

1 **HUNTON ANDREWS KURTH LLP**
 2 Ann Marie Mortimer (State Bar No. 169077)
 3 amortimer@HuntonAK.com
 4 Jason J. Kim (State Bar No. 221476)
 5 kimj@HuntonAK.com
 6 Jeff R. R. Nelson (State Bar No. 301546)
 7 jnelson@HuntonAK.com
 8 550 South Hope Street, Suite 2000
 Los Angeles, California 90071-2627
 Telephone: (213) 532-2000
 Facsimile: (213) 532-2020

9 Attorneys for Plaintiffs
 10 FACEBOOK, INC. and INSTAGRAM, LLC

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **OAKLAND/SAN FRANCISCO DIVISION**

14 FACEBOOK, INC., a Delaware
 15 corporation and INSTAGRAM, LLC, a
 16 Delaware limited liability company,

17 Plaintiffs,

18 v.

19 SEAN HEILWEIL, and JARRETT
 20 LUSSO, d/b/a “BOOSTGRAM”

21 Defendants.
 22
 23
 24
 25
 26
 27
 28

CASE NO.: 3:20-cv-07345

COMPLAINT; DEMAND FOR JURY TRIAL

Hunton Andrews Kurth LLP
 550 South Hope Street, Suite 2000
 Los Angeles, California 90071-2627

1 Plaintiffs Facebook, Inc. (“Facebook”) and Instagram, LLC (“Instagram”) allege
2 the following:

3 INTRODUCTION

4 1. Since at least August 1, 2015, and continuing to the present, Defendants
5 Sean Heilweil and Jarret Lusso operated an unlawful business using the website
6 boostgram.com. Defendants’ business artificially inflated the “likes” and “followers”
7 of Instagram accounts (a practice known as “fake engagement”). Defendants used a
8 network of computers or “bots,” computer scripts, and their customers’ Instagram
9 accounts to deliver automated “likes” and “followers” to Instagram accounts, and
10 promoted their fake engagement service using a diluting domain name, in violation of
11 Instagram’s Terms of Use, Community Guidelines, and Platform Policy and state and
12 federal laws.

13 2. Defendants interfered with and continue to interfere with Instagram’s
14 service, created an inauthentic experience for Instagram users, and attempted to
15 fraudulently influence Instagram users for their own enrichment. Facebook and
16 Instagram bring this action to stop Defendants’ ongoing and future misuse of Plaintiffs’
17 platform and infringing activity. Facebook and Instagram also bring this action to
18 obtain compensatory and punitive damages pursuant to the California Comprehensive
19 Computer Data Access and Fraud Act, Section 502 (the “CCCDFA”); Computer
20 Fraud and Abuse Act, 18 U.S.C. § 1030 (the “CFAA”), the Lanham Act, 15 U.S.C. §
21 1125 (c) and (d), and for breach of contract. Facebook and Instagram also seek
22 disgorgement of Defendants’ illicit profits for unjust enrichment.

23 PARTIES

24 3. Plaintiff Facebook is a Delaware corporation with its principal place of
25 business in Menlo Park, California.

26 4. Plaintiff Instagram is a Delaware limited liability company with its
27 principal place of business in Menlo Park, California. Instagram is a subsidiary of
28 Facebook.

1 5. Defendant Sean Heilweil is an individual who is domiciled in the state of
2 New York.

3 6. Defendant Jarrett Lusso is an individual who is domiciled in the state of
4 New York.

5 7. Since at least August 1, 2015, Defendants Lusso and Heilweil have
6 controlled the boostgram.com fake engagement service. Exs. 1-2. On their website,
7 Defendants offered users a way to “increase [their] Instagram exposure” and “get real
8 organic engagement on [their] Instagram account in just three clicks.” Ex. 3.

9 **JURISDICTION AND VENUE**

10 8. This Court has subject matter jurisdiction over the federal causes of action
11 alleged in this Complaint pursuant to 28 U.S.C. § 1331.

12 9. This Court has supplemental jurisdiction over the state law causes of action
13 alleged in this Complaint pursuant to 28 U.S.C. § 1367 because these claims arise out
14 of the same nucleus of operative facts as Facebook and Instagram’s federal claim.

15 10. In addition, this Court has jurisdiction over all the causes of action alleged
16 in this Complaint pursuant to 28 U.S.C. § 1332 because complete diversity between the
17 Plaintiffs and each of the named Defendants exists, and because the amount in
18 controversy exceeds \$75,000.

