report the

12 email; or (c) click the simulated phishing link in the email, leading them to one of the

13 Domain Names, in which event they receive a teachable moment notice informing them that

14 they responded to a phishing attempt as part of a training exercise. This process helps to

15 reinforce the desired behavior of the recipient, which is to ignore or report the phishing email

16 attack, or to be taught the proper behavior in case the recipient did in fact click on the

17 simulated phishing link. A representative example of such a teachable moment notice is

18 shown below:

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