

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  
 9 Los Angeles, California 90071-2627  
 10 Telephone: (213) 532-2000  
 11 Facsimile: (213) 532-2020

12 Attorneys for Plaintiffs  
 13 FACEBOOK, INC. and INSTAGRAM, LLC

14 **UNITED STATES DISTRICT COURT**  
 15 **NORTHERN DISTRICT OF CALIFORNIA**  
 16 **SAN FRANCISCO/OAKLAND DIVISION**

17 FACEBOOK, INC., a Delaware  
 18 corporation, and INSTAGRAM, LLC, a  
 19 Delaware limited liability company,

CASE NO.: 3:20-cv-08153

**COMPLAINT; DEMAND FOR JURY  
 TRIAL**

20 Plaintiffs,

21 v.

22 ENSAR SAHINTURK,

23 Defendant.

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 2017, Defendant Ensar Sahinturk created and  
5 maintained a network of “clone” Instagram websites and web viewers (the “clone  
6 sites”), which displayed Instagram users’ public profiles without their knowledge or  
7 consent. Defendant “scraped” or improperly collected the Instagram users’ publicly  
8 viewable profiles, including photos, videos, and profile information, using unauthorized  
9 automation software. Defendant’s automation software evaded Instagram’s technical  
10 restrictions by falsely identifying itself as a legitimate Instagram user’s Android device  
11 connected to the official Instagram mobile application (“Official IG App”). Through  
12 this fraudulent connection, Defendant scraped publicly available data from over  
13 100,000 Instagram users and republished it to the clone sites.

14 2. Defendant’s conduct was not authorized by Facebook or Instagram. Since  
15 May 2019, Facebook and Instagram have taken technical and legal enforcement actions  
16 against Defendant, including disabling accounts and sending cease and desist letters.  
17 Facebook and Instagram bring this action to stop Defendant’s continued and future  
18 misuse of their platform in violation of Instagram’s Terms of Use (“TOU”). Facebook  
19 and Instagram also bring this action to obtain compensatory and punitive damages  
20 pursuant to the Lanham Act, 15 U.S.C. § 1125 (c) and (d).

### 21 PARTIES

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

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

27 5. Defendant Ensar Sahinturk is a resident of Istanbul, Turkey. According to  
28 LinkedIn, Defendant is a software developer and operates various Turkish companies,

1 which purport to provide services related to “corporate intelligence” and “software  
2 solutions.” Ex. 1. Since at least March 2020, Defendant controlled at least twenty clone  
3 websites displaying data from Instagram, including [jolygram.com](http://jolygram.com), [pikdo.net](http://pikdo.net), and  
4 [finalgram.com](http://finalgram.com).

### 5 JURISDICTION AND VENUE

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

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

11 8. In addition, the Court has jurisdiction over all the causes of action alleged  
12 in this Complaint pursuant to 28 U.S.C. § 1332 because complete diversity exists  
13 between the Plaintiff and the Defendant, and because the amount in controversy exceeds  
14 \$75,000.

15 9. The Court has personal jurisdiction over Defendant because Defendant has  
16 created multiple Instagram accounts and thereby agreed to Instagram’s TOU.  
17 Instagram’s TOU require Defendant to submit to the personal jurisdiction of this Court  
18 for litigating any claim, cause of action, or dispute with Instagram.

19 10. In addition, the Court has personal jurisdiction because Defendant  
20 knowingly directed and targeted his actions at Facebook, which has its principal place  
21 of business in California. Defendant’s business depends on accessing and scraping  
22 Instagram. Defendant has transacted business and engaged in commerce in California  
23 by, among other things, using a hosting provider and servers in San Francisco to host at  
24 least five of his clone sites. Facebook’s claims arise directly from these California  
25 contacts. Defendant generated revenue from his clone sites by running ads using an ad  
26 publishing service hosted by Google.

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

1 proper with respect to Defendant pursuant to 28 U.S.C. §1391(c)(3) because he does  
2 not reside in the United States.

3 12. Pursuant to Civil L.R. 3-2(c), this case may be assigned to either the San  
4 Francisco or Oakland division because Facebook is located in San Mateo County.

### 5 **FACTUAL ALLEGATIONS**

#### 6 **A. Background on Facebook and Instagram**

7 13. Facebook offers a social networking website and mobile application that  
8 enables its users to create their own personal profiles and connect with each other on  
9 their personal computers and mobile devices.

10 14. Instagram is a photo and video sharing service, mobile application, and  
11 social network. Instagram users can post photos and videos to their profile. They can  
12 also view, comment on, and like posts shared by others on Instagram. The Instagram  
13 service is a Facebook product.

14 15. When an Instagram user posts a photo, other Instagram users can view the  
15 photo and choose to “like” or “comment” on it. For private accounts, approved  
16 followers of the account can see the post. For public accounts, anyone can see the post.  
17 When a photo is liked, that like can be seen by anyone who can see the post.

18 16. Instagram users can also tag their photos with hashtags—words or phrases  
19 preceded by a number or hash sign (#)—that indicate that the post is about a specific  
20 topic. Other users can then search for hashtags to find content related to various topics.

21 17. Instagram also enables users to post Stories—photos or videos that can  
22 include audio and augmented reality affects. Stories are only visible to other users for  
23 24 hours after they are posted, unless the user specifically makes them available for  
24 longer by adding them as a Story Highlight. The user who posts a Story can see a list  
25 of every user who has viewed their Story.

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

1 Instagram credentials or to create a new Instagram account. In addition, if a visitor to  
2 Instagram has not logged in, they will be able to see only a limited number of posts  
3 before being redirected to an Instagram login page. Only users who have logged in can  
4 view Stories.

5 19. Instagram can be viewed using the Official IG App or at its website,  
6 [www.instagram.com](http://www.instagram.com). The Official IG App is a mobile application designed by  
7 Facebook that users can download onto their mobile phone. Communications made by  
8 authenticated Instagram users, using the Official IG App, are sent to Facebook  
9 computers, which will then return information to allow a user to experience the  
10 Instagram service on the Official IG App.

#### 11 **B. Instagram's Terms of Use**

12 20. Everyone who creates an Instagram account agrees to Instagram's TOU<sup>1</sup>  
13 and other rules that govern access to and use of Instagram, including Instagram's  
14 Community Guidelines.<sup>2</sup> Instagram's TOU state that because Instagram is a Facebook  
15 product, the TOU constitute an agreement between the Instagram users and Facebook.<sup>3</sup>

16 21. Since at least April 2018, Instagram's TOU prohibit users from (a)  
17 "do[ing] anything unlawful, misleading, or fraudulent or for an illegal or unauthorized  
18 purpose;" (b) "[I]nterfering or impairing the intended operation of [Instagram];" and (c)  
19 "creating accounts or collecting information in an automated way."

20 22. In addition, Instagram's TOU require users to "use [Instagram's]  
21 intellectual property and trademarks or similar marks," only "as expressly permitted by  
22 [Instagram's] Brand Guidelines[ ] or with [ ] prior written permission." The Brand  
23 Guidelines prohibit using the marks in a way that "[m]akes the Instagram brand the  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Instagram's TOU can be found at <https://help.instagram.com/581066165581870>.

27 <sup>2</sup> Instagram Community Guidelines can be found at  
28 <https://help.instagram.com/477434105621119>.

<sup>3</sup> See <https://help.instagram.com/581066165581870>.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.