19 11. This Court has personal jurisdiction over Defendants because each
20 Defendant had an Instagram account and agreed to Instagram’s Terms of Use.
21 Additionally, Defendants, through their business, acquired access to their customers’
22 Instagram accounts, and used those accounts to provide fake engagement. Accordingly,
23 the Court has personal jurisdiction over Defendants because Instagram’s Terms of Use
24 contain a forum selection clause that requires this complaint be resolved exclusively in
25 this Court and that Defendants submit to the personal jurisdiction of this Court.

26 12. This Court also has personal jurisdiction over Defendants because they
27 knowingly and intentionally directed their actions at California, and at Facebook and
28 Instagram, which have their principal place of business in California. Defendants’

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1 business model depended on accessing and using Instagram in order to artificially
2 manipulate Instagram accounts in exchange for money and used a mark that dilutes
3 Instagram marks. Additionally, Defendants transacted business and engaged in
4 commerce in California by, among other things, knowingly using a server and computer
5 network located in the Northern District of California to operate their fake engagement
6 service.

7 13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b),
8 as the threatened and actual harm to Facebook and Instagram occurred in this District.

9 14. Pursuant to Civil L.R. 3-2(c), this case may be assigned to either the San
10 Francisco or Oakland division because Facebook and Instagram are located in San
11 Mateo County.

12 **FACTUAL ALLEGATIONS**

13 **A. Background on Instagram and Facebook**

14 15. Facebook is a social networking website and mobile application that
15 enables its users to create their own personal profiles and connect with each other on
16 their personal computers and mobile devices. As of August 2020, Facebook daily active
17 users averaged 1.79 billion and monthly active users averaged 2.7 billion. Facebook
18 has several products, including Instagram. Facebook owns and operates the Instagram
19 service, platform, and computers.

20 16. Instagram is a photo and video sharing service, mobile application, and
21 social network. Instagram users can post photos and videos to their profile and share
22 them with their followers or a select group of friends. Instagram users can also view,
23 comment on, and “like” posts shared by others on Instagram.

24 17. Instagram users can gain followers, views, and likes, but only from other
25 registered Instagram users. If a visitor to Instagram does not have an Instagram account
26 and tries to “like” a post, the visitor is redirected to the Instagram login page to enter
27 their Instagram credentials or to create an Instagram account.
28

1 18. When an Instagram user posts a photo to their account, other Instagram
2 users can view the photo, and choose to “like” it and add a comment to the post. For
3 private accounts, followers of the private account can see the post. For public accounts,
4 anyone with an Instagram account can see the post. When a photo is liked or a comment
5 about the post is added, that like and comment can be seen by anyone who can see the
6 post. An Instagram user can also choose to “follow” another Instagram user. Instagram
7 users can see the total number of users following an Instagram account. For marketing
8 and other commercial purposes, certain Instagram users strive to increase the number
9 of followers, views, comments, and likes they receive to increase their visibility and
10 popularity on Instagram.

11 **B. Instagram’s Terms of Use, Guidelines, and Platform Policy**

12 19. Everyone who uses Instagram agrees to Instagram’s Terms of Use
13 (“Terms”) and other rules that govern access to and use of Instagram, including
14 Instagram’s Community Guidelines, Brand Guidelines, and Platform Policy
15 (collectively, “Terms and Policies”).¹ Since April 2018, the Instagram Terms state that
16 because Instagram is a Facebook product, the Instagram Terms constitute an agreement
17 between the Instagram users and Facebook.

18 20. Since at least April 2018, Instagram’s Terms have prohibited users from
19 (a) “do[ing] anything unlawful, misleading, or fraudulent or for an illegal or
20 unauthorized purpose”; (b) “interfer[ing] with or impair[ing] the intended operation of
21 [Instagram]”; (c) “attempt[ing] to buy, [or] sell . . . any aspect of [an Instagram]
22 account”; (d) “access . . . information in unauthorized ways” including “in an automated
23 way without our express permission”; (e) “violate (or help or encourage others to
24 violate) [Instagram] Terms or [Instagram] policies . . . including . . . the Instagram
25 Community Guidelines[, and] Instagram Platform Policy.”

26
27
28 ¹ Instagram’s Terms and Policies can be accessed at
<https://help.instagram.com/581066165581870>

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